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**EIGHTY-SECOND LEGISLATURE**

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**VOLUME II**



NOTE: The second volume continues with Journal proceedings proper (page 1293) of February 27 and concludes with the proceedings of March 11, ending with page 2634 of the Regular Session.



**Com. Sub. for Senate Bill 460** (originating in the Committee on Health and Human Resources), Repealing regulation of opioid treatment programs and creating licenses for all medication-assisted programs.

And reports back a committee substitute for same with the following title:

**Com. Sub. for Com. Sub. for Senate Bill 460** (originating in the Committee on the Judiciary)—A Bill to amend and reenact §16-1-4 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §16-5Y-1, §16-5Y-2, §16-5Y-3, §16-5Y-4, §16-5Y-5, §16-5Y-6, §16-5Y-7, §16-5Y-8, §16-5Y-9, §16-5Y-10, §16-5Y-11, §16-5Y-12 and §16-5Y-13; and to amend and reenact §60A-9-5 of said code, all relating to licensing and regulation of medication-assisted treatment programs for substance use disorders; repealing regulation of opioid treatment programs; setting out purpose; providing definitions; creating licenses for opioid treatment programs; creating categories of licenses; setting out licensing requirements; providing for registration of office-based medication-assisted programs; providing for application, fees and inspections of office-based medication-assisted programs; setting operational requirements for medication-assisted treatment programs; providing for a program sponsor and medical director; setting forth staffing requirements; providing for regulation and oversight by Office of Health Facility Licensure and Certification; designating necessity for a medical director and prescribing minimum training and performance requirements; allowing enrollment as a Medicaid provider; providing billing requirements; setting forth minimum certification requirements; mandating state and federal criminal background checks; designating who may prescribe and dispense medication-assisted treatment medications; setting certain minimum practice standards and patient treatment standards for any medication-assisted treatment program prescribing or dispensing medication-assisted treatment medications; requiring review of the Controlled Substances Monitoring Database for each patient at least quarterly; setting compliance requirements for a medication-assisted treatment program; providing for patient protocols, treatment plans

and profiles; allowing liquid methadone to be prescribed and dispensed only as allowed by legislative rule; setting notification requirements of operation changes; restricting location of medication-assisted treatment programs; allowing for waivers and variances from certification or licensure standards; permitting inspection warrants; providing for an administrative review and appeal process; allowing civil monetary penalties; designating license limitations for deviation for accepted practice or patient treatment standards; permitting the secretary to promulgate rules, including emergency rules; providing advertisement requirements; creating a moratorium on new opioid treatment programs; establishing state authority and state oversight authority for medication-assisted treatment programs; mandating data collection; and granting Office of Health Facility Licensure and Certification access to the Controlled Substances Monitoring Database for use in certification, licensure and regulation of health facilities.

With the recommendation that the committee substitute for committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

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

And reports back a committee substitute for same with the following title:

**Com. Sub. for Senate Bill 614** (originating in the Committee on the Judiciary)—A Bill to amend and reenact §46A-1-105 of the Code of West Virginia, 1931, as amended; and to amend and

reenact §46A-2-115 and §46A-2-121 of said code, all relating to the Consumer Credit and Protection Act; excluding obligation to make required payments to property owners' or homeowners' association from provisions of the Consumer Credit and Protection Act; clarifying conduct for unconscionable inducement; and providing limits on charges a secured lender may recover from a consumer borrower upon default.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Senate Bill 622**, Composition of PEIA Finance Board.

And reports back a committee substitute for same with the following title:

**Com. Sub. for Senate Bill 622** (originating in the Committee on Government Organization)—A Bill to amend and reenact §5-16-4 of the Code of West Virginia, 1931, as amended, relating to the composition of the Public Employees Insurance Agency Finance Board; reducing the number of members; and changing the experience requirements for members.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Craig Blair,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

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

And reports back a committee substitute for same with the following title:

**Com. Sub. for Senate Bill 625** (originating in the Committee on the Judiciary)—A Bill to amend and reenact §16-1-9c of the Code of West Virginia, 1931, as amended, relating to limitations on public access to information regarding aboveground storage tanks; creating an exception to information in a water protection plan; and allowing disclosure of information already in public domain as a result of the action of a state or federal agency.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

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

Your Committee on Health and Human Resources has had under consideration

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

And reports back a committee substitute for same with the following title:

**Com. Sub. for Senate Bill 628** (originating in the Committee on Health and Human Resources)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,

designated §30-3-10b; and to amend said code by adding thereto a new section, designated §30-14-12d, all relating to palliative or emergent treatment for terminally ill or critically injured incapacitated patients whose medical directives would otherwise be made under the authority of the Secretary of the Department of Health and Human Resources; defining certain terms; providing that a treating physician with concurrence of another treating physician may direct palliative or emergent medical care plan or treatment for terminally ill or critically injured incapacitated patients, including when not to resuscitate, when Department of Health and Human Resources delays in providing a directive for medical treatment; and providing that in order to direct palliative or emergent treatment plan, two treating physicians must concur that Department of Health and Human Resources delay has resulted in the patient having to endure unnecessary pain and suffering and that any remedial medical intervention likely would not lead to any meaningful recovery.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Ryan J. Ferns,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

**Senate Bill 657**, Relating to damages for medical monitoring.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

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

Your Committee on Health and Human Resources has had under consideration

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

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

Respectfully submitted,

Ryan J. Ferns,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

**Senate Joint Resolution 14**, Right to Farm and Ranch Amendment.

And reports back a committee substitute for same with the following title:

**Com. Sub. for Senate Joint Resolution 14** (originating in the Committee on the Judiciary)—Proposing an amendment to the Constitution of the State of West Virginia amending article III thereof, by adding thereto a new section, designated section twenty-three, relating to the right to farm and ranch; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

With the recommendation that the committee substitute be adopted.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

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

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

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

Your Committee on Health and Human Resources has had under consideration

**Eng. Com. Sub. for House Bill 4209**, Relating generally to health care provider taxes.

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

Respectfully submitted,

Ryan J. Ferns,  
*Chair.*

The bill, under the original double committee reference, was then referred to the Committee on Finance.

The Senate proceeded to the sixth order of business.

Senators Sypolt, Williams, Stollings and Boso offered the following resolution:

**Senate Concurrent Resolution 51**—Requesting the Joint Committee on Government and Finance to conduct an interim study of the governance structure of the regional educational service agencies.

Whereas, A primary responsibility of the State Legislature is to ensure a thorough and efficient education for the children of the state; and

Whereas, The eight regional educational service agencies have a duty to provide for services to local school districts which reflect the needs of the individual districts and schools; and

Whereas, Current governance of RESAs is centralized with the West Virginia Board of Education; and

Whereas, Decisions regarding staffing and programming at the RESAs may be more efficient and responsive to the needs of local school districts at a regional level as opposed to being centralized at the state level; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the feasibility and related issues with regards to moving the governance of RESAs to regional level boards of governors as opposed to the West Virginia Board of Education; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the Joint Committee on Education, on its findings, conclusions and recommendations, together with drafts of any legislation necessary 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.

Which, under the rules, lies over one day.

Senators Palumbo, Laird, Woelfel, Prezioso, Williams, Stollings and Plymale offered the following resolution:

**Senate Concurrent Resolution 52**—Requesting the Joint Committee on Government and Finance study the feasibility of introducing a home modification tax credit and/or grant program in the State of West Virginia with the purpose of assisting older adults and people with disabilities with modifying their homes in order to make them more accessible.

Whereas, West Virginia's population is expected to age at a rate that exceeds the country. The U. S. Census estimates that 30 percent of West Virginia's population will be 60 and older by 2030. Many older adults will choose to age in place and continue to be active in the communities in which they live. Having an accessible home will help an older adult live safely at home for as long as possible; and

Whereas, West Virginia has one of the highest rates of disability in the country. According to the 2015 Annual Report of the Disability Statistics & Demographics Rehabilitation and Training Center, 17.9 percent of adults ages 18-64 in West Virginia live with a disability. Nationally, 10.5 percent of adults in the same age bracket live with a disability. In the 64 and older age bracket — more than two of every five West Virginians lives with a disability. Accessible homes are key to helping people with disabilities live their best lives; and

Whereas, Home modifications prevent falls. Studies consistently report that over 50 percent of people with multiple sclerosis (MS) fall in a three-to-six-month period and around 30 to 50 percent fall multiple times. People with MS also suffer various sequelae (or side effects) of falls, with over 50 percent having been

injured by a fall. Falls are also associated with loss of confidence and independence, social isolation, curtailment of activities, increased risk for more falls and increased use and cost of healthcare services. In the older adult population, one in three adults (aged 65 or older) falls each year. Among older adults, falls are the leading cause of both fatal and nonfatal injuries. In 2011, the Centers for Disease Control and Prevention estimated 22,900 older adults died from unintentional fall injuries. In older adults, fall-related injuries may result in nursing home admission and injuries that require extensive rehabilitation (e.g. hip fractures and traumatic brain injuries). The direct medical cost of these falls was \$30 billion in 2010. Given the high prevalence and serious consequences of falls on people with disabilities and older adults, interventions such as home modifications that prevent falls are essential; and

Whereas, Home modifications can place a large financial burden on individuals with disabilities and their families. According to the Center for Universal Design, home modifications can range from \$100 to \$50,000. Modifications can be simple such as installing a grab bar in the shower, which minimal costs are associated; involve assistive technology, which comes at a moderate or expensive cost; or require much costlier structural changes such as widening a doorway; and

Whereas, There are currently no grants or tax credit programs in West Virginia to help individuals make their home more accessible. Tax credits provide much needed financial relief for those individuals and families living with disabilities who are often unable to access other programs that offer assistance for home modifications due to income guidelines. A grant program would benefit individuals who do not have tax liability or who cannot afford to pay for a home modification initially; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the feasibility of introducing a home modification tax credit and/or grant program in the State of West Virginia with the purpose of assisting older adults and people with

disabilities with modifying their homes in order to make them more accessible; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2017, on its findings, conclusions and recommendations, together with drafts of any legislation necessary 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.

Which, under the rules, lies over one day.

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

**Senate Concurrent Resolution 53**—Requesting Division of Highways name bridge number 25-218-4.69 (25A219), carrying West Virginia Route 218 over Buffalo Creek, and connecting the town of Farmington to U. S. Route 250 in Marion County, the “Harry C. ‘Buck’ Markley Jr. Memorial Bridge”.

Whereas, Harry C. “Buck” Markley, was born on May 27, 1935, in Farmington, West Virginia. He was the son of Harry and Virginia Pyles Markley. He graduated from Farmington High School and worked in Marion County at Wall Plaster and Angelucci Trucking before transitioning to the coal fields of the Four States, Blacksville and Grant Town mines. He served as a federal mine inspector from 1972 through 1996 and was a member of the Four States, Blacksville and the federal mine rescue teams; and

Whereas, Harry Markley was a devoted public servant, serving on the Farmington Town Council and as Mayor of Farmington for eighteen years, as well as serving with the Farmington Volunteer Fire Department for forty-five years, and forty years as chief of Company Seven. During Harry Markley’s career in public service he also served on the Marion County Fire Board. As Mayor, Harry

Markley took the steps necessary to make Farmington easily accessible by leading the effort to reconstruct the bridge connecting Farmington to U. S. Route 250 in 1985; and

Whereas, Harry Markley passed away on June 23, 2015, in his home in Marion County. He has been an outstanding citizen and leader of Farmington and it is fitting that Harry C. “Buck” Markley Jr.’s legacy is memorialized on the very bridge that he helped to create; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 25-218-4.69 (25A219), carrying West Virginia Route 218 over Buffalo Creek in Marion County, the Harry C. “Buck” Markley Jr. Memorial Bridge; and, be it

*Further Resolved,* That the Commissioner of the Division of Highways is hereby requested to have made and be placed signed identifying the Harry C. “Buck” Markley Jr. Bridge; and, be it

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

Which, under the rules, lies over one day.

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for Com. Sub. for Senate Bill 116,** Increasing number of limited video lottery terminals allowed at retail location.

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

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Romano, Snyder, Stollings, Sypolt,

Takubo, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: Prezioso and Unger—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 116) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 344**, Clarifying composition and chairmanship of Commission on Special Investigations.

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

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

**Eng. Com. Sub. for Senate Bill 411**, Creating Second Chance for Employment Act.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 411) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 421**, Terminating behavioral health severance and business privilege tax.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 421) passed with its title.

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

**Eng. Senate Bill 455**, Allowing person to be both limited video lottery operator and retailer.

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

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Stollings, Sypolt,

Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: Snyder—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 455) passed with its title.

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

**Eng. Senate Bill 461**, Updating WV Workforce Investment Act to the WV Workforce Innovation and Opportunity Act.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 461) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 468**, Allowing lender charge and receive interest on rescindable loan during rescission period.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 468) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 542**, Admissibility of certain evidence in civil action on use or nonuse of safety belt.

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

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

The nays were: Facemire, Kessler, Romano, Snyder and Unger—5.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 542) passed with its title.

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

**Eng. Senate Bill 578**, Protecting utility workers from crimes against person.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 578) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 595**, Relating to retirement credit for members of WV National Guard.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 595) passed with its title.

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

**Eng. Senate Bill 618**, Allowing Economic Development Authority to make loans to certain whitewater outfitters.

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

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

**Eng. Com. Sub. for Senate Bill 619**, 2016 Regulatory Reform Act.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 619 pass?”

On the passage of the bill, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Leonhardt, Maynard, Mullins, Sypolt, Takubo, Trump, Walters and Cole (Mr. President)—18.

The nays were: Beach, Facemire, Kessler, Kirkendoll, Laird, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Unger, Williams, Woelfel and Yost—16.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 619) passed.

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

**Eng. Com. Sub. for Senate Bill 619**—A Bill to amend and reenact §29A-3-5 and §29A-3-11 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto two new sections, designated §29A-3-19 and §29A-3-20; and to amend said code by adding thereto a new section, designated §29A-3A-20, all relating to legislative rulemaking; requiring agencies respond to public comments during the rule-making process; requiring five-year expiration provisions in all future rules promulgated by executive agencies and higher education, but with provided exceptions; requiring expiration provisions in all future modifications of rules affecting agencies and higher education, but with provided exceptions; providing that any rule containing an expiration provision shall remain in effect after the expiration date and until the rule is modified or repealed; requiring agencies to explain why or why not public comments were incorporated into the rule; providing that failure of an agency to adequately explain why or why not public comments were incorporated into the rule is grounds for rejection of the rule; requiring additional information to be included when an agency submits proposed rules to the Legislative Rule-Making Review Committee, including an economic impact statement, public health impact statement, detailed description of the purpose or objective of the rule, explanation of the statutory authority, public comments and written responses by the agency concerning those comments; requiring the agency's response address each issue and concern expressed by the comments received and whether the rule will be overly burdensome on business and industry or negatively impact public health by setting forth specific factors that must be addressed; requiring all executive branch agencies to review and evaluate all rules, guidelines, policies and recommendations with those any federal counterparts and determine if the state's rules, guidelines, policies and recommendations are more stringent; and requiring each

agency to review each of its rules within four years to determine if its rules should be continued without change, modified or repealed, and to submit a report to the Legislative Rule-Making Review Committee.

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

**Eng. Senate Bill 627**, Permitting physician to decline prescribing controlled substance.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 627) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 634**, Creating William R. Laird IV Second Chance Driver's License Act.

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

Pending discussion,

The question being "Shall Engrossed Committee Substitute for Senate Bill 634 pass?"

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 634) passed with its title.

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

Thereafter, at the request of Senator Kessler, and by unanimous consent, the remarks by Senators Trump, Laird and Miller regarding the passage of Engrossed Committee Substitute for Senate Bill 634 were ordered printed in the Appendix to the Journal.

**Eng. Com. Sub. for House Bill 2444,** Providing for the assignment of economic development office representatives to serve as Small Business Allies as facilitators to assist small business entities and individuals.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2444) passed with its title.

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

**Eng. Com. Sub. for House Bill 4163**, Providing the authority and procedure for municipalities to give notice to, and publish the names of, entities delinquent in paying business and occupation taxes.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4163) passed.

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

**Eng. Com. Sub. for House Bill 4163**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto four new sections, designated §8-13-24, §8-13-25, §8-13-26 and §8-13-27, all relating to providing municipalities plenary power and authority to adopt an ordinance providing for the publication of delinquent business and occupation taxes; providing notice

requirements; requiring policies and procedures regarding the preparation, publication and posting of a delinquent business and occupation list; and allowing for a reasonable charge to be added to the amount owed by a delinquent taxpayer to cover the costs of preparing, publishing and posting a delinquent list.

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

The Senate proceeded to the ninth order of business.

**Com. Sub. for Com. Sub. for Senate Bill 47**, Rewriting licensing requirements for practice of medicine and surgery and podiatry.

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

**Com. Sub. for Senate Bill 287**, Creating West Virginia Safer Workplaces Act.

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

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

On page four, section four, line four, after the word “employees” by changing the period to a colon and inserting the following proviso: *Provided*, That this article does not abrogate the right of privacy, including the right of an individual to be let alone and to keep secret his or her private communications, conversations and affairs, as stated in *Roach v. Harper*, 143 W. Va. 869, but rather determines that the right of privacy is outweighed by the public policy stated in this section if an employer meets the requirements set forth in this article.

The bill (Com. Sub. for S. B. 287), as amended, was then ordered to engrossment and third reading.

**Com. Sub. for Com. Sub. for Senate Bill 303**, Providing for 5-day resident fishing license.

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

**Senate Bill 384**, Requiring Bureau for Medical Services seek federal waiver for 30-day waiting period for tubal ligation.

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

**Com. Sub. for Senate Bill 399**, Establishing personal and corporate income tax credits for farmers donating edible agricultural products.

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

**Senate Bill 435**, Allowing farm winery enter alternating wine proprietorship agreements with farm owners.

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

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

On page six, section three, line twenty-four, after the word "article" by changing the semicolon to a colon and inserting the following proviso: *Provided*, That notwithstanding any provision of this code to the contrary, the commissioner may issue a license to a wine specialty shop consistent with the provisions of section two, article eight, chapter six of this code that is located on the premises of an existing resort area in a county that has elected not to permit the sale of wine or alcoholic beverages. "Resort area" shall mean an area encompassing one or more resort hotels, and attachments of the resort hotels, and the traditional, immediate grounds of such resort hotels;.

The bill (S. B. 435), as amended, was then ordered to engrossment and third reading.

**Com. Sub. for Senate Bill 594**, Requiring State Auditor consider for payment claim submitted by electronically generated invoice.

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

**Com. Sub. for Senate Bill 596**, Permitting natural gas companies enter upon real property in certain instances.

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

**Senate Bill 626**, Requiring DHHR secretary seek waiver within Supplemental Nutrition Assistance Program limiting purchases under WIC program.

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

**Com. Sub. for Senate Bill 637**, Creating WV Uniform Fiduciary Access to Digital Assets Act of 2016.

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

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

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

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

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

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

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

**Senate Bill 700**, Authorizing Berkeley County Council own or operate a drug treatment or drug rehabilitation facility.

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

**Com. Sub. for Senate Joint Resolution 1**, County Economic Development Amendment.

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

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

**Eng. Com. Sub. for House Bill 2852**, Relating to legalizing and regulating the sale and use of fireworks.

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

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

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

That §29-3-23, §29-3-24, §29-3-25 and §29-3-26 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding a new article, designated §29-3E-1, §29-3E-2, §29-3E-3, §29-3E-4, §29-3E-5, §29-3E-6, §29-3E-7, §29-3E-8, §29-3E-9, §29-3E-10, §29-3E-11, §29-3E-12, §29-3E-13 and §29-3E-14; and that §61-3E-1 and §61-3E-11 of said code be amended and reenacted, all to read as follows:

**CHAPTER 29. MISCELLANEOUS BOARDS AND  
OFFICERS.**

**ARTICLE 3E. FIREWORKS SAFETY.**

**§29-3E-1. Unlawful acts.**

It is unlawful for a person to manufacture, wholesale, distribute, import, sell or store for the purpose of resale, consumer fireworks, sparkling devices, novelties or toy caps without a license, registration, certificate or permit from the State Fire Marshal.

**§29-3E-2. Definitions.**

As used in this article:

(1) “Agricultural and wildlife fireworks” means fireworks devices distributed to farmers, ranchers and growers through a wildlife management program administered by the United States Department of the Interior or the Division of Natural Resources of this state;

(2) “Amusement park” means any person or organization which holds a permit for the operation of an amusement ride or amusement attraction under article ten, chapter twenty-one of this code;

(3) “APA Standard 87-1” means the APA Standard 87-1 published by the American Pyrotechnics Association, as amended, and incorporated by reference into Title 49 of the Code of Federal Regulations;

(4) “Articles pyrotechnic” means pyrotechnic devices for professional use that are similar to consumer fireworks in chemical composition and construction but not intended for consumer use, that meet the weight limits for consumer fireworks but are not labeled as such, and that are classified as UN0431 or UN0432 under 49 C. F. R. §172.101 (2014);

(5) “Consumer fireworks” means small fireworks devices that are designed to produce visible effects by combustion that are required to comply with the construction, chemical composition and labeling regulations promulgated by the United States Consumer Product Safety Commission under 16 C. F. R. Parts 1500 and 1507 (2014), and that are listed in APA Standard 87-1. Consumer fireworks do not include sparkling devices, novelties, toy caps or model rockets;

(6) “Consumer fireworks certificate” means a certificate issued under section five of this article;

(7) “Display fireworks” means large fireworks to be used solely by professional pyro-technicians licensed by the State Fire Marshal and designed primarily to produce visible or audible effects by combustion, deflagration or detonation and includes, but is not limited to, salutes containing more than two grains (one hundred thirty milligrams) of explosive materials, aerial shells containing more than forty grams of pyrotechnic compositions and other display pieces that exceed the limits of explosive materials for classification as consumer fireworks and are classified as fireworks UN0333, UN0334, or UN0335 under 49 C. F. R. §172.101 (2014);

(8) “Distributor” means a person who sells fireworks to wholesalers and retailers for resale;

(9) “Division 1.3 explosive” means that term as defined in 49 C. F. R. §173.50 (2014);

(10) “Division 1.4 explosive” means that term as defined in 49 C. F. R. §173.50 (2014);

(11) “Explosive composition” means a chemical or mixture of chemicals that produces an audible effect by deflagration or detonation when ignited;

(12) “Fire Marshal” means the State Fire Marshal;

(13) “Firework” or “fireworks” means any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration or detonation. Fireworks

include consumer fireworks, display fireworks and special effects. Fireworks does not include sparkling devices, novelties, toy caps or model rockets;

(14) “Interstate wholesaler” means a person who is engaged in interstate commerce selling fireworks;

(15) “Model rocket” means that term as defined in National Fire Protection Association Standard 1122, “Code for Model Rocketry”;

(16) “New explosive” means that term as defined in 49 C. F. R. §173.56 (2014);

(17) “NFPA 1123” means National Fire Protection Association Standard 1123, “Code for Fireworks Display;”

(18) “NFPA 1124” means National Fire Protection Association Standard 1124, “Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles,” 2006 Edition;

(19) “NFPA 1126” means National Fire Protection Association Standard 1126, “Standard for the Use of Pyrotechnics Before a Proximate Audience;”

(20) “Novelties” means that term as defined under APA standard 87-1, section 3.2; but shall not include toy pistols, toy caps, toy canes, toy guns or other similar devices;

(21) “Permanent” means that term as defined in NFPA 1124;

(22) “Person” means an individual or the responsible person for an association, an organization, a partnership, a limited partnership, a limited liability company, a corporation or any other group or combination acting as a unit;

(23) “Public display of fireworks” means a public entertainment feature that is advertised to the general public or is on public property that includes the display or discharge of fireworks;

(24) “Pyrotechnic composition” means a mixture of chemicals that produces a visible or audible effect by combustion rather than deflagration or detonation. A pyrotechnic composition will not explode upon ignition unless severely confined;

(25) “Retailer” means a person who purchases consumer fireworks for resale to consumers;

(26) “Sparkling devices” means “ground or handheld sparkling devices” as that phrase is defined under APA 87-1, sections 3.1.1 and 3.5;

(27) “Special effects” means a combination of chemical elements or chemical compounds capable of burning independently of the oxygen of the atmosphere and designed and intended to produce an audible, visual, mechanical or thermal effect as an integral part of a motion picture, radio, television, theatrical or opera production or live entertainment;

(28) “Temporary” means that term as defined in NFPA 1124;

(29) “Toy caps” means that term as defined under APA 87-1, section 3.3; and

(30) “Wholesaler” means any person who sells consumer fireworks to a retailer or any other person for resale and any person who sells articles of pyrotechnics, display fireworks, and special effects to a person licensed to possess and use those devices.

### **§29-3E-3. Production or transportation of fireworks.**

A person may produce or transport a firework that is a new explosive and that is either a division 1.3 explosive or division 1.4 explosive if the person first meets the requirements of 49 C. F. R. §173.56(2)(j) (2014).

### **§29-3E-4. Sparkling devices and novelties registration required.**

(a) A person may not sell sparkling devices or novelties without being registered with the State Fire Marshal.

(b) To be registered with the State Fire Marshal, the person shall:

(1) Submit an application to the State Fire Marshal;

(2) Provide a copy of his or her current business registration certificate or his or her certificate to sell sparklers and novelties issued by the State Tax Commissioner;

(3) Pay the required fee; and

(4) Provide other information as the State Fire Marshal may require by legislative rule.

(c) A registration is valid for the calendar year or any fraction thereof and expires on December 31 of each year.

(d) A registration is not transferable.

(e) A person shall post the registration in a conspicuous place at the location of the business.

(f) A separate registration is required for each location.

(g) The fee required in subdivision (3), subsection (b) of this section shall be \$15.00 per retail location.

(h) The fee assessed by this section shall be retained by the State Fire Marshal and expended to offset costs incurred in performing the duties imposed by the provisions of this code.

**§29-3E-5. Consumer fireworks certificate required.**

(a) A retailer may not sell consumer fireworks unless the retailer is certified under this article.

(b) To be certified to sell consumer fireworks a retailer shall:

(1) Submit an application to the State Fire Marshal;

(2) Submit with the application a copy of his or her current business registration certificate;

(3) Pay a fee of \$500.00 for each temporary retail sales location and \$1000.00 for each permanent retail sales location to the State Fire Marshal;

(4) Provide the State Fire Marshal proof that the retailer maintains at all times public liability and product liability insurance with minimum coverage limits of \$1 million dollars to cover losses, damages or injuries that might result from selling consumer fireworks; and

(5) Provide other information as the State Fire Marshal may require by legislative rule.

(c) A consumer fireworks certificate is valid from April 1 through March 31 of the next calendar year.

(d) A consumer fireworks certificate is not transferable.

(e) A retailer shall post the certificate in a conspicuous place at the location of the business.

(f) A separate certificate is required for each location of the business.

(g) A certificate holder may also sell sparkling devices and novelties at the same location without additionally obtaining a sparkling devices and novelties registration.

(h) A retailer who sells consumer fireworks shall comply with the regulations provided in NFPA 1124.

(i) A retailer who sells consumer fireworks shall comply with all regulations provided in NFPA 1124. The State Fire Marshal may by legislative rule, promulgate rules to supplement those rules established in NFPA 1124.

(j) A retailer shall sell the consumer fireworks only from a permanent building or structure that meets the specifications in NFPA 1124 or a temporary facility or structure that meets the specifications of NFPA 1124.7.3.5.

(k) Any fees collected pursuant to this section shall be deposited in the State Fire Marshal Fees Fund established by the provisions of section twelve-b, article three, chapter twenty-nine of this code.

(l) Notwithstanding any provision of this article to the contrary, no retailer may offer consumer fireworks for sale before June 1, 2016.

**§29-3E-6. Required permit for public fireworks display.**

(a) Any municipality, county, fair association, amusement park or other organization shall have a permit to present a public display of fireworks from the State Fire Marshal.

(b) To receive a permit, a municipality, fair association, amusement park, or other organization shall:

(1) Submit an application to the State Fire Marshal;

(2) Pay the required fee not to exceed \$50.00;

(3) Furnish proof of financial responsibility to satisfy claims for damages to property or personal injuries arising out of any act or omission on the part of the person or an employee thereof, in the amount, character and form as the State Fire Marshal determines to be necessary for the protection of the public; and

(4) Provide any other information as the State Fire Marshal may require by legislative rule.

(c) The State Fire Marshal shall require the municipality, county, fair association, amusement park and other organizations to give written notice to the local police and fire authorities at least five days prior to the display for which the permit is sought.

(d) A permit is not transferable.

(e) The display shall be operated by a competent operator licensed or certified as to competency by the State Fire Marshal and shall be of such composition, character, and so located, discharged or fired so as to be safe in the opinion of the chief of the fire

department serving the community or area where such display is being held.

(f) The permittee shall require a bond from the licensee in a sum not less than \$1,000 conditioned on compliance with the provisions of this article and the rules of the State Fire Marshal except where the licensee is an insured government entity.

(g) Any fees collected pursuant to this section shall be deposited in the State Fire Marshal Fees Fund established by the provisions of section twelve-b, article three, chapter twenty-nine of this code.

**§29-3E-7. Fireworks safety fee; administration; tax crimes; collections; remittances; deposits; distributions; rules.**

(a) In addition to the sales tax, a fireworks safety fee of twelve percent of all sales is levied on retail sales of consumer fireworks in this state. The fee shall be distributed pursuant to the provisions of this subsection. The fee computation under this subsection shall be carried to the third decimal place, and the fee rounded up to the next whole cent whenever the third decimal place is greater than four, and rounded down to the lower whole cent whenever the third decimal place is four or less.

The State Tax Commissioner shall disburse all proceeds of the fireworks safety fee into the state treasury each month in the following manner:

(1) Seventy-five percent shall be deposited into a special account in the State Treasury, designated the Veterans' Facility Support Fund established by the provisions of section eleven, article one, chapter nine-a for expenditure on veterans' programs.

(2) Twenty-five percent shall be deposited into a special account in the State Treasury, designated the Fire Protection Fund established in section thirty-three, article three, chapter thirty-three of this code and distributed in accordance with that section to each volunteer fire company or department on an equal share basis by the State Treasurer.

(b) A person who purchases consumer fireworks in a retail transaction shall pay to the retailer the amount of the fee levied by this section, which fee is added to and constitutes a part of the sale price, and is collectible by the retailer who shall account to the state for all fees paid by a purchaser. If the retailer fails to collect the fee, or fails to account to the state for the fees paid by a purchaser, then the retailer is liable for the payment of the fee to the state.

(c) A retailer shall remit to the State Tax Commissioner no later than thirty days after the end of each preceding month all moneys collected for such preceding month, pursuant to the requirements of this section, and shall report such collections on forms and in the manner prescribed by the State Tax Commissioner.

(d) All moneys so remitted, net of refunds and adjustments, shall be paid by the State Tax Commissioner into the funds specified in this section.

(e) Each and every provision of the West Virginia Tax Crimes and Penalties Act set forth in article nine, chapter eleven of this code applies to the fees imposed pursuant to this article, with like effect as if that act were applicable only to the fees imposed by this article and were set forth in extenso in this article.

(f) The State Tax Commissioner shall propose legislative rules and may promulgate such emergency rules as are necessary to implement the provisions of this article.

(g) Notwithstanding any other provision of this code to the contrary, the State Tax Commissioner may deduct and retain one percent from each payment into the General Revenue Fund, as provided in this section, for the benefit of his or her office for general tax administration, from which expenditures are permitted from collections without appropriation by the Legislature.

#### **§29-3E-8. State Fire Marshal's Rule-making Authority.**

(a) The State Fire Marshal may promulgate emergency rules and shall propose legislative rules for promulgation, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article, including:

(1) Adopting by reference the most recent edition of APA Standard 87-1;

(2) Adopting by reference the most recent edition of NFPA 1123, Code for Fireworks Display;

(3) Adopting by reference NFPA 1124, code for the manufacture, transportation, storage and retail sales of fireworks and pyrotechnic articles;

(4) Adopting by reference the most recent edition of NFPA 1126, standard for the use of pyrotechnics before a proximate audience;

(5) Procedures for the issuance and renewal of a registration, certificate and permit;

(6) A fee schedule;

(7) Establishing insurance or bond requirements;

(8) Establishing additional criteria for the granting of a registration, certificate, or permit under this article; and

(9) Registration of manufacturers, wholesalers and distributors.

### **§29-3E-9. Exemptions.**

This article does not prohibit any of the following:

(1) The use of fireworks by railroads or other transportation agencies for signaling purposes or illumination;

(2) The use of agricultural and wildlife fireworks;

(3) The sale or use of blank cartridges for a theatrical performance, use by military organizations or signal or ceremonial purposes in athletics or sports; or

(4) The possession, sale or disposal of fireworks incidental to the public display of fireworks by wholesalers or other persons who have a permit to possess, store and sell explosives from the Bureau

of Alcohol, Tobacco, Firearms, and Explosives of the United States Department of Justice and the State Fire Marshal.

**§29-3E-10. Local municipalities' regulation of consumer fireworks.**

This article does not affect the authority of the governing body of a municipality to prohibit or regulate the use of consumer fireworks within its boundaries.

**§29-3E-11. Violations of this article; penalties.**

(a) A person may not intentionally ignite, discharge or use consumer fireworks on public or private property without the express permission of the owner to do so.

(b) A person may not intentionally ignite or discharge any consumer fireworks or sparkling devices within or throw the same from a motor vehicle or building.

(c) A person may not intentionally ignite or discharge any consumer fireworks or sparkling devices into or at a motor vehicle or building, or at any person or group of people.

(d) A person may not intentionally ignite or discharge any consumer fireworks or sparkling device while the person:

(1) Is under the influence of alcohol;

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

(3) Is under the influence of any other drug; or

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

(e) A person who is less than eighteen years of age may not purchase, nor offer for sale, consumer fireworks.

(f) The provisions of this section shall be effective June 1, 2016.

**§29-3E-12. Miscellaneous offenses; penalties.**

Any person who violates a provision of this article for which a penalty is not expressly set forth is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100.00 nor more than \$500.00. The provisions of this section shall be effective June 1, 2016.

**§29-3E-13. Seizures by the State Fire Marshal; enforcement of law.**

(a) The State Fire Marshal shall seize, take, remove and dispose of at public auction or destroy, or cause to be seized, taken or removed and disposed of at public auction, or destroyed at the expense of the owner, all stocks of fireworks or combustibles offered for sale, stored or held in violation of this article or an emergency or legislative rule promulgated hereunder.

(b) The West Virginia State Police, deputy sheriffs, municipal police officers and other law-enforcement officers shall assist in the enforcement of this article.

**§29-3E-14. Reporting requirements; duration of reporting requirements.**

Annually, on or before January 15, 2017, 2018 and 2019:

(1) The State Treasurer shall submit to the President of the Senate and the Speaker of the House of Delegates a report detailing the amount of revenue received and deposited from the Fireworks Safety Fee into the Fire Safety Fund authorized by section seven of this article and the distribution of said funds;

(2) The Secretary of Veterans' Assistance shall supply the President of the Senate and Speaker of the House of Delegates with a report detailing the revenue received from the Fireworks Safety Fee and deposited in the Veterans' Facility Support Fund and the purposes for which the money was expended;

(3) The State Tax Commissioner shall provide to the President of the Senate and Speaker of the House of Delegates a report

detailing the revenue received from the sales tax received from the sale of fireworks authorized by the provisions of the article and revenue received from the Fireworks Safety Fee authorized by section seven of this article; and

(4) The State Fire Marshal shall submit to the President of the Senate and Speaker of the House of Delegates a report detailing the amounts of revenue received from the registration fees imposed pursuant to the provisions of section five of this article, the purposes for which the fees were expended and the adequacy of the fees received in relation to the duties required of the office.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### **ARTICLE 3E. OFFENSES INVOLVING EXPLOSIVES.**

#### **§61-3E-1. Definitions.**

As used in this article, unless the context otherwise requires:

(a) “Destructive device” means any bomb, grenade, mine, rocket, missile, pipebomb or similar device containing an explosive, incendiary, explosive gas or expanding gas which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts, either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled.

“Destructive device” does not include a firearm as such is defined in section two, article seven of this chapter, or sparkling devices, novelties, toy caps, model rockets and their components as defined in section twenty three, article three, chapter twenty nine of this code or fireworks as these terms are defined in section two, article three-e, chapter twenty-nine of this code, or high power rockets and their components, as defined in this section.

(b) “Explosive material” means any chemical compound, mechanical mixture or device that is commonly used or can be used for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such

proportions, quantities or packaging that an ignition by fire, by friction, by concussion, by percussion, by detonator or by any part of the compound or mixture may cause a sudden generation of highly heated gases. These materials include, but are not limited to, powders for blasting, high or low explosives, blasting materials, blasting agents, blasting emulsions, blasting fuses other than electric circuit breakers, detonators, blasting caps and other detonating agents and black or smokeless powders not manufactured or used for lawful sporting purposes. ~~or fireworks defined in section twenty three, article three, chapter twenty nine of this code which are not used in violation of this article.~~ Also included are all explosive materials listed annually by the office of the State Fire Marshal and published in the State Register, said publication being hereby mandated.

(c) “High power rocket” means the term as defined in National Fire Protection Association Standard 1127, “Code for High Power Rocketry.”

~~(e)~~ (d) “Hoax bomb” means any device or object that by its design, construction, content or characteristics appears to be, or is represented to be or to contain a destructive device, explosive material or incendiary device as defined in this section, but is, in fact, an inoperative facsimile or imitation of such a destructive device, explosive material or incendiary device.

~~(d)~~ (e) “Incendiary device” means a container containing gasoline, kerosene, fuel oil, or derivative thereof, or other flammable or combustible material, having a wick or other substance or device which, if set or ignited, is capable of igniting such gasoline, kerosene, fuel oil, or derivative thereof, or other flammable or combustible material: *Provided*, That no similar device commercially manufactured and used solely for the purpose of illumination shall be deemed to be an incendiary device.

~~(e)~~ (f) “Legal authority” means that right as expressly stated by statute or law.

(g) “Model rocket” means the term as defined in National Fire Protection Association Standard 1122, “Code for Model Rocketry.”

~~(f)~~ (h) “Person” shall mean means an individual, corporation, company, association, firm, partnership, society or joint stock company.

~~(g)~~ (i) “Storage magazine” is defined to mean any building or structure, other than an explosives manufacturing building, approved by the legal authority for the storage of explosive materials.

### **§61-3E-11. Exemptions.**

(a) Unless specifically prohibited by any provision of this code or the laws of the United States, nothing in this article ~~shall prohibit~~ prohibits the authorized manufacture, sale, transportation, distribution, use or possession of any explosive material by any person holding a permit for such issued by the office of the State Fire Marshal. Any person performing a lawful activity pursuant to or regulated by the terms of a permit issued by the Division of Environmental Protection, or any office thereof, ~~shall be~~ is exempt from the provisions of this article.

(b) Unless specifically prohibited by any other provision of this code or the laws of the United States, nothing in this section ~~shall prohibit~~ prohibits the authorized manufacture, transportation, distribution, use or possession of any explosive, destructive device or incendiary device by a member of the armed forces or law-enforcement officers whenever such persons are acting lawfully and in the line of duty; nor shall it prohibit the manufacture, transportation, distribution, use or possession of any explosive material, destructive device or incendiary device to be used solely for lawful scientific research or lawful educational purposes. Any person engaged in otherwise lawful blasting activities failing to obtain a permit or in possession of an expired permit issued by the office of the ~~state fire marshal~~ State Fire Marshal ~~shall not be construed to be~~ is not in violation of the article.

(c) Nothing contained in this article applies to sparkling devices or novelties or to the sale, purchase, possession, use, transportation or storage of fireworks as regulated in article three-e, chapter twenty-nine of this code.

The bill (Eng. Com. Sub. for H. B. 2852), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4366**, Finding and declaring certain claims against the state and its agencies to be moral obligations of the state.

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

The Senate proceeded to the tenth order of business.

**Com. Sub. for Com. Sub. for Senate Bill 12**, Relating to County Local Powers Act.

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

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

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

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

**Com. Sub. for Senate Bill 545**, Relating to asbestos abatement on oil and gas pipelines.

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

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

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

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

**Com. Sub. for Senate Bill 635**, Limiting action to recover unpaid balance on contract made by consumer purchase.

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

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

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

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

**Eng. Com. Sub. for House Bill 4228**, Relating to transportation network companies.

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

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

The Senate then proceeded to the twelfth order of business.

Remarks were made by Senators Snyder and Stollings.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Sunday, February 28, 2016, at 5 p.m.

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## SUNDAY, FEBRUARY 28, 2016

The Senate met at 5 p.m.

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

Prayer was offered by the Honorable Charles S. Trump IV, a senator from the fifteenth district.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Chris Walters, a senator from the eighth district.

Pending the reading of the Journal of Saturday, February 27, 2016,

At the request of Senator Ferns, and by unanimous consent, the Journal was approved and the further reading thereof dispensed with.

At the request of Senator Carmichael, and by unanimous consent, the provisions of rule number fifty-four of the Rules of the Senate, relating to persons entitled to the privileges of the floor, were suspended in order to grant Chase Mullins, son of the Honorable Jeff Mullins, a senator from the ninth district, privileges of the floor for the day.

The Senate proceeded to the fourth order of business

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

Your Committee on the Judiciary has had under consideration

**Com. Sub. for Senate Bill 454** (originating in the Committee on Health and Human Resources), Requiring prescriptions for opioid antagonists be logged into Controlled Substances Monitoring Program.

And reports back a committee substitute for same with the following title:

**Com. Sub. for Com. Sub. for Senate Bill 454** (originating in the Committee on the Judiciary)—A Bill to amend and reenact §16-1-4 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §16-5Y-1, §16-5Y-2, §16-5Y-3, §16-5Y-4, §16-5Y-5, §16-5Y-6, §16-5Y-7, §16-5Y-8, §16-5Y-9, §16-5Y-10, §16-5Y-11, §16-5Y-12 and §16-5Y-13; and to amend and reenact §60A-9-4, §60A-9-5, §60A-9-5a, §60A-9-7 and §60A-9-8 of said code, all relating to licensing and regulation of medication-assisted treatment programs for substance use disorders; repealing regulation of opioid treatment programs; setting out purpose; providing definitions; creating licenses for opioid treatment programs; creating categories of licenses; setting out licensing requirements; providing for registration of office-based medication-assisted programs; providing for application, fees and inspections of office-based medication-assisted programs; setting operational requirements for medication-assisted treatment programs; providing for a program sponsor and medical director; setting forth staffing requirements; providing for regulation and oversight by Office of Health Facility Licensure and Certification; designating necessity for a medical director and prescribing minimum training and performance requirements; allowing enrollment as a Medicaid provider; providing billing requirements; setting forth minimum certification requirements; mandating state and federal criminal background checks; designating who may prescribe and dispense medication-assisted treatment medications; setting certain minimum practice standards and patient treatment standards for any medication-assisted treatment program prescribing or dispensing medication-assisted treatment medications; requiring review of the West Virginia Controlled Substances Monitoring Program database for each patient at least quarterly; setting compliance requirements for a medication-assisted treatment program; providing for patient protocols, treatment plans and profiles; allowing liquid methadone to be prescribed and dispensed only as allowed by legislative rule; setting notification requirements of operation changes; restricting location of medication-assisted treatment programs; allowing for waivers and variances from certification or licensure standards; permitting inspection warrants; providing for an administrative review and appeal process; allowing civil monetary penalties;

designating license limitations for deviation for accepted practice or patient treatment standards; permitting the secretary to promulgate rules, including emergency rules; providing advertisement requirements; creating moratorium on new opioid treatment programs; establishing state authority and state oversight authority for medication-assisted treatment programs; mandating data collection; granting Office of Health Facility Licensure and Certification access to the West Virginia Controlled Substances Monitoring Program database for use in certification, licensure and regulation of health facilities; requiring reporting when an opioid antagonist is dispensed by certain persons; clarifying statutory language related to 72-hour prescriptions; prohibiting licensing boards from issuing or reissuing licenses to practitioners who have not registered for the West Virginia Controlled Substances Monitoring Program database; establishing a civil penalty for failure to register for the West Virginia Controlled Substances Monitoring Program database; establishing a civil penalty for failure to access the West Virginia Controlled Substances Monitoring Program database as mandated by the code; providing exceptions to penalties; clarifying language related to the Fight Substance Abuse Fund; placing administrative authority over the Fight Substance Abuse Fund with the Bureau for Public Health; revising statutory language to use defined terms; and reorganizing existing language.

With the recommendation that the committee substitute for committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

**Com. Sub. for Senate Bill 484** (originating in the Committee on Military), Relating to reemployment rights of military personnel.

And reports back a committee substitute for same with the following title:

**Com. Sub. for Com. Sub. for Senate Bill 484** (originating in the Committee on the Judiciary)—A Bill to amend and reenact §15-1F-8 of the Code of West Virginia, 1931, as amended, relating to the reemployment rights of military personnel; extending reemployment rights protection to members of the organized militia in the active service of another state; and clarifying that the Uniformed Services Employment and Reemployment Rights Act of 1994 is considered applicable federal law.

With the recommendation that the committee substitute for committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

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

And reports back a committee substitute for same with the following title:

**Com. Sub. for Senate Bill 567** (originating in the Committee on the Judiciary)—A Bill to amend and reenact §61-3-29 of the Code of West Virginia, 1931, as amended, relating to prohibiting damage to property of railroads, public utilities and certain production, storage and distribution facilities; adding electrical storage facilities and timber operations to the protected entities;

prohibiting destruction and creating criminal offense of knowingly and willfully damaging property resulting in impairment to the normal, safe operation of safety-related equipment; providing criminal penalties; and clarifying persons convicted of offenses are subject to restitution.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

**Senate Bill 599**, Relating generally to Uniform Unclaimed Property Act.

And reports back a committee substitute for same with the following title:

**Com. Sub. for Senate Bill 599** (originating in the Committee on the Judiciary)—A Bill to amend and reenact §36-8-2 of the Code of West Virginia, 1931, as amended, relating generally to Uniform Unclaimed Property Act; and clarifying that presumed abandoned property in the form of amounts owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, and obligations related thereto, are guided by policies, requirements and interpretations of the Insurance Commissioner.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

**Senate Bill 601**, Legislative findings relating to oil and gas solid waste facility.

And reports back a committee substitute for same with the following title:

**Com. Sub. for Senate Bill 601** (originating in the Committee on the Judiciary)—A Bill to amend and reenact §22-15-10 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §24-2-11, relating to exception from the jurisdiction of the Public Service Commission for materials recovery facilities or mixed waste processing facilities.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

**Senate Bill 643**, Requiring individuals receiving unemployment compensation seek seasonal employment.

And reports back a committee substitute for same with the following title:

**Com. Sub. for Senate Bill 643** (originating in the Committee on the Judiciary)—A Bill to amend and reenact §21A-6-1a of the Code of West Virginia, 1931, as amended, relating to requiring

individuals receiving unemployment compensation to apply for and accept seasonal employment.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

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

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

Respectfully submitted,

Craig Blair,  
*Chair.*

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

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

And has amended same.

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

Respectfully submitted,

Craig Blair,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

**Senate Bill 686**, Allowing exception for locally authorized races on county or municipal roads.

And reports back a committee substitute for same with the following title:

**Com. Sub. for Senate Bill 686** (originating in the Committee on the Judiciary)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-1-3pp; and to amend said code by adding thereto a new section, designated §8-12-5g, all relating to authorizing local governing authorities to hold sanctioned motor vehicle races on public roads or municipal streets or airports under their jurisdiction; requiring issuance of permit in relation to racing event; providing immunity from damages; and declaring that an authorized racing event is not a nuisance or subject to speed restrictions.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

**Senate Bill 701** (originating in the Committee on the Judiciary)—A Bill to repeal §7-25-15, §7-25-17, §7-25-19, §7-25-

21 and §7-25-22 of the Code of West Virginia, 1931, as amended; to amend and reenact §7-25-3 and §7-25-8 of said code; and to amend and reenact §60-5-1, §60-5-2, §60-5-3, §60-5-4, §60-5-6, §60-5-7 and §60-5-8 of said code, all relating generally to resort area districts; removing resort area district authority to conduct property assessments; authorizing resort area districts to hold local option elections as to whether or not the sale of alcoholic beverages may be sold within the district; and providing voting mechanisms therefor.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

**Senate Bill 702** (originating in the Committee on the Judiciary)—A Bill to amend and reenact §44-8-1 of the Code of West Virginia, 1931, as amended, relating to providing that, in instances where real estate, or an interest therein, is devised to be sold and the proceeds thereof distributed, title to said real estate passes to those individuals entitled to receive the proceeds of sale if the personal representative of the estate does not do so within five years of the closing of an estate.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

**Senate Bill 703** (originating in the Committee on the Judiciary)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §59-1-2b, relating to requiring the Secretary of State to develop a mechanism for the deposit of the overpayment of certain fees into the Children's Trust Fund; and requiring that the person due the refund voluntarily and affirmatively chooses to donate the amount of the overpayment.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Senate Bill 704** (originating in the Committee on Government Organization)—A Bill to amend and reenact §24-6-12 of the Code of West Virginia, 1931, as amended, relating to dispatching of towing service for emergency towing of vehicles.

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

Respectfully submitted,

Craig Blair,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

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

And reports back a committee substitute for same with the following title:

**Com. Sub. for Senate Bill 25** (originating in the Committee on the Judiciary)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §3-11A-1, §3-11A-2, §3-11A-3, §3-11A-4 and §3-11A-5, all relating to providing procedure for West Virginia to select delegates to an Article V convention for proposing amendments to Constitution of the United States of America; defining terms; directing Legislature to establish committee of correspondence for Article V convention; authorizing participation by delegates in Article V convention only when each state has equal vote; setting forth delegate duties and responsibilities; setting forth oath for candidate for delegate or alternate; designating delegates and alternates as public officials and subject to West Virginia Governmental Ethics Act; providing for immediate recall of delegate casting unauthorized vote and replacement with alternate; directing Legislature to certify certain information to Article V convention; making violation of delegate's oath a felony; and providing criminal penalties for violation of a delegate's oath.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

**Senate Bill 528**, Altering power of Higher Education Policy Commission.

And reports back a committee substitute for same with the following title:

**Com. Sub. for Senate Bill 528** (originating in the Committee on Education)—A Bill to amend and reenact §18B-1B-4 of the Code of West Virginia, 1931, as amended, relating to altering the power of the Higher Education Policy Commission over academic programs of institutions under its jurisdiction.

With the recommendation that the committee substitute do pass; but under the original double committee reference first be referred to the Committee on Government Organization.

Respectfully submitted,

Dave Sypolt,  
*Chair.*

At the request of Senator Blair, as chair of the Committee on Government Organization, unanimous consent was granted to dispense with the second committee reference of the bill contained in the foregoing report from the Committee on Education.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

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

And has amended same.

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

Respectfully submitted,

Dave Sypolt,  
*Chair.*

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

**Senate Bill 677**, Allowing Higher Education Policy Commission increase tuition for online courses.

And reports back a committee substitute for same with the following title:

**Com. Sub. for Senate Bill 677** (originating in the Committee on Education)—A Bill to amend and reenact §18B-10-1 of the Code of West Virginia, 1931, as amended, relating to tuition rates set by higher education institutional governing boards; allowing increase in tuition for undergraduate and graduate students taking more than sixteen and twelve hours, respectively, a semester; requiring the Higher Education Policy Commission and the Council for Community and Technical College Education to promulgate rules in accordance with this amendment; and allowing the fixing of different tuition and fees for summer terms, nontraditional time periods and online course delivery.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Dave Sypolt,  
*Chair.*

The Senate proceeded to the sixth order of business, which agenda includes the making of main motions.

Senator Snyder moved that the Senate reconsider the vote by which on yesterday, Saturday, February 27, 2016, it adopted the

amendment offered by Senator Walters to Senate Bill 435 (*shown in the Senate Journal of that day, page 1316*).

On motion of Senator Snyder, further consideration of his aforesaid motion was postponed and placed under unfinished business for tomorrow, Monday, February 29, 2016.

The Senate proceeded to the seventh order of business.

**Senate Concurrent Resolution 51**, Requesting interim study of structure of Regional Educational Service Agencies.

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

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

**Senate Concurrent Resolution 52**, Requesting study of feasibility of home modification tax credit to make homes more accessible for older adults and disabled.

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

At the request of Senator Carmichael, and by unanimous consent, the resolution was laid over one day, retaining its place on the calendar.

**Senate Concurrent Resolution 53**, Harry C. "Buck" Markley, Jr. Memorial Bridge.

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

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

The Senate proceeded to the eighth order of business.

At the request of Senator Carmichael, and by unanimous consent, the following bills on third reading were laid over one day, retaining their place on the calendar:

**Eng. Com. Sub. for Com. Sub. for Senate Bill 47**, Rewriting licensing requirements for practice of medicine and surgery and podiatry.

**Eng. Com. Sub. for Senate Bill 287**, Creating West Virginia Safer Workplaces Act.

**Eng. Com. Sub. for Com. Sub. for Senate Bill 303**, Providing for 5-day resident fishing license.

**Eng. Com. Sub. for Senate Bill 344**, Clarifying composition and chairmanship of Commission on Special Investigations.

**Eng. Senate Bill 384**, Requiring Bureau for Medical Services seek federal waiver for 30-day waiting period for tubal ligation.

**Eng. Com. Sub. for Senate Bill 399**, Establishing personal and corporate income tax credits for farmers donating edible agricultural products.

**Eng. Senate Bill 435**, Allowing farm winery enter alternating wine proprietorship agreements with farm owners.

**Eng. Com. Sub. for Senate Bill 594**, Requiring State Auditor consider for payment claim submitted by electronically generated invoice.

**Eng. Com. Sub. for Senate Bill 596**, Permitting natural gas companies enter upon real property in certain instances.

**Eng. Senate Bill 618**, Allowing Economic Development Authority to make loans to certain whitewater outfitters.

**Eng. Senate Bill 626**, Requiring DHHR secretary seek waiver within Supplemental Nutrition Assistance Program limiting purchases under WIC program.

**Eng. Com. Sub. for Senate Bill 637**, Creating WV Uniform Fiduciary Access to Digital Assets Act of 2016.

**Eng. Senate Bill 700**, Authorizing Berkeley County Council own or operate a drug treatment or drug rehabilitation facility.

**Eng. Com. Sub. for House Bill 2852**, Relating to legalizing and regulating the sale and use of fireworks.

And,

**Eng. Com. Sub. for House Bill 4366**, Finding and declaring certain claims against the state and its agencies to be moral obligations of the state.

The Senate proceeded to the ninth order of business.

At the request of Senator Carmichael, and by unanimous consent, the following bills on second reading were laid over one day, retaining their place on the calendar:

**Com. Sub. for Com. Sub. for Senate Bill 12**, Relating to County Local Powers Act.

**Com. Sub. for Senate Bill 545**, Relating to asbestos abatement on oil and gas pipelines.

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

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

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

**Com. Sub. for Senate Joint Resolution 1**, County Economic Development Amendment.

And,

**Eng. Com. Sub. for House Bill 4228**, Relating to transportation network companies.

The Senate proceeded to the tenth order of business.

At the request of Senator Carmichael, and by unanimous consent, the following bills on first reading were laid over one day, retaining their place on the calendar:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Senate Bill 657**, Relating to damages for medical monitoring.

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

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

And,

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

The Senate proceeded to the thirteenth order of business.

Senator Carmichael called attention to today being the birthday of Donnie Adkins, Counsel to the Majority Leader, and on behalf of the Senate extended felicitations and good wishes to Donnie Adkins.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Monday, February 29, 2016, at 11 a.m.

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## MONDAY, FEBRUARY 29, 2016

The Senate met at 11 a.m.

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

Prayer was offered by Pastor LaDeana Teets, Brookside Church of the Brethren, Aurora, West Virginia.

Mountaineer Challenge Academy Honor Guard from Kingwood, West Virginia, proceeded in the posting of the Colors. The Honorable Mitch Carmichael, a senator from the fourth district, then led the Senate in the recitation of the Pledge of Allegiance.

Pending the reading of the Journal of Sunday, February 28, 2016,

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

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

The Senate then proceeded to the third order of business.

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

**Eng. Com. Sub. for House Bill 2110**—A Bill to amend and reenact §11-6F-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-13S-3 and §11-13S-4 of said code, all relating generally to the tax treatment of manufacturing entities generally; amending definition of manufacturing for purposes of special method for appraising qualified capital additions to manufacturing facilities for property tax purposes; amending definition of manufacturing for purposes of manufacturing investment tax credit; and amending the formula for calculating credit allowed for manufacturing investment, to include Small

Arms Ammunition Manufacturing and Small Arms, Ordinance, and Ordinance Accessories Manufacturing.

Referred to the Committee on Finance.

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

**Eng. Com. Sub. for House Bill 2205**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §61-8F-1 and §61-8F-2, all relating to prohibited sexual contact by psychotherapists; creating the crime of prohibited sexual contact by a psychotherapist and the crime of therapeutic deception; providing elements of the crime; providing exceptions; providing definitions; and providing criminal penalties.

Referred to the Committee on the Judiciary.

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

**Eng. Com. Sub. for House Bill 2801**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-1-3pp; and to amend said code by adding thereto a new section, designated §8-12-16d, all relating to permitting county commissions and municipalities to designate areas of special interest which will not affect the use of property in those areas; and setting forth their additional powers and responsibilities.

Referred to the Committee on Government Organization.

A message from The Clerk of the House of Delegates announced the passage by that body, to take effect July 1, 2016, and requested the concurrence of the Senate in the passage of

**Eng. House Bill 2960**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-16b, relating to emergency preparedness drills in

schools; requiring a three day notice of drills; permitting parents or guardians to refuse participation; and exempting fire drills from notice requirement.

Referred to the Committee on Education.

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

**Eng. Com. Sub. for House Bill 4237**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §49-8-1, §49-8-2, §49-8-3, §49-8-4, §49-8-5, and §49-8-6, all relating to the temporary delegation of certain custodial powers by a parent or guardian; providing findings, defining terms; permitting the delegation of certain custodial powers; creating a parental rights form; requiring certain background checks; mandating certain disclosures; and providing exemptions.

Referred to the Committee on the Judiciary.

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

**Eng. House Bill 4299**—A Bill to amend and reenact §7-1-3d of the Code of West Virginia, 1931, as amended, relating to increasing the amount volunteer fire companies or paid fire departments may charge for reimbursement for personnel and equipment used in performing fire fighting services, victim rescue or cleanup of debris.

Referred to the Committee on Government Organization; and then to the Committee on Finance.

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

**Eng. House Bill 4315**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-16-8a, relating to collection of air-ambulance fees for emergency treatment or air transportation rendered to persons covered by Public Employee Insurance Agency plans; allowing providers of air ambulance services not under contract with the Public Employees Insurance Agency to collect an amount up to the equivalent paid for federal reimbursement for services rendered to covered employees or dependents; and requiring providers of air ambulance services that enter into a subscription service agreement with employees or dependents covered by Public Employee Insurance Agency plans to accept the subscription fee as payment in full for services rendered.

Referred to the Committee on Banking and Insurance; and then to the Committee on Finance.

A message from The Clerk of the House of Delegates announced the passage by that body, to take effect January 1, 2017, and requested the concurrence of the Senate in the passage of

**Eng. House Bill 4321**—A Bill to amend and reenact §11-13W-1 of the Code of West Virginia, 1931, as amended, relating to tax credits for apprenticeship training in construction trades; and removing requirement that eligibility is limited to programs jointly administered by labor and management trustees.

Referred to the Committee on Finance.

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

**Eng. Com. Sub. for House Bill 4330**—A Bill to amend and reenact §20-2-64 of the Code of West Virginia, 1931, as amended, relating to making it unlawful to take, give or receive, or agree to take, give or receive, any fish, water animal or other aquatic organism from state waters to stock a commercial fishing preserve or other privately owned pond for commercial purposes.

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

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

**Eng. House Bill 4334**—A Bill to repeal §30-15-1, §30-15-2, §30-15-3, §30-15-4, §30-15-5, §30-15-6, §30-15-7, §30-15-7a, §30-15-7b, §30-15-7c and §30-15-8, of the Code of West Virginia, 1931, as amended; to amend and reenact §30-7-1, §30-7-2, §30-7-6, §30-7-7, §30-7-15a, §30-7-15b and §30-7-15c of said code; and to amend said code by adding thereto a new section, designated §30-7-15d, all relating to the licensure and authority of advanced practice registered nurses; repealing separate and redundant provisions relating to nurse-midwives; updating and adding definitions of terms; requiring a license to practice as an advanced practice registered nurse; establishing license requirements for an advanced practice registered nurse; updating the prerequisites and application requirements to apply for authority to prescribe drugs; modifying the types and amounts of controlled substances that may be prescribed by authorized advanced practice registered nurses; permitting the signature of an advanced practice registered nurse to have the same force and effect as that of a physician insofar as patient care documentation is concerned; removing the requirement for collaborative relationships with physicians as an ongoing requirement for practice for certified nurse-midwives; removing the requirement for collaborative relationships with physicians as an on-going requirement for prescriptive authority for advanced practice registered nurses; removing certain notifications; and permitting certain fees to be set by rule.

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

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

**Eng. Com. Sub. for House Bill 4339**—A Bill to amend and reenact §20-2-4 of the Code of West Virginia, 1931, as amended, relating to wildlife resources; requiring the Director of the Division of Natural Resources, in connection with rulemaking concerning electronic registration of wildlife, to provide a procedure for persons who are not required to obtain licenses or permits to register wildlife using identification other than a social security number.

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

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

**Eng. Com. Sub. for House Bill 4380**—A Bill to amend and reenact §9-5-9 and §9-5-18 of the Code of West Virginia, 1931, as amended, all relating to liability of spouses or relatives for certain expenses of an indigent person; requiring spouse to be liable for funeral expenses of an indigent person; eliminating liability of certain persons for support of an indigent person; defining terms; limiting liability of certain persons for funeral expenses of an indigent person; reducing the maximum amount the department of health and human resources may pay for funeral expenses for indigent persons; authorizing department to require certain financial information; requiring certain sworn statements regarding ability to pay for funeral services for an indigent person; limiting the total number of indigent funeral services that may be paid for by the department of health and human resources per year; and requiring cremation under certain circumstances.

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

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

**Eng. House Bill 4411**—A Bill to amend and reenact §20-2-5a of the Code of West Virginia, 1931, as amended, relating to wildlife resources; illegally taking native brook trout; and setting a replacement penalty of \$100 for each native brook trout illegally taken.

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

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

**Eng. House Bill 4461**—A Bill to amend and reenact §18-9D-15 of the Code of West Virginia, 1931, as amended, relating to School Building Authority School Major Improvement Fund eligibility; removing requirement for certain annual amounts to be expended by county board for facility maintenance; and requiring county board to provide facility maintenance expenditure data for review to assist authority in project determinations.

Referred to the Committee on Education; and then to the Committee on Finance.

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

**Eng. Com. Sub. for House Bill 4554**—A Bill to authorize the Commissioner of the Division of Highways to allow an increase of gross weight limitations on certain roads in Greenbrier County.

Referred to the Committee on Transportation and Infrastructure.

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

**Eng. Com. Sub. for House Bill 4587**—A Bill to amend and reenact §3-9-19 of the Code of West Virginia, 1931, as amended,

relating to violations associated with absent voters' ballots; providing cleanup language by changing reference of circuit clerk to clerk of county commission; changing gender references and making other changes relating to the language in the misdemeanor provisions of this section.

Referred to the Committee on the Judiciary.

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

**Eng. Com. Sub. for House Bill 4607**—A Bill to amend and reenact §5-10A-2 of the Code of West Virginia, 1931, as amended, relating to adding violations of law upon which a public servant's retirement plan may be forfeited; changing the definition of less than honorable service; removing the exception of a misdemeanor from the definition of less than honorable service relating to impeachment and conviction of a participant or former participant under the Constitution; removing the exception for certain lesser included crimes to constitute less than honorable service; and adding additional violations of law which constitute less than honorable service.

Referred to the Committee on Pensions; and then to the Committee on the Judiciary.

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

**Eng. House Bill 4658**—A Bill to amend and reenact §30-6-4 of the Code of West Virginia, 1931, as amended, relating to the Board of Funeral Service Examiners; changing the qualifications for board members; providing for the continuous service of qualifying board members; and providing for the disqualification of certain members who become licensees.

Referred to the Committee on Government Organization.

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

**Eng. House Bill 4725**—A Bill to amend and reenact §3-10-3 of the Code of West Virginia, 1931, as amended, all relating to providing the procedures for the filling of vacancies in the offices of justices of the Supreme Court of Appeals, circuit judge, family court judge or magistrate and making certain clarifications.

Referred to the Committee on the Judiciary.

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

**Eng. House Bill 4727**—A Bill to amend and reenact §9-2-6 of the Code of West Virginia, 1931, as amended, and to amend and reenact §9-5-23 of said code, all relating to state plan amendments; requiring the filing of state plan amendments to the legislature; requiring state plan amendments to be filed with the legislative rule-making and review committee; requiring a state plan amendment by approved through the rule-making process.

Referred to the Committee on Health and Human Resources.

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

**Eng. House Bill 4730**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated section §18-2-12, relating to computer science courses of instruction; making legislative findings; requiring submission by state board of plan for implementation of computer science instruction and learning standards in public schools to legislative oversight commission prior to 2017 legislative session; and specifying areas of recommendations to be included in plan.

Referred to the Committee on Education.

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

**Eng. House Bill 4731**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated section §18-2-7b, relating to requiring comprehensive drug awareness and prevention program in all public schools; requiring county boards to implement no later than 2016-2017 school year; specifying purposes of program; requiring county boards to coordinate delivery of instruction to meet program purposes with educators, drug rehabilitation specialists and law enforcement agencies; and requiring instruction relating to interactions with law enforcement officers.

Referred to the Committee on Education.

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

**Eng. House Bill 4732**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17-2A-24, relating to performance metrics for the West Virginia Division of Highways; requiring the division to develop performance standards and criteria to measure agency performance in all essential operations; requiring the division to employ a management information system that will track the division's past and current progress toward meeting performance standards; and requiring the division to report to the Joint Committee on Infrastructure.

Referred to the Committee on Transportation and Infrastructure; and then to the Committee on Government Organization.

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

**Eng. House Bill 4733**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17-4-55, relating to requiring the Commissioner of Highways to develop a statewide communications plan known as the Comprehensive Public Involvement Plan; requiring that the plan utilize multimedia outlets to inform the public of known or anticipated disruptions in traffic patterns; requiring that the plan include a mechanism to receive and respond to communications from the public in a timely manner; requiring that the plan include a mechanism for collecting feedback from the public on the division's response to public communications; requiring the division to designate a communications specialist in each maintenance district; and requiring the division to submit the plan to the Legislature for approval as a legislative rule.

Referred to the Committee on Transportation and Infrastructure; and then to the Committee on Government Organization.

### **Executive Communications**

The Clerk then presented a communication from His Excellency, the Governor, advising that on February 29, 2016, he had approved **Enr. Senate Bill 419**.

The Senate proceeded to the fourth order of business.

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

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 29th day of February, 2016, presented to His Excellency, the Governor, for his action, the following bill, signed by the President of the Senate and the Speaker of the House of Delegates:

**(Com. Sub. for H. B. 3019)**, Requiring official business and records of the state and its political subdivisions be conducted in English.

Respectfully submitted,

Mark R. Maynard,  
*Chair, Senate Committee.*  
John B. McCuskey,  
*Chair, House Committee.*

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Senate Bill 555**, Providing for 5-cent tax increase on sale of fuel when cost is less than \$2 per gallon.

And reports back a committee substitute for same with the following title:

**Com. Sub. for Senate Bill 555** (originating in the Committee on Finance)—A Bill to amend and reenact §11-14C-5 of the Code of West Virginia, 1931, as amended, relating to providing the flat tax motor fuel, other than alternative fuels, is increased by 3 cents, unless actual average wholesale price of motor fuel rises above \$2 per invoiced gallon; setting minimum level for average wholesale price of motor fuel; and providing effective dates.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Mike Hall,  
*Chair.*

At the request of Senator Hall, unanimous consent being granted, the bill (Com. Sub. for S. B. 555) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

The Senate proceeded to the sixth order of business.

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

**Senate Resolution 54**—Designating February 29, 2016, as Preston County Day.

Whereas, Preston County is home to over 1,200 small businesses and 1,000 working farms; and

Whereas, Preston County small businesses and local farms contribute to the economic success in Preston County; and

Whereas, Over 300,000, or 96 percent, of West Virginians work for small businesses; and

Whereas, Preston County businesses, farms and organizations want to remind people to buy and shop local; and

Whereas, By shopping local you help create jobs in your community, your tax dollars stay local, you help small businesses support community groups, you encourage local prosperity, you keep your community unique, you get better service, you invest in your community and you know where your food comes from; and

Whereas, The citizens of Preston County are proud to be business and agricultural leaders in the state; and

Whereas, The citizens of Preston County travel to the state capitol on an annual basis during the legislative session to share this heritage and participate in the democratic process, in which they share their accomplishments, aspirations and concerns with lawmakers; and

Whereas, It is fitting to recognize Preston County for its history, culture, economy, natural beauty and future development in the State of West Virginia; therefore, be it

*Resolved by the Senate:*

That the Senate hereby designates February 29, 2016, as Preston County Day; and, be it

*Further Resolved*, That the Senate acknowledges the many important contributions the citizens and businesses of Preston County make in the State of West Virginia and encourages those citizens to participate in the democratic process; and, be it

*Further Resolved*, That the Clerk is hereby directed to forward a copy of this resolution to the appropriate representatives of Preston County.

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

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

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

### **Petitions**

Senator Kessler presented a petition from Dustin Teel and numerous West Virginia residents, opposing Engrossed Committee Substitute for House Bill 4012 (*West Virginia Religious Freedom Restoration Act*).

Referred to the Committee on the Judiciary.

The Senate proceeded to the seventh order of business.

**Eng. Senate Bill 435**, Allowing farm winery enter alternating wine proprietorship agreements with farm owners.

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

The pending question being on the adoption of Senator Snyder's motion that the Senate reconsider the vote by which on Saturday, February 27, 2016, it adopted the amendment offered by Senator Walters to the bill (*shown in the Senate Journal of that day, page 1316*).

Following discussion,

The question being on the adoption of Senator Snyder's aforesaid motion, the same was put and prevailed.

The question now being on the adoption of the amendment offered by Senator Walters to the bill.

Senator Williams arose to a point of order that the amendment offered by Senator Walters to the bill was not germane.

Which point of order, the President ruled not well taken.

Thereafter, at the request of Senator Walters, and by unanimous consent, the amendment offered by Senator Walters to the bill was withdrawn.

The bill (Eng. S. B. 435) was again ordered to engrossment.

**Senate Concurrent Resolution 51**, Requesting interim study of structure of Regional Educational Service Agencies.

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

**Senate Concurrent Resolution 52**, Requesting study of feasibility of home modification tax credit to make homes more accessible for older adults and disabled.

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

**Senate Concurrent Resolution 53**, Harry C. "Buck" Markley, Jr. Memorial Bridge.

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

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for Com. Sub. for Senate Bill 47**, Rewriting licensing requirements for practice of medicine and surgery and podiatry.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 47) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 287**, Creating West Virginia Safer Workplaces Act.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 287) passed with its title.

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

**Eng. Com. Sub. for Com. Sub. for Senate Bill 303**, Providing for 5-day resident fishing license.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 303) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 344**, Clarifying composition and chairmanship of Commission on Special Investigations.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 344 pass?”

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Leonhardt, Maynard, Mullins, Palumbo, Plymale, Prezioso, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—28.

The nays were: Facemire, Laird, Miller, Romano, Snyder and Unger—6.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 344) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Leonhardt, Maynard, Mullins, Palumbo, Plymale, Prezioso, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—28.

The nays were: Facemire, Laird, Miller, Romano, Snyder and Unger—6.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 344) takes effect from passage.

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

**Eng. Senate Bill 384**, Requiring Bureau for Medical Services seek federal waiver for 30-day waiting period for tubal ligation.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 384) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 399**, Establishing personal and corporate income tax credits for farmers donating edible agricultural products.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 399) passed with its title.

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

**Eng. Senate Bill 435**, Allowing farm winery enter alternating wine proprietorship agreements with farm owners.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 435) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 594**, Requiring State Auditor consider for payment claim submitted by electronically generated invoice.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 594) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 596**, Permitting natural gas companies enter upon real property in certain instances.

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

Pending extended discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 596 pass?”

Senator Sypolt requested a ruling from the Chair as to whether he should be excused from voting under Senate Rule 43.

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

On this question, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, Maynard, Trump, Walters and Cole (Mr. President)—11.

The nays were: Beach, Cline, Facemire, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Unger, Williams, Woelfel and Yost—23.

Absent: None.

So, a majority of all the members present and voting not having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 596) rejected.

**Eng. Senate Bill 618**, Allowing Economic Development Authority to make loans to certain whitewater outfitters.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 618) passed with its title.

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

**Eng. Senate Bill 626**, Requiring DHHR secretary seek waiver within Supplemental Nutrition Assistance Program limiting purchases under WIC program.

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

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

The nays were: Facemire, Kessler, Laird, Miller and Romano—5.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 626) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 637**, Creating WV Uniform Fiduciary Access to Digital Assets Act of 2016.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 637) passed with its title.

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

**Eng. Senate Bill 700**, Authorizing Berkeley County Council own or operate a drug treatment or drug rehabilitation facility.

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

Pending extended discussion,

The question being “Shall Engrossed Senate Bill 700 pass?”

On this question, the yeas were: Ashley, Blair, Boley, Boso, Cline, Ferns, Leonhardt, Maynard, Mullins, Trump and Walters—11.

The nays were: Beach, Carmichael, Facemire, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Unger, Williams, Woelfel, Yost and Cole (Mr. President)—23.

Absent: None.

So, a majority of all the members present and voting not having voted in the affirmative, the President declared the bill (Eng. S. B. 700) rejected.

On motion of Senator Carmichael, the Senate recessed until 2:30 p.m. today.

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

**Eng. Com. Sub. for House Bill 2852**, Relating to legalizing and regulating the sale and use of fireworks.

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

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Boley and Williams—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2852) passed.

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

**Eng. Com. Sub. for House Bill 2852**—A Bill to repeal §29-3-23, §29-3-24, §29-3-25 and §29-3-26 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §29-3E-1, §29-3E-2, §29-3E-3, §29-3E-4, §29-3E-5, §29-3E-6, §29-3E-7, §29-3E-8, §29-3E-9, §29-3E-10, §29-3E-11, §29-3E-12, §29-3E-13 and §29-3E-14; and to amend and reenact §61-3E-1 and §61-3E-11 of said code, all relating to the regulation of fireworks generally; relocating certain existing provisions relating to sparkling devices, novelties and toy guns, including penalties for certain violations; raising funds for veterans' assistance and volunteer fire departments; authorizing sale of consumer fireworks on and after June 1, 2016; defining "consumer fireworks"; establishing regulatory framework for sale of fireworks; defining terms; requiring certificate; establishing fees; requiring permit; dedicating certain fees to Veterans Facility Support Fund and Fire Protection Fund; establishing rule-making authority; creating criminal violations related to fireworks; penalties; enforcement; defining terms; exemptions; reporting requirements; and establishing internal effective dates for certain provisions.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Boley and Williams—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2852) takes effect from passage.

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

**Eng. Com. Sub. for House Bill 4366**, Finding and declaring certain claims against the state and its agencies to be moral obligations of the state.

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

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Boley and Williams—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4366) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Boley and Williams—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4366) takes effect from passage.

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

The Senate proceeded to the ninth order of business.

**Com. Sub. for Com. Sub. for Senate Bill 12,** Relating to County Local Powers Act.

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

**Com. Sub. for Senate Bill 545,** Relating to asbestos abatement on oil and gas pipelines.

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

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

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

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

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

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

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

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

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

That §3-10-1, §3-10-3 and §3-10-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

## **ARTICLE 10. FILLING VACANCIES.**

### **§3-10-1. Elections to fill vacancies.**

(a) When a vacancy occurs in an elected office of the state or county, it shall be filled according to the processes set forth in this article. As used in this article, unless otherwise indicated by the context:

(1) “General cutoff date” means the eighty-fourth day before the general election that immediately precedes the general election where the office would be on the ballot for election if there were not a vacancy; and

(2) “Primary cutoff date” means the eighty-fourth day before the primary election that immediately precedes the general cutoff date.

(b) When this article requires an appointment to fill a vacancy in an elected office, the appointment shall be made within thirty days of the vacancy, unless this code specifically states a different time period for the specific office. The term that the appointee holds the office shall depend on when the vacancy occurs, as follows:

(1) If the vacancy occurs after the primary cutoff date, then that appointee shall hold the office until the end of the term of office: *Provided*, That if the vacancy for any county office or United States Senate occurs during the window after the primary cutoff date, but before the general cutoff date, the process contained in sections four, six, seven and eight of this article, depending on the specific office vacated, shall be followed; or

(2) If the vacancy occurs on or before the primary cutoff date, then the office shall be filled at the following regular primary and subsequent general election pursuant to this article and the appointee shall hold the office until a qualified replacement is

elected and certified at that general election. The elected replacement shall hold the office until the end of the original term of office.

(c) If an election is required to fill the vacancy by subsection (b) of this section and the other provisions of this article, the election shall proceed depending on when the vacancy occurs and in which office it occurs. Elections to fill vacancies shall be held at the same places, and superintended, conducted and returned, and the result ascertained, certified and declared, in the same manner, and by the same officers, as in general elections, unless otherwise stated in this article.

(1) For a vacancy in the Office of Governor, the times for the special elections contained in section two of this article shall control. The proclamation entered pursuant to section two of this article by the person acting as Governor shall include the dates for the special candidate filing period, if necessary, and shall follow the requirements set forth in this section. All aspects of this section, where not in conflict with section two of this article, shall also be followed. If a regularly scheduled primary or general election fits within the times for the special elections contained in section two of this article, the special elections shall be conducted in conjunction with the regularly scheduled election or elections. If a special election is required by section two of this article and it cannot be held in conjunction with the regular election dates, then the compensation of election officers shall be reimbursed pursuant to section nine of this article.

(2) For a vacancy in the offices of United States House of Representatives or United States Senate, the times for the special election, if necessary, contained in section four of this article shall control. All aspects of this section, where not in conflict with section four of this article, shall also be followed. ~~(A) With regard to United States House of Representatives~~ these offices, the proclamation entered pursuant to section four of this article by the Governor shall include the dates for the special candidate filing period, if necessary, and shall follow the requirements set forth in this section. If a regularly scheduled primary or general election fits within the times for the special elections contained in section four

of this article, the special elections shall be conducted in conjunction with the regularly scheduled election or elections. If a special election is required by section two of this article and it cannot be held in conjunction with the regular election dates, then the compensation of election officers shall be reimbursed pursuant to section nine of this article.

~~(B) With regard to United States Senate, if a special general election following the regular general election is required by section four of this article, and it cannot be held in conjunction with the regular election dates, then the compensation of election officers shall be reimbursed pursuant to section nine of this article.~~

(3) For all other offices, the Governor, or other person granted authority by this article, shall issue a proclamation stating that the office will appear on the next regular primary election and subsequent general election, in order to fill the vacancy: *Provided*, That if the vacancy for any county office occurs during the window after the primary cutoff date, but before the general cutoff date, the process contained in sections six, seven and eight of this article shall be followed. If the candidate filing period for the next regular primary election has closed or has less than one week remaining, the proclamation shall provide for a special primary candidate filing period. If there are less than eighty-four days between the vacancy and the next regular primary election, then the proclamation shall state that the office will appear on the subsequent regular primary election and corresponding general election following the next regular primary election.

(d) (1) If a special candidate filing period is necessary, it shall begin no sooner than the day after the proclamation and shall close no earlier than close of business on the fourteenth day following the proclamation. A notarized declaration of candidacy and filing fee provided by section seven, article five of this chapter shall be filed either in person, by United States mail, electronic means or any other means authorized by the Secretary of State and received by the appropriate office before the close of the filing period. For petition in lieu of payment of filing fees, a candidate seeking nomination for the vacancy may utilize the process set forth in section eight-a, article five of this chapter: *Provided*, That the

minimum number of signatures required is equivalent to one qualified signature per one whole dollar of the filing fee for that office.

(2) If a primary election is required by the provisions of this article:

(A) For all statewide, multicounty and legislative elections, drawing for the primary election ballot position will take place at the Secretary of State's office twenty-four hours after the end of the filing period. For each major political party on the ballot, a single drawing by lot shall determine the candidate ballot position for ballots statewide. This drawing shall be witnessed by four clerks of the county commission chosen by the West Virginia Association of County Clerks, with no more than two clerks representing a single political party.

(B) For county elections, drawing for the primary election ballot position will take place at the county clerk's office twenty-four hours after the end of the filing period. For each major political party on the ballot, a single drawing by lot shall determine the candidate ballot position for ballots statewide. This drawing shall be witnessed by the chairperson of the county democratic and republican executive committees or their designee, and the president of the county commission or his or her designee.

(3) Ballot position for a general election required by this article shall be determined pursuant to subdivision (3), subsection (c), section two, article six of this chapter. If a general election required by this article occurs in conjunction with a regularly scheduled primary election, the general election shall be listed along with the nonpartisan portion of each ballot in the order of offices provided for regular ballots in this chapter.

(e) When an election is required to fill a vacancy, the date of the election and offices to be elected, as well as any other information required in the proclamation, shall be published prior to such election as a Class I-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code,

and the publication area for such publication shall be each county of the state that is eligible to vote in the election for those offices.

(f) If an election is required by this article, citizens having no party organization or affiliation may nominate candidates as provided by sections twenty-three and twenty-four, article five of this chapter: *Provided*, That when an election is required by the provisions of this article to be held at some time other than with a regularly scheduled election, all certificates nominating candidates shall be filed with the appropriate official no later than ninety days before the election.

(g) The persons elected, having first duly qualified, shall enter upon the duties of their respective offices. The elected replacement shall hold the office until the end of the original term of office.

**§3-10-3. Vacancies in offices of state officials, United States Senators and judges.**

(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, except for the office of United States Senator, is filled by the Governor of the state by appointment and subsequent election to fill the remainder of the term, if required by section one of this article.

(b) Any vacancy occurring in the offices of Justice of the Supreme 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 subsequent election to fill the remainder of the term, as required by subsection (d) of this section. If an election is required under subsection (d) of this section, the Governor, circuit court or the chief judge thereof in vacation, is responsible for the proper proclamation by order and notice required by section one of this article.

(c) Any vacancy in the office of magistrate is appointed according to the provisions of section six, article one, chapter fifty

of this code, and subsequent election to fill the remainder of the term, as required by subsection (d) of this section.

(d) (1) When the vacancy in Justice of the Supreme Court of Appeals, judge of the circuit court, judge of a family court or magistrate occurs after the eighty-fourth day before a general election, and the affected term of office ends on the December 31 following the next election, 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, 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 eighty-four days before the general election, 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 subsection (d) of this section, 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 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 seventy-seven days before the general election.

#### **§3-10-4. Vacancies in representation in United States Congress.**

(a) (1) If there is a vacancy in the representation from this state in the House of Representatives in the Congress of the United States, the Governor shall, within five days after the fact comes to his or her knowledge, issue a proclamation setting dates for a special general election that is not less than eighty-four nor more than one hundred twenty days from the date of the vacancy and

requiring nomination of candidates as provided in subdivision (2) of this subsection: *Provided*, That no such proclamation may be made nor may a special election be held if the vacancy occurs after the eighty-fourth day prior to the regularly scheduled general election for a new full term of the office. The election shall follow the requirements of section one of this article that are not in conflict with this section.

(2) The party executive committees for the congressional district for which there is a vacancy shall each, within thirty days of the Governor's proclamation, nominate a candidate to stand at the general election required by subdivision (1) of this subsection.

(b) (1) If there is a vacancy in the representation from this state in the Senate of the United States Congress, the vacancy shall be filled by the Governor of the state by appointment and the Governor shall, within five days after the fact comes to his or her knowledge, issue a proclamation setting dates for a special general election that is not less than eighty-four nor more than one hundred twenty days from the date of the vacancy, and requiring nomination of candidates as provided in subdivision (2) of this subsection: *Provided*, That if a regularly scheduled primary or general election is set to occur within sixty days after the permissible time frame for a special general election, then the Governor may, in his or her discretion, call for the special election to be held in conjunction with the upcoming primary or general election: *Provided, however*, That no such proclamation may be made nor may a special election be held if the vacancy occurs after the eighty-fourth day prior to the regularly scheduled primary election for a new full term of the office. The election shall follow the requirements of section one of this article that are not in conflict with this section.

~~(1) If the vacancy occurs on or before the primary cutoff date, then an election shall be held pursuant to section one of this article; or~~

~~(2) If the vacancy occurs after the primary cutoff date, but on or before the general cutoff date, then the Governor shall issue a proclamation providing for: (A) A special filing period; (B) a special primary election to be held in conjunction with the~~

~~upcoming general election; and (C) a special general election to be held not less than ninety nor more than one hundred twenty days following the date of the special primary election. Each election shall follow the requirements of section one of this article that are not in conflict with this section.~~

(2) The state party executive committees shall, within thirty days of the Governor's proclamation, nominate a candidate to stand at the general election required by subdivision (1) of this subsection.

(3) Notwithstanding the foregoing, the Governor of the state shall, by appointment, fill any vacancy occurring in the office of United States Senator. Such appointee shall hold the office until, at the special election held pursuant to subdivision (1) of this subsection, a successor is elected and certified to fill the unexpired term.

On motion of Senator Palumbo, the following amendments to Senator Trump's amendment to the bill (S. B. 670) were next reported by the Clerk and considered simultaneously:

On page eight, after section four, by adding four new sections, designated sections five, six, seven and eight, to read as follows:

### **§3-10-5. Vacancies in State Legislature.**

(a) Any vacancy in the office of State Senator or member of the House of Delegates shall be filled by appointment by the Governor, from a list of three legally qualified persons submitted by the party executive committee of the party with which the person ~~holding~~ vacating the office ~~immediately preceding the vacancy~~ was affiliated at the time of his or her election to the vacated office: Provided, That if he or she was not elected to the office, then the list shall be submitted by the same executive committee authorized to submit the list resulting in his or her appointment. The list of qualified persons to fill the vacancy shall be submitted to the Governor within fifteen 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 fifteen-day period, the Governor shall appoint within five days thereafter a legally qualified person of the same political party as the person vacating the office was affiliated at the time of his or her last election to the vacated office: *Provided*, That if he or she was not elected to the office, then the Governor shall appoint a person from the same political party as the executive committee authorized to submit the list resulting in his or her appointment.

(b) In the case of a member of the House of Delegates, the list shall be submitted by the party executive committee of the delegate district in which the vacating member resided at the time of his or her election or appointment. The appointment to fill a vacancy in the House of Delegates is for the unexpired term.

(c) In the case of a State Senator, the list shall be submitted by the party executive committee of the state senatorial district in which the vacating senator resided at the time of his or her election or appointment. The appointment to fill a vacancy in the state Senate is for the unexpired term, unless section one of this article requires a subsequent election to fill the remainder of the term, which shall follow the procedure set forth in section one of this article.

### **§3-10-6. Vacancy in office of circuit court clerk.**

(a) When a vacancy occurs in the office of clerk of the circuit court, the circuit court by a majority vote of the judges shall fill the same within thirty days of the vacancy by appointment of a person of the same political party as the officeholder vacating the office was affiliated with at the time of his or her last election to the vacated office for the period required by section one of this article: *Provided*, That if he or she was not elected to the office, then circuit court shall fill the position with a person of the same political party as the officeholder vacating the office was affiliated with at the time of his or her appointment.

(b) Notwithstanding any code provision to the contrary, the chief judge may appoint a temporary successor to the office of clerk of the circuit court until the requirements of this section have been

met. The temporary successor may serve no more than thirty days from the date of the vacancy.

(c) If an election is necessary, the circuit court, or the chief judge thereof in vacation, is responsible for the proper proclamation, by order and notice required by section one of this article.

(d) Section one of this article shall be followed with respect to any election needed to fill a vacancy, except that if the vacancy occurs after the primary cutoff date but not later than the general cutoff date, candidates to fill the vacancy shall be nominated by the county executive committee in the manner provided in section nineteen, article five of this chapter, as in the case of filling vacancies in nominations, and the names of the persons, so nominated and certified to the clerk of the county commission of the county, shall be placed upon the ballot to be voted at the next general election.

**§3-10-7. Vacancies in offices of county commissioner and clerk of county commission.**

(a) Any vacancy in the office of county commissioner or clerk of county commission shall be filled by the county commission of the county, unless the number of vacancies in a county commission deprive that body of a quorum, in which case the Governor of the state shall fill any vacancy in the county commission necessary to create a quorum thereof. Persons appointed shall be of the same political party as the officeholder vacating the office was affiliated with at the time of his or her last election to the vacated office for the period stated by section one of this article: *Provided, That if he or she was not elected to the office, then the person appointed shall be of the same political party as the officeholder vacating the office was affiliated with at the time of his or her appointment.* If a quorum of the county commission cannot agree upon a person to fill a vacancy in the office of county commissioner within thirty days of the date the vacancy first occurred, the county executive committee of the vacating county commissioner's political party at the time of his or her last election to the vacated office shall select and name a person to fill the vacancy from the membership of the

vacating county commissioner's political party at the time of his or her last election to the vacated office: *Provided, That if he or she was not elected to the office, then the list shall be submitted by the same executive committee authorized to submit the list resulting in his or her appointment.* The clerk shall be appointed within thirty days of the vacancy.

(b) Notwithstanding any code provision to the contrary, a county commission may appoint a temporary successor to the office of clerk of the county commission until the requirements of this section have been met. The temporary successor may serve no more than thirty days from the date of the vacancy.

(c) If an election is necessary under section one of this article, the county commission, or the president thereof in vacation, shall be responsible for the proper proclamation, by order, and notice required by section one of this article.

(d) Section one of this article shall be followed with respect to any election needed to fill a vacancy, except that if the vacancy occurs after the primary cutoff date but not later than the general cutoff date, candidates to fill the vacancy shall be nominated by the county executive committee in the manner provided in section nineteen, article five of this chapter, as in the case of filling vacancies in nominations, and the names of the persons, so nominated and certified to the clerk of the county commission of the county, shall be placed upon the ballot to be voted at the next general election.

(e) If the election for an unexpired term is held at the same time as the election for a full term for county commissioner, the full term shall be counted first and the unexpired term shall be counted second. If the candidate with the highest number of votes for the unexpired term resides in the same magisterial district as the candidate with the highest number of votes for the full term, the candidate for the full term shall be seated. The candidate with the next highest number of votes for the unexpired term residing in a different magisterial district shall be seated for the unexpired term.

**§3-10-8. Vacancies in offices of prosecuting attorney, sheriff, assessor and surveyor.**

(a) Any vacancy occurring in the office of prosecuting attorney, sheriff, assessor or county surveyor shall be filled by the county commission within thirty days of the vacancy by appointment of a person of the same political party as the officeholder vacating the office was affiliated with at the time his or her last election to the vacated office: *Provided*, That if he or she was not elected to the office, then county commission shall fill the office by appointment of a person of the same political party as the officeholder vacating the office was affiliated with at the time of his or her appointment. The appointed person shall hold the office for the period stated by section one of this article.

(b) Notwithstanding any code provision to the contrary, a county commission may appoint a temporary successor to the office of prosecuting attorney, sheriff, assessor or county surveyor until the requirements of this section have been met. The temporary successor may serve no more than thirty days from the date of the vacancy.

(c) If an election is necessary under section one of this article, the county commission, or the president thereof in vacation, shall be responsible for the proper proclamation, by order, and notice required by section one of this article.

(d) Section one of this article shall be followed with respect to any election needed to fill a vacancy, except that if the vacancy occurs after the primary cutoff date but not later than the general cutoff date, candidates to fill the vacancy shall be nominated by the county executive committee in the manner provided in section nineteen, article five of this chapter, as in the case of filling vacancies in nominations, and the names of the persons, so nominated and certified to the clerk of the county commission of the county, shall be placed upon the ballot to be voted at the next general election.;

And,

By striking out the enacting section and inserting in lieu thereof the following:

That §3-10-1, §3-10-3, §3-10-4, §3-10-5, §3-10-6, §3-10-7 and §3-10-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

The question being on the adoption of Senator Palumbo's amendment to Senator Trump's amendment to the bill (S. B. 670), the same was put.

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

A standing vote being taken, there were sixteen "yeas" and seventeen "nays".

Whereupon, Senator Cole (Mr. President) declared Senator Palumbo's amendment to Senator Trump's amendment to the bill rejected.

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

The bill (S. B. 670), as amended, was then ordered to engrossment and third reading.

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

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

**Com. Sub. for Senate Joint Resolution 1**, County Economic Development Amendment.

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

**Eng. Com. Sub. for House Bill 4228**, Relating to transportation network companies.

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

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

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §17-29-1, §17-29-2, §17-29-3, §17-29-4, §17-29-5, §17-29-6, §17-29-7, §17-29-8, §17-29-9, §17-29-10, §17-29-11, §17-29-12, §17-29-13, §17-29-14, §17-29-15, §17-29-16, §17-29-17, §17-29-18 and §17-29-19, all to read as follows:

## **ARTICLE 29. TRANSPORTATION NETWORK COMPANIES.**

### **§17-29-1. Definitions.**

As used in this article:

(1) “Personal vehicle” means a vehicle that is:

(a) Used by a transportation network company driver to provide a prearranged ride;

(b) Owned, leased or otherwise authorized for use by the transportation network company driver; and

(c) Not a taxicab or for-hire vehicle.

(2) “Digital network” means any online-enabled application, software, website or system offered or utilized by a transportation network company that enables the prearrangement of rides with transportation network company drivers.

(3) “Transportation network company” means a corporation, partnership, sole proprietorship, or other entity that is licensed pursuant to this article and operating in West Virginia that uses a digital network to connect transportation network company riders to transportation network company drivers who provide

prearranged rides. A transportation network company does not control, direct or manage the personal vehicles or transportation network company drivers that connect to its digital network, except where agreed to by written contract.

(4) “Transportation network company driver” or “driver” means an individual who:

(A) Receives connections to potential passengers and related services from a transportation network company in exchange for payment of a fee to the transportation network company; and

(B) Uses a personal vehicle to offer or provide a prearranged ride to transportation network company riders upon connection through a digital network controlled by a transportation network company in return for compensation or payment of a fee.

(5) “Transportation network company rider” or “rider” means an individual or persons who use a transportation network company’s digital network to connect with a transportation network company driver who provides prearranged rides to the rider in the driver’s personal vehicle between points chosen by the rider.

(6) “Prearranged ride” means the provision of transportation by a driver to a transportation network company rider, beginning when a driver accepts a transportation network company rider’s request for a ride through a digital network controlled by a transportation network company, continuing while the driver transports the requesting rider, and ending when the last requesting rider departs from the personal vehicle. A prearranged ride does not include:

(A) Transportation provided using a taxi, limousine or other for-hire vehicle; or

(B) Transportation provided under a ridesharing arrangement, as defined in section one, article twenty-two, chapter seventeen-c of this code or any other type of arrangement or service in which the driver receives a fee that does not exceed the driver’s costs associated with providing the ride.

**§17-29-2. Not other carriers.**

Transportation network companies or transportation network company drivers are not common carriers by motor vehicle or contract carriers by motor vehicle, or motor carriers, as defined in section two, article one, chapter twenty-four-a of this code, nor do they provide taxicab or for-hire vehicle services.

**§17-29-3. Transportation network company permit required.**

(a) A person may not operate a transportation network company in West Virginia without first having obtained a permit from the Division of Motor Vehicles.

(b) The Division of Motor Vehicles shall issue a permit to each applicant that:

(1) Provides proof of an agent for service of process in the State of West Virginia to the Division of Motor Vehicles in accordance with section four of this article;

(2) Provides a copy of a certificate of insurance maintained by the transportation network company in accordance with section eight of this article;

(3) Provides a copy of the transportation network company's zero tolerance for drug or alcohol use policy to the Division of Motor Vehicles in accordance with section twelve of this article;

(4) Provides a copy of the transportation network company's policy prohibiting solicitation or acceptance of street hails to the Division of Motor Vehicles in accordance with section fifteen of this article;

(5) Provides a copy of the transportation network company's policy prohibiting solicitation or acceptance of cash payments from riders to the Division of Motor Vehicles in accordance with section sixteen of this article;

(6) Provides a copy of the transportation network company's policy of nondiscrimination with respect to riders and potential

riders to the Division of Motor Vehicles in accordance with section seventeen of this article; and

(7) Has paid an annual permit fee of \$1,000 to the Division of Motor Vehicles.

(c) Any fees collected under the provisions of this article shall be deposited into the Motor Vehicle Fees Fund established in accordance with section twenty-one, article two, chapter seventeen-a of this code. The Division of Motor Vehicles shall use the fees collected for the payment of the costs and expenses necessary for the administration of this article.

**§17-29-4. Agent.**

A transportation network company shall maintain an agent for service of process in this state.

**§17-29-5. Fare collected for services.**

On behalf of a transportation network company driver, a transportation network company may charge a fare for the services provided to riders: *Provided*, That if a fare is collected from a rider, the transportation network company shall disclose to the rider the fare calculation method on its website or within the software application service. The transportation network company shall also provide riders with the applicable rates being charged and the option to receive an estimated fare before the rider enters the transportation network company driver's vehicle.

**§17-29-6. Identification of transportation network company vehicles and drivers.**

The transportation network company's software application or website shall display a picture of the transportation network company driver and the license plate number of the motor vehicle utilized for providing the prearranged ride before the rider enters the transportation network company driver's vehicle.

**§17-29-7. Electronic receipt.**

Within a reasonable period of time following the completion of a prearranged ride, a transportation network company shall

transmit an electronic receipt to the rider on behalf of the transportation network company driver that lists:

- (a) The origin and destination of the prearranged ride;
- (b) The total time and distance of the prearranged ride; and
- (c) An itemization of the total fare paid, if any.

**§17-29-8. Financial responsibility of transportation network companies.**

(a) On or before July 1, 2016, and thereafter, a transportation network company driver or transportation network company on the driver's behalf shall maintain primary automobile insurance that recognizes that the driver is a transportation network company driver or otherwise uses a vehicle to transport passengers for compensation and covers the driver:

- (1) While the transportation network company driver is logged on to the transportation network company's digital network; or
- (2) While the driver is engaged in a prearranged ride.

(b) The following automobile insurance requirements apply while a participating transportation network company driver is logged on to the transportation network company's digital network and is available to receive transportation requests, but is not engaged in a prearranged ride:

- (1) Primary automobile liability insurance in the amount of at least \$50,000 for death and bodily injury per person, \$100,000 for death and bodily injury per incident and \$25,000 for property damage; and
- (2) Uninsured and underinsured motorists' coverage as required in section thirty-one, article six, chapter thirty-three of this code.
- (3) The coverage requirements of this subsection may be satisfied by any of the following:

(A) Automobile insurance maintained by the transportation network company driver; or

(B) Automobile insurance maintained by the transportation network company; or

(C) Any combination of paragraphs (A) and (B) of this subdivision.

(c) The following automobile insurance requirements apply while a transportation network company driver is engaged in a prearranged ride:

(1) Primary automobile liability insurance that provides at least \$1,000,000 for death, bodily injury and property damage; and

(2) Uninsured and underinsured motorists' coverage as required in section thirty-one, article six, chapter thirty-three of this code.

(3) The coverage requirements of this subsection (c) may be satisfied by any of the following:

(A) Automobile insurance maintained by the transportation network company driver; or

(B) Automobile insurance maintained by the transportation network company; or

(C) Any combination of paragraphs (A) and (B) of this subdivision.

(d) If insurance maintained by a driver in subsection (b) or (c) has lapsed or does not provide the required coverage, insurance maintained by a transportation network company shall provide the coverage required under this section beginning with the first dollar of a claim and have the duty to defend such claim.

(e) Coverage under an automobile insurance policy maintained by the transportation network company shall not be dependent on a personal automobile insurer first denying a claim nor shall a

personal automobile insurance policy be required to first deny a claim.

(f) Insurance required under this section may be placed with an insurer authorized to do business in this state or with a surplus lines insurer eligible under section five, article twelve-c, chapter thirty-three of this code that has a credit rating of no less than “A-” from A.M. Best or “A” from Demotech or similar rating from another rating agency recognized by the Insurance Commissioner.

(g) Insurance satisfying the requirements of this section shall be deemed to satisfy the financial responsibility requirement for a motor vehicle under article four, chapter seventeen-d of this code.

(h) A transportation network company driver shall carry proof of coverage satisfying subsections (b) and (c), section eight of this article with him or her at all times during his or her use of a personal vehicle in connection with a transportation network company’s digital network. In the event of an accident, a transportation network company driver shall provide this insurance coverage information to the directly interested parties, automobile insurers and investigating police officers, upon request pursuant to section four, article two-a, chapter seventeen-d of this code. Upon such request, a transportation network company driver shall also disclose to directly interested parties, automobile insurers, and investigating police officers, whether he or she was logged on to the transportation network company’s digital network or on a prearranged ride at the time of an accident.

#### **§17-29-9. Disclosures.**

The transportation network company shall disclose in writing to transportation network company drivers the following before they are allowed to accept a request for a prearranged ride on the transportation network company’s digital network:

(1) The insurance coverage, including the types of coverage and the limits for each coverage that the transportation network company provides while the transportation network company

driver uses a personal vehicle in connection with a transportation network company's digital network; and

(2) That the transportation network company driver's own automobile insurance policy might not provide any coverage while the driver is logged on to the transportation network company's digital network and is available to receive transportation requests or is engaged in a prearranged ride, depending on its terms.

**§17-29-10. Automobile insurance provisions.**

(a) Insurers that write automobile insurance in this state may exclude any and all coverage afforded under the policy issued to an owner or operator of a personal vehicle for any loss or injury that occurs while a driver is logged on to a transportation network company's digital network or while a driver provides a prearranged ride. This right to exclude all coverage may apply to any coverage included in an automobile insurance policy including, but not limited to:

- (1) Liability coverage for bodily injury and property damage;
- (2) Uninsured and underinsured motorist coverage;
- (3) Medical payments coverage;
- (4) Comprehensive physical damage coverage; and
- (5) Collision physical damage coverage.

Such exclusions apply notwithstanding any requirement under article four, chapter seventeen-d of this code. Nothing in this section implies or requires that a personal automobile insurance policy provide coverage while the driver is logged on to the transportation network company's digital network, while the driver is engaged in a prearranged ride or while the driver otherwise uses a vehicle to transport passengers for compensation. Nothing shall be deemed to preclude an insurer from providing coverage for the transportation network company driver's vehicle, if it so chooses to do so by contract or endorsement.

(b) Automobile insurers that exclude the coverage described in section eight of this article have no duty to defend or indemnify any claim expressly excluded thereunder. Nothing in this article invalidates or limits an exclusion contained in a policy, including any policy in use or approved for use in this state prior to the enactment of this article that excludes coverage for vehicles used to carry persons or property for a charge or available for hire by the public. An automobile insurer that defends or indemnifies a claim against a driver that is excluded under the terms of its policy shall have a right of contribution against other insurers that provide automobile insurance to the same driver in satisfaction of the coverage requirements of section eight of this article at the time of loss.

(c) In a claims coverage investigation, transportation network companies shall immediately provide upon request by directly involved parties or any insurer of the transportation network company driver if applicable, the precise times that a transportation network company driver logged on and off of the transportation network company's digital network in the twelve-hour period immediately preceding and in the twelve-hour period immediately following the accident. Insurers providing coverage as set forth in Section C shall disclose upon request by any other such insurer involved in the particular claim, the applicable coverages, exclusions and limits provided under any automobile insurance maintained in order to satisfy the requirements of section eight of this article.

**§17-29-11. Limitation on transportation network companies.**

(a) Drivers are independent contractors and not employees of the transportation network company if all of the following conditions are met:

(1) The transportation network company does not prescribe specific hours during which a transportation network company driver must be logged into the transportation network company's digital network;

(2) The transportation network company imposes no restrictions on the transportation network company driver's ability to utilize digital networks from other transportation network companies;

(3) The transportation network company does not assign a transportation network company driver a particular territory in which to operate;

(4) The transportation network company does not restrict a transportation network company driver from engaging in any other occupation or business; and

(5) The transportation network company and transportation network company driver agree in writing that the driver is an independent contractor of the transportation network company.

(b) A transportation network company operating under this article is not required to provide workers' compensation coverage to a transportation network company driver that is classified as an independent contractor pursuant to this section.

**§17-29-12. Zero tolerance for drug or alcohol use.**

(a) The transportation network company shall implement a zero tolerance policy regarding a transportation network company driver's activities while accessing the transportation network company's digital network. The zero tolerance policy shall address the use of drugs or alcohol while a transportation network company driver is providing prearranged rides or is logged into the transportation network company's digital network but is not providing prearranged rides, and the transportation network company shall provide notice of this policy on its website, as well as procedures to report a complaint about a driver with whom a rider was matched and whom the rider reasonably suspects was under the influence of drugs or alcohol during the course of the trip.

(b) Upon receipt of such rider complaint alleging a violation of the zero tolerance policy, the transportation network company shall immediately suspend such transportation network company driver's access to the transportation network company's digital

network and shall conduct an investigation into the reported incident. The suspension shall last the duration of the investigation.

(c) The transportation network company shall maintain records relevant to the enforcement of this requirement for a period of at least two years from the date that a rider complaint is received by the transportation network company.

**§17-29-13. Transportation network company driver requirements.**

(a) Before allowing an individual to accept trip requests through a transportation network company's digital platform:

(1) The individual shall submit an application to the transportation network company, which includes information regarding his or her address, age, driver's license, motor vehicle registration, automobile liability insurance and other information required by the transportation network company;

(2) The transportation network company shall conduct, or have a third party conduct, a local and national criminal background check for each applicant that shall include:

(A) Multistate/multijurisdiction criminal records locator or other similar commercial nationwide database with validation (primary source search); and

(B) National Sex Offender Registry database.

(3) The transportation network company shall review, or have a third party review, a driving history research report for such individual.

(b) The transportation network company shall not permit an individual to act as a transportation network company driver on its digital network who:

(1) Has had more than three moving violations in the prior three-year period, or one major violation in the prior three-year

period, including, but not limited to, attempting to evade the police, reckless driving or driving on a suspended or revoked license;

(2) Has been convicted, within the past seven years, of any felony or misdemeanor, driving under the influence, reckless driving, hit and run, or any misdemeanor violent offense or sexual offense, or more than three misdemeanors of any kind;

(3) Is a match in the National Sex Offender Registry database;

(4) Does not possess a valid driver's license;

(5) Does not possess proof of registration for the motor vehicle(s) used to provide prearranged rides;

(6) Does not possess proof of automobile liability insurance for the motor vehicle(s) used to provide prearranged rides; or

(7) Is not at least nineteen years of age.

#### **§17-29-14. Vehicle safety and emissions.**

The transportation network company shall require any motor vehicle that a transportation network company driver will use to provide transportation network company services to meet the inspection requirements of section four, article sixteen, chapter seventeen-c of this code or the inspection requirements for a private motor vehicle of the state in which the motor vehicle is registered.

#### **§17-29-15. No street hails.**

A transportation network company driver may not solicit or accept street hails.

#### **§17-29-16. No cash trips.**

The transportation network company shall adopt a policy prohibiting solicitation or acceptance of cash payments from riders and notify transportation network company drivers of such policy. Transportation network company drivers may not solicit or accept cash payments from riders. Any payment for prearranged rides

shall be made only electronically using the transportation network company's digital network or software application.

**§17-29-17. No discrimination; accessibility.**

(a) The transportation network company shall adopt a policy of nondiscrimination with respect to riders and potential riders and notify transportation network company drivers of such policy: Provided, That no provision of this article may be construed to require that the policy of nondiscrimination with respect to riders and potential riders be more stringent than state law governing unlawful discriminatory practices.

(b) Transportation network company drivers shall comply with all applicable laws regarding nondiscrimination against riders or potential riders.

(c) Transportation network company drivers shall comply with all applicable laws relating to accommodation of service animals.

(d) A transportation network company may not impose additional charges for providing services to persons with physical disabilities due to those disabilities.

**§17-29-18. Records.**

A transportation network company shall maintain the following customer records:

(a) Individual trip records of rider customers for at least two years from the date each trip was provided; and

(b) Individual records of transportation network company driver customers at least until the two year anniversary of the date on which a transportation network company driver's customer relationship with the transportation network company has ended.

**§17-29-19. Controlling authority.**

(a) Notwithstanding any provision of chapter twenty-four or any other provision of this code to the contrary, the regulation of the business activities of transportation network companies and

transportation network company drivers is governed exclusively by this article.

(b) *Taxation.* — No municipality, county or other local governmental entity or special district may impose a special district excise tax, sales tax, use tax, business and occupation tax, or any other tax or fee on, or require a license for, a transportation network company, a transportation network company driver, or a personal vehicle used by a transportation network company driver, where such tax or license relates to, or is imposed upon, the service or privilege of providing prearranged transportation of persons or property. No municipal consumers sales and service tax and use tax or special district excise tax may be imposed on the customers of a transportation network company or a transportation network company driver for, or with relation to, purchases of transportation network company transportation services.

(c) *Licensure, registration and qualification.* — No municipality, county or other local governmental entity or special district may require a transportation network company driver to obtain a business license or any other similar authorization to operate within the jurisdiction, or subject a transportation network company or transportation network company driver to any licensure requirement, fee, tax, entry requirement, registration requirement, operating or operational requirement or any other requirement.

(d) *Consumers sales and service tax and use tax exemptions.* —

(1) The provision of prearranged transportation service by a transportation network company driver is exempt from the consumers sales and service tax and use tax imposed under articles fifteen and fifteen-a, chapter eleven of this code.

(2) Transportation network companies may assert a lawful and timely exemption from the consumer sales and service tax and use tax, in accordance with section nine, article fifteen, chapter eleven of this code, for purchases of tangible personal property and services directly used in transportation.

(e) Limitations and interpretation. —

(1) No provision of this section or this article shall be interpreted to void, abrogate, restrict or affect imposition of the ad valorem property tax on tangible personal property of a transportation network company or of a transportation network company driver by any levying body.

(2) No provision of this section or this article shall be interpreted to void, abrogate, restrict or affect imposition of the state personal income tax or state corporation net income tax on a transportation network company or a transportation network company driver.

(3) No provision of this section or this article shall be interpreted to void, abrogate, restrict or affect imposition of the motor fuel excise tax on any taxable motor fuel or alternative fuel purchased by any transportation network company or transportation network company driver.

(4) No provision of this section or this article shall be interpreted to void, abrogate, restrict or affect the requirements of chapter eleven of this code for issuance of a business registration certificate for transportation network companies and transportation network drivers.

(5) No provision of this section or this article voids, abrogates, restricts or affects any requirement of state law with relation to licensure of drivers or motor vehicles.

(6) Transportation network company drivers may not assert the exemption from the consumer sales and service tax and use tax, for purchases of tangible personal property and services directly used in transportation under section nine, article fifteen, chapter eleven of this code.

The bill (Eng. Com. Sub. for H. B. 4228), as amended, was then ordered to third reading.

Without objection, the Senate returned to the third order of business.

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

**Eng. Com. Sub. for Senate Bill 10**, Creating Unborn Child Protection from Dismemberment Abortion Act.

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

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

**Eng. Com. Sub. for Senate Bill 10**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-20-1, relating to prohibiting certain abortions; defining terms; prohibiting dismemberment abortions; deeming violations by physicians and other licensed medical practitioners to be a breach of the standard of care and outside the scope of practice that is permitted by law; providing an exception; allowing for discipline from the applicable licensure board for that conduct, including, but not limited to, loss of professional license to practice for violation; constituting violations for nonphysician and nonlicensed medical practitioners as unauthorized practice of medicine and subject to criminal penalties; preserving existing legal remedies for violations; clarifying that no penalty may be assessed against a patient; and providing for certain construction of this section.

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

Engrossed Committee Substitute for Senate Bill 10, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Blair, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Leonhardt, Maynard, Mullins, Plymale, Prezioso, Sypolt, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—24.

The nays were: Beach, Facemire, Laird, Miller, Palumbo, Romano, Snyder, Stollings and Takubo—9.

Absent: Boley—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 10) passed with its House of Delegates amended title.

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

The Senate proceeded to the tenth order of business.

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

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

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

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

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

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

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

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

**Com. Sub. for Com. Sub. for Senate Bill 454**, Requiring prescriptions for opioid antagonists be logged into Controlled Substances Monitoring Program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Com. Sub. for Senate Bill 601**, Legislative findings relating to oil and gas solid waste facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Senate Bill 657**, Relating to damages for medical monitoring.

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

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

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

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

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

**Com. Sub. for Senate Bill 677**, Allowing Higher Education Policy Commission increase tuition for online courses.

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

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

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

**Com. Sub. for Senate Bill 686**, Allowing exception for locally authorized races on county or municipal roads.

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

**Senate Bill 701**, Relating generally to resort area districts.

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

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

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

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

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

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

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

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

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

And,

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

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

Pending announcement of a meeting of a standing committee of the Senate, including a minority party caucus,

On motion of Senator Carmichael, the Senate recessed until 5 p.m. today.

Upon expiration of the recess, the Senate reconvened and, at the request of Senator Carmichael, and by unanimous consent, returned to the fourth order of business.

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

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 29th day of February, 2016, 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:

(S. B. 341), Expiring funds from Insurance Commissioner, Examination Revolving Fund and Insurance Commission Fund to State Fund, General Revenue.

(S. B. 351), Dedicating severance tax proceeds.

(S. B. 449), Supplemental appropriation from State Fund, General Revenue to Department of Administration, Public Defender Services.

(S. B. 450), Supplemental appropriation from State Fund, General Revenue to DHHR, Division of Health.

(S. B. 451), Supplemental appropriation from State Fund, General Revenue to Department of Military Affairs.

And,

(S. B. 462), Reducing deposit of excess lottery proceeds into WV Infrastructure Fund.

Respectfully submitted,

Mark R. Maynard,  
*Chair, Senate Committee.*  
John B. McCuskey,  
*Chair, House Committee.*

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

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

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

Respectfully submitted,

Mike Hall,  
*Chair.*

At the request of Senator Hall, unanimous consent being granted, the bill (Com. Sub. for S. B. 337) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

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

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

Respectfully submitted,

Mike Hall,  
*Chair.*

At the request of Senator Hall, unanimous consent being granted, the bill (S. B. 563) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

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

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

Respectfully submitted,

Mike Hall,  
*Chair.*

At the request of Senator Hall, unanimous consent being granted, the bill (Com. Sub. for S. B. 631) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

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

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

Respectfully submitted,

Mike Hall,  
*Chair.*

At the request of Senator Hall, unanimous consent being granted, the bill (Com. Sub. for S. B. 647) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Senate Bill 705** (originating in the Committee on Finance)—A Bill to amend and reenact §11-13A-3 of the Code of West Virginia, 1931, as amended, relating to reducing the severance tax on coal to three percent over two years; and specifying effective dates.

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

Respectfully submitted,

Mike Hall,  
*Chair.*

Senator Hall requested unanimous consent that the bill (S. B. 705) contained in the preceding report from the Committee on Finance be taken up for immediate consideration.

Which consent was not granted, Senator Kessler objecting.

Senator Hall then moved that the bill be taken up for immediate consideration.

Following discussion,

The question being on the adoption of Senator Hall's aforestated motion, and on this question, Senator Hall demanded the yeas and nays.

The roll being taken, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Leonhardt, Maynard, Mullins, Sypolt, Takubo, Trump, Walters and Cole (Mr. President)—18.

The nays were: Beach, Facemire, Kessler, Kirkendoll, Laird, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Unger, Williams, Woelfel and Yost—16.

Absent: None.

So, a majority of those present and voting having voted in the affirmative, the President declared Senator Hall's motion had prevailed.

Thereafter, the bill (S. B. 705) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

The Senate proceeded to the thirteenth order of business.

At the request of Senator Yost, unanimous consent being granted, it was ordered that the Journal show had Senator Yost been present in the chamber on Tuesday, February 23, 2016, he would have voted “yea” on the passage of Engrossed Committee Substitute for Senate Bill 420, Engrossed Committee Substitute for Senate Bill 485, Engrossed Committee Substitute for Senate Bill 565 and Engrossed Committee Substitute for Senate Bill 591 and “nay” on the passage of Engrossed Committee Substitute for Senate Bill 508; on Wednesday, February 24, 2016, he would have voted “yea” on the passage of Engrossed Committee Substitute for Senate Bill 252, Engrossed Committee Substitute for Senate Bill 274, Engrossed Committee Substitute for Senate Bill 291, Engrossed Committee Substitute for Senate Bill 376, Engrossed Senate Bill 416, Engrossed Senate Bill 438, Engrossed Committee Substitute for Senate Bill 474, Engrossed Committee Substitute for Senate Bill 575, Engrossed Committee Substitute for Senate Bill 592 and Engrossed Committee Substitute for Senate Bill 621; on Thursday, February 25, 2016, he would have voted “yea” on the passage of Engrossed Senate Bill 94, Engrossed Senate Bill 476 and Engrossed Committee Substitute for House Bill 3019; and on Friday, February, 26, 2016, he would have voted “yea” on the passage of Engrossed Committee Substitute for Senate Bill 106, Engrossed Committee Substitute for Senate Bill 525, Engrossed Committee Substitute for Senate Bill 593, Engrossed Senate Bill 613 and “nay” on the passage of Engrossed Senate Bill 538.

At the request of Senator Plymale, the name of Senator Plymale was removed as a sponsor of **Committee Substitute for Senate Bill 677** (*Relating to tuition rates set by higher education institutional governing boards*).

Pending announcement of meetings of standing committees of the Senate, including majority and minority party caucuses,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Tuesday, March 1, 2016, at 11 a.m.

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## TUESDAY, MARCH 1, 2016

The Senate met at 11 a.m.

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

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

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

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

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

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

The Senate then proceeded to the third order of business.

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

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

access approved after July 1, 2016 to include no parking signs, markings and paint necessary to comply with appropriate safety requirements and with the approval of the commissioner; and designating this as “Sarah Nott’s Law”.

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

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

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

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

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

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

Referred to the Committee on the Judiciary.

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

**Eng. House Bill 4324**—A Bill to amend and reenact §21A-10-11 of the Code of West Virginia, 1931, as amended, relating to authorizing information sharing by Workforce West Virginia related to administration of the Workforce Innovation and

Opportunity Act with agencies of state government responsible for vocational rehabilitation, employment and training.

Referred to the Committee on Government Organization.

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

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

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

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

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

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

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

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

Referred to the Committee on Finance.

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

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

Referred to the Committee on the Judiciary.

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

**Eng. Com. Sub. for House Bill 4463**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-3-13a; and to amend said code by adding thereto a new section, designated §30-14-12d, all relating to the practice of medicine, permitting the practice of telemedicine; establishing requirements and exceptions for licensure; providing for establishment of physician-patient or podiatrist-patient relationship through telemedicine encounter; establishing certain requirements for physician or podiatrist using telemedicine technologies to practice medicine or podiatry; establishing standard of care for telemedicine medical practice; providing requirements regarding establishment and maintenance of patient records in use of telemedicine; providing limitations on prescriptions which may be made in telemedicine encounters; providing exceptions when in-person physician-patient or podiatrist-patient relationship is established; allowing rulemaking for legislative approval by Board

of Medicine and Board of Osteopathic Medicine; and preserving traditional physician-patient and podiatrist-patient relationships.

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

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

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

Referred to the Committee on the Judiciary.

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

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

exemption under the Freedom of Information Act for powerball winner information.

Referred to the Committee on the Judiciary.

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

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

Referred to the Committee on Education.

The Senate proceeded to the sixth order of business.

Senators Williams, Stollings and Plymale offered the following resolution:

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

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

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

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

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

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

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

*Resolved by the Legislature of West Virginia:*

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

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

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

Which, under the rules, lies over one day.

Senators Maynard, Stollings and Plymale offered the following resolution:

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

Whereas, Dewey “Duke” Maynard was born January 18, 1941, at Holden in Logan County, West Virginia, the youngest son of the late Hardin and Genevie McNeeley Maynard. He was married to Icie Moore Maynard for 47 years. On January 14, 2010, Dewey “Duke” Maynard died at the age of 69 after suffering from a debilitating neurological disease that robbed him of his pride and mobility. Duke was survived by his wife, daughter and son-in-law, Robin Lee and J. T. Spaulding; a son and daughter-in-law, Dewey Lee Maynard, Jr., and Sueann Maynard, all of Dunlow, West Virginia; and

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

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

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

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

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

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

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

*Resolved by the Legislature of West Virginia:*

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

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

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

of the Division of Highways and the surviving relatives of Dewey 'Duke' Maynard.

Which, under the rules, lies over one day.

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

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

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

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

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

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

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

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

*Resolved by the Senate:*

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

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

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

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

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

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

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

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

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

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

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

Whereas, Taiwan signed a reciprocate agreement with West Virginia to recognize driver's licenses issued by each government on July 29, 2015, reflecting the friendship, trust and cooperation between the two governments, which benefits both the people of Taiwan and West Virginia in terms of travel and business; and

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

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

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

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

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

*Resolved by the Senate:*

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

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

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

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

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

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

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

**Eng. Com. Sub. for Com. Sub. for Senate Bill 12**, Relating to County Local Powers Act.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 12) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 545**, Relating to asbestos abatement on oil and gas pipelines.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 545) passed with its title.

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

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

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

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

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

(d) *Legislative approval required for result of special election to take effect.* — Following an election held pursuant to the provisions of subsection (c) of this section, the county commission

of the county in which the racetrack is located shall notify the Legislature of the results of the special election. The result of the special election shall not take effect without the express approval of both houses of the Legislature by concurrent resolution. If both houses adopt the concurrent resolution under this subsection, the result of the special election shall take effect.;

And by relettering the remaining subsections;

And,

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

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

There being no further amendments offered,

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

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

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

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

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 641) passed with its title.

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

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

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

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

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

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 691) passed with its title.

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

**Eng. Com. Sub. for Senate Joint Resolution 1**, County Economic Development Amendment.

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

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

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the resolution (Eng. Com. Sub. for S. J. R. 1) adopted, as follows:

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

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

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

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

Any other provision of this Constitution notwithstanding, the Legislature may, by general law, authorize county commissions to allocate and spend a portion of property taxes imposed pursuant to section one, article X of this Constitution, but not including taxes attributable to excess levies and levies for bonded indebtedness, which are paid by owners of new manufacturing facilities in their county that cost more than \$50 million, or by owners of new capital additions to existing manufacturing facilities in their county when the capital addition costs more than \$50 million. The Legislature may, from time to time, increase these thresholds and may impose restrictions and conditions on the use of property taxes allocated pursuant to this section. The property taxes allocated pursuant to this section may be used to pay for infrastructure capital improvements on a pay-as-you go basis and to pay debt service on infrastructure capital improvement bonds. However, when the property taxes are used to pay debt service on infrastructure capital improvement bonds, the bonds may be issued without a vote of the people for a period of not more than thirty years. The allocation of property tax collections paid by a manufacturing facility described in this section ceases thirty years after the first year of the allocation in the county. For purposes of this section, the term “infrastructure capital improvement project” includes the following public facilities or assets that are owned, supported or established by county government or the state at the request of county government: (1) Water treatment and distribution facilities; (2) wastewater treatment and disposal facilities; (3) sanitary sewers; (4) storm water, drainage and flood control facilities; (5) public primary and secondary school facilities, when owned by the county board of education; (6) public roads, bridges and rights-of-way, when owned by the state; (7) parks and recreational facilities, when owned by the county, a municipality or joint economic development entities; (8) law enforcement, emergency medical, rescue and fire protection facilities; and (9) other infrastructure capital improvement projects as defined by the Legislature.

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

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

**Eng. Com. Sub. for House Bill 4228**, Relating to transportation network companies.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4228) passed.

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

**Eng. Com. Sub. for House Bill 4228**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article designated §17-29-1, §17-29-2, §17-29-3, §17-29-4, §17-29-5, §17-29-6, §17-29-7, §17-29-8, §17-29-9, §17-29-10, §17-29-11, §17-29-12, §17-29-13, §17-29-14, §17-29-15, §17-29-16, §17-29-17, §17-29-18 and §17-29-19, all relating to transportation network companies; providing definitions; declaring not common carriers, taxi cabs or for-hire vehicle services; requiring permits from the Division of Motor Vehicles for TNCs to operate in the state; outlining requirements for such permits including payment of an annual permit fee; requiring an agent for service of process; providing for fare collection, identification of TNC vehicles and drivers, and electronic receipts; requiring financial responsibility and disclosure thereof; providing for different level of financial responsibility based on circumstances; requiring disclosures of financial responsibility to TNC drivers; allowing automobile insurers to exclude certain coverages; defining the relationship between drivers and transportation network companies; providing that workers compensation coverage not required under certain circumstances; requiring transportation network companies to adopt a policy of zero tolerance of alcohol or drug use for drivers; requiring for certain record keeping practices; providing requirements for drivers; requiring background checks and other requirements before drives may accept trip requests for TNCs; establishing criteria which disqualify persons from acting as TNC drivers; requiring vehicle inspections; requiring transportation network companies to adopt policies prohibiting solicitation or acceptance of cash payments and a policy of nondiscrimination; prohibiting additional charges for providing services to persons with physical disabilities; requiring customer records to be kept; prescribing certain tax requirements, limitations and exemptions; and prohibiting certain political subdivisions from imposition of licensure or other requirements or fees.

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

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

The nays were: None.

Absent: None.

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

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

The Senate proceeded to the ninth order of business.

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

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

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

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

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

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

(e) The superintendent shall partner with the DNA and Digital Forensics sections of the Marshall University Forensic Science Center, which is designated as a Disaster Recovery Laboratory, to

enhance the ability of the superintendent and the State Police to comply with their responsibilities.

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

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

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

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

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

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

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

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

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

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

The nays were: None.

Absent: None.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 363) passed with its title.

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

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

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

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

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

The nays were: None.

Absent: None.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 398) passed with its title.

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

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

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

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

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

And,

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

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

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

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

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

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

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

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

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

The nays were: None.

Absent: None.

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

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings,

Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 484) passed with its title.

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

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

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

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

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

The nays were: None.

Absent: None.

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

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings,

Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 494) passed with its title.

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

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

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

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

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

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

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

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

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

in the Motor Vehicle Alcohol Test and Lock Program as described in section three-a, article five-a of this chapter.

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

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

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

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

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

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

On motions of Senators Plymale, Kessler, Stollings and Williams, the following amendment to the bill was reported by the Clerk:

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

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

**CHAPTER 11. TAXATION.****ARTICLE 14C. MOTOR FUEL EXCISE TAX.****§11-14C-5. Taxes levied; rate.**

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

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

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

variable component equal to five percent of the average wholesale price of the alternative fuel.

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

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

(2) The “average wholesale price” means the single, statewide average per gallon wholesale price, rounded to the third decimal (thousandth of a cent), exclusive of state and federal excise taxes on each gallon of motor fuel or on each gallon equivalent of alternative fuel as determined by the Tax Commissioner from information furnished by suppliers, importers and distributors of motor fuel and alternative-fuel providers, alternative-fuel bulk end users and retailers of alternative fuel in this state, or other information regarding wholesale selling prices as the Tax Commissioner may gather or a combination of information. In no event shall the average wholesale price be determined to be less than 97 cents per gallon of motor fuel. For calendar year 2009, the average wholesale price of motor fuel shall not exceed the average wholesale price of motor fuel for calendar year 2008 as determined pursuant to the notice filed by the Tax Commissioner with the Secretary of State on November 21, 2007, and published in the State Register on November 30, 2007. On and after January 1, 2010, in no event shall the average wholesale price be determined to be less than \$2.34 per gallon of motor fuel. On and after January 1, 2017, the average wholesale price shall be no less than \$2.54 per invoiced gallon and is computed as hereinafter prescribed in this section. On and after January 1, ~~2011~~ 2017, the average wholesale price shall not vary by more than ten percent from the average

wholesale price of motor fuel as determined by the Tax Commissioner for the previous calendar year. Any limitation on the average wholesale price of motor fuel contained in this subsection shall not be applicable to alternative fuel.

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) The Tax Commissioner shall determine by January 1, 2014, the gasoline gallon equivalent for each alternative fuel by filing a notice of the gasoline gallon equivalent in the State Register and by other means that the Tax Commissioner considers reasonable. The

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

## **ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**

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

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

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

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

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

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

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

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

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

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

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

(d) *Calculation of tax on fractional parts of a dollar after December 31, 2003.* — Beginning January 1, 2004, the tax computation under subsection (b) of this section, and any

amendments thereto, shall be carried to the third decimal place, and the tax rounded up to the next whole cent whenever the third decimal place is greater than four and rounded down to the lower whole cent whenever the third decimal place is four or less. The vendor may elect to compute the tax due on a transaction on a per item basis or on an invoice basis provided the method used is consistently used during the reporting period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) On and after January 1, 2009, the tax imposed by this section does not apply to Class B trucks, truck tractors and road

tractors registered at a gross weight of fifty-five thousand pounds or more or to Class C trailers, semitrailers, full trailers, pole trailers and converter gear having a weight of two thousand pounds or greater. If an owner of a vehicle has previously titled the vehicle at a declared gross weight of fifty-five thousand pounds or more and the title was issued without the payment of the tax imposed by this section, then before the owner may obtain registration for the vehicle at a gross weight less than fifty-five thousand pounds, the owner shall surrender to the commissioner the exempted registration, the exempted certificate of title and pay the tax imposed by this section based upon the current market value of the vehicle.

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

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

(h) *Dedication of tax to highways.* — Notwithstanding any provision of this article or article fifteen-a of this chapter to the contrary, all taxes collected pursuant to this section, after deducting

the amount of any refunds lawfully paid, shall be deposited in the State Road Fund in the State Treasury and expended by the Commissioner of Highways for design, maintenance and construction of roads in the state highway system.

(i) *Legislative rules; emergency rules.* — Notwithstanding any provision of this article, article fifteen-a and article ten of this chapter to the contrary, the Commissioner of Motor Vehicles shall promulgate legislative rules explaining and implementing this section, which rules shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code and should include a minimum taxable value and set forth instances when a vehicle is to be taxed at fair market value rather than its purchase price. The authority to promulgate rules includes authority to amend or repeal those rules. If proposed legislative rules for this section are filed in the State Register before June 15, 2008, those rules may be promulgated as emergency legislative rules as provided in article three, chapter twenty-nine-a of this code.

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

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

**ARTICLE 2. DIVISION OF MOTOR VEHICLES.**

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

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

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

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

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

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

(a) Certificates of registration of any vehicle or registration plates for the vehicle, whether original issues or duplicates, may not be issued or furnished by the Division of Motor Vehicles or any other officer or agent charged with the duty, unless the applicant

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

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

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

(2) No certificate of title for any vehicle may be issued to any applicant unless the applicant has paid to the Division of Motor Vehicles the tax imposed by this section which is ~~five~~ four percent of the true and actual value of the vehicle whether the vehicle is

acquired through purchase, by gift or by any other manner whatsoever, except gifts between husband and wife or between parents and children: *Provided*, That the husband or wife, or the parents or children, previously have paid the tax on the vehicles transferred to the State of West Virginia.

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

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

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

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

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

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

*Provided*, That this state or any political subdivision of this state or any volunteer fire department or duly chartered rescue squad is exempt from payment of the charge.

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

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

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

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

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

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

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

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

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

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

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

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

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

the title of his or her vehicle in accordance with the provisions of this section.

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

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

(e) Any person making any affidavit required under any provision of this section who knowingly swears falsely, or any person who counsels, advises, aids or abets another in the commission of false swearing, or any person, while acting as an agent of the Division of Motor Vehicles, issues a vehicle registration without first collecting the fees and taxes or fails to perform any other duty required by this chapter or chapter eleven

of this code to be performed before a vehicle registration is issued is, on the first offense, guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$500 or be confined in jail for a period not to exceed six months or, in the discretion of the court, both fined and confined. For a second or any subsequent conviction within five years, that person is guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 or be imprisoned in a state correctional facility for not less than one year nor more than five years or, in the discretion of the court, both fined and imprisoned.

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

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

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

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

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

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

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

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

#### **ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.**

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

Whenever the owner of a registered vehicle transfers or assigns his or her title, or interest thereto, the registration of such vehicle shall expire: *Provided*, That such owner, if he or she has made application to the department within sixty days from the date of purchase to have said registration plates transferred to be used on another vehicle owned by said owner, may then operate the other vehicle for a period of sixty days, but in no event longer than sixty days from the date of original transfer. Upon such transfer, it shall be the duty of the original owner to retain the registration plates issued therefor and to immediately notify the commissioner of such transfer upon such form as may be provided therefor and to deliver to him or her the certificate of registration, whereupon the commissioner shall, upon the payment of a fee of \$5 ~~\$15~~, issue a new certificate showing the use to be made of such plates. Such

plates may then be used by such owner on another vehicle of the same class as the vehicle for which they were originally issued if such other vehicle does not require a greater license fee than was required for such original vehicle. If such other vehicle requires a greater license fee than such original vehicle, then such plates may be used by paying such difference to the commissioner. When such transfer of ownership is made to a licensed dealer in motor vehicles it shall be the duty of such dealer to immediately execute notification of transfer, in triplicate, and to have this notification properly signed by the owner making the transfer. The dealer shall immediately forward to the ~~department~~ division the original copy of the notification of transfer. One copy of the notification of transfer shall be given to the owner and one shall be retained by the dealer. The owner shall immediately send to the ~~department~~ division the transfer fee of ~~\$5~~ \$6 with any additional fee that may be required under the terms of this chapter. The owner's copy, properly signed by the dealer, will be the owner's identification until he or she receives a new registration card from the ~~department~~ division.

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

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

(a) In the event a motor vehicle is determined to be a total loss or otherwise designated as totaled by an insurance company or insurer, and upon payment of a total loss claim to an insured or claimant owner for the purchase of the vehicle, the insurance company or the insurer, as a condition of the payment, shall require the owner to surrender the certificate of title: *Provided*, That an insured or claimant owner may choose to retain physical possession and ownership of a total loss vehicle. If the vehicle owner chooses to retain the vehicle and the vehicle has not been determined to be

a cosmetic total loss in accordance with subsection (d) of this section, the insurance company or insurer shall also require the owner to surrender the vehicle registration certificate. The term “total loss” means a motor vehicle which has sustained damages equivalent to seventy-five percent or more of the market value as determined by a nationally accepted used car value guide or meets the definition of a flood-damaged vehicle as defined in this section.

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

(c) If the insurance company or insurer determines that the vehicle is repairable, the division shall issue a salvage certificate, on a form prescribed by the commissioner, in the name of the insurance company, the insurer or the vehicle owner if the owner has chosen to retain the vehicle. The certificate shall contain, on the reverse, spaces for one successive assignment before a new certificate at an additional fee is required. Upon the sale of the vehicle, the insurance company, insurer or vehicle owner if the owner has chosen to retain the vehicle, shall complete the assignment of ownership on the salvage certificate and deliver it to the purchaser. The vehicle may not be titled or registered for operation on the streets or highways of this state unless there is compliance with subsection (g) of this section. The division shall charge a fee of \$15 for each salvage title issued.

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

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

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

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

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

(g) Any person who purchases or acquires a vehicle as salvage or scrap, to be dismantled, compressed or destroyed, shall, within forty-five days, surrender to the division the certificate of title,

nonrepairable motor vehicle certificate, salvage certificate or a statement of cancellation signed by the seller, on a form prescribed by the commissioner. Subsequent purchasers of salvage or scrap are not required to comply with the notification requirement.

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

(i) The owner or title holder of a motor vehicle titled in this state which has previously been branded in this state or another state as salvage, reconstructed, cosmetic total loss, cosmetic total loss salvage, flood, fire, an equivalent term under another state’s laws or a term consistent with the intent of the National Motor Vehicle Title Information System established pursuant to 49 U. S. C. §30502 shall, upon becoming aware of the brand, apply for and receive a title from the Division of Motor Vehicles on which the brand “reconstructed”, “salvage”, “cosmetic total loss”, “cosmetic total loss salvage”, “flood”, “fire” or other brand is shown. The division shall charge a fee of ~~\$5~~ \$40 for each title so issued.

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

value of the vehicle as determined by a nationally accepted used car value guide to be used by the commissioner.

(k) The division shall charge a fee of ~~\$15~~ \$40 for the issuance of each salvage certificate or cosmetic total loss salvage certificate but shall not require the payment of the five percent motor vehicle sales tax. However, upon application for a certificate of title for a reconstructed, cosmetic total loss, flood or fire damaged vehicle or other brand, the division shall collect the five percent privilege tax on the fair market value of the vehicle as determined by the commissioner unless the applicant is otherwise exempt from the payment of such privilege tax. A wrecker/dismantler/rebuilder, licensed by the division, is exempt from the payment of the five percent privilege tax upon titling a reconstructed vehicle. The division shall collect a fee of \$35 per vehicle for inspections of reconstructed vehicles. These fees shall be deposited in a special fund created in the State Treasurer's Office and may be expended by the division to carry out the provisions of this article: *Provided*, That on and after July 1, 2007, any balance in the special fund and all fees collected pursuant to this section shall be deposited in the State Road Fund. Licensed wreckers/dismantlers/rebuilders may charge a fee not to exceed \$25 for all vehicles owned by private rebuilders which are inspected at the place of business of a wrecker/dismantler/rebuilder.

(l) As used in this section:

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

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

(3) "Other brand" means a brand consistent with the intent of the National Motor Vehicle Title Information System established

pursuant to 49 U. S. C. §30502 and rules promulgated by the United States Department of Justice to alert consumers, motor vehicle dealers or the insurance industry of the history of a vehicle.

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

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

(o) Any person who knowingly provides false or fraudulent information to the division that is required by this section in an application for a title, a cosmetic total loss title, a reconstructed vehicle title or a salvage certificate or who knowingly fails to disclose to the division information required by this section to be included in the application or who otherwise violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall for each incident be fined not less than \$1,000 nor more than \$2,500, or imprisoned in jail for not more than one year, or both fined and imprisoned.

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

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

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

shall be made for the issuance of a title to the owner of a vehicle upon the receipt of an electronic release of the final lien.

**ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.**

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

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

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

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

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

Class G. Motorcycles and parking enforcement vehicles;

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

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

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

Class R. House trailers;

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

Class X. Motor vehicles designated as trucks having a minimum gross weight of more than eight thousand pounds and a maximum gross weight of eighty thousand pounds, used exclusively in the conduct of a farming business, engaged in the production of agricultural products by means of: (a) The planting, cultivation and harvesting of agricultural, horticultural, vegetable or other products of the soil; or (b) the raising, feeding and care of livestock, poultry, bees and dairy cattle. A farm truck may be used only for the transportation of agricultural products produced by the owner of the truck, for the transportation of agricultural supplies used in the production or for private passenger use.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The identification card shall contain the same information as a driver's license except that the identification card shall be clearly marked as an identification card. The division may issue an identification card with less information to persons under the age

of sixteen. An identification card may be renewed annually on application and payment of the fee required by this section.

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

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

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

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

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

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

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

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

section two, article five-a of said chapter. Any person under the age of eighteen, regardless of class or licensure level, is subject to the mandatory school attendance and satisfactory academic progress provisions of section eleven, article eight, chapter eighteen of this code.

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

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

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

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

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

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

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

(2) *Terms and conditions of instruction permit.* — A level one instruction permit issued under the provisions of this section is valid until thirty days after the date the applicant attains the age of eighteen and is not renewable. However, any permit holder who allows his or her permit to expire prior to successfully passing the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(F) Pays a fee of \$5.

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

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

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

(i) Lawful employment;

(ii) A school-sanctioned activity;

(iii) A religious event; or

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

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

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

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

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

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

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

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

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

driver's license has been revoked as a level two intermediate driver, upon reaching the age of eighteen years and if otherwise eligible may reapply for an instruction permit, then a driver's license in accordance with the provisions of sections five, six and seven of this article.

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

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

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

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

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

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

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

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

(2) Reaches the age of eighteen years; and

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

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

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

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

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

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

(c) The division shall use such process or processes in the issuance of licenses that will, insofar as possible, prevent any identity theft, alteration, counterfeiting, duplication, reproduction,

forging or modification of, or the superimposition of a photograph on, the license.

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

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

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

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

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

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

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

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

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

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

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

In the event that an instruction permit or driver's license issued under the provisions of this chapter is lost or destroyed, or if the information contained on the license has changed, the person to whom the permit or license was issued may upon making proper application and upon payment of a fee of \$5 \$20 obtain a duplicate thereof upon furnishing proof satisfactory to the division that the permit or license has been lost or destroyed.

### **CHAPTER 17D. MOTOR VEHICLE SAFETY**

#### **RESPONSIBILITY LAW.**

#### **ARTICLE 2. ADMINISTRATION OF LAW.**

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

The commissioner shall upon request and subject to the provisions of article two-a, chapter seventeen-a of this code, furnish any person a certified abstract of the operating record of any person subject to the provisions of this chapter, and if there is no record of any conviction of the person of a violation of any law

relating to the operation of a motor vehicle or of any injury or damage caused by the person, the commissioner shall so certify. The commissioner shall collect ~~\$5~~ \$25 for each abstract.

Following extended discussion,

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

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

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

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

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

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

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

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

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

On suspending the constitutional rule, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano,

Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 567) passed with its title.

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

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

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

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

On page two, section two, line thirty-three, after the word "Commissioner" by changing the semicolon to a colon and inserting the following proviso: *Provided, however*, That such policies, requirements and interpretations shall include a requirement that insurers on a life or endowment insurance policy

or an annuity shall annually search the United States Social Security Administration's Death Master File or any other database or service that is at least as comprehensive for determining that a person has reportedly died to determine whether its insureds have died and, therefore, an obligation to pay exists.

Following discussion,

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

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

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

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

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

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

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

That §29-12B-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §29-12D-1 and §29-12D-3 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §29-12D-1a; that §55-7B-9 and §55-7B-9c of said code be amended and reenacted; and that §59-1-11 and §59-1-28a of said code be amended and reenacted, all to read as follows:

**CHAPTER 29. MISCELLANEOUS BOARDS AND  
OFFICES.**

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

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

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

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

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

in this section. The Treasurer shall effect these transfers pursuant to this section upon written request of the Director of the Board of Risk and Insurance Management.

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

## **ARTICLE 12D. WEST VIRGINIA PATIENT INJURY COMPENSATION FUND.**

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

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

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

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

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

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

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

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

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

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

(a) Annual assessment on licensed physicians. —

(1) The Board of Medicine and the Board of Osteopathic Medicine shall collect a biennial assessment in the amount of \$125 from every physician licensed by each board for the privilege of

practicing medicine in this state. The assessment is to be imposed and collected on forms prescribed by each licensing board. The assessment shall be collected as part of licensure or license renewal beginning July 1, 2016, for licenses issued or renewed in calendar year 2016 through calendar year 2019: *Provided*, That the following physicians shall be exempt from the assessment:

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

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

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

(D) A physician who holds an inactive license pursuant to subsection (j), section twelve, article three, chapter thirty of this code or section ten, article fourteen of said chapter, or a physician who voluntarily surrenders his or her license: *Provided*, That a retired osteopathic physician who submits to the Board of Osteopathic Medicine an affidavit asserting that he or she receives no monetary remuneration for any medical services provided, executed under the penalty of perjury and if executed outside the State of West Virginia, verified, may be considered to be licensed on an inactive basis: *Provided, however*, That if a physician or osteopathic physician elects to resume an active license to practice in the state and the physician or osteopathic physician has not paid the assessments during his or her inactive status, then as a condition of receiving an active status license, the physician or osteopathic physician shall pay the assessment due in the year in which the osteopathic physician resumes an active license; and

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

(2) The entire proceeds of the annual assessment collected pursuant to subsection (a) of this section shall be dedicated to the Patient Injury Compensation Fund. The Board of Medicine and the Board of Osteopathic Medicine shall promptly pay over to the Board of Risk and Insurance Management all amounts collected pursuant to this subsection for deposit in the fund.

(3) Notwithstanding any provision of the code to the contrary, a physician required to pay the annual assessment who fails to do so shall not be granted a license or renewal of an existing license by the Board of Medicine or the Board of Osteopathic Medicine. Any license which expires as a result of a failure to pay the required assessment shall not be reinstated or reactivated until the assessment is paid in full.

(b) *Assessment on trauma centers.* — From July 1, 2016 through June 30, 2020, an assessment of \$25 shall be levied on trauma centers for each trauma patient treated at a health care facility designated by the Office of Emergency Medical Services as a trauma center, as reported to the West Virginia Trauma Registry. The health care facility shall remit the assessment periodically, but in no event less frequently than once each year, with the first assessment being remitted no later than June 30, 2017. The assessment shall be remitted to the Board of Risk and Insurance Management to be deposited in the fund thereafter.

(c) *Assessment on claims filed under the Medical Professional Liability Act.* — From July 1, 2016, through June 30, 2020, an assessment of one percent of the gross amount of any settlement or judgment in a qualifying claim shall be levied.

(1) For purposes of this subsection, a qualifying claim is any claim for which a screening certificate of merit, as that term is defined in section six, article seven-b, chapter fifty-five of this code, is required.

(2) For any assessment levied pursuant to this subsection for which a judgment is entered by a court, the date of the entry of judgment shall be used to determine applicability of this provision. The defendant or defendants shall remit the assessment to the clerk

of the court in which the qualified claim was filed. The clerk of the court shall then remit the assessment quarterly to the Board of Risk and Insurance Management to be deposited in the fund.

(3) For any assessment levied pursuant to this subsection on a settlement entered into by the parties, the date on which the agreement is formalized in writing by the parties shall be used to determine applicability of this provision. At the time that an action alleging a qualified claim is dismissed by the parties, the assessment shall be paid to the clerk of the court, who shall then remit the assessment to the Board of Risk and Insurance Management to be deposited in the fund. Collected assessments shall be remitted no less often than quarterly. If a qualifying claim is settled prior to the filing of an action, the plaintiff, or his or her counsel, shall remit the payment to the Board of Risk and Insurance Management within sixty days of the date of the settlement agreement to be paid into the fund.

(d) *Termination of assessments.* - The requirements of this section shall terminate on the dates set forth in this section or sooner if the liability of the Patient Injury Compensation Fund has been paid or has been funded in its entirety. The Board of Risk and Insurance Management shall submit a report to the Joint Committee on Government and Finance each year beginning January 1, 2018, giving recommendations based on actuarial analysis of the fund's liability. The recommendations shall include, but not be limited to, discontinuance of the assessments provided for in this section, closure of the fund and transfer of the fund's liability.

### **§29-12D-3. Payments from the Patient Injury Compensation Fund.**

(a) Other than payments in connection with the ongoing operation and administration of the fund, no payments may be made from the fund other than in satisfaction of claims for economic damages to qualified claimants who would have collected economic damages but for the operation of the limits on economic damages set forth in article seven-b, chapter fifty-five of this code.

(b) For purposes of this article, a qualified claimant must be both a “patient” and a “plaintiff” as those terms are defined in article seven-b, chapter fifty-five of this code.

(c) Any qualified claimant seeking payment from the fund must establish to the satisfaction of the board that he or she has exhausted all reasonable means to recover from all applicable liability insurance an award of economic damages, following procedures prescribed by the board by legislative rule.

(d) Upon a determination by the board that a qualified claimant to the fund for compensation has exhausted all reasonable means to recover from all applicable liability insurance an award of economic damages arising under article seven-b, chapter fifty-five of this code, the board shall make a payment or payments to the claimant for economic damages. The economic damages must have been awarded but be uncollectible after the exhaustion of all reasonable means of recovery of applicable insurance proceeds. In no event shall the amount paid by the board in respect to any one occurrence exceed \$1 million or the maximum amount of money that could have been collected from all applicable insurance prior to the creation of the Patient Injury Compensation Fund under this article, regardless of the number of plaintiffs or the number of defendants or, in the case of wrongful death, regardless of the number of distributees.

(e) The board, in its discretion, may make payments to a qualified claimant in a lump sum amount or in the form of periodic payments. Periodic payments are to be based upon the present value of the total amount to be paid by the fund to the claimant by using federally approved qualified assignments.

(f) In its discretion, the board may make a payment or payments out of the fund to a qualified claimant in connection with the settlement of claims arising under article seven-b, chapter fifty-five of this code all according to rules promulgated by the board. The board shall prior to making payment determine that payment from the fund to a qualified claimant is in the best interests of the fund. When the claimant and the board agree upon a settlement amount, the following procedure shall be followed:

(1) A petition shall be filed by the claimant with the court in which the action is pending, or if none is pending, in a court of appropriate jurisdiction, for approval of the agreement between the claimant and the board.

(2) The court shall set the petition for hearing as soon as the court's calendar permits. Notice of the time, date and place of hearing shall be given to the claimant and to the board.

(3) ~~At the hearing the court shall approve the proposed settlement~~ The authority of the court is limited to denial of the final proposed settlement or, if the court finds it to be valid, just and equitable, approval of the proposed settlement.

(g) If and to the extent that any payment to one or more qualified claimants under this section would deplete the fund during any fiscal year, payments to and among qualified claimants shall, at the discretion of the board, be prorated, made in periodic installments during the fiscal year according to the rules promulgated by the board or be placed in a nonpayment status until such time as sufficient moneys are received by the fund to initiate or resume payments. Any amounts due and unpaid to qualified claimants in any fiscal year shall be paid in subsequent fiscal years from available funds, but only to the extent funds are available in any fiscal year, according to the board's rules.

~~(h) Payments out of the fund may be used to pay reasonable attorney fees of attorneys representing qualified claimants receiving compensation in respect of economic damages as established by the board of Risk and Insurance Management.~~

(†) (h) The claimant may appeal a final decision made by the board pursuant to the provisions of article five, chapter twenty-nine-a of this code.

## **CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.**

### **ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.**

#### **§55-7B-9. Several liability.**

(a) In the trial of a medical professional liability action under this article involving multiple defendants, the trier of fact shall report its findings on a form provided by the court which contains each of the possible verdicts as determined by the court. Unless otherwise agreed by all the parties to the action, the jury shall be instructed to answer special interrogatories, or the court, acting without a jury, shall make findings as to:

(1) The total amount of compensatory damages recoverable by the plaintiff;

(2) The portion of the damages that represents damages for noneconomic loss;

(3) The portion of the damages that represents damages for each category of economic loss;

(4) The percentage of fault, if any, attributable to each plaintiff; and

(5) The percentage of fault, if any, attributable to each of the defendants.

~~(b) In assessing percentages of fault, the trier of fact shall consider only the fault of the parties in the litigation at the time the verdict is rendered and may not consider the fault of any other person who has settled a claim with the plaintiff arising out of the same medical injury: *Provided, That, upon the creation of the Patient Injury Compensation Fund provided for in article twelve c, chapter twenty nine of this code, or of some other mechanism for compensating a plaintiff for any amount of economic damages awarded by the trier of fact which the plaintiff has been unable to collect, the* The trier of fact shall, in assessing percentages of fault, consider the fault of all alleged parties, including the fault of any person who has settled a claim with the plaintiff arising out of the same medical injury.~~

(c) If the trier of fact renders a verdict for the plaintiff, the court shall enter judgment of several, but not joint, liability against each defendant in accordance with the percentage of fault attributed to the defendant by the trier of fact.

(d) To determine the amount of judgment to be entered against each defendant, the court shall first, after adjusting the verdict as provided in section nine-a of this article, reduce the adjusted verdict by the amount of any preverdict settlement arising out of the same medical injury. The court shall then, with regard to each defendant, multiply the total amount of damages remaining, with prejudgment interest recoverable by the plaintiff, by the percentage of fault attributed to each defendant by the trier of fact. The resulting amount of damages, together with any post-judgment interest accrued, shall be the maximum recoverable against the defendant. To determine the amount of judgment to be entered against each defendant when there is no preverdict settlement, the court shall first, after adjusting the verdict as provided in section nine-a of this article, multiply the total amount of damages remaining with any prejudgment interest recoverable by the plaintiff, by the percentage of fault attributed to each defendant by the trier of fact. The resulting amount of damages, together with any post-judgment interest accrued, shall be the maximum amount recoverable damages against each defendant.

~~(e) Upon the creation of the Patient Injury Compensation Fund provided for in article twelve c, chapter twenty nine of this code, or of some other mechanism for compensating a plaintiff for any amount of economic damages awarded by the trier of fact which the plaintiff has been unable to collect, the court shall, in determining the amount of judgment to be entered against each defendant, first multiply the total amount of damages, with interest, recoverable by the plaintiff by the percentage of each defendant's fault and that amount, together with any post judgment interest accrued, is the maximum recoverable against said defendant. Prior to the court's entry of the final judgment order as to each defendant against whom a verdict was rendered, the court shall reduce the total jury verdict by any amounts received by a plaintiff in settlement of the action. When any defendant's percentage of the verdict exceeds the remaining amounts due the plaintiff after the mandatory reductions, each defendant shall be liable only for the defendant's pro rata share of the remainder of the verdict as calculated by the court from the remaining defendants to the action.~~

The plaintiff's total award may never exceed the jury's verdict less any statutory or court-ordered reductions.

(f) Nothing in this section is meant to eliminate or diminish any defenses or immunities which exist as of the effective date of this section, except as expressly noted in this section.

(g) Nothing in this article is meant to preclude a health care provider from being held responsible for the portion of fault attributed by the trier of fact to any person acting as the health care provider's agent or servant or to preclude imposition of fault otherwise imputable or attributable to the health care provider under claims of vicarious liability. A health care provider may not be held vicariously liable for the acts of a nonemployee pursuant to a theory of ostensible agency unless the alleged agent does not maintain professional liability insurance covering the medical injury which is the subject of the action in the aggregate amount of at least \$1 million for each occurrence.

**§55-7B-9c. Limit on liability for treatment of emergency conditions for which patient is admitted to a designated trauma center; exceptions; emergency rules.**

(a) In any action brought under this article for injury to or death of a patient as a result of health care services or assistance rendered in good faith and necessitated by an emergency condition for which the patient enters a health care facility designated by the Office of Emergency Medical Services as a trauma center, including health care services or assistance rendered in good faith by a licensed emergency medical services authority or agency, certified emergency medical service personnel or an employee of a licensed emergency medical services authority or agency, the total amount of civil damages recoverable may not exceed \$500,000 for each occurrence, exclusive of interest computed from the date of judgment, and regardless of the number of plaintiffs or the number of defendants or, in the case of wrongful death, regardless of the number of distributees.

(b) On January 1, 2016, and in each year thereafter, the limitation on the total amount of civil damages contained in subsection (a) of this section shall increase to account for inflation as determined by the Consumer Price Index published by the United States Department of Labor: *Provided*, That increases on the limitation of damages shall not exceed one hundred fifty percent of the amounts specified in said subsection.

(c) Beginning July 1, 2016, a plaintiff who suffers economic damages, as determined by the trier of fact or the agreement of the parties, in excess of the limitation of liability in section (a) of this section and for whom recovery from the Patient Injury Compensation Fund is precluded pursuant to section one, article twelve-d, chapter twenty-nine of this code may recover additional economic damages of up to \$1 million. This amount is not subject to the adjustment for inflation set forth in subsection (b) of this section.

~~(b)~~(d) The limitation of liability in subsection (a) of this section also applies to any act or omission of a health care provider in rendering continued care or assistance in the event that surgery is required as a result of the emergency condition within a reasonable time after the patient's condition is stabilized.

~~(c)~~(e) The limitation on liability provided under subsection (a) of this section does not apply to any act or omission in rendering care or assistance which:

(1) Occurs after the patient's condition is stabilized and the patient is capable of receiving medical treatment as a nonemergency patient; or

(2) Is unrelated to the original emergency condition.

~~(d)~~(f) In the event that: (1) A physician provides follow-up care to a patient to whom the physician rendered care or assistance pursuant to subsection (a) of this section; and (2) a medical condition arises during the course of the follow-up care that is directly related to the original emergency condition for which care or assistance was rendered pursuant to said subsection, there is

rebuttable presumption that the medical condition was the result of the original emergency condition and that the limitation on liability provided by said subsection applies with respect to that medical condition.

~~(e)~~(g) There is a rebuttable presumption that a medical condition which arises in the course of follow-up care provided by the designated trauma center health care provider who rendered good faith care or assistance for the original emergency condition is directly related to the original emergency condition where the follow-up care is provided within a reasonable time after the patient's admission to the designated trauma center.

~~(f)~~(h) The limitation on liability provided under subsection (a) of this section does not apply where health care or assistance for the emergency condition is rendered:

(1) In willful and wanton or reckless disregard of a risk of harm to the patient; or

(2) In clear violation of established written protocols for triage and emergency health care procedures developed by the Office of Emergency Medical Services in accordance with subsection (e) of this section. In the event that the Office of Emergency Medical Services has not developed a written triage or emergency medical protocol by the effective date of this section, the limitation on liability provided under subsection (a) of this section does not apply where health care or assistance is rendered under this section in violation of nationally recognized standards for triage and emergency health care procedures.

~~(g)~~(i) The Office of Emergency Medical Services shall, prior to the effective date of this section, develop a written protocol specifying recognized and accepted standards for triage and emergency health care procedures for treatment of emergency conditions necessitating admission of the patient to a designated trauma center.

~~(h)~~(j) In its discretion, the Office of Emergency Medical Services may grant provisional trauma center status for a period of

up to one year to a health care facility applying for designated trauma center status. A facility given provisional trauma center status is eligible for the limitation on liability provided in subsection ~~(a)~~ (i) of this section. If, at the end of the provisional period, the facility has not been approved by the Office of Emergency Medical Services as a designated trauma center, the facility is no longer eligible for the limitation on liability provided in subsection (a) of this section.

~~(j)~~(k) The Commissioner of the Bureau for Public Health may grant an applicant for designated trauma center status a one-time only extension of provisional trauma center status, upon submission by the facility of a written request for extension, accompanied by a detailed explanation and plan of action to fulfill the requirements for a designated trauma center. If, at the end of the six-month period, the facility has not been approved by the Office of Emergency Medical Services as a designated trauma center, the facility no longer has the protection of the limitation on liability provided in subsection (a) of this section.

~~(j)~~(l) If the Office of Emergency Medical Services determines that a health care facility no longer meets the requirements for a designated trauma center, it shall revoke the designation, at which time the limitation on liability established by subsection (a) of this section ceases to apply to that health care facility for services or treatment rendered thereafter.

~~(k)~~(m) The Legislature hereby finds that an emergency exists compelling promulgation of an emergency rule, consistent with the provisions of this section, governing the criteria for designation of a facility as a trauma center or provisional trauma center and implementation of a statewide trauma/emergency care system. The Legislature therefore directs the Secretary of the Department of Health and Human Resources to file, on or before July 1, 2003, emergency rules specifying the criteria for designation of a facility as a trauma center or provisional trauma center in accordance with nationally accepted and recognized standards and governing the implementation of a statewide trauma/emergency care system. The rules governing the statewide trauma/emergency care system shall include, but not be limited to:

(1) System design, organizational structure and operation, including integration with the existing emergency medical services system;

(2) Regulation of facility designation, categorization and credentialing, including the establishment and collection of reasonable fees for designation; and

(3) System accountability, including medical review and audit to assure system quality. Any medical review committees established to assure system quality shall include all levels of care, including emergency medical service providers, and both the review committees and the providers shall qualify for all the rights and protections established in article three-c, chapter thirty of this code.

~~(4) On January 1, 2016, and in each year after that, the limitation for civil damages contained in subsection (a) of this section shall increase to account for inflation by an amount equal to the Consumer Price Index published by the United States Department of Labor, not to exceed one hundred fifty percent of said subsection.~~

## **CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.**

### **ARTICLE 1. FEES AND ALLOWANCES.**

#### **§59-1-11. Fees to be charged by clerk of circuit court.**

(a) The clerk of a circuit court shall charge and collect for services rendered by the clerk the following fees which shall be paid in advance by the parties for whom services are to be rendered:

(1) Except as provided in subdivisions (2) and (3) of this subsection, for instituting any civil action under the Rules of Civil Procedure, any statutory summary proceeding, any extraordinary remedy, the docketing of civil appeals or removals of civil cases from magistrate court, or any other action, cause, suit or proceeding, \$200, of which \$30 shall be deposited in the Courthouse Facilities Improvement Fund created by section six,

article twenty-six, chapter twenty-nine of this code and \$45 shall be deposited in the special revenue account designated the Fund for Civil Legal Services for Low Income Persons, established by paragraph (B), subdivision (4), subsection (c), section ten of this article, and \$20 deposited in the special revenue account created in section six hundred three, article twenty-six, chapter forty-eight of this code to provide legal services for domestic violence victims;

(2) For instituting an action for medical professional liability, ~~\$280~~ \$400, of which \$10 shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code;

(3) Beginning on and after July 1, 1999, for instituting an action for divorce, separate maintenance or annulment, \$135;

(4) For petitioning for the modification of an order involving child custody, child visitation, child support or spousal support, \$85;

(5) For petitioning for an expedited modification of a child support order, \$35; and

(6) For filing any pleading that includes a counterclaim, cross claim, third-party complaint or motion to intervene, \$200, which shall be deposited in the special revenue account designated the Fund for Civil Legal Services for Low Income Persons, established by paragraph (B), subdivision (4), subsection (c), section ten of this article: *Provided*, That this subdivision and the fee it imposes does not apply in family court cases nor may more than one such fee be imposed on any one party in any one civil action.

(b) In addition to the foregoing fees, the following fees shall be charged and collected:

(1) For preparing an abstract of judgment, \$5;

(2) For a transcript, copy or paper made by the clerk for use in any other court or otherwise to go out of the office, for each page, \$1;

(3) For issuing a suggestion and serving notice to the debtor by certified mail, \$25;

(4) For issuing an execution, \$25;

(5) For issuing or renewing a suggestee execution and serving notice to the debtor by certified mail, \$25;

(6) For vacation or modification of a suggestee execution, \$1;

(7) For docketing and issuing an execution on a transcript of judgment from magistrate court, \$3;

(8) For arranging the papers in a certified question, writ of error, appeal or removal to any other court, \$10, of which \$5 shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code;

(9) For each subpoena, on the part of either plaintiff or defendant, to be paid by the party requesting the same, 50 cents;

(10) For additional service, plaintiff or appellant, where any case remains on the docket longer than three years, for each additional year or part year, \$20; and

(11) For administering funds deposited into a federally insured interest-bearing account or interest-bearing instrument pursuant to a court order, \$50, to be collected from the party making the deposit. A fee collected pursuant to this subdivision shall be paid into the general county fund.

(c) In addition to the foregoing fees, a fee for the actual amount of the postage and express may be charged and collected for sending decrees, orders or records that have not been ordered by the court to be sent by mail or express.

(d) The clerk shall tax the following fees for services in a criminal case against a defendant convicted in such court:

(1) In the case of a misdemeanor, \$85; and

(2) In the case of a felony, \$105, of which \$10 shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code.

(e) The clerk of a circuit court shall charge and collect a fee of \$25 per bond for services rendered by the clerk for processing of criminal bonds and the fee shall be paid at the time of issuance by the person or entity set forth below:

(1) For cash bonds, the fee shall be paid by the person tendering cash as bond;

(2) For recognizance bonds secured by real estate, the fee shall be paid by the owner of the real estate serving as surety;

(3) For recognizance bonds secured by a surety company, the fee shall be paid by the surety company;

(4) For ten percent recognizance bonds with surety, the fee shall be paid by the person serving as surety; and

(5) For ten percent recognizance bonds without surety, the fee shall be paid by the person tendering ten percent of the bail amount.

In instances in which the total of the bond is posted by more than one bond instrument, the above fee shall be collected at the time of issuance of each bond instrument processed by the clerk and all fees collected pursuant to this subsection shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code. Nothing in this subsection authorizes the clerk to collect the above fee from any person for the processing of a personal recognizance bond.

(f) The clerk of a circuit court shall charge and collect a fee of \$10 for services rendered by the clerk for processing of bail piece and the fee shall be paid by the surety at the time of issuance. All fees collected pursuant to this subsection shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code.

(g) No clerk is required to handle or accept for disbursement any fees, cost or amounts of any other officer or party not payable into the county treasury except on written order of the court or in compliance with the provisions of law governing such fees, costs or accounts.

(h) Fees for removal of civil cases from magistrate court shall be collected by the magistrate court when the case is still properly before the magistrate court. The magistrate court clerk shall forward the fees collected to the circuit court clerk.

**§59-1-28a. Disposition of filing fees in civil actions and fees for services in criminal cases.**

(a) Except for those payments to be made from amounts equaling filing fees received for the institution of divorce actions as prescribed in subsection (b) of this section, and except for those payments to be made from amounts equaling filing fees received for the institution of actions for divorce, separate maintenance and annulment as prescribed in said subsection, for each civil action instituted under the rules of civil procedure, any statutory summary proceeding, any extraordinary remedy, the docketing of civil appeals or any other action, cause, suit or proceeding in the circuit court the clerk of the court shall, at the end of each month, pay into the funds or accounts described in this subsection an amount equal to the amount set forth in this subsection of every filing fee received for instituting the action as follows:

(1) Into the Regional Jail and Correctional Facility Authority Fund in the State Treasury established pursuant to the provisions of section ten, article twenty, chapter thirty-one of this code the amount of \$60;

(2) Into the Court Security Fund in the State Treasury established pursuant to the provisions of section fourteen, article three, chapter fifty-one of this code the amount of \$5; and

(3) Into the Regional Jail Operations Partial Reimbursement Fund established pursuant to the provisions of section ten-b, article twenty, chapter thirty-one of this code the amount of \$20.

(b) For each action for divorce, separate maintenance or annulment instituted in the circuit court, the clerk of the court shall, at the end of each month, report to the Supreme Court of Appeals the number of actions filed by persons unable to pay and pay into the funds or accounts in this subsection an amount equal to the amount set forth in this subsection of every filing fee received for instituting the divorce action as follows:

(1) Into the Regional Jail and Correctional Facility Authority Fund in the State Treasury established pursuant to the provisions of section ten, article twenty, chapter thirty-one of this code the amount of \$10;

(2) Into the special revenue account of the State Treasury, established pursuant to section six hundred four, article two, chapter forty-eight of this code an amount of \$30;

(3) Into the Family Court Fund established under section twenty-two, article two-a, chapter fifty-one of this code an amount of \$70; and

(4) Into the Court Security Fund in the State Treasury, established pursuant to the provisions of section fourteen, article three, chapter fifty-one of this code the amount of \$5.

(c) Notwithstanding any provision of subsection (a) or (b) of this section to the contrary, the clerk of the court shall, at the end of each month, pay into the Family Court Fund established under section twenty-two, article two-a, chapter fifty-one of this code an amount equal to the amount of every fee received for petitioning for the modification of an order involving child custody, child visitation, child support or spousal support as determined by subdivision (3), subsection (a), section eleven of this article and for petitioning for an expedited modification of a child support order as provided in subdivision (4) of said subsection.

(d) The clerk of the court from which a protective order is issued shall, at the end of each month, pay into the Family Court Fund established under section twenty-two, article two-a, chapter fifty-one of this code an amount equal to every fee received

pursuant to the provisions of section five hundred eight, article twenty-seven, chapter forty-eight of this code.

(e) Of every fee for service received in any criminal case against any respondent convicted in circuit court, the clerk of each circuit court shall, at the end of each month, pay into the Regional Jail and Correctional Facility Authority Fund in the State Treasury an amount equal to \$40, into the Court Security Fund in the State Treasury established pursuant to the provisions of section fourteen, article three, chapter fifty-one of this code an amount equal to \$5 and into the Regional Jail Operations Partial Reimbursement Fund established pursuant to the provisions of section ten-b, article twenty, chapter thirty-one of this code an amount equal to \$30.

(f) The clerk of the circuit court shall, at the end of each month, pay into the Medical Liability Fund established under article twelve-b, chapter twenty-nine of this code, an amount equal to ~~\$165~~ \$285 of every filing fee received for instituting a medical professional liability action: Provided, That effective July 1, 2016, payment shall be into the Patient Injury Compensation Fund created by the provisions of article twelve-d, chapter twenty-nine of this code.

(g) The clerk of the circuit court shall, at the end of each month, pay into the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code those amounts received by the clerk which are dedicated for deposit in the fund.

(h) The clerk of each circuit court shall, at the end of each month, pay into the Regional Jail Operations Partial Reimbursement Fund established in the State Treasury pursuant to the provisions of section ten-b, article twenty, chapter thirty-one of this code those amounts received by the clerk which are dedicated for deposit in the fund.

The bill (Com. Sub. for S. B. 602), as amended, was then ordered to engrossment and third reading.

**Com. Sub. for Senate Bill 614**, Conforming statute with court interpretation by replacing “unconscionable” with “fraudulent” when referring to conduct.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

On motion of Senator Carmichael, the constitutional rule requiring a bill to be read on three separate days was suspended by a vote of four fifths of the members present, taken by yeas and nays.

On suspending the constitutional rule, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

Engrossed Committee Substitute for Senate Bill 614 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 614) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Com. Sub. for Senate Bill 622**, Composition of PEIA Finance Board.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for Senate Bill 625**, Revising exceptions from FOIA provided for in Aboveground Storage Tank Act.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for Senate Bill 628**, Permitting treating physician direct palliative or emergent treatment for patients.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

On motion of Senator Carmichael, the constitutional rule requiring a bill to be read on three separate days was suspended by a vote of four fifths of the members present, taken by yeas and nays.

On suspending the constitutional rule, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

Engrossed Committee Substitute for Senate Bill 628 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 628) passed with its title.

*Ordered,* That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Com. Sub. for Senate Bill 631,** Authorizing higher education boards of governors develop retirement and incentive packages.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for Senate Bill 643,** Requiring individuals receiving unemployment compensation seek seasonal employment.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Senate Bill 644,** Authorizing counties to offer license plates customized to county.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for Senate Bill 647,** Exempting certain complimentary hotel rooms from occupancy tax.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Senate Bill 648,** Allowing local authorities permit flashing traffic signals during low traffic times.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

On motion of Senator Carmichael, the constitutional rule requiring a bill to be read on three separate days was suspended by a vote of four fifths of the members present, taken by yeas and nays.

On suspending the constitutional rule, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

Engrossed Senate Bill 648 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 648) passed with its title.

*Ordered,* That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Senate Bill 656**, Creating Upper Kanawha Valley Resiliency and Revitalization Program.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

On motion of Senator Carmichael, the constitutional rule requiring a bill to be read on three separate days was suspended by a vote of four fifths of the members present, taken by yeas and nays.

On suspending the constitutional rule, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

Engrossed Senate Bill 656 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 656) passed with its title.

*Ordered,* That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Senate Bill 657**, Relating to damages for medical monitoring.

On second reading, coming up in regular order, was read a second time.

The following amendments to the bill, from the Committee on the Judiciary, were reported by the Clerk, considered simultaneously, and adopted:

On page one, section thirty, lines one through ten, by striking out all of subsection (a);

And,

On page one, section thirty, line eleven, by striking out “(b)”.

The bill (S. B. 657), as amended, was then ordered to engrossment and third reading.

**Senate Bill 658**, Allowing licensed professionals donate time to care of indigent and needy in clinical setting.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

On motion of Senator Carmichael, the constitutional rule requiring a bill to be read on three separate days was suspended by a vote of four fifths of the members present, taken by yeas and nays.

On suspending the constitutional rule, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

Engrossed Senate Bill 658 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings,

Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 658) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Senate Bill 669**, Requiring proficiency in civics as condition for high school or GED diploma.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Education, was reported by the Clerk and adopted:

On page one, section six, lines twelve and thirteen, after the word “diploma” by inserting a comma and striking out the words “or General Educational Development (GED) diploma” and inserting in lieu thereof the words “Test Assessing Secondary Completion (TASC) diploma or equivalent”.

On motion of Senator Plymale, the following amendment to bill (S. B. 669) was next reported by the Clerk and adopted:

On page one, section six, line fourteen, after the word “test” by changing the period to a colon and inserting the following proviso: *Provided*, That any necessary modifications pursuant to any student’s individualized education plan (IEP) or education plan established pursuant to Section 504 of the Rehabilitation Act of 1973, as amended, 29 U. S. C. §794, shall apply.

The bill (S. B. 669), as amended, was then ordered to engrossment and third reading.

**Com. Sub. for Senate Bill 677**, Relating to tuition rates set by higher education institutional governing boards.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Senate Bill 678**, Relating to ownership and use of conduit providing telephone service.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Government Organization, was reported by the Clerk and adopted:

On page one, section three, line five, after the word “apparatus” by changing the period to a colon and inserting the following proviso: *Provided*, That the customer and all occupants of the conduit or other underground apparatus shall comply with the national electrical safety code and all other reasonable standards and practices to be established by the Public Service Commission.

The bill (S. B. 678), as amended, was then ordered to engrossment and third reading.

**Com. Sub. for Senate Bill 686**, Authorizing local governing authorities hold sanctioned motor vehicle races on roads, streets or airports under their jurisdiction.

On second reading, coming up in regular order, was read a second time.

On motion of Senator Romano, the following amendments to the bill were reported by the Clerk, considered simultaneously, and adopted:

On page one, section three-pp, lines five and six, by striking out the words “to provide immunity from damages;”;

And,

On page four, section five-g, lines five and six, by striking out the words “to provide immunity from damages;”.

The bill (Com. Sub. for S. B. 686), as amended, was then ordered to engrossment and third reading.

**Senate Bill 701**, Relating generally to resort area districts.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Senate Bill 702**, Allowing title of real estate to pass to individuals entitled to sale proceeds if executor fails to do so within 5 years of closing estate.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Senate Bill 703**, Relating to deposit of overpayment of certain fees into Children’s Trust Fund.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Senate Bill 704**, Dispatching of towing service for emergency towing of vehicles.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Carmichael, and by unanimous consent, the bill was advanced to third reading with the right for amendments to be considered on that reading.

**Senate Bill 705**, Reducing coal severance tax to 3 percent over two years.

On second reading, coming up in regular order, was read a second time.

On motion of Senator Kessler, the following amendments to the bill were reported by the Clerk and considered simultaneously:

On page one, section three, line six, by striking out “2018” and inserting in lieu thereof “2016”;

And,

On page one, section three, line eight, by striking out “2019” and inserting in lieu thereof “2017”.

The question being on the adoption of Senator Kessler’s amendments to the bill, the same was put and did not prevail.

On motion of Senator Kessler, the following amendment to the bill (S. B. 705) was next reported by the Clerk:

On page two, section three, after line sixteen, by inserting a new subsection, designated subsection (c), to read as follows:

(c) Notwithstanding any provision of this code to the contrary, the tax imposed in subsection (a) of this section for each fiscal year shall be five percent of the gross value of the natural resource produced, as shown by the gross income derived from the sale or furnishing thereof and the provisions of subsection (b) shall not apply to any entity unless it employs full-time employees in West Virginia at a number that is at least ninety percent of the full-time employees it employed in West Virginia on July 1, 2011.

The question being on the adoption of Senator Kessler’s amendment to the bill, the same was put and did not prevail.

On motion of Senator Snyder, the following amendments to the bill (S. B. 705) were next reported by the Clerk and considered simultaneously:

On page three, after section three, by inserting a new section, designated section three-a, to read as follows:

**§11-13A-3a. Imposition of tax on privilege of severing natural gas or oil; Tax Commissioner to develop a uniform reporting form.**

(a) *Imposition of tax.* — For the privilege of engaging or continuing within this state in the business of severing natural gas

or oil for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax: *Provided*, That effective for all taxable periods beginning on or after January 1, 2000, there is an exemption from the imposition of the tax provided in this article on the following: (1) Free natural gas provided to any surface owner; (2) natural gas produced from any well which produced an average of less than five thousand cubic feet of natural gas per day during the calendar year immediately preceding a given taxable period; (3) oil produced from any oil well which produced an average of less than one-half barrel of oil per day during the calendar year immediately preceding a given taxable period; and (4) for a maximum period of ten years, all natural gas or oil produced from any well which has not produced marketable quantities of natural gas or oil for five consecutive years immediately preceding the year in which a well is placed back into production and thereafter produces marketable quantities of natural gas or oil.

(b) *Rate and measure of tax.* — The tax imposed in subsection (a) of this section shall be five percent of the gross value of the natural gas or oil produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article: *Provided*, That if the coal severance tax imposed in section three of this article is changed to some amount other than five percent, then the severance tax imposed by this subsection shall adjust on the same dates and to the same percentages such that the two severance taxes continue to be equivalent percentages of the gross value of the natural resource produced.

(c) *Tax in addition to other taxes.* — The tax imposed by this section shall apply to all persons severing gas or oil in this state, and shall be in addition to all other taxes imposed by law.

(d)(1) The Legislature finds that in addition to the production reports and financial records which must be filed by oil and gas producers with the State Tax Commissioner in order to comply with this section, oil and gas producers are required to file other production reports with other agencies, including, but not limited to, the office of oil and gas, the Public Service Commission and county assessors. The reports required to be filed are largely

duplicative, the compiling of the information in different formats is unnecessarily time consuming and costly, and the filing of one report or the sharing of information by agencies of government would reduce the cost of compliance for oil and gas producers.

(2) On or before July 1, 2003, the Tax Commissioner shall design a common form that may be used for each of the reports regarding production that are required to be filed by oil and gas producers, which form shall readily permit a filing without financial information when such information is unnecessary. The commissioner shall also design such forms so as to permit filings in different formats, including, but not limited to, electronic formats.

(3) Effective July 1, 2006, this subsection shall have no force or effect.

And,

By striking out the enacting section and inserting in lieu thereof a new enacting section to read as follows:

That §11-13A-3 and §11-13A-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:.

Following discussion,

The question being on the adoption of Senator Snyder's amendments to the bill, the same was put and prevailed.

On motion of Senator Hall, the following amendments to the bill (S. B. 705) were next reported by the Clerk, considered simultaneously, and adopted:

On page one, section three, line six, by striking out "2018" and inserting in lieu thereof "2017";

And,

On page one, section three, line eight, by striking out "2019" and inserting in lieu thereof "2018".

The bill (S. B. 705), as amended, was then ordered to engrossment and third reading.

**Com. Sub. for Senate Joint Resolution 14**, Right to Farm and Ranch Amendment.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Eng. Com. Sub. for House Bill 4012**, West Virginia Religious Freedom Restoration Act.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §5-11C-1, §5-11C-2, §5-11C-3, §5-11C-4, §5-11C-5, §5-11C-6 and §5-11C-7, all to read as follows:

**ARTICLE 11C. WEST VIRGINIA RELIGIOUS FREEDOM PROTECTION ACT.**

**§5-11C-1. Short title.**

This article may be known and cited as the West Virginia Religious Freedom Protection Act.

**§5-11C-2. Purposes.**

The purpose of this article is to affirm the rights of West Virginians as enumerated in Section fifteen, Article III of the Constitution of the State of West Virginia and the First Amendment to the United States Constitution; to codify the application of the compelling interest test and strict scrutiny standard set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*,

406 U.S. 205 (1972), and affirmed by *State v. Everly*, 150 W.Va. 423 (1966); and to guarantee its application in all cases in which any person's free exercise of religion is alleged to have been substantially burdened by governmental action.

### **§5-11C-3. Definitions.**

As used in this article:

“Exercise of religion” means the sincere practice or observance of religion under the rights enumerated in Section 15, Article III of the Constitution of the State of West Virginia and the First Amendment to the Constitution of the United States of America.

“Governmental action” means any action by a branch, department, agency, board, commission, instrumentality, official, or a person or entity acting in an agency capacity, of the State of West Virginia or a political subdivision thereof.

“Substantially burden” means a governmental action which does any of the following:

(1) Significantly constrains or inhibits conduct or expression mandated by a person's sincerely held religious beliefs;

(2) Significantly curtails a person's ability to express adherence to his or her religious faith;

(3) Denies a person a reasonable opportunity to engage in activities which are fundamental to that person's religion; or

(4) Compels conduct or expression by a person which violates a specific tenet of that person's religious faith.

### **§5-11C-4. Applicability; construction; remedies.**

(a) Except as authorized by the provisions of this article, governmental action may not substantially burden a person's right to the free exercise of his or her religion, even if the burden results from a rule of general applicability, unless it is demonstrated that applying the burden to a person's free exercise of religion in this particular instance:

(1) Is in furtherance of a compelling governmental interest; and

(2) Is the least restrictive means of furthering that compelling governmental interest.

(b) A person who believes his or her free exercise of religion has been substantially burdened, or is likely to be substantially burdened, in may assert such alleged violation or impending violation as a claim for injunctive or declaratory relief or as a defense in a judicial or administrative proceeding. If the person asserting such a claim or defense prevails, then he or she may obtain relief against the state or its political subdivisions: *Provided*, That such relief is limited to injunctive or declaratory relief.

(c) Nothing in this article may be construed to constitute a defense to any cause of action based upon a refusal to provide emergency medical treatment.

(d) This article does not apply to any local or regional jail, or any state or federal correctional facility, nor any facility that treats civilly committed sexually violent offenders.

#### **§5-11C-5. Churches and religious institutions.**

A person's free exercise of religion shall apply equally to churches and religious institutions in or through which persons exercise and express their religious faith, and including also the pastors, ministers, priests, rabbis and other clerics of such churches and religious institutions.

#### **§5-11C-6. Governmental actions expressly prohibited.**

No governmental entity may:

(1) Compel a church, religious institution or cleric thereof to perform any sacrament, ceremony, practice, ritual or service of its, his or her faith against its, his or her will;

(2) Compel a cleric of any church or religious institution to recognize, for purposes of practicing his or her religious duties, any marriage which violates the tenets of his or her faith;

(3) Preclude a cleric of any church or religious institution from performing any sacrament, ceremony, practice ritual or service of his or her faith that is not prohibited by a state law, rule or county or municipal ordinance regulating health and safety;

(4) Compel any person to participate in or undergo any religious sacrament, ceremony, practice, ritual or service which violates his or her religious beliefs.

**§5-11C-7. Scope of article; legislative intent.**

(a) In enacting this article, it is not the intention of the legislature to expand or diminish the rights of persons under the United States Constitution, the Constitution of West Virginia, applicable laws of the United States, the laws of the State of West Virginia or ordinances enacted by political subdivisions of the State of West Virginia. Rather, it is the sole intention of the Legislature in enacting this article to codify the test and standard of review under which governmental actions are to be judicially reviewed when those action are alleged to be substantially burdening to one person's sincerely held religious beliefs.

(b) Nothing in this article shall be construed to create a cause of action for monetary damages.

On motion of Senator Gaunch, the following amendments to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 4012) were reported by the Clerk and considered simultaneously:

On page one, section one, by striking out the word "Protection" and inserting in lieu thereof the word "Restoration";

On page one, section three, after the word "America.", by striking out the remainder of the amendment and inserting in lieu thereof the following:

"State action" means action by a branch, department, agency, board, commission, instrumentality, official, or other person acting under color of law, of the state of West Virginia or any political subdivision thereof.

**§5-11C-4. Applicability; construction; remedies.**

(a) State action may not substantially burden a person's right to exercise of religion, even if the burden results from a rule of general applicability, unless it is demonstrated that applying the burden to that person's exercise of religion in this particular instance:

(1) Is in furtherance of a compelling governmental interest; and

(2) Is the least restrictive means of furthering that compelling governmental interest.

(b) A person whose exercise of religion has been substantially burdened, or is likely to be substantially burdened, in violation of this article may assert such violation or impending violation as a claim for injunctive or declaratory relief or as a defense in any judicial or administrative proceeding. The person asserting such a claim or defense may obtain relief against the state or its political subdivisions: *Provided*, That such relief is limited to injunctive or declaratory relief and reimbursement of costs and reasonable attorney fees. Nothing in this article shall be construed to create a cause of action by an employee against a nongovernmental employer; nor shall anything in this article be construed to constitute a defense to any claim based upon a refusal to provide emergency medical services.

(c) This article applies to all state and local laws, and the implementation of those laws, whether statutory or otherwise, and whether adopted before or after the effective date of this article. This article does not apply to any local or regional jail, or any state or federal correctional facility, nor any facility that treats civilly committed sexually violent offenders.

**§5-11C-5. Severability.**

If a subsection or portion of this article is declared invalid, that declaration does not affect the validity of the remaining portions.;

And,

On page one, by striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §5-11C-1, §5-11C-2, §5-11C-3, §5-11C-4 and §5-11C-5, all to read as follows:

Following extended discussion and a point of inquiry to the President, with resultant response thereto,

The question being on the adoption of Senator Gaunch's amendments to the Judiciary committee amendment to the bill, and on this question, Senator Gaunch demanded the yeas and nays.

The roll being taken, the yeas were: Ashley, Blair, Boley, Boso, Cline, Gaunch, Karnes, Kirkendoll, Leonhardt, Maynard, Mullins, Sypolt and Cole (Mr. President)—13.

The nays were: Beach, Carmichael, Facemire, Ferns, Hall, Kessler, Laird, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Takubo, Trump, Unger, Walters, Williams, Woelfel and Yost—21.

Absent: None.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Gaunch's amendments to the Judiciary committee amendment to the bill rejected.

On motions of Senators Palumbo and Stollings, the following amendments to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 4012) were next reported by the Clerk and considered simultaneously:

On page two, section four, after subsection (c), by inserting the following:

(d) Notwithstanding any provision of this code to the contrary, this article does not apply to any federal, state or local antidiscrimination laws or ordinances, whether adopted before or

after the effective date of this article. Antidiscrimination laws and ordinances are hereby determined to be both a compelling governmental interest and the least restrictive means of furthering that compelling governmental interest.

(e) Notwithstanding any provision of this code to the contrary, this article does not apply to any federal, state or local child health laws or ordinances concerning child vaccinations, whether adopted before or after the effective date of this article. Child vaccination laws and ordinances are hereby determined to be both a compelling governmental interest and the least restrictive means of furthering that compelling governmental interest.;

And,

By relettering the remaining subsection.

Following extended discussion,

The question being on the adoption of the amendments offered by Senators Palumbo and Stollings to the Judiciary committee amendment to the bill, and on this question, Senator Karnes demanded the yeas and nays.

The roll being taken, the yeas were: Beach, Boley, Carmichael, Cline, Facemire, Ferns, Hall, Kessler, Laird, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Takubo, Trump, Unger, Walters, Williams, Woelfel and Yost—23.

The nays were: Ashley, Blair, Boso, Gaunch, Karnes, Kirkendoll, Leonhardt, Maynard, Mullins, Sypolt and Cole (Mr. President)—11.

Absent: None.

So, a majority of those present and voting having voted in the affirmative, the President declared the amendments offered by Senators Palumbo and Stollings to the Judiciary committee amendment to the bill adopted.

The question now being on the adoption of the Judiciary committee amendment to the bill, as amended, the same was put and prevailed.

Thereafter, at the request of Senator Kessler, and by unanimous consent, the remarks by Senator Carmichael regarding the adoption of the amendments offered by Senators Palumbo and Stollings to the Judiciary committee amendment to Engrossed Committee Substitute for House Bill 4012 were ordered printed in the Appendix to the Journal.

The bill (Eng. Com. Sub. for H. B. 4012), as amended, was then ordered to third reading.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senators Cline and Woelfel.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Wednesday, March 2, 2016, at 11 a.m.

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## WEDNESDAY, MARCH 2, 2016

The Senate met at 11 a.m.

(Senator Cole, Mr. President, in the Chair.)

Prayer was offered by Bishop Joe Thomas, Nondenominational Fellowship Pentecostal Ministries, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Tom Takubo, a senator from the seventeenth district.

Pending the reading of the Journal of Tuesday, March 1, 2016,

At the request of Senator Karnes, unanimous consent being granted, the Journal was approved and the further reading thereof dispensed with.

The Senate proceeded to the second order of business and the introduction of guests.

The Senate then proceeded to the third order of business.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage, to take effect from passage, of

**Eng. Senate Bill 558**, Maintaining solvency of Unemployment Compensation Fund.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 2665**—A Bill to amend and reenact §17C-5-2b of the Code of West Virginia, 1931, as amended, relating to participation in Motor Vehicle Alcohol Test and Lock Program; limiting eligibility for participation in the program and for dismissal and discharge of charges.

Referred to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 2849**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §61-14-1, §61-14-2, §61-14-3 and §61-14-4, all relating to creating the West Virginia Sentencing Commission; establishing composition and membership of commission; providing legislative findings and purpose; setting forth objectives for the commission to pursue; and providing powers and duties of the commission.

Referred to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 2963**—A Bill to amend and reenact §61-2-14a of the Code of West Virginia, 1931, as amended, relating to criminal offense of kidnapping; making unlawful the taking or gaining custody of, confining or concealing another person by force or threat of force, or by duress, fraud, deceit, misrepresentation or enticement; and providing penalties.

Referred to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4176**—A Bill to amend and reenact §62-15A-1, §62-15A-2 and §62-15A-3 of the Code of West Virginia, 1931, as amended, all relating to the addiction treatment pilot program; defining terms; permitting the Regional Jail and Correctional Facility Authority to participate in the pilot program; establishing criteria for participants; and including the Director of the Regional Jail and Correctional Facility Authority and The Secretary of the Department of Military Affairs and Public Safety in the list of recipients of the report required to be made by the Department of Health and Human Resources.

Referred to the Committee on Health and Human Resources; and then to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4183**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-4C-24; and to amend and reenact §60A-9-4, all relating generally to reporting opioid overdoses; requiring

emergency medical service agencies and emergency medical service providers to report nonlethal opioid overdoses to the Board of Pharmacy; establishing that the information reported be added to the West Virginia Controlled Substance Monitoring Program.

Referred to the Committee on Health and Human Resources.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4225**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-6-17, relating to patriotic displays at public buildings; providing legislative findings; allowing for the national motto, “In God We Trust”, to be displayed on public buildings; allowing for the display of the POW-MIA flag at public buildings; authorizing costs associated with display of national motto or POW-MIA flag may be paid with any private donation, gifts, grants and bequests received by the governing authority; and requiring the Department of Administration to develop guidelines for appropriate display of the motto and flag.

Referred to the Committee on Government Organization.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4240**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §60A-4-406b, all relating to the Uniform Controlled Substances Act; offenses and penalties; providing mandatory minimum sentences for trafficking drugs into the state and for other drug offenses; increasing period of ineligibility for parole for certain violations of possession or distribution of controlled substances and establishing applicable conditions; increasing period of ineligibility for parole for transporting certain controlled substances into the state and establishing applicable conditions; prohibiting application of alternative sentences; and

increasing the penalties for transporting controlled substances into the state.

Referred to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4248**—A Bill to amend and reenact §16-1-4 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §16-5Y-1, all relating to methadone regulation; requiring the secretary of Health and Human Resources to propose legislative rules for the regulation of opioid treatment programs; requiring the Health Care Authority to develop new certificate of need standards; prohibiting the Health Care Authority from approving applications of certificate of need for opioid treatment programs; imposing a moratorium on licensure of certain new opioid treatment programs; providing the secretary monitor opioid treatment programs; requiring program staff to receive minimum training; setting forth standards for initial assessment to admission to a program; setting forth criteria to be admitted to a treatment program; requiring a program to develop individualized treatment plans; providing for random drug testing for program patients; enunciating consequences for positive drug tests, including mandatory counseling; requiring mandatory statistical reporting to the Department of Health and Human Resources and the Legislative Oversight Commission on Health and Human Resources; prescribing times programs must be open; setting forth certain staff requirements for programs; requiring programs to establish peer review committees that include a physician member; and requiring the secretary to prescribe the procedure for peer review.

Referred to the Committee on Health and Human Resources.

A message from The Clerk of the House of Delegates announced the passage by that body, to take effect from passage, and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4271**—A Bill to amend and reenact §29-22A-10 of the Code of West Virginia, 1931, as amended; and to amend and reenact §29-25-22 and §29-25-22b of said code, all relating to ending transfers to the Licensed Racetrack Modernization Fund; transferring funds remaining in the Licensed Racetrack Modernization Fund and the Historic Resort Hotel Modernization Fund to the General Revenue Fund of the state during the fiscal year ending June 30, 2016; providing exceptions for recoupment of certain expenditures for eligible facility modernization improvements from the Licensed Racetrack Modernization Fund; and closing the Licensed Racetrack Modernization Fund and the Historic Resort Hotel Modernization Fund.

Referred to the Committee on Finance.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4307**—A Bill to amend and reenact §20-2-5 of the Code of West Virginia, 1931, as amended, relating to carrying a firearm for self-defense in a state park, state forest, state wildlife management area, or state rail trail, and providing an exception.

Referred to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4314**—A Bill to amend and reenact §60-1-5, §60-3-11, §60-6-7 and §60-6-8 of the Code of West Virginia, 1931, as amended, all relating to prohibiting the sale of powdered or crystalline alcohol; and to amend said code by adding thereto a new section, designated §61-10-33, all relating to prohibiting the sale of pure caffeine products; defining terms; prohibiting the commissioner from listing or stocking powdered alcohol in inventory; creating a criminal offense for anyone who

manufactures or sells, aids or abets in the manufacture or sale of powdered alcohol, or possesses, uses or in any other manner provides or furnishes powdered alcohol; making a second and subsequent offense a felony and providing for increased penalties; creating a criminal offense for any licensee who sells, possesses, possesses for sale, furnishes or provides any powdered alcohol; making a second and subsequent offense a felony and providing for increased penalties; defining terms; creating a criminal offense for the sale and possession of pure caffeine products; providing exclusions; and providing penalties.

Referred to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. House Bill 4428**—A Bill to amend and reenact §30-8-9 of the Code of West Virginia, 1931, as amended, relating to clarifying that optometrists may continue to exercise the same prescriptive authority which they possessed prior to hydrocodone being reclassified as a Schedule II substance.

Referred to the Committee on Health and Human Resources.

A message from The Clerk of the House of Delegates announced the passage by that body, to take effect July 1, 2016, and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4466**—A Bill to amend and reenact §18-9A-4, §18-9A-5, §18-9A-6a, §18-9A-7, §18-9A-8a, §18-9A-9 and §18-9A-10 of the Code of West Virginia, 1931, as amended, all relating to public school support; basing the allowable number of state aid professional educators on a ratio basis, rather than the number employed subject to a limit; providing a certain salary level be used when the number of professional positions exceed the number employed in a county; basing minimum professional instructional personnel required to be on a ratio basis of funded professional educators; providing for prorating professional instructional personnel among participating counties

in a joint school or in joint programs and services; deleting obsolete language and mandated periodic legislative review; basing the allowable number of service personnel on a ratio basis, rather than number employed subject to a limit; providing a certain salary level be used when the number of service positions exceed the number employed in a county; providing for proration of number and allowance of personnel employed in part by state and county funds; adding professional student support personnel allowance to calculation of teachers retirement fund allowance; updating employer retirement contribution rate percentage used for calculating retirement allowance to reflect both plans; allowing a limited portion of funds for bus purchases to be used for certain facility, equipment and other current expense priorities if requested and approved; reducing maximum amount of foundation allowance for regional education service agencies; reducing percent of growth in local share amount for improving instructional programs; removing authorization for use of instructional improvement funds for implementation and maintenance of regional computer information system; increasing percent of growth in local share amount for improving instructional technology; increasing base dollar amount to be distributed to each county; authorizing the use of instructional technology improvement funds for employment of technology system specialist subject to a limit and authorization by state superintendent; and specifying when certain debt service funds payments are to be made into school building capital improvement fund.

Referred to the Committee on Education; and then to the Committee on Finance.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4480**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-51-1 and §16-51-2, all relating to prescribing certain controlled substances; defining terms; limiting to whom certain drugs may be prescribed; requiring notification; requiring a physician to prescribe certain drugs; limiting the

prescription of drugs containing buprenorphine; setting a titration procedure; providing exemption to the titration procedure; and requiring chart notations.

Referred to the Committee on Health and Human Resources.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4500**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §22-6C-1, §22-6C-2, §22-6C-3, §22-6C-4, §22-6C-5 and §22-6C-6, all relating to oil and gas royalty owner protections; providing methods of ensuring transparency in determining the amount paid to a royalty interest owner by requiring certain information be attached to the payment instrument provided to the interest owner by the producer; defining terms; establishing a general rule for the accumulation of proceeds from production and the payment of funds therefrom; requiring the timely payment of royalties and establishing interest penalty for failure to timely pay an interest owner; requiring oil and gas producers to report to the Department of Environmental Protection on a quarterly basis all production data associated with a given well; requiring the Department of Environmental Protection to collect all quarterly production data and organize such data on the Department of Environmental Protection website; resolving conflicts between division orders and leases; and providing for rulemaking.

Referred to the Committee on Energy, Industry and Mining; and then to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4507**—A Bill to amend and reenact §5-11-9 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto a new section, designated

§5-11-9a, all relating to granting preference in hiring to a veteran or disabled veteran; establishing that an employer granting preference in hiring a veteran or disabled veteran does not violate the state Human Rights Act under certain circumstances; providing that an employer may grant preference in hiring to a veteran or disabled veteran who has been honorably discharged from the United States Armed Services when the veteran or disabled veteran meets all of the knowledge, skills, and eligibility requirements of the job if granting said preference does not violate any state equal employment opportunity law; and defining the term “veteran”.

Referred to the Committee on Military; and then to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4517**—A Bill to amend and reenact §39B-1-114 of the Code of West Virginia, 1931, as amended; and to amend and reenact §39B-2-101 of said code, all relating to limiting the ability of an agent under a power of attorney to take self-benefiting actions; creating a presumption that an act is not within the scope of authority granted in a power of attorney when an agent benefits from the act to the detriment of an ancestor, spouse, heir, or descendant, unless the authority to perform the act is expressly provided with particularity in identifying the existing property interest in the power of attorney; and prohibiting an agent from exercising authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal’s property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise, unless the power of attorney expresses in the grant of authority the specific act and identifies the existing property interest with particularity, rather than in general terms.

Referred to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4542**—A Bill to amend and reenact §8-15-3 of the Code of West Virginia, 1931, as amended, relating to the imposition of fire fees on non-residents of a municipality who are users of that municipality's fire service; capping the amount of such fees which can be imposed, providing for a referendum on this issue of fire service, and petition requirements for triggering the same.

Referred to the Committee on Government Organization.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4561**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-6-4a, relating to requiring the Commissioner of the Division of Highways and the Director of the Division of Personnel to collaborate to develop a special hiring procedure for hourly personnel positions in the Division of Highways; establishing requirements for the special hiring procedure; exempting the Division of Highways and the division of Personnel from classified service hiring procedures upon implementation of the special hiring process; exceptions; establishing reporting requirements; and requiring emergency and legislative rulemaking.

Referred to the Committee on Government Organization.

A message from The Clerk of the House of Delegates announced the passage by that body, to take effect July 1, 2016, and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4566**—A Bill to amend and reenact §18-4-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §18A-2-2, §18A-2-5a, §18A-2-6, §18A-2-7 and §18A-2-8a of said code; to amend said code by adding thereto

a new section, designated §18A-2-7b; to amend and reenact, §18A-4-7a, §18A-4-8b and §18A-4-8e of said code; and to amend and reenact §18A-5-8 of said code, all relating to school personnel; including assistant and associate superintendents under provisions for permanent administrative certification for superintendents; changing deadline for county board vote on termination of continuing contracts of teachers; requiring the department to report on database system certain disqualifications to teach; changing deadlines for teachers and service personnel to give notice of retirement to qualify for early notification payment; changing deadline for county board vote on termination of continuing contracts of service persons; changing deadline for notice of consideration for transfer; changing deadline for hearing on proposed transfer; changing deadline to provide list of employees considered for transfer to county board; changing method of notification and documentation of receipt of notice to employees recommended for transfer; making technical alignment of dates on personnel action and foreseen need for personnel; consolidating limitations on employee transfers after twentieth day prior to instructional term; removing reports to state superintendent; removing exemption for position vacated but not posted; changing transfer limit to twentieth day for prior for service person employed and assigned as autism mentor or certain aid, paraprofessional, interpreter or early childhood assistant teacher; limiting transfers service persons after the twentieth day prior with certain exceptions; changing deadline providing county board list of probationary teachers recommended for rehire; providing for filling position known on or before March 1 to exist for the next school year and requiring employees subject to release to be considered prior to posting for application for nonemployees; removing requirement to submit lateral transfer policies to state board to be complied for reports to LOCEA; facilitating postings for longer than the five-day minimum; removing requirement to any applicant of status of his or her application after hiring decision made; changing requirements for notice and receipt notification to persons on preferred recall of all position openings; requiring periodic review and update of service personnel competency tests; removing requiring requirement for minimum one day in-service

training to assist preparation for competency tests; removing obsolete language and making technical improvements.

Referred to the Committee on Education.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4575**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §61-14-1, §61-14-2, §61-14-3, §61-14-4, §61-14-5 and §61-14-6, all relating to laundering and concealment of proceeds from criminal activity; defining terms; creating felony crime of conducting financial transactions involving proceeds of criminal activity; creating felony crime of transporting, transmitting or transferring monetary instruments or property involving proceeds of criminal activity; providing for penalties; providing for presumptions when law enforcement or persons acting at the direction of law enforcement are involved with proceeds of criminal activity; denying availability of certain defenses; providing for seizure and forfeiture of property or monetary instruments; clarifying conduct that constitutes separate offenses; and setting forth venue for offenses.

Referred to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4577**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §60A-4-414, relating to use of a firearm during, in relation to, or in furtherance of a violation of certain offenses of the Uniform Controlled Substances Act; creating the felony offense of use or possession of a firearm; providing penalties; clarifying that the offense is separate and distinct from other offenses; denying eligibility for sentencing alternatives; and clarifying the term “convicted”.

Referred to the Committee on the Judiciary

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. House Bill 4578**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §60A-4-414, relating to conspiracy to commit violations of the Uniform Controlled Substances Act; creating the felony offense of conspiracy; providing penalties; establishing a sentencing guideline based upon quantity for certain controlled substances; authorizing the court to make the determination of applicable quantity; and authorizing the aggregation of quantities from all participants and members of the conspiracy.

Referred to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4625**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §19-23-30; to amend said code by adding thereto a new section, designated §29-22-31; to amend said code by adding thereto a new section, designated §29-22A-20; and to amend said code by adding thereto a new section, designated §29-22C-35, all relating to redirecting certain racing and gaming revenues from greyhound development funds to the State Road Fund.

Referred to the Committee on Finance.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4633**—A Bill to amend and reenact §49-4-720 and §49-4-722 of the Code of West Virginia, 1931, as amended, all relating to requiring the Division of Juvenile

Services to transfer to a correctional facility or regional jail any juvenile in its custody that has been transferred to adult jurisdiction of the circuit court and who reaches his or her eighteenth birthday; requiring transfer of juvenile in adult jurisdiction upon reaching eighteen years of age if he or she has either been convicted or is in a pretrial status; directing the Division of Juvenile Services to notify the circuit court of the age of a juvenile reaching the age of eighteen years of age; authorizing the circuit court to conduct a hearing as to alternative placement; mandating that the position of victim be taken under consideration by the court in considering disposition or alternative placement; prohibiting juveniles that commit an adult offense while under the custody of the Division of Juvenile Services from returning back to the placement in a juvenile facility if the juvenile has attained the age of eighteen years; and requiring the court to conduct a hearing as to placement of a juvenile that has turned eighteen years of age and is remanded back to the custody of the Division of Juvenile Services after completion of an adult sentence.

Referred to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. House Bill 4644**—A Bill to amend and reenact §52-1-17 of the Code of West Virginia, 1931, as amended, relating to deleting subsection (e) therein which provides the sheriff to pay into the State Treasury all jury costs received from the court clerks and that the sheriff shall be held to account in the sheriff's annual settlement for all the moneys.

Referred to the Committee on Government Organization.

A message from The Clerk of the House of Delegates announced the passage by that body, to take effect from passage, and requested the concurrence of the Senate in the passage of

**Eng. House Bill 4654**—A Bill to amend and reenact §30-7-4 of the Code of West Virginia, 1931, as amended, relating to the

Executive Secretary of the Board of Registered Professional Nurses; and removing the executive secretary experience requirements.

Referred to the Committee on Government Organization.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. House Bill 4655**—A Bill to amend and reenact §33-25E-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §33-25E-5; all relating to vision care insurance plans; defining terms; prohibiting plans from requiring vision care providers to provide discounts on noncovered services or materials; prohibiting eye care providers from charging more to enrollees for noncovered services than the normal and customary fee; providing that plans may not provide for a nominal reimbursement in order to claim that a service or material is covered; prohibiting plans from falsely representing benefits provided to sell coverage or communicate benefits to enrollees; prohibiting the requirement that eye care providers be credentialed through a designated vision plan; providing pay parity for optometrist and ophthalmologists; providing that optometrist and ophthalmologist be held to the same credentialing standards; prohibiting eye care providers from being required to accept all plan and discount plans offered by plans in order to be on a panel for the plan; prohibits the plans from changing the terms of an agreement with an eye care provider without communication with and agreement from the eye care provider; permitting eye care providers to use any lab or supplier and notification of contract changes; creating a private right of action for eye care providers; placing limits on charge backs of administrative fees and other recoupments; providing that a plan may not discriminate against a provider based on geographic location of the eye care provider; and authorizing suits for injunctions by persons aggrieved or by Insurance Commissioner and recovery of monetary damages, costs and attorney's fees.

Referred to the Committee on Banking and Insurance; and then to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4659**—A Bill to amend and reenact §16-2-11 of the Code of West Virginia, 1931, as amended, relating to local health departments; and authorizing local health departments to bill for medical services without obtaining approval from the commissioner.

Referred to the Committee on Health and Human Resources.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4660**—A Bill to amend and reenact §24-2-11 of the Code of West Virginia, 1931, as amended, relating to Public Service Commission certificates of convenience and necessity for water, sewer and/or stormwater service projects; requiring a preliminary engineering report and financial analysis of the proposed project; prohibiting the Public Service Commission from requiring final design materials to be submitted in support of an application; permitting an entity to pursue a further rate increase through the normal rate changing process if an increase is needed exceeding fifteen percent above the rates already approved; prohibiting the Public Service Commission from modifying the scope of a project to which a certificate was previously granted; and prohibiting the rescinding of a previously granted certificate if the rates expected to go in effect upon substantial completion of the project have increased by less than fifteen percent.

Referred to the Committee on Government Organization; and then to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body, to take effect July 1, 2016, and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4662**—A Bill to amend and reenact §17C-16-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17C-16-6 of said code, all relating to permitting the Superintendent of the State Police to collect \$3 dollars from the sale of motor vehicle inspection stickers to purchase, equip and maintain vehicles; increasing the allowable fee for vehicle inspection and any necessary headlight adjustment.

Referred to the Committee on Transportation and Infrastructure; and then to the Committee on Finance.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4673**—A Bill to amend the Code of West Virginia, 1931 as amended, by adding thereto a new section, designated §20-2-7a, relating to making unlawful the theft, damage or release of deer from private game farms; providing definitions; creating a crime for the taking or carrying away, or intentionally injuring or releasing any captive cervid that is the property of another person; providing a criminal penalty; and providing for restitution to be paid to the victim.

Referred to the Committee on Natural Resources; and then to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. House Bill 4685**—A Bill to amend and reenact §30-1-4a of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto four new sections, designated §30-1-21, §30-1-22, §30-1-23 and §30-1-24, all relating to professional and occupational board members; providing for the disqualification of lay members who become licensees; indemnification of board members; prohibiting impersonation of a board licensee; requiring boards use the sunrise process to expand their scope of practice;

and requiring boards to submit names of qualified individuals to the Governor for possible appointment.

Referred to the Committee on Government Organization.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. House Bill 4696**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §30-1D-1 and §30-1D-2, all relating to creation of the unlicensed practice review board; providing requirements for membership on the board; providing that licensing boards shall submit complaints they receive to the board; requiring the board to conduct hearings to determine if probable cause exists to take action; providing for alternative actions the board may take in making various determinations; and, establishing the board's authority and scope.

Referred to the Committee on Government Organization.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. House Bill 4726**—A Bill to repeal §22-3A-1, §22-3A-2, §22-3A-3, §22-3A-4, §22-3A-5, §22-3A-6, §22-3A-7, §22-3A-8, §22-3A-9 and §22-3A-10 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-4C-6c of said code; to amend and reenact §22-1-7 of said code; to amend and reenact §22-3-2, §22-3-4, §22-3-13, §22-3-13a, §22-3-22a, §22-3-30a of said code; to amend said code by adding thereto six new sections, designated §22-3-34, §22-3-35, §22-3-36, §22-3-37, §22-3-38 and §22-3-39; to amend and reenact §22-11-6 of said code; to amend and reenact §22A-1-13, §22A-1-14, §22A-1-15, §22A-1-19, §22A-1-20, §22A-1-31 and §22A-1-35 of said code; to amend and reenact §22A-1A-2 of said code; to amend and reenact §22A-2-3, §22A-2-8, §22A-2-14, §22A-2-20, §22A-2-25, §22A-2-36, §22A-2-55, §22A-2-66 and §22A-2-77 of said code; to amend and reenact

§22A-7-7 of said code, all relating generally to coal mining; making findings; eliminating the Department of Environmental Protection Office of Explosives and Blasting and consolidating the remaining duties and responsibilities related to blasting to the Department of Environmental Protection Division of Mining and Reclamation; adding blasting oversight; providing that the Department of Environmental Protection to revise rules on hydrologic protection and stormwater runoff analyses on mining operations and to promulgate rules that conform with the federal regulations requirements to minimize the disturbances to the prevailing hydrologic balance at a mine site and in associated off-site areas; providing that cumulative hydrologic impact assessment may be conducted; requiring a statement of probable hydrologic consequences and to prevent flooding; modifying certain findings, ventilation requirements, and roof or rib requirements; requiring the Department of Environmental Protection to follow deadlines for approving or denying applications for site specific water quality criteria; providing that state mine rescue teams may serve as backup mine rescue teams for mines in this state; providing that the Board of Mine Health and Safety to have the authority to propose rules for the use of diesel equipment in the state's mines; transferring certification authority to the Director of the Office of Miners' Health Safety and Training for mining emergency medical technicians; requiring the State Board of Appeals to allow evidence of testing procedures and test results be introduced through notarized affidavits from Medical Review Officers and testify if necessary; providing for telephonic testimony under oath; providing that the penalty for not reporting accidents in fifteen minutes to the Office of Miners' Health, Safety and Training be modified to "up to \$100,000"; providing that the Director of Office of Miners' Health, Safety and Training shall have the authority to modify assessed penalties and penalties may be modified by the State Board of Appeals based on a vote of two Board members; providing a method incase a miners' wireless emergency communications device fails; and allowing company input into state supervisory training and how it is scheduled during the year.

Referred to the Committee on Energy, Industry and Mining.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. House Bill 4734**—A Bill to amend and reenact §33-30-6 of the Code of West Virginia, 1931, as amended, and to amend and reenact §33-30-8 of said code, all relating to mine subsidence insurance; increasing the maximum amount of the total insured value reinsured by the Board of Risk Management.

Referred to the Committee on Banking and Insurance; and then to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. House Bill 4735**—A Bill to amend and reenact §55-7B-2 of the Code of West Virginia, 1931, as amended, relating to the definition of health care provider, and clarifying that speech-language pathologists and audiologists are two separate providers.

Referred to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. House Bill 4739**—A Bill to amend the Code of West Virginia, 1931, as amended by adding thereto a new article, designated §33-13D-1 and §33-13D-2, relating to the creation of the Unclaimed Life Insurance Benefits Act; providing definitions; regulating insurer conduct; requiring insurers to perform an annual comparison of its insureds' Policies, Retained Asset Accounts and Account Owners against a Death Master File; requiring the Insurance Commissioner to promulgate rules requiring a comparison against a Death Master File to be completed on policies issued prior to 2000 if the Commissioner determines that reliable technology and data exist to make such comparison accurate and cost-effective; providing that the annual comparison of insureds' Policies, Retained Asset Accounts and Account Owners against a

Death Master File shall not apply to those accounts for which the insurer is receiving premiums from outside the policy value, by check, bank draft, payroll deduction or any other similar method of payment within eighteen months immediately preceding the Death Master File comparison; requiring reasonable steps to be taken to locate and contact beneficiaries or other authorized representatives regarding the insurer's claims process; and authorizing the Insurance Commissioner to promulgate rules that may be reasonably necessary to implement the Unclaimed Life Insurance Benefits Act.

Referred to the Committee on the Judiciary.

### **Executive Communications**

The Clerk then presented a communication from His Excellency, the Governor, advising that on March 1, 2016, he had approved **Enr. Committee Substitute for Senate Bill 309, Enr. Senate Bill 341, Enr. Senate Bill 449, Enr. Senate Bill 450 and Enr. Senate Bill 451.**

The Senate proceeded to the fourth order of business.

Senator Ferns, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

**Eng. Com. Sub. for House Bill 4146**, Providing insurance cover abuse-deterrent opioid analgesic drugs.

With amendments from the Committee on Banking and Insurance pending;

And reports the same back with the recommendation that it do pass as amended by the Committee on Banking and Insurance to which the bill was first referred.

Respectfully submitted,

Ryan J. Ferns,  
*Chair.*

The Senate proceeded to the sixth order of business.

Senators Williams, Sypolt, Stollings, Ashley, Unger and Plymale offered the following resolution:

**Senate Concurrent Resolution 56**—Requesting Division of Highways to name future bridge, located at latitude 39.14167, longitude -79.42482, to carry currently unassigned county route over the Blackwater River in Tucker County from its junction with county route 32/18, the “Judge Ronald G. Pearson Bridge”.

Whereas, Ronald G. Pearson was born June 15, 1942, in Fairmont, West Virginia, to Gilbert Sidney and Catherine Evans Pearson; and

Whereas, Ronald G. Pearson received his college education at West Virginia University where, among other achievements, he distinguished himself by becoming chair of the Interfraternity Council in 1965, being inducted into the Summit of Mountain Honor Society in 1966 and by chairing the statue committee that selected the sculptor, Donald DeLue, to create the West Virginia Mountaineer statue; and

Whereas, After graduating with a Bachelor of Science in Industrial Engineering, Ronald G. Pearson continued his education at the West Virginia University College of Law, where he received a Juris Doctor degree in 1968; and

Whereas, Ronald G. Pearson began a distinguished career in law and government following his admission to the West Virginia Bar in 1968, including service as the Director of Local Government Relations for the State Tax Department, the Commissioner of the Department of Finance and Administration, the State Treasurer and culminating in his appointment as a United States Bankruptcy Judge, serving in this position for thirty-two years; and

Whereas, In his service with the state, Ronald G. Pearson oversaw the inventory and mapping of all land and mineral resources of the state, calculated actuarial values for all state pension and compensation funds to report, monitor and control the state’s long-term debt and he identified and invested previously

unvested funds now amounting to \$400,000,000 which continue to yield ongoing income for the state; and

Whereas, In his service as Judge of the United States Bankruptcy Court for the Southern District of West Virginia, Judge Pearson also served as Treasurer for the National Conference of Bankruptcy Judges, President of the Bankruptcy Judges Council for the Fourth Circuit, and as a member of the Fourth Circuit Judicial Council and the Committee on the Administrative Office of the Judicial Conference of the United States, and he was also honored with the Bierce Distinguished Service Award by the National Conference of Bankruptcy Judges; and

Whereas, Judge Pearson has also volunteered substantial amounts of his time to the operation and success of the National Youth Science Foundation, an organization that he helped to found in 1983 and that he has continued to serve as a member of its board of trustees since its founding; and

Whereas, The National Youth Science Foundation, based here in West Virginia, operates the renowned National Youth Science Camp and, this fall, will implement the Youth Science Discovery Experience program for West Virginia students to last through the academic year; and

Whereas, The National Youth Science Foundation inspires lifelong engagement and ethical leadership in science, technology, engineering, mathematics, and related professions through its proven educational model for mentoring, challenging, and motivating students; and

Whereas, A bridge is now being built over the Blackwater River to provide access to the newly established National Youth Science Center, a facility dedicated to state and national education programs in science, technology, engineering and mathematics and a facility that would not exist without the dedication and efforts of Judge Ronald Pearson through many years; and

Whereas, It is fitting that Judge Pearson be honored by dedicating this bridge in recognition of his contributions to law,

government, finance, education and to the people of West Virginia and the youth of this country; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways name a future bridge, located at latitude 39.14167, longitude -79.42482, to carry a currently unassigned county route over the Blackwater River in Tucker County from its junction with county route 32/18, as the “Judge Ronald G. Pearson Bridge”; and, be it

*Further Resolved,* That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the “Judge Ronald G. Pearson Bridge”; and, be it

*Further Resolved,* That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways and to the honoree, Judge Ronald G. Pearson.

Which, under the rules, lies over one day.

Senators Unger and Stollings offered the following resolution:

**Senate Concurrent Resolution 57**—Requesting the Joint Committee on Government and Finance to authorize a study on county animal shelter dog and cat population and operational costs.

Whereas, West Virginia Code §19-20C-1 created the West Virginia Spay Neuter Assistance Program to reduce the population of homeless dogs and cats; and

Whereas, The Legislature, through Senate Bill 199 in the 2015 regular session, authorized the legislative rules, now published as Title 61, Series 9 of the Code of State Rules, proposed by the Commissioner of Agriculture for the West Virginia Spay Neuter Assistance Program, relieving the burden to county budgets; and

Whereas, A funding mechanism has not been established as set forth in the approved rules; and

Whereas, Independent research from thirty-eight reporting counties has suggested approximately fifty thousand homeless pets require shelter-provided care at a cost of \$10,000,000 annually in West Virginia; and

Whereas, West Virginia shelters continue to euthanize nearly half of the homeless dogs and cats; and

Whereas, The West Virginia Spay Neuter Assistance Program is required to produce grants to nonprofit organizations specializing in spay and neuter assistance within communities statewide; and

Whereas, It is in the best interest of the citizens of this state to reduce the population of unwanted and stray dogs and cats in this state, thereby reducing the cost of animal shelter operations; and

Whereas, Determination of the most effective, humane and cost efficient means of reducing the population of unwanted and stray dogs and cats in this state, including, but not limited to, the gathering of information upon which an accurate projection of the costs of achieving this goal can be made and upon which the most fair allocation of the burden of those costs can be devised would assist the Legislature in the formulation of substantial and continuous funding most appropriate to accomplish that goal; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the most effective, humane and cost efficient means of reducing the population of unwanted and stray dogs and cats in this state; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the 2017 regular session of the Legislature, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved,* That the expenses necessary to conduct this study, prepare a report and draft necessary legislation be paid from

legislative appropriations to the Joint Committee on Government and Finance.

Which, under the rules, lies over one day.

Senators Sypolt and Stollings offered the following resolution:

**Senate Concurrent Resolution 58**—Requesting the Joint Committee on Government and Finance study the issue and advantages of tax map legislation.

Whereas, Tax map legislation will create a stable funding source for court house facilities and for each county assessor to maintain and update paper and digital tax maps; and

Whereas, Tax map legislation will promote the sale and distribution of paper and digital tax maps for the benefit of the public; and

Whereas, Tax map legislation will override any nonconformity between the language of the statute and the associated legislative rules; and

Whereas, Tax map legislation will help existing businesses conduct commerce, assist with infrastructure and other economic development projects; and

Whereas, Tax map legislation will aid in attracting new business and industry into the state and counties, all of which will serve to increase revenues for all involved; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Legislature hereby requests the Joint Committee on Government and Finance study the issue and advantages of tax map legislation; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2017, on its findings and conclusions; 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.

Which, under the rules, lies over one day.

Senators Miller, Laird, Stollings, Unger and Plymale offered the following resolution:

**Senate Concurrent Resolution 59**—Requesting Division of Highways name the Indian Creek Bridge #3, bridge number 32-122-8.95 (32A056), latitude 37.52981, longitude -80.65837, carrying West Virginia Route 122 over Indian Creek, in Monroe County, the “U. S. Army SPC 4 Everette R. Johnson Memorial Bridge”.

Whereas, Everette R. Johnson was born on November 7, 1947, in Beckley, West Virginia, the son of John C. and Minnie Louise Johnson. He lived most of his life in Monroe County and was educated in Monroe County schools, graduating from Greenville High School in 1965. He was married to Sue G. Loan and they were expecting their first child when Everette was killed in Vietnam on February 7, 1968; and

Whereas, Everette R. Johnson was survived by his widow and son, Everette Robert Johnson, Jr., who was born in August, 1968, and his mother and father, sister Darlene Johnson and three brothers, Wayne, David and Maury; and

Whereas, Naming the Indian Creek Bridge #3, bridge number 32-122-8.95 (32A056) latitude 37.52981, longitude -80.65837, carrying West Virginia Route 122 over Indian Creek, in Monroe County, the “U. S. Army SPC 4 Everette R. Johnson Memorial Bridge” is an appropriate recognition of his contributions and his supreme sacrifice to his country, state, community and Monroe County; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name the Indian Creek Bridge #3, bridge number 32-122-8.95 (32A056) latitude 37.52981, longitude -80.65837, carrying West Virginia Route 122 over Indian Creek, in Monroe County, the “U. S. Army SPC 4 Everette R. Johnson Memorial Bridge”; and, be it

*Further Resolved*, That the Division of Highways is hereby requested to have made and be placed signs identifying the twin bridges, both northbound and southbound, as the “U. S. Army SPC 4 Everette R. Johnson Memorial Bridge”; and, be it

*Further Resolved*, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways and the surviving relatives of Everette R. Johnson.

Which, under the rules, lies over one day.

Senators Ashley, Stollings, Kessler and Plymale offered the following resolution:

**Senate Resolution 57**—Recognizing Sistersville Tank Works for their dedication and commitment to building a successful business in West Virginia.

Whereas, Sistersville Tank Works, Inc., was founded in 1894, in Sistersville, West Virginia; and

Whereas, Sistersville Tank Works played an important role in the development of the oil and gas industry in the Ohio Valley, manufacturing oil field boilers, vessels and large storage tanks; and

Whereas, In 1923, Sistersville Tank Works received authorization to manufacture boilers with the American Society of Mechanical Engineers code stamp; and

Whereas, In 1942, to support the war effort, the company built landing craft and military ordnance; and

Whereas, In 1984, two Sistersville Tank Works employees, Janet Wells and her daughter, Darlene Morgan, mortgaged the family farm to buy the company; and

Whereas, With a new emphasis on improved quality of work, expansion of markets served and improved customer service, revenues improved six-fold within a few years and employment rose from seven to fifty workers; and

Whereas, In 1988, Janet Wells was named the U. S. Small Business Person of the Year and was featured in TIME Magazine; and

Whereas, Today, Sistersville Tank Works builds ASME custom pressure vessels, specialized industrial storage tanks, industrial heat exchangers and reactors used by energy companies, chemical manufacturers, utilities, refineries and oil and gas industries worldwide; and

Whereas, In 2015, Sistersville Tank Works dedicated its new production facility just north of Parkersburg, more than doubling its production space, employing 30 to 40 additional employees and capable of building multiple tanks in excess of one hundred feet long simultaneously, and shipping them by barge, rail and highway; and

Whereas, Sistersville Tank Works is a West Virginia and American success story, one that all West Virginians should be proud of; therefore, be it

*Resolved by the Senate:*

That the Senate hereby recognizes Sistersville Tank Works for their dedication and commitment to building a successful business in West Virginia; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to Sistersville Tank Works, Inc.

At the request of Senator Ashley, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with, and adopted.

On motion of Senator Carmichael, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and resumed business under the sixth order.

Senators Cole (Mr. President), Stollings, Ashley, Unger, Kessler, Prezioso, Williams and Plymale offered the following resolution:

**Senate Resolution 58**—Designating March 2, 2016, as Domestic Violence Prevention Day.

Whereas, All people have a right to be safe in their homes, workplace, college campus and community; and

Whereas, During the fiscal year 2014-2015, approximately fifteen thousand individuals were served by one or more of the fourteen licensed domestic violence programs in West Virginia, six of which also provide rape crisis services; and

Whereas, Domestic and sexual violence erode the infrastructure of our families, our social makeup and our culture, and threaten the integrity of our future; and

Whereas, Stalking is often a factor in domestic and sexual violence and a serious offense in its own right; and

Whereas, On average, nearly 20 people per minute are physically abused by an intimate partner in the United States. During one year, this equates to more than 10 million women and men; and

Whereas, In 2014, domestic and sexual violence offenses were major law enforcement problems within West Virginia and over eight thousand domestic violence offenses were committed

requiring over two hundred twenty thousand hours spent by law enforcement investigating incidents of domestic violence; and

Whereas, In 2014, twenty-one homicides in our state were the result of domestic violence; and

Whereas, Women are three times more likely than males to be murdered by an intimate partner; and

Whereas, Boys who witness domestic violence are twice as likely to abuse their own partners and children when they become adults; and

Whereas, One in six women and one in twenty-one men will be victims of rape or attempted rape in West Virginia; and

Whereas, 19.3 million women and 5.1 million men in the United States have been stalked in their lifetime; and

Whereas, Domestic and sexual violence can be deterred, prevented and reduced through a large network of private, public and nonprofit entities working together to form a coalition providing social, legal, medical, educational and protective services for victims of domestic and sexual violence; and

Whereas, The West Virginia Coalition Against Domestic Violence has been working for thirty-five years to provide safe space, quality services and systemic change to give families options for building lives free from violence; therefore, be it

*Resolved by the Senate:*

That the Senate hereby designates March 2, 2016, as Domestic Violence Prevention Day; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to the West Virginia Coalition Against Domestic Violence.

At the request of Senator Carmichael, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with, and adopted.

On motion of Senator Carmichael, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and proceeded to the seventh order of business.

**Senate Concurrent Resolution 54**, Union Army CPT John Bond Memorial Bridge.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Transportation and Infrastructure.

**Senate Concurrent Resolution 55**, Dewey “Duke” Maynard Memorial Road.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Transportation and Infrastructure.

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for Senate Bill 25**, Providing selection procedure for state delegates to Article V convention.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kirkendoll, Leonhardt, Maynard, Mullins, Snyder, Sypolt, Takubo, Trump, Walters and Cole (Mr. President)—21.

The nays were: Beach, Kessler, Laird, Miller, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger, Williams, Woelfel and Yost—13.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 25) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for Senate Bill 104**, Classifying Marshall University Forensic Science Center as a criminal justice agency.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 104) passed.

On motion of Senator Trump, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. Com. Sub. for Senate Bill 104**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-2-24c, relating to declaring Forensic DNA Analysis Laboratory of the Marshall University Forensic Science Center to be engaged in administration of criminal justice as that term is defined in 28 C. F. R. 20.3(b); requiring Marshall University Forensic Science Center and the West Virginia State Police to confer as to available grants and similar possible funding sources and applications therefor; affording West Virginia State Police primacy of decisionmaking over Marshall University Forensic Science Center as to which entity may apply for certain grants; directing West Virginia State Police and Marshall University Forensic Science Center to execute an agreement to ensure compliance with the section provisions; and requiring the

West Virginia State Police to partner with the DNA and Digital Forensics sections of Marshall University Forensic Science Center, which sections are designated a Disaster Recovery Laboratory.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for Senate Bill 337**, Creating 5-year tax credit for businesses on post-mine sites.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 337) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for Com. Sub. for Senate Bill 454**, Licensing and regulating medication-assisted treatment programs for substance use disorders.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings,

Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 454) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Com. Sub. for Senate Bill 528**, Altering power of Higher Education Policy Commission.

On third reading, coming up in regular order, with the right having been granted on yesterday, Tuesday, March 1, 2016, for amendments to be received on third reading, was reported by the Clerk.

On motion of Senator Sypolt, the bill was recommitted to the Committee on Education.

**Eng. Com. Sub. for Senate Bill 534**, Relating to procedures for driver's license suspension and revocation in criminal proceedings.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being "Shall Engrossed Committee Substitute for Senate Bill 534 pass?"

On the passage of the bill, the yeas were: Blair, Boley, Boso, Carmichael, Facemire, Ferns, Hall, Karnes, Kessler, Kirkendoll, Leonhardt, Maynard, Palumbo, Plymale, Prezioso, Romano, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Yost and Cole (Mr. President)—24.

The nays were: Ashley, Beach, Cline, Gaunch, Laird, Miller, Mullins, Snyder, Unger and Woelfel—10.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 534) passed.

On motion of Senator Trump, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. Com. Sub. for Senate Bill 534**—A Bill to amend and reenact §17C-5-2, §17C-5-2b, §17C-5-4 and §17C-5-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §17C-5A-1, §17C-5A-1a and §17C-5A-3 of said code; to amend said code by adding thereto two new sections, designated §17C-5A-1b and §17C-5A-1c; and to amend said code by adding thereto a new section, designated §17C-5C-6, all relating generally to the procedures for drivers' license suspensions and revocations for driving under the influence of alcohol, controlled substances or drugs; transferring authority for hearing matters related to suspensions or revocations of drivers' license for operating a motor vehicle while under the influence of alcohol, controlled substances or drugs from the Office of Administrative Hearings to magistrate courts; granting authority to magistrate courts to suspend or revoke driver's licenses in such cases; establishing mandatory revocation periods for individuals convicted of driving under the influence; authorizing alternate revocation period involving participation in motor vehicle alcohol test and lock period for certain first offenses; establishing mandatory revocation periods for individuals upon subsequent convictions for driving under the influence; requiring individuals whose driver's licenses have been revoked upon conviction for driving under the influence to complete comprehensive safety and treatment program; making individuals convicted of felony DUI ineligible for participation in Motor Vehicle Alcohol Test and Lock Program; making individuals convicted of misdemeanor DUI eligible for participation in Motor Vehicle Alcohol Test and Lock Program unless otherwise ordered by the court; making individuals who are found guilty of driving

under the influence ineligible for deferral of further proceedings upon condition of participation in Motor Vehicle Alcohol Test and Lock Program; making individuals who refuse to submit to a secondary chemical test ineligible for deferral of further proceedings upon condition of participation in Motor Vehicle Alcohol Test and Lock Program; prohibiting secondary test of blood without issuance of warrant signed by a magistrate or circuit judge; requiring that individual arrested for driving under the influence be advised orally of certain consequences for refusal to submit to secondary chemical test; requiring that individual arrested for driving under the influence be given written statement informing the individuals of legal consequences of taking or refusing to take a preliminary breath test and informing the individual of right to receive secondary blood test; requiring that officer give second oral warning fifteen minutes after first warning given and before refusal is considered final; requiring that, following an individual's refusal to take a preliminary breath test, an arresting officer execute a signed statement that the officer administered all required warnings; directing officer to submit copy of written statement to court having jurisdiction over charges filed against the individual; eliminating all statutory provisions authorizing or requiring the Commissioner of the Division of Motor Vehicles to take administrative action upon an individual's driver's license on the basis of a driving under the influence arrest; limiting administrative jurisdiction of Division of Motor Vehicles and Office of Administrative Hearings to offenses occurring on or before June 30, 2016; providing that administrative hearings relating to refusal to undergo a secondary chemical test does not apply to offenses occurring on or after July 1, 2016; eliminating requirement for an order entered by the Division of Motor Vehicles revoking a driver's license to advise of procedures for requesting administrative hearing when the offense is driving under the influence; limiting the right of individuals to challenge suspension or revocation of driver's licenses to the issue of mistaken identity; requiring the Commissioner to take corrective action if a driver's license is incorrectly suspended or revoked based on mistaken identity; providing that plea of no contest constitutes a conviction; requiring pretrial suspension of driver's licenses if individual refuses to submit to secondary chemical test; permitting pretrial

suspension of driver's license by court under certain circumstances; establishing right to request and receive judicial review of suspension orders pending criminal proceedings; establishing the scope of review for judicial review of pretrial driver's license suspension for refusal to submit to secondary chemical test; requiring the clerk of a court to transmit a copy of an order suspending or revoking a driver's license to the Division of Motor Vehicles; providing terms and length of pretrial license suspension; giving person's convicted of driving under the influence credit for pretrial suspension time against period of revocation imposed; making persons convicted of driving under the influence eligible for participation in comprehensive safety and treatment program and related reductions in length of revocation for successful completion thereof; establishing procedures and timeline for the Division of Motor Vehicles to transfer jurisdiction of driver's license suspension and revocation to the courts; and making technical corrections.

Senator Carmichael moved that the bill take effect July 1, 2016.

On this question, the yeas were: Blair, Boley, Boso, Carmichael, Facemire, Ferns, Hall, Karnes, Kessler, Kirkendoll, Leonhardt, Maynard, Palumbo, Plymale, Prezioso, Romano, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Yost and Cole (Mr. President)—24.

The nays were: Ashley, Beach, Cline, Gaunch, Laird, Miller, Mullins, Snyder, Unger and Woelfel—10.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 534) takes effect July 1, 2016.

*Ordered,* That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Com. Sub. for Senate Bill 539,** Relating to condemnation proceedings.

On third reading, coming up in regular order, with the right having been granted on yesterday, Tuesday, March 1, 2016, for amendments to be received on third reading, was reported by the Clerk.

On motion of Senator Romano, the following amendment to the bill was reported by the Clerk and adopted:

On page two, section fourteen-a, lines twenty-six through thirty-two, by striking out all of subsection (c) and inserting in lieu thereof a new subsection, designated subsection (c), to read as follows:

(c) With respect to minerals, the calculation of fair market value shall follow the common law of this state: *Provided*, That to the extent limestone, gravel, rock, clay, sand, chalk and all other similar minerals generally found near the surface and for which the property owner may be entitled to compensation, the property owner has the burden of proving that the mineral is found in such quantity and quality as to be commercially marketable and shall then be compensated for by considering the production and marketing costs, as well as the market and demand for the minerals: *Provided, however*, That the use of limestone, gravel, rock, clay, sand, chalk or other similar minerals by the state or its political subdivisions for the project for which the land is taken is inadmissible and shall be excluded from this calculation of fair market value: *Provided further*, That in the absence of an express contractual term or an express conveyance in a deed stating otherwise, limestone, gravel, rock, clay, sand, chalk and all other similar minerals shall lie with the surface owner.

There being no further amendments offered,

The bill, as just amended, was ordered to engrossment.

Engrossed Committee Substitute for Senate Bill 539 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller,

Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 539) passed.

On motion of Senator Romano, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. Com. Sub. for Senate Bill 539**—A Bill to amend and reenact §54-2-14a of the Code of West Virginia, 1931, as amended, relating to condemnation proceedings; setting forth conditions which must be met and procedures which must be followed; providing that fair market value of minerals shall follow common law with certain exceptions; declaring the procedure for calculation of the fair market value of near-surface minerals; allowing for near-surface minerals to be compensated for by considering production and marketing costs if owner meets certain burden; providing that certain near-surface minerals lie with the surface owner unless specifically granted otherwise; providing for the inadmissibility of certain evidence; requiring certain funds to be paid into the court; providing for an owner's interest in the money paid into court; removing refund and reimbursement provisions; updating antiquated language; and conforming certain language to accepted drafting standards.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 539) takes effect from passage.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

On motion of Senator Carmichael, the Senate recessed until 1:30 p.m. today.

Upon expiration of the recess, the Senate reconvened and resumed consideration of its third reading calendar, the next bill coming up in numerical sequence being

**Eng. Com. Sub. for Senate Bill 555**, Providing for 3-cent tax increase on sale of fuel when cost is less than \$2 per gallon.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Boso, Carmichael, Cline, Facemire, Gaunch, Hall, Kessler, Kirkendoll, Laird, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Takubo, Trump, Unger, Walters, Williams, Woelfel and Yost—25.

The nays were: Ashley, Blair, Boley, Ferns, Karnes, Leonhardt, Maynard, Sypolt and Cole (Mr. President)—9.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 555) passed.

On motion of Senator Plymale, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. Com. Sub. for Senate Bill 555**—A Bill to amend and reenact §11-14C-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-15-3 and §11-15-3c of said code; to amend and reenact §17A-2-13 of said code; to amend and reenact §17A-3-4 of said code; to amend and reenact §17A-4-1 and §17A-4-10 of said code; to amend and reenact §17A-4A-10 of said code; to amend and reenact §17A-10-1, §17A-10-3, §17A-10-10 and §17A-10-11 of said code; to amend and reenact §17B-2-1, §17B-2-3a, §17B-2-8 and §17B-2-11 of said code; and to amend and reenact §17D-2-2 of said code, all relating to generating and maintaining revenue for maintenance of roads and infrastructure; providing the flat tax motor fuel, other than alternative fuels, is increased by three cents, unless actual average wholesale price of motor fuel rises above \$2.00 per invoiced gallon; setting minimum level for average wholesale price of motor fuel; increasing general consumers sales and service tax; dedicating portion of general consumers sales and service tax imposed to State Road Fund; reducing the tax rate on the sale and use of a motor vehicle, but changing the calculation regarding exchange of other vehicles; increasing certain fees related to motor vehicles, registration, exchanges, transfers, titles, license plates, decals, records, recordings, releases, certificates, permits, licenses and identification cards; creating expedited processing fees for certain motor vehicle titles; creating fees for the issuance of duplicate or substitute registration plates or decals or duplicate certificates of title; and changing privilege tax rate and privilege tax calculation on motor vehicles.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Senate Bill 563**, Increasing retirement benefit multiplier for WV Emergency Medical Services Retirement System members.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall,

Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 563) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Com. Sub. for Senate Bill 599**, Relating generally to Uniform Unclaimed Property Act.

On third reading, coming up in regular order, with Senator Romano's amendment pending, and with the right having been granted on yesterday, Tuesday, March 1, 2016, for other amendments to be received on third reading, was reported by the Clerk.

The question being on the adoption of Senator Romano's pending amendment to the bill (*shown in the Senate Journal of yesterday, Tuesday, March 1, 2016, pages 1497 and 1498*).

At the request of Senator Romano, and by unanimous consent, Senator Romano's amendment to the bill was withdrawn.

There being no further amendments offered,

The bill was ordered to engrossment.

Engrossed Committee Substitute for Senate Bill 599 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Leonhardt,

Maynard, Mullins, Palumbo, Plymale, Prezioso, Sypolt, Takubo, Trump, Walters and Cole (Mr. President)—21.

The nays were: Beach, Facemire, Kessler, Kirkendoll, Laird, Miller, Romano, Snyder, Stollings, Unger, Williams, Woelfel and Yost—13.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 599) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for Senate Bill 601**, Relating to exception from jurisdiction of PSC for materials recovery facilities or mixed waste processing facilities.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 601 pass?”

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kirkendoll, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—31.

The nays were: Kessler, Laird and Unger—3.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 601) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kirkendoll, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—31.

The nays were: Kessler, Laird and Unger—3.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 601) takes effect from passage.

*Ordered,* That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for Senate Bill 602**, Relating to Patient Injury Compensation Fund.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: Karnes—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 602) passed.

On motion of Senator Trump, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. Com. Sub. for Senate Bill 602**—A Bill to amend and reenact §29-12B-10 of the Code of West Virginia, 1931, as amended; to amend and reenact §29-12D-1 and §29-12D-3 of said code; to amend said code by adding thereto a new section, designated §29-12D-1a; to amend and reenact §55-7B-9 and §55-7B-9c of said code; and to amend and reenact §59-1-11 and §59-1-28a of said code, all relating generally to the Patient Injury Compensation Fund; transferring funds from Medical Liability Fund to Patient Injury Compensation Fund and thereafter closing Medical Liability Fund; prohibiting direct recovery of legal fees from Patient Injury Compensation Fund; providing that fund may not compensate claimants who have not filed a claim with the fund before July 1, 2016; imposing an assessment on medical licenses; providing exceptions to assessment on medical licenses; prohibiting granting or renewal of medical license for failure to pay assessment; imposing an assessment on trauma centers based upon the number of patients treated; imposing an assessment on claims filed under the Medical Professional Liability Act; defining “qualifying claim”; establishing a date for purposes of determining applicability of section; directing entities collecting assessments to remit payment to Board of Risk and Insurance Management; setting schedule for remittance of payments to Board of Risk and Insurance Management; providing for termination of assessments upon certain deadlines being met; limiting authority of court reviewing an award from the board to approval or disapproval of final award; clarifying authority of Board of Risk and Insurance Management make periodic payments or place claims in nonpayment status in its discretion; permitting trier of fact to consider fault of all alleged parties, including fault of persons who have settled claims with plaintiff arising out of same medical injury, in assessing percentages of fault; clarifying manner in which damages are to be determined with respect to each defendant for purposes of entering judgment when there is no preverdict settlement; providing for limit on liability for economic damages in causes of actions against a trauma facility to be adjusted for inflation annually beginning January 1, 2016; setting limit on

inflation increase; authorizing plaintiff who suffers economic damages in excess of limit of liability to collect economic damages up to an additional \$1 million; clarifying that additional economic liability limit is not subject to inflation; providing that a claimant's attorney fees may not be paid out of the fund; providing that several liability applies in all cases under the Medical Professional Liability Act; increasing filing fee for causes of action under the Medical Professional Liability Act; and directing clerk of court to deposit a portion of the filing fee into Patient Injury Compensation Fund.

Senator Carmichael moved that the bill take effect July 1, 2016.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: Karnes—1.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 602) takes effect July 1, 2016.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

At the request of Senator Kessler, and by unanimous consent, the Senate returned to the second order of business and the introduction of guests.

The Senate again proceeded to the eighth order of business, the next bill coming up in numerical sequence being

**Eng. Com. Sub. for Senate Bill 622**, Composition of PEIA Finance Board.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending extended discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 622 pass?”

On the passage of the bill, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Leonhardt, Maynard, Mullins, Sypolt, Takubo, Trump, Walters and Cole (Mr. President)—18.

The nays were: Beach, Facemire, Kessler, Kirkendoll, Laird, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Unger, Williams, Woelfel and Yost—16.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 622) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for Senate Bill 625**, Revising exceptions from FOIA provided for in Aboveground Storage Tank Act.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 625) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for Senate Bill 631**, Authorizing higher education boards of governors develop retirement and incentive packages.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 631) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for Senate Bill 643**, Requiring individuals receiving unemployment compensation seek seasonal employment.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 643 pass?”

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel and Cole (Mr. President)—32.

The nays were: Kessler and Yost—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 643) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Senate Bill 644**, Authorizing counties to offer license plates customized to county.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending extended discussion,

Senator Woelfel moved the previous question, which motion prevailed.

The previous question having been ordered, that being on the passage of Engrossed Senate Bill 644.

On the passage of the bill, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Leonhardt, Maynard, Mullins, Palumbo, Snyder, Sypolt, Takubo, Trump, Walters, Williams, Woelfel and Cole (Mr. President)—21.

The nays were: Beach, Facemire, Karnes, Kessler, Kirkendoll, Laird, Miller, Plymale, Prezioso, Romano, Stollings, Unger and Yost—13.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 644) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for Senate Bill 647**, Exempting certain complimentary hotel rooms from occupancy tax.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 647 pass?”

On the passage of the bill, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Romano, Snyder, Takubo, Trump, Walters, Williams, Woelfel and Cole (Mr. President)—26.

The nays were: Beach, Facemire, Kessler, Prezioso, Stollings, Sypolt, Unger and Yost—8.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 647) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Senate Bill 657**, Relating to damages for medical monitoring.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Senator Walters moved to be excused from voting on any matter pertaining to the bill under rule number forty-three of the Rules of the Senate, which motion prevailed.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: None.

Excused from voting: Walters—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 657) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. Senate Bill 657**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-30, relating generally to damages for medical monitoring; prohibiting payment of damages for a plaintiff's future medical surveillance, screening tests or monitoring procedures to a plaintiff to cover the cost of his or her future medical surveillance, screening tests or monitoring procedures until they have been completed; establishing that court shall order liable defendant to make periodic payments into a fund established to pay the cost of future medical surveillance, screening tests or monitoring

procedures; authorizing court to determine how the fund will be administered; requiring court to establish date after which future medical surveillance, screening tests or monitoring procedures are no longer required; providing for repayment of moneys remaining in the fund that are not needed to pay for medical surveillance, screening tests or monitoring procedures completed prior to the date established by the court to the contributing defendants; and providing that repayments to multiple defendants to be made in proportion to the total contributions of each defendant to the fund.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Senate Bill 669**, Requiring proficiency in civics as condition for high school or GED diploma.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 669) passed.

On motion of Senator Sypolt, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. Senate Bill 669**—A Bill to amend and reenact §18-2-6 of the Code of West Virginia, 1931, as amended, relating to the demonstration of proficiency in civics as a condition of receiving a

high school diploma, Test Assessing Secondary Completion (TASC) diploma or equivalent.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for Senate Bill 677**, Relating to tuition rates set by higher education institutional governing boards.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kirkendoll, Leonhardt, Maynard, Mullins, Snyder, Sypolt, Takubo, Trump, Walters, Williams and Cole (Mr. President)—22.

The nays were: Beach, Kessler, Laird, Miller, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger, Woelfel and Yost—12.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 677) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Senate Bill 678**, Relating to ownership and use of conduit providing telephone service.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 678) passed.

On motion of Senator Blair, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. Senate Bill 678**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2E-3, relating to ownership and use of certain conduit that provides service by a telephone public utility; requiring the telephone company to permit a customer to own and use the conduit for other purposes; requiring customers and all occupants of conduit or other underground apparatuses comply with national electrical safety code and other reasonable standards; and providing for Public Service Commission rule-making authority.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for Senate Bill 686**, Authorizing local governing authorities hold sanctioned motor vehicle races on roads, streets or airports under their jurisdiction.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

Senator Plymale moved that the bill lie over one day, retaining its place on the calendar.

The question being on the adoption of Senator Plymale's aforestated motion, the same was put and did not prevail.

Pending discussion,

Senator Plymale moved the previous question, which motion prevailed.

The previous question having been ordered, that being on the passage of Engrossed Committee Substitute for Senate Bill 686.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: Snyder—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 686) passed with its title.

*Ordered,* That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Senate Bill 701**, Relating generally to resort area districts.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 701) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Senate Bill 702**, Allowing title of real estate to pass to individuals entitled to sale proceeds if executor fails to do so within 5 years of closing estate.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 702) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Senate Bill 703**, Relating to deposit of overpayment of certain fees into Children's Trust Fund.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings,

Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 703) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Senate Bill 704**, Dispatching of towing service for emergency towing of vehicles.

On third reading, coming up in regular order, with the right having been granted on yesterday, Tuesday, March 1, 2016, for amendments to be received on third reading, was reported by the Clerk.

There being no amendments offered,

The bill was ordered to engrossment.

Engrossed Senate Bill 704 was then read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed Senate Bill 704 pass?”

Senator Maynard requested a ruling from the Chair as to whether he should be excused from voting under Senate Rule 43.

The Chair replied that any impact on Senator Maynard would be as a member of a class of persons and that he would be required to vote.

On this question, the yeas were: Blair, Boley, Carmichael, Cline, Ferns, Gaunch, Karnes, Leonhardt, Maynard, Mullins, Sypolt, Takubo, Trump, Walters and Cole (Mr. President)—15.

The nays were: Ashley, Beach, Boso, Facemire, Hall, Kessler, Kirkendoll, Laird, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Unger, Williams, Woelfel and Yost—19.

Absent: None.

So, a majority of all the members present and voting not having voted in the affirmative, the President declared the bill (Eng. S. B. 704) rejected.

**Eng. Senate Bill 705**, Reducing coal severance tax to 3 percent over two years.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending extended discussion,

The question being “Shall Engrossed Senate Bill 705 pass?”

On the passage of the bill, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Leonhardt, Maynard, Mullins, Sypolt, Takubo, Trump, Walters, Yost and Cole (Mr. President)—19.

The nays were: Beach, Facemire, Kessler, Kirkendoll, Laird, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Unger, Williams and Woelfel—15.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 705) passed.

On motion of Senator Hall, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. Senate Bill 705**—A Bill to amend and reenact §11-13A-3 and §11-13A-3a of the Code of West Virginia, 1931, as amended, all relating to reducing the severance tax on coal to three percent over two years; adjusting the severance tax on natural gas or oil in like manner and amount; and specifying effective dates.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for Senate Joint Resolution 14**, Right to Farm and Ranch Amendment.

On third reading, coming up in regular order, was read a third time and put upon its adoption.

On the adoption of the resolution, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the resolution (Eng. Com. Sub. for S. J. R. 14) adopted, as follows:

**Eng. Com. Sub. for Senate Joint Resolution 14**—Proposing an amendment to the Constitution of the State of West Virginia amending article III thereof, by adding thereto a new section, designated section twenty-three, relating to the right to farm and ranch; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

*Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:*

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in 2016, which proposed amendment is that article III thereof be amended by adding thereto a new section, designated section twenty-three, to read as follows:

**ARTICLE III. BILL OF RIGHTS.**

**§23. RIGHT TO FARM AND RANCH.**

The right of farmers and ranchers to engage in natural, traditional or modern farming and ranching practices is forever guaranteed in this state.

*Resolved further*, That in accordance with the provisions of article eleven, chapter three of the Code of West Virginia, 1931, as amended, such amendment is hereby numbered “Amendment No. 1” and designated as the “Right to Farm and Ranch Amendment” and the purpose of the proposed amendment is summarized as follows: “To add a new section to article III of the West Virginia Constitution, to recognize the right of citizens of West Virginia to farm and ranch.”

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 4012**, West Virginia Religious Freedom Restoration Act.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On this question, the yeas were: Carmichael, Ferns, Hall, Kirkendoll, Sypolt, Trump and Woelfel—7.

The nays were: Ashley, Beach, Blair, Boley, Boso, Cline, Facemire, Gaunch, Karnes, Kessler, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Takubo, Unger, Walters, Williams, Yost and Cole (Mr. President)—27.

Absent: None.

So, a majority of all the members present and voting not having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4012) rejected.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Thursday, March 3, 2016, at 11 a.m.

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## THURSDAY, MARCH 3, 2016

The Senate met at 11 a.m.

(Senator Cole, Mr. President, in the Chair.)

Prayer was offered by Terry Swanson, Gideons International, Camp President of the Charleston North Camp, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable C. Edward Gaunch, a senator from the eighth district.

Pending the reading of the Journal of Wednesday, March 2, 2016,

At the request of Senator Gaunch, unanimous consent being granted, the Journal was approved and the further reading thereof dispensed with.

The Senate proceeded to the second order of business and the introduction of guests.

The Senate then proceeded to the third order of business.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Com. Sub. for Senate Bill 421**, Terminating behavioral health severance and business privilege tax.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting section and inserting in lieu thereof the following:

**ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.**

**§11-13A-3. Imposition of tax ~~or~~ on privilege of severing coal, limestone or sandstone, or furnishing certain health care services, effective dates therefor; reduction of severance rate for coal mined by underground methods based on seam thickness.**

(a) *Imposition of tax.* — Upon every person exercising the privilege of engaging or continuing within this state in the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use coal, limestone or sandstone, or in the business of furnishing certain health care services, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax.

(b) *Rate and measure of tax.* — ~~The~~ Subject to the provisions of subsection (g) of this section, the tax imposed in subsection (a) of this section shall be five percent of the gross value of the natural resource produced or the health care service provided, as shown by the gross income derived from the sale or furnishing thereof by the producer or the provider of the health care service, except as

otherwise provided in this article. In the case of coal, this five percent rate of tax includes the thirty-five one hundredths of one percent additional severance tax on coal imposed by the state for the benefit of counties and municipalities as provided in section six of this article.

(c) *“Certain health care services” defined.* — For purposes of this section, the term “certain health care services” means, and is limited to, behavioral health services.

(d) *Tax in addition to other taxes.* — The tax imposed by this section shall apply to all persons severing or processing, or both severing and processing, in this state natural resources enumerated in subsection (a) of this section and to all persons providing certain health care services in this state as enumerated in subsection (c) of this section and shall be in addition to all other taxes imposed by law.

(e) *Effective date.* — This section, as amended in 1993, shall apply to gross proceeds derived after May 31, 1993. The language of this section, as in effect on January 1, 1993, shall apply to gross proceeds derived prior to June 1, 1993 and, with respect to such gross proceeds, shall be fully and completely preserved.

(f) *Reduction of severance tax rate.* — For tax years beginning after the effective date of this subsection, any person exercising the privilege of engaging within this state in the business of severing coal for the purposes provided in subsection (a) of this section shall be allowed a reduced rate of tax on coal mined by underground methods in accordance with the following:

(†) (1) For coal mined by underground methods from seams with an average thickness of thirty-seven inches to forty-five inches, the tax imposed in subsection (a) of this section shall be two percent of the gross value of the coal produced. For coal mined by underground methods from seams with an average thickness of less than thirty-seven inches, the tax imposed in subsection (a) of this section shall be one percent of the gross value of the coal produced. Gross value is determined from the sale of the mined coal by the producer. This rate of tax includes the thirty-five one hundredths of

one percent additional severance tax imposed by the state for the benefit of counties and municipalities as provided in section six of this article.

~~(ii)~~ (2) This reduced rate of tax applies to any new underground mine producing coal after the effective date of this subsection, from seams of less than forty-five inches in average thickness or any existing mine that has not produced coal from seams forty-five inches or less in thickness in the one hundred eighty days immediately preceding the effective date of this subsection.

~~(iii)~~ (3) The seam thickness shall be based on the weighted average isopach mapping of actual coal thickness by mine as certified by a professional engineer.

(g)(1) Termination and expiration of the behavioral health severance and business privilege tax. — The tax imposed upon providers of health care services under the provisions of this article shall expire, terminate and cease to be imposed with respect to privileges exercised on or after July 1, 2016. Expiration of the tax as provided in this subsection shall not relieve any person from payment of any tax imposed with respect to privileges exercised before the expiration date.

(2) Refunds made. — The Tax Commissioner will issue a requisition on the treasury for any amount finally, administratively or judicially determined to be an overpayment of the tax terminated under this subsection. The Auditor shall issue a warrant on the Treasurer for any refund requisitioned under this subsection payable to the taxpayer entitled to the refund, and the Treasurer shall pay the warrant out of the fund into which the amount refunded was originally paid.

## ARTICLE 15. CONSUMERS SALE AND SERVICE TAX.

### **§11-15-9i. Exempt drugs, durable medical equipment, mobility enhancing equipment and prosthetic devices.**

(a) Notwithstanding any provision of this article, article fifteen-a or article fifteen-b of this chapter, the purchase by a health care provider of drugs, durable medical equipment, mobility enhancing

equipment and prosthetic devices, all as defined in section two, article fifteen-b of this chapter, to be dispensed upon prescription and intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or disease are exempt from the tax imposed by this article: Provided, That the exemption provided for the purchase by a health care provider of durable medical equipment is suspended for the period beginning on and after July 1, 2016, and continuing until June 30, 2018. On and after July 1, 2018, the exemption is reestablished.

(b) Notwithstanding any provision of this article, article fifteen-a or article fifteen-b of this chapter, the purchase of durable medical equipment, as defined in section two, article fifteen-b of this chapter, to be dispensed upon prescription by a health care provider and intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or disease is exempt from the tax imposed by this article: *Provided, That the durable medical equipment is purchased by an individual for exclusive use by the purchaser or another individual and used predominantly by the recipient individual in his or her home environment.*

(1) *Effective Dates.* — The provisions of this subsection shall apply to purchases made on and after July 1, 2016.

(2) *Per se exemption.* — The exemption set forth by this subsection shall be given without the necessity of an exemption certificate, direct pay permit or refund or credit request.

(c) *Definitions.* — The following definitions shall apply:

(1) For purposes of this section, “used predominantly by the recipient individual in his or her home environment”, with reference to durable medical equipment, means that the equipment is sold to an individual for use by the individual purchaser or by another individual at home, regardless of where the individual resides. For purposes of this definition, the term “home” means and includes facilities such as nursing homes, assisted care centers and school dormitories, of which a user or purchaser is a resident. A purchase of such equipment shall not be disqualified from the exemption because the equipment is incidentally used on the

streets, in commercial establishments, in public places and in locations other than the home, so long as use in the home is the predominant use. For purposes of this definition, the term “individual” means and is limited to a single, separate human being and specifically excludes any health care provider, or provider of nursing services, personal care services, behavioral care services, residential care or assisted living care, or any entity or organization other than a human being.

(2) When the equipment is sold to a facility such as a hospital, nursing home, medical clinic, dental office, chiropractor or optician office, then this shall not constitute a use of the equipment by the recipient individual in his or her home environment. The fact that a nursing home may use the equipment only for its residents does not make the equipment exempt for home use: *Provided*, That nothing in this section shall be interpreted to void or abrogate lawful assertion and application of the purchases for resale exemption as it may apply to any purchaser of durable medical equipment.

~~(b)~~ (3) For purposes of this ~~exemption~~ section, “health care provider” means any person licensed to prescribe drugs, durable medical equipment, mobility enhancing equipment and prosthetic devices intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or disease. For purposes of this section, the term “health care provider” includes any hospital, medical clinic, nursing home or provider of inpatient hospital services and any provider of outpatient hospital services, physician services, nursing services, ambulance services, surgical services or veterinary services: *Provided*, That the amendment to this subsection enacted during the 2009 regular legislative session shall be effective on or after July 1, 2009.

~~(e)~~ (4) The term “durable medical goods”, as used in this article, means “durable medical equipment” as defined in section two, article fifteen-b of this chapter.

(5) For purposes of this section, the term “nursing home or facility” means any institution, residence or place, or any part or unit thereof, however named, in this state which is advertised,

offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations and care, for a period of more than twenty-four hours, for four or more persons who are ill or otherwise incapacitated and in need of extensive, ongoing nursing care due to physical or mental impairment or which provides services for the rehabilitation of persons who are convalescing from illness or incapacitation: *Provided*, That the care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute a nursing home within the meaning of this article.

(6) For purposes of this section, the term “assisted care center” means any living facility, residence or place of accommodation, however named, available for four or more residents, in this state which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of having personal assistance or supervision, or both, provided to any residents therein who are dependent upon the services of others by reason of physical or mental impairment and who may also require nursing care at a level that is not greater than limited and intermittent nursing care: *Provided*, That the care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute an assisted living residence within the meaning of this article.

(7) For purposes of this section, the term “school dormitory” means housing or a unit of housing provided primarily for students as a temporary or permanent dwelling place or abode and owned, operated or controlled by an institution of higher education, and shall be synonymous with the term “residence hall”.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 421**—A Bill to amend and reenact §11-13A-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-15-9i of said code, all relating to termination of behavioral health severance and business privilege tax; specifying effective date of termination; establishing method of payment of outstanding refund claims; generating replacement revenue stream by suspending exemption of certain purchases of durable medical equipment from consumer sales and service tax for certain period; continuing exemption for specified purchases of durable medical equipment; specifying effective dates; providing method to claim exemption; and providing definitions and conditions for exemption.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Senate Bill 421, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 421) passed with its House of Delegates amended title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4035**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-46-7; relating to permitting pharmacists to furnish opioid antagonists in accordance with standardized procedures developed and approved by both the West Virginia Board of Pharmacy and the West Virginia Board of Medicine; and granting rule-making authority.

Referred to the Committee on Health and Human Resources; and then to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended, with its Senate amended title, of

**Eng. Com. Sub. for House Bill 4163**, Providing the authority and procedure for municipalities to give notice to, and publish the names of, entities delinquent in paying business and occupation taxes.

A message from The Clerk of the House of Delegates announced the passage by that body, to take effect July 1, 2016, and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4168**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17A-6F-1, §17A-6F-2 and §17A-6F-3, all relating to authorizing the commissioner of the division of motor vehicles to issue a special motor vehicle collector license plate; defining terms; establishing requirements for issuance; establishing fees; and providing requirements and conditions for use of the plate on a collector motor vehicle.

Referred to the Committee on Transportation and Infrastructure; and then to the Committee on Finance.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4196**—A Bill to amend and reenact §17-24A-1 and §17-24A-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §17A-4-10 of said code; and to amend said code by adding thereto a new section, designated §17-24A-6a, all relating to abandoned antique vehicles; adding new definitions; allowing automobile auctions to obtain title to abandoned vehicles; creating a process by which an automobile auction may obtain a salvage certificate or a nonrepairable motor vehicle certificate for vehicles abandoned on its property; establishing a process by which automobile auctions may obtain title to and sell certain abandoned vehicles; allowing an insurance company to obtain a salvage certificate or a cosmetic total loss salvage certificate after paying a total loss claim on a vehicle; creating a special procedure for a person in possession of an abandoned antique vehicle to apply for and receive title to the vehicle; creating a procedure for the Division of Motor Vehicles to search for the owner of the vehicle and provide notice of the application for title to vehicle; creating a procedure for the owner to reclaim the vehicle within 30 days of notice of an application for title to the vehicle; establishing fees to accompany an application for title to the vehicle; establishing fees for reclamation of the vehicle by owner; creating a misdemeanor and imposing fines for interfering with an owner's attempt to reclaim a vehicle; and directing the division to promulgate rules and forms to effectuate new procedure.

Referred to the Committee on Transportation and Infrastructure.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4239**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17-2A-8d, relating to development of a

highway project plan for the extension of the state of Kentucky's Mountain Parkway Expansion project from the eastern Kentucky border with West Virginia into Mercer County and Raleigh County; legislative findings; requiring the commissioner of highways to develop the highway project plan; requiring quarterly progress and status reports; requiring a full report to the Legislature by the first day of the 2017 regular session.

Referred to the Committee on Transportation and Infrastructure; and then to the Committee on Finance.

A message from The Clerk of the House of Delegates announced the passage by that body, to take effect from passage, and requested the concurrence of the Senate in the passage of

**Eng. House Bill 4246**—A Bill to amend and reenact chapter 83, Acts of the Legislature, regular session, 1970, relating to changing the Martinsburg Public Library to the Martinsburg-Berkeley County Public Library; creating a library board with the power to operate the public library; and providing a stable method of financing the operation of the Martinsburg-Berkeley County Public Library.

Referred to the Committee on Government Organization.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4301**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-36, relating to a framework for initiating comprehensive transformation of school leadership; making legislative findings that provide a context for leadership that promotes instructional improvement; stating purpose of section as framework for development of needed statutory and policy changes; stating further purpose to initiate transformation through general statement of legislative intent; providing certain expectations; stating intent for process of broad stakeholder input; requiring convening of stakeholders to assist state board; listing

minimum issues to be considered for state recommendations; and requiring reports and recommendations to Legislature and Governor.

Referred to the Committee on Education; and then to the Committee on Finance.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4308**—A Bill to amend and reenact §36-1-20 of the Code of West Virginia, 1931, as amended; and to amend and reenact §42-4-2 of said code, all relating generally to barring persons who are convicted of certain criminal offenses from acquiring property from their victims through joint tenancy or inheritance; and creating exceptions.

Referred to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. House Bill 4345**—A Bill to repeal §5A-6A-1, §5A-6A-2, §5A-6A-3, §5A-6A-4, §5A-6A-5, §5A-6A-6, §5A-6A-7, §5A-6A-8 and §5A-6A-9 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Permitting and Licensing Information Act.

Referred to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. House Bill 4364**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21-5G-1, §21-5G-2, §21-5G-3 and §21-5G-4, all relating to employment and privacy protection; prohibiting an employer from requesting or requiring that an employee or

applicant disclose any user name, password, or other means for accessing a personal account or service through certain electronic communications devices; prohibiting an employer from taking or threatening to take, certain disciplinary actions for an employee's refusal to disclose certain password and related information; prohibiting an employer from failing or refusing to hire an applicant as a result of the applicant's refusal to disclose certain password and related information; prohibiting an employee from downloading certain unauthorized information or data to certain websites or web-based accounts; providing that an employer is not prevented from conducting certain investigations for certain purposes, including gathering information needed for compliance with mandatory state or federal regulations; and duties not created under this article.

Referred to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4435**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2-11, relating to modernization and improvement of coal-fired boilers at electric power plants; providing procedure for expedited cost recovery of electric utility coal-fired boiler modernization and improvement projects deemed just and reasonable and in the public interest; and providing rulemaking authority.

Referred to the Committee on Energy, Industry and Mining.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4537**—A Bill to amend and reenact §16-5H-2, §16-5H-5 and §16-5H-7 of the Code of West Virginia, 1931, as amended, all relating to the regulation of chronic pain clinics; updating definitions; deleting an exemption; and

clarifying the process for hearing notices regarding license suspension or revocation.

Referred to the Committee on Health and Human Resources; and then to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4586**—A Bill to amend and reenact §54-2-4 of the Code of West Virginia, 1931, as amended, relating to representation in condemnation proceedings where a property owner or other party is under a legal disability; providing that the court shall protect the rights of any person who is under a legal disability because he or she is a protect person, incarcerated, or whose ownership interest, lien, or other claim to property requires them to be a party in a condemnation action; providing that a protected person who is a party in a condemnation action may be represented by a conservator or guardian or by a limited guardian appointed by the court; providing that an incarcerated person who is a party in a condemnation action and has an attorney or committee shall be represented by the attorney or committee; providing that an incarcerated person who is a party in a condemnation action who does not have an attorney or committee shall be represented by a court appointed attorney; providing that the court shall appoint a guardian ad litem to defend the interests of an unknown owner or owners of property subject to condemnation; clarifying that the statutory procedures for condemnation actions control; and authorizing payment for court appointed attorneys to be paid in an amount to be fixed by the court or judge, to be taxed as costs and paid by the applicant.

Referred to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. House Bill 4616**—A Bill to amend and reenact §7-7-9 of the Code of West Virginia, 1931, as amended, relating to permitting county commissions the option of paying the salaries of county officials and their employees on a bi-weekly basis.

Referred to the Committee on Government Organization.

A message from The Clerk of the House of Delegates announced the passage by that body, to take effect July 1, 2016, and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4668**—A Bill to amend and reenact §11-13A-6 of the Code of West Virginia, 1931, as amended, relating to raising the allowable threshold of the coal severance tax revenue fund budgeted for personal services from one fourth to one half; and directing State Auditor report of county special budgets to Joint Committee on Government and Finance.

Referred to the Committee on Finance.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. House Bill 4724**—A Bill to amend and reenact §61-5-27 of the Code of West Virginia, 1931, as amended, relating to adding a requirement for the likelihood of imminent lawless action to the prerequisites for the crime of intimidation and retaliation.

Referred to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. House Bill 4728**—A Bill to amend and reenact §60A-2-208 of the Code of West Virginia, 1931, as amended, relating to schedule three controlled substances; designating human chorionic gonadotropin as a schedule three controlled substance; and allowing human chorionic gonadotropin solely for injection or implantation in cattle and other nonhuman species.

Referred to the Committee on Health and Human Resources.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. House Bill 4738**—A Bill to amend and reenact §17C-5-2 of the Code of West Virginia, 1931, as amended, relating to the offense of driving in an impaired state; establishing the offense of driving a vehicle while he or she is in an impaired state; establishing the offense of driving a vehicle while he or she is in an impaired state but has an alcohol concentration in his or her blood of less than fifteen hundredths of one percent by weight; adding influence of substances in definition of impaired state; and providing for penalties.

Referred to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

**Eng. House Bill 4740**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §52-1-11b, relating to jury service; permitting that current members of the National Guard or Reserves may be excused from jury duty.

Referred to the Committee on the Judiciary.

### **Executive Communications**

The Clerk then presented a communication from His Excellency, the Governor, advising that on March 2, 2016, he had approved **Enr. Committee Substitute for Senate Bill 7, Enr. Committee Substitute for Senate Bill 14, Enr. Committee Substitute for Senate Bill 146, Enr. Committee Substitute for Senate Bill 150, Enr. Senate Bill 351, Enr. Committee Substitute for Senate Bill 369 and Enr. Committee Substitute for Senate Bill 462.**

The Senate proceeded to the fourth order of business.

Senator Maynard, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 3rd day of March, 2016, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

**(Com. Sub. for S. B. 10)**, Creating Unborn Child Protection from Dismemberment Abortion Act.

**(S. B. 558)**, Maintaining solvency of Unemployment Compensation Fund.

And,

**(Com. Sub. for H. B. 4366)**, Finding and declaring certain claims against the state and its agencies to be moral obligations of the state.

Respectfully submitted,

Mark R. Maynard,  
*Chair, Senate Committee.*  
John B. McCuskey,  
*Chair, House Committee.*

Senator Walters, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**Senate Concurrent Resolution 7**, Rosie the Riveters Memorial Bridge.

And reports back a committee substitute for same as follows:

**Com. Sub. for Senate Concurrent Resolution 7** (originating in the Committee on Transportation and Infrastructure)—Requesting the Division of Highways name bridge design number 11186 that will carry University Town Center Drive over Interstate 79, at mile marker 153, approximate latitude and longitude of 39.63966, -80.00394, crossing Interstate 79 in Monongalia County, the “Rosie the Riveters Memorial Bridge”.

Whereas, Rosie the Riveter is a cultural icon of the United States, representing the American women who worked in factories and shipyards during World War II, many of whom produced munitions and war supplies. American women sometimes took entirely new jobs replacing the male workers who were in the military. Rosie the Riveter is commonly used as a symbol of feminism and women’s economic power. Similar images of women war workers appeared in other countries such as Great Britain and Australia. Images of women workers were widespread in the media as government posters and commercial advertising was heavily used by the government to encourage women to volunteer for wartime service in factories; and

Whereas, Nearly 19 million women held jobs during World War II. Many of these women had already been working. Only 3 million new female workers entered the workforce during the time of the war. Although most women took on male dominated trades during World War II, they were expected to return to their everyday housework once men returned from the war; and

Whereas, Rosie the Riveter became most closely associated with another real woman, Rose Will Monroe, who was born in Pulaski County, Kentucky. In 1920 Ms. Monroe moved to Michigan and during World War II she worked as a riveter at the Willow Run Aircraft Factory in Ypsilanti, Michigan, building B-24 bombers for the U. S. Army air forces. She was asked to star in a promotional film about the war effort at home. The song “Rosie the Riveter” was popular at the time and Ms. Monroe happened to best fit the description of the worker depicted in the song. “Rosie” went on to become perhaps the most widely recognized icon of that era. The films and posters she appeared in were used to encourage women to go to work in support of the war effort. At the age of 50,

Ms. Monroe realized her dream of flying when she obtained a pilot's license. In 1978, she crashed in her small propeller plane when the engine failed during takeoff. The accident resulted in the loss of one kidney and the sight in her left eye, and ended her flying career. She died from kidney failure on May 31, 1997, age of 77, in Clarksville, Indiana, where she was a resident; and

Whereas, According to the Encyclopedia of American Economic History, "Rosie the Riveter" inspired a social movement that increased the number of working American women from 12 million to 20 million by 1944, a 57 percent increase from 1940. By 1944 only 1.7 million unmarried men between the ages of 20 and 34 worked in the defense industry, while 4.1 million unmarried women between those ages did so. Although the image of "Rosie the Riveter" reflected the industrial work of welders and riveters during World War II, the majority of working women filled nonfactory positions in every sector of the economy. What unified the experiences of these women was that they proved to themselves and the country that they could do a "man's job" and could do it well. In 1942, just between the months of January and July, the estimates of the proportion of jobs that would be "acceptable" for women was raised by employers from 29 to 85 percent; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge design number 11186 that will carry University Town Center Drive over Interstate 79, at mile marker 153, approximate latitude and longitude of 39.63966, -80.00394, crossing Interstate 79 in Monongalia County, the "Rosie the Riveters Memorial Bridge"; and, be it

*Further Resolved,* That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the "Rosie the Riveters Memorial Bridge"; and, be it

*Further Resolved,* That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner

of the Division of Highways and the Rosie the Riveters state organization.

And,

**Senate Concurrent Resolution 37**, US Army PFC Willie Paul Wilson Bridge.

And reports back a committee substitute for same as follows:

**Com. Sub. for Senate Concurrent Resolution 37** (originating in the Committee on Transportation and Infrastructure)—Requesting the Division of Highways to name bridge numbers 22-119-0.04 NB & SB (22A102 & 22A103), latitude 38.18215, longitude -81.84941, on U. S. Route 119, otherwise known as the North Pinnacle Rock Creek Bridge, in Lincoln County, the “U. S. Army PFC Willie Paul Wilson Memorial Bridge”.

Whereas, Willie Paul Wilson, known to his family and friends as “Jenkie”, was born on November 11, 1925, in Julian, West Virginia, to John and Elsie Wilson; and

Whereas, Willie Paul Wilson enlisted in the U. S. Army on February 29, 1944, and was assigned to Company K, 1st Platoon, 262nd Regiment; and

Whereas, PFC Willie Paul Wilson was killed on Christmas Eve, 1944, aboard the S. Leopoldville, a Belgian troopship being used in the English Channel to transport troops and supplies for the Allied war effort. On that evening, a German submarine torpedoed the S. Leopoldville when it was only five miles from the shore, killing at least 802 people in the most deadly tragedy to ever befall an American Infantry Division as the result of an enemy submarine attack; and

Whereas, PFC Willie Paul Wilson was awarded the Purple Heart on June 30, 1945, for the wounds that resulted in his death; and

Whereas, It is fitting that PFC Willie Paul Wilson be memorialized and honored for his great sacrifice in the area where he lived; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Legislature hereby requests the Division of Highways to name bridge numbers 22-119-0.04 NB & SB (22A102 & 22A103), latitude 38.18215, longitude -81.84941, on U. S. Route 119, otherwise known as the North Pinnacle Rock Creek Bridge, in Lincoln County, the “U. S. Army PFC Willie Paul Wilson Memorial Bridge”; and, be it

*Further Resolved*, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the “U. S. Army PFC Willie Paul Wilson Memorial Bridge”; and, be it

*Further Resolved*, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways and to the family of Willie Paul Wilson.

With the recommendation that the two committee substitutes be adopted.

Respectfully submitted,

Chris Walters,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the resolutions (Com. Sub. for S. C. R. 7 and 37) contained in the preceding report from the Committee on Transportation and Infrastructure were taken up for immediate consideration and considered simultaneously.

The question being on the adoption of the resolutions, the same was put and prevailed.

*Ordered,* That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Senator Walters, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**Senate Concurrent Resolution 38**, Army PFC Denver Holly Memorial Bridge.

**Senate Concurrent Resolution 39**, Clifford Family Memorial Bridge.

**Senate Concurrent Resolution 41**, US Army SGT Philip Ray Casto Memorial Bridge.

**Senate Concurrent Resolution 42**, US Navy LCDR Helen Elizabeth Peck Memorial Bridge.

**Senate Concurrent Resolution 44**, US Marine Corps SGT Mike Plasha Memorial Bridge.

**Senate Concurrent Resolution 45**, US Army SGT Deforest Lee Talbert Memorial Bridge.

And,

**Senate Concurrent Resolution 47**, WV State Police SGT Harold E. Dailey Bridge.

And reports the same back with the recommendation that they each be adopted.

Respectfully submitted,

Chris Walters,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the resolutions (S. C. R. 38, 39, 41, 42, 44, 45 and 47)

contained in the preceding report from the Committee on Transportation and Infrastructure were taken up for immediate consideration and considered simultaneously.

The question being on the adoption of the resolutions, the same was put and prevailed.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 4235**, Relating to the publication requirements of the administration of estates.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. 4235) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 4362**, Establishing a felony offense of strangulation.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. 4362) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Gaunch, from the Committee on Pensions, submitted the following report, which was received:

Your Committee on Pensions has had under consideration

**Eng. Com. Sub. for House Bill 4487**, Relating to state retirement systems.

And reports the same back with the recommendation that it do pass; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

C. Edward Gaunch,  
*Chair.*

At the request of Senator Gaunch, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4487) contained in the preceding report from the Committee on Pensions was taken up for immediate consideration, read a first time, ordered to second reading and, under the original double committee reference, was then referred to the Committee on Finance.

Senator Gaunch, from the Committee on Pensions, submitted the following report, which was received:

Your Committee on Pensions has had under consideration

**Eng. Com. Sub. for House Bill 4519**, Allowing certain municipalities to elect to participate in the West Virginia Municipal Police Officers and Firefighters Retirement System.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

C. Edward Gaunch,  
*Chair.*

At the request of Senator Gaunch, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4519) contained in the preceding report from the Committee on Pensions was taken up for immediate consideration, read a first time, ordered to second reading and, under the original double committee reference, was then referred to the Committee on Finance, with an amendment from the Committee on Pensions pending.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4604**, Relating to violations of the Ethics Act.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

The Senate proceeded to the fifth order of business.

### Filed Conference Committee Reports

The Clerk announced the following conference committee report had been filed at 11:37 a.m. today:

**Eng. Senate Bill 509**, Removing 10-day requirement Division of Labor has to inspect amusement rides and attractions.

The Senate proceeded to the sixth order of business.

Senators Sybolt, Stollings, Williams, Plymale, Cline and Unger offered the following resolution:

**Senate Concurrent Resolution 60**—Requesting the Joint Committee on Government and Finance conduct an interim study of the feasibility of public virtual online schools.

Whereas, A primary responsibility of the Legislature is to ensure a thorough and efficient education for the children of the state; and

Whereas, A variety of educational opportunities should be made available to students including those whose needs are not met in the in the traditional school setting; and

Whereas, There may be a desire to expand upon the use of virtual online programming currently available for West Virginia students who do not excel in a regular school setting and for whom a full-time virtual learning program would better meet their needs; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the feasibility of public virtual online schools; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the Joint Committee on Education on its findings, conclusions and recommendations, together with drafts of any legislation necessary 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.

Which, under the rules, lies over one day.

Senators Sypolt, Stollings, Plymale, Williams, Cline and Unger offered the following resolution:

**Senate Concurrent Resolution 61**—Requesting the Joint Committee on Government and Finance conduct a study on the best methods to enhance communication between teachers, parents and students to promote student success.

Whereas, The success of youth in grades prekindergarten through twelve is vital to their success as adults and to the future of our state; and

Whereas, Efficient and ongoing communication between teachers, parents and students is crucial to that success; and

Whereas, Internet technology and software resources may enhance communication in and among teachers, parents and students; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the best methods to enhance communication between teachers, parents and students to promote student success; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2017, on its findings, conclusions and recommendations, together with drafts of any legislation necessary 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.

Which, under the rules, lies over one day.

Senators Carmichael, Beach, Williams, Prezioso, Stollings, Plymale, Ashley, Cline, Unger, Leonhardt and Kessler offered the following resolution:

**Senate Resolution 59**—Designating March 3, 2016, as Cancer Survivorship Day.

Whereas, West Virginia will experience 11,770 new cases of cancer this year; and

Whereas, In West Virginia, 4,750 people will die from cancer this year; and

Whereas, Cancer will cost the United States economy an estimated \$216 billion in medical costs and lost productivity; and

Whereas, Lawmakers play a key role in preventing cancer by passing policies to reduce tobacco use and exposure to secondhand smoke, increase healthy eating and active living, and limit indoor tanning; and

Whereas, Lawmakers can also advance policies that will increase access to lifesaving screenings, improve quality of life, fund research and expand access to care; and

Whereas, There are 14.5 million cancer survivors alive in the United States because of the efforts of researchers, doctors, volunteers and lawmakers; and

Whereas, This progress must continue through collaboration between lawmakers and citizens to end cancer as a major health issue; therefore, be it

*Resolved by the Senate:*

That the Senate hereby designates March 3, 2016, as Cancer Survivorship Day; and, be it

*Further Resolved*, That the Clerk is hereby directed to forward a copy of this resolution to the American Cancer Society Cancer Action Network.

At the request of Senator Carmichael, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with, and adopted.

On motion of Senator Carmichael, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and resumed business under the sixth order.

Senators Karnes, Williams, Stollings, Plymale, Ashley, Cline, Unger and Leonhardt offered the following resolution:

**Senate Resolution 60**—Recognizing June 12, 2016, as the 75th Anniversary of the American Tree Farm System.

Whereas, Forests, covering one third of the land in the U. S., provide all Americans, including the residents of West Virginia, clean drinking water, clean air and an abundant wildlife habitat; and

Whereas, Forests provide renewable wood for buildings, furniture, energy and paper needs; and

Whereas, In West Virginia, forests provide people with over 30,000 jobs and contribute more than \$3.2 billion annually to West Virginia's economy; and

Whereas, Most of our nation's forests are owned by the people who make West Virginia and our country great, the citizens; and

Whereas, Seventy-five years ago, the American Tree Farm System was founded to help family and individual woodland owners sustain their forests and the benefits we all receive from them; and

Whereas, With more than 186 individuals and families, who combined own more than 116,000 acres in West Virginia, the

American Tree Farm System remains a strong and essential program today to conserve our state's forests and their benefits, especially in the face of growing pressures such as wildfires, insects and diseases, and development pressures; and

Whereas, Tree farmers invest time, manpower and personal funds to practice sustainable forest management on their land so we can enjoy all the benefits these forests provide us; and

Whereas, The American Tree Farm System is made possible by volunteers from the local small woodlands associations, conservation organizations, forest products companies, university extensions and our own West Virginia Division of Forestry; therefore, be it

*Resolved by the Senate:*

That the Senate hereby recognizes June 12, 2016, as the 75th Anniversary of the American Tree Farm System; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to the American Tree Farm System.

At the request of Senator Karnes, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with, and adopted.

On motion of Senator Carmichael, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and, at the request of Senator Carmichael, and by unanimous consent, returned to the fourth order of business.

Senator Walters, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**Senate Concurrent Resolution 62** (originating in the Committee on Transportation and Infrastructure)—Requesting

Joint Committee on Government and Finance study the benefits of permitting the Division of Highways to continue to be able to enter into comprehensive agreements with a developer under the Public-Private Transportation Facilities Act.

Whereas, In 2008, the West Virginia Legislature passed the Public-Private Transportation Facilities Act and the act was signed into law; and

Whereas, The act allows the West Virginia Division of Highways to partner with a private company on the design and construction of otherwise public transportation facilities; and

Whereas, The act initially permitted the Division of Highways to enter into comprehensive agreements with developers until June 30, 2013; and

Whereas, The act was amended in 2013 to extend the time during which the Division of Highways may enter into comprehensive agreements with developers until June 30, 2017; and

Whereas, The Division of Highways has utilized the act to help finance three major initiatives: The Coalfields Expressway (Mullens Connector to East County Route 12/1); the upgrading of a fourteen-mile section of US 35 (WV 869 to Mason County Route 40); and a section of Corridor H (Kerens to US 219 Connector); and

Whereas, The Division of Highways has recently advertised a Public-Private-Partnership (P3) project for the construction of the Wellsburg Bridge; and

Whereas, The Division of Highways has indicated that the use of the Public-Private-Partnership project delivery allowed it to expedite project delivery, provided for the opening of sections of highway earlier than the traditional design-bid-build delivery method, allowed it to reduce costs for the engineering design for the project and provided stability in managing its cash by providing equal monthly payments to the successful bidder; and

Whereas, The Division of Highways has further indicated that allowing the act to be effective after June 30, 2017, would provide the Division of Highways and the State of West Virginia the necessary flexibility to take advantage of future public and private sector funding opportunities; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the benefits of permitting the Division of Highways to continue to be able to enter into comprehensive agreements with a developer under the Public-Private Transportation Facilities Act; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2017, on its findings, conclusions and recommendations, together with drafts of any legislation necessary 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.

And reports the same back with the recommendation that it be adopted; but with the further recommendation that it first be referred to the Committee on Rules.

Respectfully submitted,

Chris Walters,  
*Chair.*

On motion of Senator Walters, the resolution (S. C. R. 62) contained in the foregoing report from the Committee on Transportation and Infrastructure was then referred to the Committee on Rules.

The Senate proceeded to the seventh order of business.

**Senate Concurrent Resolution 56**, Judge Ronald G. Pearson Bridge.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Transportation and Infrastructure.

**Senate Concurrent Resolution 57**, Requesting study on county animal shelter dog and cat population and costs.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Government Organization; and then to the Committee on Rules.

**Senate Concurrent Resolution 58**, Requesting study on issue and advantages of tax map legislation.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Government Organization; and then to the Committee on Rules.

**Senate Concurrent Resolution 59**, U. S. Army SPC 4 Everette R. Johnson Memorial Bridge.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Transportation and Infrastructure.

The Senate proceeded to the tenth order of business.

**Eng. Com. Sub. for House Bill 4146**, Providing insurance cover abuse-deterrent opioid analgesic drugs.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

Without objection, the Senate returned to the third order of business.

Senator Cole (Mr. President) laid before the Senate the following communication from His Excellency, the Governor, which was read by the Clerk:

STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
CHARLESTON

February 17, 2016

**VIA HAND DELIVERY**

The Honorable Tim Armstead  
Speaker, West Virginia House of Delegates  
Room 228M, Building 1  
State Capitol Complex  
1900 Kanawha Blvd., East  
Charleston, West Virginia 25305

Re: Enrolled Committee Substitute for House Bill 4007

Dear Speaker Armstead:

Pursuant to the provisions of section fourteen, article VII of the Constitution of West Virginia, I hereby disapprove and return the Enrolled Committee Substitute for House Bill 4007.

The general aim of this bill—establishing competitive bidding and qualification procedures for the hiring of private legal counsel by the Attorney General in cases in which the state and its agencies are plaintiffs—is commendable. I support wholeheartedly including procedures in the West Virginia Code to ensure that the state and its offices and agencies receive competent counsel at competitive rates.

My issue with the bill is the extent to which it permits, perhaps inadvertently, the Attorney General to ignore a state office or agency client's authority, decisions, and directives in a case, in contravention of the Rules of Professional Conduct governing West Virginia lawyers. For example, the following broad language appears in the bill's § 5-3-3(b): "All special assistant attorneys general appointed shall serve at the will and pleasure of the Attorney General and shall perform such duties as the Attorney General may require of them." *See* p. 2, lines 11-13. This statement disregards that there are circumstances where special assistant

attorneys general are appointed for state offices and agencies, including the Governor's Office, because the Attorney General's Office has a conflict or has taken a contrary position in a case. In such circumstances, the special assistant attorneys general serve at the will and pleasure of their client state offices and agencies, not the Attorney General. As drafted and passed by the Legislature, § 5-3-3(b) is overbroad and could occasion conflicts of interest.

Furthermore, Enrolled Committee Substitute for House Bill 4007 provides that “[t]he Attorney General, or the deputy or assistant Attorney General involved in the case, shall retain control over the course and conduct of the case.” See § 5-3-3a(g)(1), p. 5, lines 76-77. The bill also states that “[t]he Attorney General, or the deputy or assistant Attorney General involved in the case, retains veto power over any decisions made by any appointed private attorneys.” *Id.* at § 5-3-3a(g)(3), p. 5, lines 80-81.

The Rules of Professional Conduct, however, make it clear that “a lawyer [whether it be the Attorney General, his assistant, or outside private counsel] *shall abide by a client's decisions concerning the objectives of representation and . . . shall consult with the client as to the means by which they are to be pursued.*” See Rule 1.2(a), Rules of Professional Conduct (emphasis added). Rule 1.2(a) thus “confers upon *the client* the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations.” *Id.* at Comment [1] (emphasis added).

In other words, it is the state office or agency client—not the Attorney General—who retains control over the course and conduct of the case,” and who “retains veto power over any decision made by any appointed private attorneys,” subject, of course, to the law and applicable ethical obligations. See § 5-3-3(a)(g)(1) and (3), p. 5, lines 76-81.

Enrolled Committee Substitute for House Bill 4007 is problematic because it appears to cede state office and agency decision-making authority to the Attorney General. This problem is exacerbated because West Virginia Code § 5-3-3(c), which is

implicated in the bill, expressly provides that the bill's language trumps all other laws that are inconsistent with its provisions, such as the Rules of Professional Responsibility. *See* § 5-3-3(c), p. 2, lines 14-15 ("All laws or parts of laws inconsistent with the provisions hereof are hereby amended to be in harmony with the provisions of this section.").

Finally, the bill contains a technical issue because it is silent as to its impact on existing private counsel contracts. The bill should contain a provision explicitly stating that it does not impair those contracts. *See* W. Va. Const. Art. 3, § 4 (prohibiting the passage of laws impairing contractual obligations).

In sum, I believe Enrolled Committee Substitute for House Bill 4007 contains overly-general language that fails to account for those scenarios where special assistant attorneys general cannot—for practical and ethical reasons—serve at the will and pleasure of the Attorney General. The bill also infringes on state office and agency client decisions and directives and is at odds with the Rules of Professional Conduct adopted by our Supreme Court of Appeals. Lastly, the bill is flawed technically because it could be read to impair existing contracts. For these reasons, I must disapprove the bill and return it. However, I welcome the Legislature to repair the issues I have addressed herein and then return the bill to my desk for signature.

Sincerely,

Earl Ray Tomblin  
Governor

Cc: The Hon. William P. Cole III  
President of the Senate  
The Hon. Natalie E. Tennant  
Secretary of State

A message from The Clerk of the House of Delegates announced the reconsideration, amendment and passage as amended, of a bill disapproved and returned by the Governor with

his objections, and requested the concurrence of the Senate in the passage, of

**Enr. Com. Sub. for House Bill 4007**, Relating generally to appointment of attorneys to assist the Attorney General.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

Senator Carmichael then moved that in accordance with Section 14, Article VII of the Constitution of the State of West Virginia, the Senate reconsider the bill (Enr. Com. Sub. for H. B. 4007), heretofore disapproved and returned by His Excellency, the Governor, with his objections.

The question being on the adoption of Senator Carmichael's motion that the Senate reconsider Enrolled Committee Substitute for House Bill 4007, the same was put and prevailed.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page two, section three, line thirteen, after the word "them" by changing the period to a colon and inserting the following proviso: *Provided*, That the appointment of a special assistant Attorney General under this section shall not be construed to alter, inhibit or expand the attorney-client relationship set forth in this article between the Attorney General and the state in the control or conduct of a cause of action.;

On page five, section three-a, lines seventy-six and seventy-seven, by striking out all of subdivision (1) and inserting in lieu thereof a new subdivision, designated subdivision (1), to read as follows:

"(1) The Attorney General, or the deputy or assistant Attorney General involved in the case, shall retain management and supervisory authority over the private attorney;"

On page five, section three-a, lines eighty and eighty-one, by striking out all of subdivision (3);

And by renumbering the remaining subdivision;

And,

On page eight, section three-a, after line one hundred fifty, by adding the following:

(p) The requirements and procedures established in this section are inapplicable to and shall not impair any contingency fee legal arrangement or contract awarded prior to the effective date of this section.

(q) The appointment of a special assistant Attorney General under this section shall not be construed to alter, inhibit or expand the attorney-client relationship set forth in this article between the Attorney General and the state in the control or conduct of a cause of action.

On motion of Senator Trump, the following amendment to the House of Delegates amendments to the bill was reported by the Clerk:

By striking out the title and substituting therefor a new title, to read as follows:

**Enr. Com. Sub. for House Bill 4007**—An Act to amend and reenact §5-3-3 and §5-3-4 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5-3-3a, all relating generally to appointment of attorneys to assist the Attorney General; authorizing the Attorney General to appoint special assistant attorneys general; establishing when special assistant attorneys general can be appointed; establishing competitive bidding process for the use of private attorneys on a contingency fee basis by the Attorney General; requiring written determinations for the Attorney General's selection of private attorneys to represent the state on a contingency fee basis; setting fees for contingency fee legal arrangements or contracts between private attorneys and the Attorney General; requiring appointed private attorneys to accept an award of attorney fees in accordance with, and no greater than, the established fee limitations; establishing supervision requirements for private

lawyers representing the state on a contingency fee basis; requiring the posting of certain documents relating to the Attorney General's retention of private attorneys to represent the state on a contingency fee basis; providing for the designation as a special assistant attorney general upon appointment; requiring Attorney General reports on certain legal causes and matters to the Governor, President of the Senate and Speaker of the House; outlining contents of those reports; updating and removing outdated provisions; defining terms; clarifying that the appointment of a special assistant attorney general shall not be construed to alter, inhibit or expand the attorney-client relationship between the Attorney General and the state in the control or conduct of a cause of action; and providing that these new provisions are inapplicable to and shall not impair any contingency fee legal arrangement or contract awarded prior to the effective date.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill, as amended.

The question being on the passage of the bill, disapproved by the Governor, as amended.

On the passage of the bill, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kessler, Leonhardt, Maynard, Mullins, Palumbo, Plymale, Prezioso, Snyder, Stollings, Sypolt, Takubo, Trump, Walters, Woelfel, Yost and Cole (Mr. President)—26.

The nays were: Beach, Facemire, Kirkendoll, Laird, Miller, Romano, Unger and Williams—8.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Enr. Com. Sub. for H. B. 4007) passed with its title, as amended, as a result of the objections of the Governor.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from The Clerk of the House of Delegates announced the adoption by that body of the committee of conference report, passage as amended by the conference report with its conference amended title, and requested the concurrence of the Senate in the adoption thereof, as to

**Eng. Com. Sub. for House Bill 2800**, Adding law-enforcement officers' contact information and names of family members to the list of exemptions from public records requests.

Whereupon, Senator Ashley, from the committee of conference on matters of disagreement between the two houses, as to

**Eng. Com. Sub. for House Bill 2800**, Adding law-enforcement officers' contact information and names of family members to the list of exemptions from public records requests.

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 2800 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, striking out everything after the enacting clause, and agree to the same as follows:

That §29B-1-2 and §29B-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

## **ARTICLE 1. PUBLIC RECORDS.**

### **§29B-1-2. Definitions.**

As used in this article:

(1) "Custodian" means the elected or appointed official charged with administering a public body.

(2) “Law-enforcement officer” shall have the same definition as this term is defined in W.Va. Code §30-29-1: *Provided*, That for purposes of this article, “law-enforcement officer” shall additionally include those individuals defined as “chief executive” in W.Va. Code §30-29-1.

~~(2)~~ (3) “Person” includes any natural person, corporation, partnership, firm or association.

~~(3)~~ (4) “Public body” means every state officer, agency, department, including the executive, legislative and judicial departments, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission council or agency thereof; and any other body which is created by state or local authority or which is primarily funded by the state or local authority.

~~(4)~~ (5) “Public record” includes any writing containing information prepared or received by a public body, the content or context of which, judged either by content or context, relates to the conduct of the public’s business.

~~(5)~~ (6) “Writing” includes any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics.

#### **§29B-1-4. Exemptions.**

(a) There is a presumption of public accessibility to all public records, subject only to the following categories of information which are specifically exempt from disclosure under the provisions of this article:

(1) Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data or compilation of information which is not patented which is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article or trade or a service or to locate minerals or other substances, having commercial value,

and which gives its users an opportunity to obtain business advantage over competitors;

(2) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure of the information would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in this particular instance: *Provided*, That this article does not preclude an individual from inspecting or copying his or her own personal, medical or similar file;

(3) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examination;

(4) Records of law-enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(5) Information specifically exempted from disclosure by statute;

(6) Records, archives, documents or manuscripts describing the location of undeveloped historic, prehistoric, archaeological, paleontological and battlefield sites or constituting gifts to any public body upon which the donor has attached restrictions on usage or the handling of which could irreparably damage the record, archive, document or manuscript;

(7) Information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions, except those reports which are by law required to be published in newspapers;

(8) Internal memoranda or letters received or prepared by any public body- ;

(9) Records assembled, prepared or maintained to prevent, mitigate or respond to terrorist acts or the threat of terrorist acts,

the public disclosure of which threaten the public safety or the public health;

(10) Those portions of records containing specific or unique vulnerability assessments or specific or unique response plans, data, databases and inventories of goods or materials collected or assembled to respond to terrorist acts; and communication codes or deployment plans of law-enforcement or emergency response personnel;

(11) Specific intelligence information and specific investigative records dealing with terrorist acts or the threat of a terrorist act shared by and between federal and international law-enforcement agencies, state and local law-enforcement and other agencies within the Department of Military Affairs and Public Safety;

(12) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism;

(13) Computing, telecommunications and network security records, passwords, security codes or programs used to respond to or plan against acts of terrorism which may be the subject of a terrorist act;

(14) Security or disaster recovery plans, risk assessments, tests or the results of those tests;

(15) Architectural or infrastructure designs, maps or other records that show the location or layout of the facilities where computing, telecommunications or network infrastructure used to plan against or respond to terrorism are located or planned to be located;

(16) Codes for facility security systems; or codes for secure applications for facilities referred to in subdivision (15) of this subsection;

(17) Specific engineering plans and descriptions of existing public utility plants and equipment;

(18) Customer proprietary network information of other telecommunications carriers, equipment manufacturers and individual customers, consistent with 47 U.S.C. §222; ~~and~~

(19) Records of the Division of Corrections, Regional Jail and Correctional Facility Authority and the Division of Juvenile Services relating to design of corrections, jail and detention facilities owned or operated by the agency, and the policy directives and operational procedures of personnel relating to the safe and secure management of inmates or residents, that if released, could be used by an inmate or resident to escape a facility, or to cause injury to another inmate, resident or to facility personnel; ;

(20) Information related to applications under section four, article seven, chapter sixty-one of this code, including applications, supporting documents, permits, renewals, or any other information that would identify an applicant for or holder of a concealed weapon permit: *Provided:* That information in the aggregate that does not identify any permit holder other than by county or municipality is not exempted: *Provided, however,* That information or other records exempted under this subdivision may be disclosed to a law enforcement agency or officer: (i) to determine the validity of a permit, (ii) to assist in a criminal investigation or prosecution, or (iii) for other lawful law-enforcement purposes; and

(21) Personal information of law-enforcement officers maintained by the public body in the ordinary course of the employer-employee relationship. As used in this paragraph, "personal information" means a law-enforcement officer's social security number, health information, home address, personal address, personal telephone numbers and personal email addresses and those of his or her spouse, parents and children as well as the names of the law-enforcement officer's spouse, parents and children.

(b) As used in subdivisions (9) through (16), inclusive, subsection (a) of this section, the term “terrorist act” means an act that is likely to result in serious bodily injury or damage to property or the environment and is intended to:

(1) Intimidate or coerce the civilian population;

(2) Influence the policy of a branch or level of government by intimidation or coercion;

(3) Affect the conduct of a branch or level of government by intimidation or coercion; or

(4) Retaliate against a branch or level of government for a policy or conduct of the government.

(c) The provisions of subdivisions (9) through (16), inclusive, subsection (a) of this section do not make subject to the provisions of this chapter any evidence of an immediate threat to public health or safety unrelated to a terrorist act or the threat of a terrorist act which comes to the attention of a public entity in the course of conducting a vulnerability assessment response or similar activity.;

And,

That both houses recede from their respective positions as to the title of the bill and agree to a new title as follows:

**Eng. Com. Sub. for House Bill 2800**—A Bill to amend and reenact §29B-1-2 and §29B-1-4 of the Code of West Virginia, 1931, as amended, all relating to law-enforcement officers’ personal information; defining terms; and adding personal information of law-enforcement officers and certain family members of law-enforcement officers maintained by the public body in the ordinary course of the employer-employee relationship to the list of exemptions from public records requests.

Respectfully submitted,

Patrick Lane, *Chair*, Roger Hanshaw, Steven Shaffer,  
*Conferees on the part of the House of Delegates.*

Bob Ashley, *Chair*, Robert Karnes, Michael A. Woelfel, *Conferees on the part of the Senate*.

Senator Ashley, Senate cochair of the committee of conference, was recognized to explain the report.

Thereafter, on motion of Senator Ashley, the report was taken up for immediate consideration and adopted.

Engrossed Committee Substitute for House Bill 2800, as amended by the conference report, was then put upon its passage.

On the passage of the bill, as amended, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2800) passed with its conference amended title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Friday, March 4, 2016, at 11 a.m.

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FRIDAY, MARCH 4, 2016

The Senate met at 11 a.m.

(Senator Cole, Mr. President, in the Chair.)

Prayer was offered by Pastor Kevin Walker, Calvary Church of the Nazarene, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Robert Karnes, a senator from the eleventh district.

Pending the reading of the Journal of Thursday, March 3, 2016,

At the request of Senator Takubo, unanimous consent being granted, the Journal was approved and the further reading thereof dispensed with.

The Senate proceeded to the second order of business and the introduction of guests.

The Senate then proceeded to the third order of business.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Com. Sub. for Senate Bill 594**, Requiring State Auditor consider for payment claim submitted by electronically generated invoice.

### **Executive Communications**

Senator Cole (Mr. President) laid before the Senate the following communication from His Excellency, the Governor, consisting of executive nominations for appointees:

STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
CHARLESTON

March 2, 2016

### **Senate Executive Message No. 2 Regular Session 2016**

TO: The Honorable Members of the  
West Virginia Senate

Ladies and Gentlemen:

I respectfully submit the following nominations for your advice and consent:

1. For Member, Committee for the Purchase of Commodities and Services from the Handicapped, Rebecca A. Howard, Huntington, Cabell County, for the term ending January 31, 2017.

2. For Member, West Virginia Board of Respiratory Care, Eric Hawkins, Bluefield, Mercer County, for the term ended June 30, 2015.

3. For Member, West Virginia Board of Respiratory Care, Tracy Matthews, Sod, Lincoln County, for the term ended June 30, 2015.

4. For Member, West Virginia Board of Respiratory Care, William Boring, Wheeling, Ohio County, for the term ending June 30, 2018.

5. For Member, West Virginia Board of Respiratory Care, Leonard Picha, Huntington, Wayne County, for the term ending June 30, 2017.

6. For Member, West Virginia Board of Respiratory Care, Regina Gillispie, Hurricane, Putnam County, for the term ending June 30, 2018.

7. For Member, West Virginia Board of Respiratory Care, Robert J. Crisalli, Charleston, Kanawha County, for the term ending June 30, 2017.

8. For Member, State Board of Sanitarians, Michael Eltzroth, White Sulphur Springs, Greenbrier County, for the term ending June 30, 2016.

9. For Member, State Board of Sanitarians, Lloyd White, Worthington, Marion County, for the term ending June 30, 2018.

10. For Member, State Board of Sanitarians, Richard L. Wheeler, Gerrardstown, Berkeley County, for the term ended June 30, 2015.

11. For Member, State Board of Sanitarians, Jesse J. Rose, Wilcoe, McDowell County, for the term ending June 30, 2017.

12. For Chief Administrative Law Judge, Office of Tax Appeals, Heather G. Harlan, South Charleston, Kanawha County, for the term ending June 30, 2016.

13. For Member, Public Land Corporation Board of Directors, Carl J. Martin, Buckhannon, Upshur County, for the term ended June 30, 2015.

14. For Member, Public Land Corporation Board of Directors, Steve Perdue, Charleston, Kanawha County, for the term ending June 30, 2017.

15. For Member, West Virginia Commission for the Deaf and Hard of Hearing, John Burdette, Ronceverte, Greenbrier County, for the term ending June 30, 2017.

16. For Member, West Virginia Commission for the Deaf and Hard of Hearing, Paul See, Moorefield, Hardy County, for the term ending June 30, 2017.

17. For Member, West Virginia Commission for the Deaf and Hard of Hearing, Gwen Bryant, Nitro, Kanawha County, for the term ending June 30, 2016.

18. For Member, West Virginia Commission for the Deaf and Hard of Hearing, Gloria Hollen, Hedgesville, Berkeley County, for the term ending June 30, 2017.

19. For Member, Board of Licensed Dietitians, Grady M. Bowyer, St. Albans, Kanawha County, for the term ending June 30, 2017.

20. For Member, Board of Licensed Dietitians, Margaret M. Andrews, Charleston, Kanawha County, for the term ending June 30, 2016.

21. For Member, Board of Licensed Dietitians, Mary K. Gould, Huntington, Cabell County, for the term ending June 30, 2016.

22. For Member, Board of Licensed Dietitians, Susan J. Arnold, Morgantown, Monongalia County, for the term ending June 30, 2018.

23. For Member, Solid Waste Management Board, Mallie Combs, Moorefield, Hardy County, for the term ending June 30, 2019.

24. For Member, Solid Waste Management Board, Tim Blankenship, Baisden, Mingo County, for the term ending June 30, 2020.

25. For Member, West Virginia Health System Board of Directors, The Honorable Kevin J. Craig, Huntington, Cabell County, for the term ending October 15, 2016.

26. For Member, Natural Resources Commission, Peter L. Cuffaro, Wheeling, Ohio County, for the term ending June 30, 2022.

27. For Member, Human Rights Commission, Tim Hairston, Westover, Monongalia County, for the term ending June 30, 2017.

28. For Member, Human Rights Commission, Darrell Cummings, Wheeling, Ohio County, for the term ending June 30, 2017.

29. For Member, Human Rights Commission, Lisa Younis, Shepherdstown, Jefferson County, for the term ending June 30, 2018.

30. For Member, Human Rights Commission, William Williams, Jr., Omar, Logan County, for the term ending June 30, 2018.

31. For Member, Human Rights Commission, Wesley Dobbs, Carolina, Marion County, for the term ending June 30, 2016.

32. For Member, Human Rights Commission, Karl Gattlieb, Charleston, Kanawha County, for the term ending June 30, 2016.

33. For Member, Human Rights Commission, John McFerrin, Beckley, Raleigh County, for the term ending June 30, 2018.

34. For Member, Human Rights Commission, Rev. C. Christopher Thompson, Lewisburg, Greenbrier County, for the term ending June 30, 2016.

35. For Member, Committee for the Purchase of Commodities and Services from the Handicapped, Kim Nuckles, Charleston, Kanawha County, for the term ending January 31, 2017.

36. For Member, Committee for the Purchase of Commodities and Services from the Handicapped, Everette E. Sullivan, Dunbar, Kanawha County, for the term ending January 31, 2017.

37. For Member, Committee for the Purchase of Commodities and Services from the Handicapped, Jan Smith, Fairmont, Marion County, for the term ending January 31, 2017.

38. For Member, Committee for the Purchase of Commodities and Services from the Handicapped, Chris Weikle, Charleston, Kanawha County, for the term ending January 31, 2017.

39. For Member, Committee for the Purchase of Commodities and Services from the Handicapped, Douglas Auten, Moundsville, Marshall County, for the term ending January 31, 2017.

40. For Member, Board of Examiners of Psychologists, Shirley Vinciguerra, Bluefield, Mercer County, for the term ending June 30, 2018.

41. For Member, Board of Examiners of Psychologists, Kelly Daniel, Barboursville, Cabell County, for the term ending June 30, 2016.

42. For Member, Board of Examiners of Psychologists, Jeffrey Hammond, Morgantown, Monongalia County, for the term ending June 30, 2018.

43. For Member, Board of Examiners of Psychologists, Kerri Dumm Linton, Elkview, Kanawha County, for the term ending June 30, 2017.

44. For Member, Board of Examiners of Psychologists, Susannah Grimm Poe, Morgantown, Monongalia County, for the term ending June 30, 2017.

45. For Member, Board of Examiners of Psychologists, Sandra Stroebel, South Charleston, Kanawha County, for the term ending June 30, 2018.

46. For Member, Veterans' Council, Mary Byrd, Nitro, Kanawha County, for the term ending June 30, 2020.

47. For Member, Veterans' Council, Harrison B. Gilliam, Huntington, Cabell County, for the term ending June 30, 2021.

48. For Member, Veterans' Council, Cedric Greene, Charleston, Kanawha County, for the term ending June 30, 2020.

49. For Member, West Virginia Board of Osteopathic Medicine, Ernest E. Miller, Jr., Vienna, Wood County, for the term ending June 30, 2018.

50. For Member, West Virginia Board of Osteopathic Medicine, Jimmy Adams, Barboursville, Cabell County, for the term ending June 30, 2018.

51. For Member, West Virginia Board of Osteopathic Medicine, Sharon Rowe, Lewisburg, Greenbrier County, for the term ending June 30, 2018.

52. For Member, Workforce Development Board, Ray Burke, Jr., Hurricane, Putnam County, for the term ending June 30, 2016.

53. For Member and Vice-Chair, Workforce Development Board, Nancy Kissinger, Beckley, Raleigh County, for the term ending June 30, 2018.

54. For Member, Workforce Development Board, Jim O'Connor, Belle, Kanawha County, for the term ending June 30, 2016.

55. For Member, Workforce Development Board, Tom Provost, Belle, Kanawha County, for the term ending June 30, 2018.

56. For Member and Chair, Workforce Development Board, John Sorrenti, Weirton, Hancock County, for the term ending June 30, 2018.

57. For Member, Workforce Development Board, Steve Stalnaker, Williamstown, Wood County, for the term ending June 30, 2016.

58. For Member, Workforce Development Board, Diane Strong-Treister, Charleston, Kanawha County, for the term ending June 30, 2018.

59. For Member, Workforce Development Board, Homer Sweeney, St. Albans, Kanawha County, for the term ending June 30, 2017.

60. For Member, Workforce Development Board, Kenny Perdue, Charleston, Kanawha County, for the term ending June 30, 2018.

61. For Member, Workforce Development Board, Roy Smith, Beckley, Raleigh County, for the term ending June 30, 2016.

62. For Member, Workforce Development Board, Kim Tieman, Charleston, Kanawha County, for the term ending June 30, 2018.

63. For Member, Workforce Development Board, Rev. Matthew Watts, Charleston, Kanawha County, for the term ending June 30, 2018.

64. For Member, Workforce Development Board, Logan Williams, Hurricane, Putnam County, for the term ending June 30, 2018.

65. For Member, Workforce Development Board, Penny Brown, Philippi, Barbour County, for the term ending June 30, 2018.

66. For Member, Workforce Development Board, Steve Whited, Grantsville, Calhoun County, for the term ending June 30, 2016.

67. For Member, Workforce Development Board, Nancy Paxton, South Charleston, Kanawha County, for the term ending June 30, 2018.

68. For Member, Workforce Development Board, Patrick Martin, Hurricane, Putnam County, for the term ending June 30, 2018.

69. For Member, Workforce Development Board, Will Turani, Wheeling, Ohio County, for the term ending June 30, 2016.

70. For Member, Workforce Development Board, Todd Shell, Huntington, Cabell County, for the term ending June 30, 2017.

71. For Member, Workforce Development Board, Beverly Jo Harris, Charleston, Kanawha County, for the term ending June 30, 2018.

72. For Member, Workforce Development Board, Brian Ulery, South Charleston, Kanawha County, for the term ending June 30, 2017.

73. For Member, Workforce Development Board, Barry Pearson, Buffalo, Putnam County, for the term ending June 30, 2017.

74. For Member, Workforce Development Board, Fred Clark, Nitro, Kanawha County, for the term ending June 30, 2017.

75. For Member, Workforce Development Board, Tim McLean, Belle, Kanawha County, for the term ending June 30, 2017.

76. For Member, Workforce Development Board, Guy Schiller, Danbury, Connecticut, for the term ending June 30, 2016.

77. For Member, Workforce Development Board, Matthew D. Wender, Oak Hill, Fayette County, for the term ending June 30, 2018.

78. For Member, Workforce Development Board, Randall Rapp, Vienna, Wood County, for the term ending June 30, 2017.

79. For Member, Workforce Development Board, Ray Woods, Jr., Charleston, Kanawha County, for the term ending June 30, 2017.

80. For Member, Workforce Development Board, Donna Ashworth, Charleston, Kanawha County, for the term ending June 30, 2017.

81. For Member, Workforce Development Board, Russell L. Fry, Charleston, Kanawha County, for the term ending June 30, 2017.

82. For Member, Workforce Development Board, Daniel J. Poling, Charleston, Kanawha County, for the term ending June 30, 2017.

83. For Member, Workforce Development Board, Karen Bowling, Charleston, Kanawha County, for the term ending June 30, 2017.

84. For Member, Workforce Development Board, Kathy D'Antoni, Charleston, Kanawha County, for the term ending June 30, 2017.

85. For Member, Workforce Development Board, John Moses, Wheeling, Ohio County, for the term ending June 30, 2016.

86. For Member, Workforce Development Board, Michelle Foster, Dunbar, Kanawha County, for the term ending June 30, 2017.

87. For Member, Workforce Development Board, Stephanie Ahart, Charleston, Kanawha County, for the term ending June 30, 2018.

88. For Member, Commission on the Arts, Susan Landis, Daniels, Raleigh County, for the term ending June 30, 2017.

89. For Member, Commission on the Arts, Carol Templeton, Milton, Cabell County, for the term ending June 30, 2016.

90. For Member, Commission on the Arts, Max Armentrout, Elkins, Randolph County, for the term ending June 30, 2018.

91. For Member, Commission on the Arts, Sam Winans, Parkersburg, Wood County, for the term ending June 30, 2017.

92. For Member, Commission on the Arts, Cindy McGhee, Charleston, Kanawha County, for the term ending June 30, 2018.

93. For Member, Commission on the Arts, Selina Midkiff, Charleston, Kanawha County, for the term ending June 30, 2016.

94. For Member, Commission on the Arts, DeEtta King Hunter, Lewisburg, Greenbrier County, for the term ending June 30, 2017.

95. For Member, Commission on the Arts, John Strickland, Charleston, Kanawha County, for the term ending June 30, 2018.

96. For Member, Commission on the Arts, Susan Hogan, Wheeling, Ohio County, for the term ending June 30, 2018.

97. For Member, Commission on the Arts, Dr. Bernie Schultz, Morgantown, Monongalia County, for the term ending June 30, 2017.

98. For Member, Commission on the Arts, Micky Blackwell, Charleston, Kanawha County, for the term ending June 30, 2018.

99. For Member, Commission on the Arts, Jamie Dempsey-Butcher, Chapmanville, Logan County, for the term ending June 30, 2018.

100. For Member, Commission on the Arts, Jack Thompson, Morgantown, Monongalia County, for the term ending June 30, 2016.

101. For Member, Commission on the Arts, Charles Mathena, Princeton, Mercer County, for the term ending June 30, 2016.

102. For Member, Commission on the Arts, Amy Panzarella, Charles Town, Jefferson County, for the term ending June 30, 2017.

103. For Member, National Coal Heritage Area Authority, Debrina Williams, Delbarton, Mingo County, for the term ending June 30, 2018.

104. For Member, West Virginia Commission for the Deaf and Hard of Hearing, Tammy Phillips, Romney, Hampshire County, for the term ending June 30, 2018.

105. For Member, West Virginia Commission for the Deaf and Hard of Hearing, Roy Forman, Williamstown, Wood County, for the term ending June 30, 2017.

106. For Member, Marshall University Board of Governors, Wyatt Scaggs, Logan, Logan County, for the term ending June 30, 2019.

107. For Member, Marshall University Board of Governors, Phyllis Arnold, Charleston, Kanawha County, for the term ending June 30, 2019.

108. For Member, Marshall University Board of Governors, David Haden, Charleston, Kanawha County, for the term ending June 30, 2019.

109. For Member, Board of Risk and Insurance Management, James A. Dodrill, Hurricane, Putnam County, for the term ending June 30, 2019.

110. For Member, West Virginia Hospital Finance Authority, James Christie, Bridgeport, Harrison County, for the term ending January 9, 2020.

111. For Member, West Virginia Hospital Finance Authority, David Williams, Hurricane, Putnam County, for the term ending January 9, 2021.

112. For Member, West Virginia Board of Dentistry, C. Richard Gerber, St. Marys, Pleasants County, for the term ending June 30, 2020.

113. For Member, Property Valuation Training and Procedures Commission, Dick Waybright, Ravenswood, Jackson County, for the term ending June 30, 2016.

114. For Member, Property Valuation Training and Procedures Commission, Andrew Robinson, Charleston, Kanawha County, for the term ending June 30, 2016.

115. For Member, Public Employees Insurance Agency Finance Board, Elaine A. Harris, St. Albans, Kanawha County, for the term ending June 30, 2019.

116. For Member, Public Employees Insurance Agency Finance Board, Michael T. Smith, Milton, Cabell County, for the term ending June 30, 2019.

117. For Member, Public Employees Insurance Agency Finance Board, Troy Giatras, Charleston, Kanawha County, for the term ending June 30, 2017.

118. For Member, Public Employees Insurance Agency Finance Board, James W. Dailey II, Martinsburg, Berkeley County, for the term ending June 30, 2017.

119. For Member, Board of Accountancy, Louis Costanzo III, Wheeling, Ohio County, for the term ending June 30, 2018.

120. For Member, Board of Accountancy, Reed Tanner, Morgantown, Monongalia County, for the term ending June 30, 2017.

121. For Member, Board of Accountancy, David Hill, Charleston, Kanawha County, for the term ending June 30, 2017.

122. For Member, West Virginia Board of Chiropractic, Roger Kritzer, Fairmont, Marion County, for the term ending June 30, 2017.

123. For Member, West Virginia Board of Chiropractic, Barry Stowers, Oak Hill, Fayette County, for the term ending June 30, 2016.

124. For Member, West Virginia Board of Chiropractic, Jeffrey Summers, Charleston, Kanawha County, for the term ending June 30, 2018.

125. For Member, West Virginia Board of Chiropractic, H. Jarrett Walker, Charleston, Kanawha County, for the term ending June 30, 2018.

126. For Member, Board of Examiners for Registered Professional Nurses, Ann Bostic, Charleston, Kanawha County, for the term ending June 30, 2020.

127. For Member, Board of Examiners for Registered Professional Nurses, Teresa Ritchie, Big Springs, Calhoun County, for the term ending June 30, 2019.

128. For Member, Board of Examiners for Registered Professional Nurses, Theresa L. Dennison, Mount Hope, Raleigh County, for the term ending June 30, 2020.

129. For Member, Board of Examiners for Registered Professional Nurses, Nancy V. Atkins, Charleston, Kanawha County, for the term ending June 30, 2018.

130. For Member, Board of Examiners for Registered Professional Nurses, Tara F. Hulsey, Morgantown, Monongalia County, for the term ending June 30, 2017.

131. For Member, Board of Examiners for Registered Professional Nurses, Doris F. Burkey, Berkeley Springs, Morgan County, for the term ending June 30, 2016.

132. For Member, Regional Jail and Correctional Facility Authority, Steve Deweese, Winfield, Putnam County, for the term ending June 30, 2019.

133. For Member, Regional Jail and Correctional Facility Authority, Stephen Jory, Elkins, Randolph County, for the term ending June 30, 2017.

134. For Member, Regional Jail and Correctional Facility Authority, Tim McCormick, Wheeling, Ohio County, for the term ending June 30, 2016.

135. For Member, Regional Jail and Correctional Facility Authority, Gary Ellyson, Gassaway, Braxton County, for the term ending June 30, 2016.

136. For Member, Center for Professional Development Board, Cari Pauley, Alum Creek, Lincoln County, for the term ending June 30, 2016.

137. For Member, Center for Professional Development Board, Dan Berry, Morgantown, Monongalia County, for the term ending June 30, 2016.

138. For Member, Center for Professional Development Board, David R. Deuell, Martinsburg, Berkeley County, for the term ending June 30, 2017.

139. For Member, Center for Professional Development Board, Ray Londeree, Mount Hope, Fayette County, for the term ending June 30, 2017.

140. For Member, Center for Professional Development Board, Emily Waugh, St. Albans, Kanawha County, for the term ending June 30, 2017.

141. For Member, Center for Professional Development Board, Will Hosaflook, Ripley, Jackson County, for the term ending June 30, 2016.

142. For Member, Board of Examiners for Licensed Practical Nurses, Francine Kirby, Princeton, Mercer County, for the term ending June 30, 2017.

143. For Member, Board of Examiners for Licensed Practical Nurses, Orpha Swiger, Clarksburg, Harrison County, for the term ending June 30, 2017.

144. For Member, Board of Examiners for Licensed Practical Nurses, Gregory Chirtas, Charleston, Kanawha County, for the term ending June 30, 2017.

145. For Member, Board of Examiners for Licensed Practical Nurses, Grady M. Bowyer, St. Albans, Kanawha County, for the term ending June 30, 2018.

146. For Member, Board of Examiners for Licensed Practical Nurses, Coralee Hatcher, Fairdale, Raleigh County, for the term ending June 30, 2016.

147. For Member, Board of Examiners for Licensed Practical Nurses, Megan Johnson, Beckley, Raleigh County, for the term ending June 30, 2016.

148. For Member, Bluefield State College Board of Governors, Bob Buzzo, Bluefield, Virginia, for the term ending June 30, 2019.

149. For Member, Bluefield State College Board of Governors, Dreama Denver, Princeton, Mercer County, for the term ending June 30, 2017.

150. For Member, Bluefield State College Board of Governors, Jennifer J. Douglas, Beckley, Raleigh County, for the term ending June 30, 2017.

151. For Member, Fire Commission, Carl Eastham, Huntington, Cabell County, for the term ending June 30, 2020.

152. For Member, Board of Manufactured Housing Construction and Safety, George Gunnell, Winfield, Putnam County, for the term ending June 30, 2018.

153. For Member, Board of Manufactured Housing Construction and Safety, Samuel Bonasso, Fairmont, Marion County, for the term ending June 30, 2020.

154. For Member, Board of Manufactured Housing Construction and Safety, Jack Albert, Charleston, Kanawha County, for the term ending June 30, 2020.

155. For Member, Board of Manufactured Housing Construction and Safety, Thomas Belasco II, Bridgeport, Harrison County, for the term ending June 30, 2018.

156. For Member, Board of Manufactured Housing Construction and Safety, Gary D. Shaw, Fairmont, Marion County, for the term ending June 30, 2016.

157. For Member, Board of Manufactured Housing Construction and Safety, Johnnie E. Brown, Charleston, Kanawha County, for the term ending June 30, 2016.

158. For Member, National Coal Heritage Area Authority, Kris Mitchell, Madison, Boone County, for the term ending June 30, 2016.

159. For Member, National Coal Heritage Area Authority, Cherie Coogle, Fairmont, Marion County, for the term ending June 30, 2019.

160. For Member, West Virginia University Board of Governors, David Alvarez, Bridgeport, Harrison County, for the term ending June 30, 2018.

161. For Member, West Virginia University Board of Governors, Thomas V. Flaherty, Charleston, Kanawha County, for the term ending June 30, 2018.

162. For Member, West Virginia University Board of Governors, Kim Weaver, Silver Spring, Maryland, for the term ending June 30, 2017.

163. For Member, West Virginia Board of Funeral Service Examiners, Ira Handley, Danville, Boone County, for the term ending June 30, 2019.

164. For Member, West Virginia Board of Funeral Service Examiners, Sarah Lobban, Alderson, Greenbrier County, for the term ending June 30, 2017.

165. For Member, West Virginia Board of Funeral Service Examiners, Keith Kimble, Franklin, Pendleton County, for the term ending June 30, 2017.

166. For Member, West Virginia Board of Funeral Service Examiners, Robert C. Fields, Martinsburg, Berkeley County, for the term ending June 30, 2016.

167. For Member, West Virginia Board of Funeral Service Examiners, John H. Taylor, Spencer, Roane County, for the term ending June 30, 2018.

168. For Member, West Virginia Board of Funeral Service Examiners, Connie Grisell, Glen Dale, Marshall County, for the term ending June 30, 2017.

169. For Member, West Virginia Board of Funeral Service Examiners, Bill Davis, Chapmanville, Logan County, for the term ending June 30, 2019.

170. For Member, West Virginia State Rail Authority, Steve Sherrard, Elkins, Randolph County, for the term ending June 30, 2019.

171. For Member, West Virginia State Rail Authority, Elwood Williams, Moorefield, Hardy County, for the term ending June 30, 2021.

172. For Member, West Virginia State Rail Authority, James Schoonover, Montrose, Randolph County, for the term ending June 30, 2019.

173. For Member, West Virginia State Rail Authority, William Hartman, Franklin, Pendleton County, for the term ending June 30, 2021.

174. For Member, Blue Ridge Community and Technical College Board of Governors, Chuck Basa, Winchester, Virginia, for the term ending June 30, 2019.

175. For Member, Blue Ridge Community and Technical College Board of Governors, Heather McIntyre, Charles Town, Jefferson County, for the term ending June 30, 2019.

176. For Member, Blue Ridge Community and Technical College Board of Governors, Taylor Perry, Martinsburg, Berkeley County, for the term ending June 30, 2017.

177. For Member, Blue Ridge Community and Technical College Board of Governors, James C. Rodgers, Martinsburg, Berkeley County, for the term ending June 30, 2017.

178. For Member, Eastern West Virginia Community and Technical College Board of Governors, Dixie Bean, Moorefield, Hardy County, for the term ending June 30, 2019.

179. For Member, Eastern West Virginia Community and Technical College Board of Governors, Rob Tissue, Moorefield, Hardy County, for the term ending June 30, 2018.

180. For Member, Eastern West Virginia Community and Technical College Board of Governors, Douglas Lambert, Petersburg, Grant County, for the term ending June 30, 2018.

181. For Member, Eastern West Virginia Community and Technical College Board of Governors, Melinda S. Chambers, Romney, Hampshire County, for the term ending June 30, 2017.

182. For Member, BridgeValley Community and Technical College Board of Governors, Don Stewart, Leon, Mason County, for the term ending June 30, 2016.

183. For Member, West Virginia University Board of Governors, Greg Babe, Pittsburgh, Pennsylvania, for the term ending June 30, 2018.

184. For Member, Statewide Independent Living Council, Cathy Hutchinson, Huntington, Cabell County, for the term ending June 30, 2018.

185. For Member, Statewide Independent Living Council, Marian Steele, Summersville, Nicholas County, for the term ending June 30, 2018.

186. For Member, Statewide Independent Living Council, Sarah Mathis, Grassy Meadows, Greenbrier County, for the term ending June 30, 2018.

187. For Member, Statewide Independent Living Council, Sandy Haberbosch, Shinnston, Harrison County, for the term ending June 30, 2018.

188. For Member, Statewide Independent Living Council, Jan Derry, Morgantown, Monongalia County, for the term ending June 30, 2018.

189. For Member, Statewide Independent Living Council, Mark Fordyce, Charlton Heights, Fayette County, for the term ending June 30, 2018.

190. For Member, Statewide Independent Living Council, Scott Gossard, Petersburg, Grant County, for the term ending June 30, 2018.

191. For Member, Statewide Independent Living Council, Kevin Smith, Parkersburg, Wood County, for the term ending June 30, 2018.

192. For Member, Statewide Independent Living Council, Beverly Jones, Hurricane, Putnam County, for the term ending June 30, 2017.

193. For Member, Statewide Independent Living Council, Emily Robinson, Nitro, Kanawha County, for the term ending June 30, 2017.

194. For Member, Statewide Independent Living Council, Sheryl Johnson, Charleston, Kanawha County, for the term ending June 30, 2018.

195. For Member, Athletic Commission, Paul Thornton, Vienna, Wood County, for the term ending June 30, 2019.

196. For Member, Athletic Commission, Leon Ramsey, Glenville, Gilmer County, for the term ending June 30, 2019.

197. For Member, Athletic Commission, Tim Peasak, Bridgeport, Harrison County, for the term ending June 30, 2016.

198. For Member, Glenville State College Board of Governors, Greg Smith, Glenville, Gilmer County, for the term ending June 30, 2018.

199. For Member, Glenville State College Board of Governors, Richard Heffelfinger, Charleston, Kanawha County, for the term ending June 30, 2019.

200. For Member, Glenville State College Board of Governors, William Deel, Milton, Cabell County, for the term ending June 30, 2019.

201. For Member, West Virginia Northern Community and Technical College Board of Governors, Robert Contraguerro, Jr., Wheeling, Ohio County, for the term ending June 30, 2019.

202. For Member, West Virginia Northern Community and Technical College Board of Governors, The Honorable Larry J. Edgell, New Martinsville, Wetzel County, for the term ending June 30, 2019.

203. For Member, New River Community and Technical College Board of Governors, John Barnes, Lewisburg, Greenbrier County, for the term ending June 30, 2019.

204. For Member, New River Community and Technical College Board of Governors, Sandy Epling, Lewisburg, Greenbrier County, for the term ending June 30, 2019.

205. For Member, Higher Education Policy Commission, Jenny Allen, Shepherdstown, Jefferson County, for the term ending June 30, 2019.

206. For Member, Higher Education Policy Commission, Andrew A. Payne III, Charleston, Kanawha County, for the term ending June 30, 2018.

207. For Member, Industrial Council, Dan Marshall, Parkersburg, Wood County, for the term ending June 30, 2016.

208. For Member, Industrial Council, Bill Dean, Wheeling, Ohio County, for the term ending June 30, 2016.

209. For Member, Industrial Council, Kent Hartsog, Hurricane, Putnam County, for the term ending June 30, 2019.

210. For Member, Industrial Council, James H. Dissen, Charleston, Kanawha County, for the term ending June 30, 2017.

211. For Member, Industrial Council, Sydney Thornhill-Brown, Logan, Logan County, for the term ending June 30, 2017.

212. For Member, Board of Control for Southern Regional Education, The Honorable Roman W. Prezioso, Jr., Fairmont, Marion County, for the term ending June 30, 2019.

213. For Member, Public Service Commission, Kara Cunningham Williams, Lewisburg, Greenbrier County, for the term ending June 30, 2017.

214. For Member, Public Service Commission, The Honorable Brooks F. McCabe, Jr., Charleston, Kanawha County, for the term ending June 30, 2021.

215. For Member, West Virginia Board of Barbers and Cosmetologists, Susan M. Poveromo, South Charleston, Kanawha County, for the term ending June 30, 2019.

216. For Member, West Virginia Board of Barbers and Cosmetologists, Michael Belcher, Charleston, Kanawha County, for the term ending June 30, 2018.

217. For Member, West Virginia Board of Barbers and Cosmetologists, Sarah B. Hamrick, Hurricane, Putnam County, for the term ending June 30, 2018.

218. For Member, West Virginia Board of Barbers and Cosmetologists, Justina J. Gabbert, Martinsburg, Berkeley County, for the term ending June 30, 2017.

219. For Member, West Virginia Board of Barbers and Cosmetologists, Melissa J. Delaney, Vienna, Wood County, for the term ending June 30, 2020.

220. For Member, National Coal Heritage Area Authority, Sharon Cruikshank, Oak Hill, Fayette County, for the term ending June 30, 2018.

221. For Member, National Coal Heritage Area Authority, Dyane Corcoran, Beckley, Raleigh County, for the term ending June 30, 2018.

222. For Member, National Coal Heritage Area Authority, Mike Vinciguerra, Jr., Bluefield, Mercer County, for the term ending June 30, 2016.

223. For Member, Unemployment Compensation Board of Review, Jack Canfield, Charleston, Kanawha County, for the term ending January 1, 2017.

224. For Member, Nursing Home Administrators Licensing Board, Kay Cottrill, Clarksburg, Harrison County, for the term ending June 30, 2020.

225. For Member, Nursing Home Administrators Licensing Board, Roger Topping, Princeton, Mercer County, for the term ending June 30, 2019.

226. For Member, Nursing Home Administrators Licensing Board, Joan Armbruster, Davis, Tucker County, for the term ending June 30, 2019.

227. For Member, Nursing Home Administrators Licensing Board, Joseph Bucher, Elkins, Randolph County, for the term ending June 30, 2020.

228. For Member, West Virginia Records Management and Preservation Board, Mark Musick, Morgantown, Monongalia County, to serve at the will and pleasure of the Governor.

229. For Member, West Virginia Records Management and Preservation Board, Jack Woodrum, Hinton, Summers County, to serve at the will and pleasure of the Governor.

230. For Member, Board of Examiners in Counseling, Christine J. Schimmel, Buckhannon, Upshur County, for the term ending June 30, 2018.

231. For Member, Board of Examiners in Counseling, Beth Bragg, Elkins, Randolph County, for the term ending June 30, 2019.

232. For Member, Board of Examiners in Counseling, Lori Ellison, Hurricane, Putnam County, for the term ending June 30, 2019.

233. For Member, Board of Examiners in Counseling, Guy Gage III, Bridgeport, Harrison County, for the term ending June 30, 2019.

234. For Member, Board of Examiners in Counseling, Marilyn J. Cassis, St. Albans, Kanawha County, for the term ending June 30, 2019.

235. For Member, Board of Examiners in Counseling, Lisa A. Westfall, Charleston, Kanawha County, for the term ending June 30, 2018.

236. For Member, Board of Examiners in Counseling, Jeffrey T. Jones, Charleston, Kanawha County, for the term ending June 30, 2017.

237. For Member, Fire Commission, Doug Mongold, Moorefield, Hardy County, for the term ending June 30, 2018.

238. For Member, Fire Commission, Doug Estep, Morrisvale, Boone County, for the term ending June 30, 2017.

239. For Member, Fire Commission, Jim Oldaker, Alum Creek, Lincoln County, for the term ending June 30, 2020.

240. For Member, Workforce Development Board, Megan Harris, Belle, Kanawha County, for the term ending June 30, 2016.

241. For Member, National Coal Heritage Area Authority, Fred Barkey, Charleston, Kanawha County, for the term ending June 30, 2019.

242. For Member, National Coal Heritage Area Authority, Christy Laxton, Pineville, Wyoming County, for the term ending June 30, 2016.

243. For Member, Board of Pharmacy, Dennis Lewis, Chapmanville, Logan County, for the term ending June 30, 2020.

244. For Member, Board of Pharmacy, Chuck Jones, Charleston, Kanawha County, for the term ending June 30, 2018.

245. For Member, Board of Pharmacy, John J. Bernabei, Weirton, Hancock County, for the term ending June 30, 2019.

246. For Member, Board of Pharmacy, Kim Knuckles, Beaver, Raleigh County, for the term ending June 30, 2017.

247. For Member, Board of Pharmacy, Everett Frazier, Cyclone, Wyoming County, for the term ending June 30, 2019.

248. For Member, Board of Pharmacy, Vicky Skaff, Charleston, Kanawha County, for the term ending June 30, 2018.

249. For Member, Auctioneers Board of Review, James Frio, Wheeling, Ohio County, for the term ending January 1, 2017.

250. For Member, Auctioneers Board of Review, Oscar Click, Leon, Mason County, for the term ending January 1, 2018.

251. For Member, Chief Administrative Law Judge of the Workers' Compensation Office of Judges within the Office of the Insurance Commissioner, Rebecca Roush, Mason, Mason County, for the term ending December 1, 2019.

252. For Member, West Virginia Real Estate Appraiser Licensing and Certification Board, Dale Clowser, Charleston, Kanawha County, for the term ending June 30, 2016.

253. For Member, West Virginia Real Estate Appraiser Licensing and Certification Board, Mary Beth Aliveto, Bridgeport, Harrison County, for the term ending June 30, 2016.

254. For Member, West Virginia Real Estate Appraiser Licensing and Certification Board, Anthony Julian, Fairmont, Marion County, for the term ending June 30, 2017.

255. For Member, West Virginia Real Estate Appraiser Licensing and Certification Board, Glenn Summers, Clendenin, Kanawha County, for the term ending June 30, 2018.

256. For Member, West Virginia Real Estate Appraiser Licensing and Certification Board, Nathan D. Nibert, Barboursville, Cabell County, for the term ending June 30, 2018.

257. For Member, West Virginia Real Estate Appraiser Licensing and Certification Board, Rachel Phillips, Morgantown, Monongalia County, for the term ending June 30, 2016.

258. For Member, West Virginia Real Estate Appraiser Licensing and Certification Board, Dean Dawson, Scott Depot, Putnam County, for the term ending June 30, 2016.

259. For Member, West Virginia Real Estate Appraiser Licensing and Certification Board, R. Michael Shaw, Jr., Point Pleasant, Mason County, for the term ending June 30, 2016.

260. For Member, West Virginia Real Estate Appraiser Licensing and Certification Board, Douglas Butcher, Beckley, Raleigh County, for the term ending June 30, 2017.

261. For Member, Workforce Development Board, David Hobba, Buffalo, Putnam County, for the term ending June 30, 2017.

262. For Member, Fire Commission, Phil Hart, Belington, Barbour County, for the term ending June 30, 2016.

263. For Member, West Virginia Agricultural Land Protection Authority Board of Trustees, Gary Foster, Farmington, Marion County, for the term ending June 30, 2016.

264. For Member and Chairman, West Virginia Agricultural Land Protection Authority Board of Trustees, Bob Baird, Gallipolis Ferry, Mason County, for the term ending June 30, 2018.

265. For Member, West Virginia Agricultural Land Protection Authority Board of Trustees, Rod Graves, Sinks Grove, Monroe County, for the term ending June 30, 2017.

266. For Member, West Virginia Agricultural Land Protection Authority Board of Trustees, Denzil Huff, Coxs Mills, Gilmer County, for the term ending June 30, 2016.

267. For Member, West Virginia Agricultural Land Protection Authority Board of Trustees, Bill Coffindaffer, Jane Lew, Harrison County, for the term ending June 30, 2017.

268. For Member, West Virginia Agricultural Land Protection Authority Board of Trustees, David Hammer, Martinsburg, Berkeley County, for the term ending June 30, 2016.

269. For Member, West Virginia Agricultural Land Protection Authority Board of Trustees, Amy Moloney, Lindside, Monroe County, for the term ending June 30, 2018.

270. For Member, West Virginia Agricultural Land Protection Authority Board of Trustees, Dennis Funk, Kirby, Hardy County, for the term ending June 30, 2017.

271. For Member, Property Valuation Training and Procedures Commission, Cheryl Romano, Clarksburg, Harrison County, for the term ending June 30, 2016.

272. For Member, Capitol Building Commission, H. Wood Thrasher, Clarksburg, Harrison County, for the term ending June 30, 2018.

273. For Member, Capitol Building Commission, David M. Marshall, Charleston, Kanawha County, for the term ending June 30, 2018.

274. For Member, Auctioneers Board of Review, Shelby Crouse, St. Albans, Kanawha County, for the term ending January 1, 2019.

275. For Member, West Virginia Board of Licensed Dietitians, Joan Starliper, Martinsburg, Berkeley County, for the term ending June 30, 2016.

276. For Member, Catastrophic Illness Commission, Victoria Shuman, Lewisburg, Greenbrier County, for the term ending August 31, 2017.

277. For Member, Catastrophic Illness Commission, Sandra L. Cotton, Morgantown, Monongalia County, for the term ending August 31, 2018.

278. For Member, Catastrophic Illness Commission, Frances Roberts-Buchanan, Huntington, Cabell County, for the term ending August 31, 2018.

279. For Member, Catastrophic Illness Commission, Jacques R. Williams, Morgantown, Monongalia County, for the term ending August 31, 2017.

280. For Member, Catastrophic Illness Commission, Patricia Davis, Romney, Hampshire County, for the term ending August 31, 2019.

281. For Member, Catastrophic Illness Commission, John R. Davidson, Jr., Charleston, Kanawha County, for the term ending August 31, 2019.

282. For Member, West Virginia Archives and History Commission, Melissa Bingmann, Morgantown, Monongalia County, for the term ending June 30, 2018.

283. For Member, West Virginia Archives and History Commission, Charles T. Ledbetter, Scott Depot, Putnam County, for the term ending June 30, 2018.

284. For Member, West Virginia Archives and History Commission, Victor Greco, Wheeling, Ohio County, for the term ending June 30, 2018.

285. For Member, West Virginia Archives and History Commission, Billy Joe Peyton, Institute, Kanawha County, for the term ending June 30, 2017.

286. For Member, West Virginia Archives and History Commission, Tommy Bailey, St. Albans, Kanawha County, for the term ending June 30, 2016.

287. For Member, West Virginia Archives and History Commission, Nat DeBruin, Huntington, Cabell County, for the term ending June 30, 2018.

288. For Member, West Virginia Archives and History Commission, Alison Thornton, Beverly, Randolph County, for the term ending June 30, 2016.

289. For Member, Board of the College Prepaid Tuition and Savings Program, Terri Underhill, Charleston, Kanawha County, for the term ending June 30, 2020.

290. For Member, Board of the College Prepaid Tuition and Savings Program, Phyllis Arnold, Charleston, Kanawha County, for the term ending June 30, 2019.

291. For Member, Shepherd University Board of Governors, Eric J. Lewis, Shepherdstown, Jefferson County, for the term ending June 30, 2019.

292. For Member, Board of Coal Mine Health and Safety, Gary Trout, Leivasy, Nicholas County, for the term ending June 30, 2018.

293. For Member, Board of Coal Mine Health and Safety, Theodore B. Hapney, Reedy, Roane County, for the term ending June 30, 2016.

294. For Member, Board of Coal Mine Health and Safety, Carl Egnor, Given, Jackson County, for the term ending June 30, 2018.

295. For Member, Board of Coal Mine Health and Safety, Chris Hamilton, Elkview, Kanawha County, for the term ending June 30, 2018.

296. For Member, Board of Coal Mine Health and Safety, Terry Hudson, Flat Top, Mercer County, for the term ending June 30, 2018.

297. For Member, Board of Coal Mine Health and Safety, Brian S. Keaton, South Charleston, Kanawha County, for the term ending June 30, 2018.

298. For Member, West Virginia Health Care Authority, Marilyn G. White, Wheeling, Ohio County, for the term ending March 12, 2021.

299. For Member and Chair, Women's Commission, Stacy C. North, Morgantown, Monongalia County, for the term ending June 30, 2018.

300. For Member and Vice-Chair, Women's Commission, Kathleen McDermott, Wheeling, Ohio County, for the term ending June 30, 2017.

301. For Member, Women's Commission, Diana Bell, Wheeling, Ohio County, for the term ending June 30, 2017.

302. For Member, Women's Commission, Robin Young, South Charleston, Kanawha County, for the term ending June 30, 2017.

303. For Member, Women's Commission, Belinda Biafore, Fairmont, Marion County, for the term ending June 30, 2018.

304. For Member, Women's Commission, Kameron Miller, Charleston, Kanawha County, for the term ending June 30, 2016.

305. For Member, Women's Commission, Jean Ford, Williamstown, Wood County, for the term ending June 30, 2016.

306. For Member, Women's Commission, Michelle Barnes Russell, Martinsburg, Berkeley County, for the term ending June 30, 2017.

307. For Member, Women's Commission, Kenyatta Grant, Elkview, Kanawha County, for the term ending June 30, 2016.

308. For Member, Broadband Enhancement Council, John Reasbeck, Wheeling, Ohio County, to serve at the will and pleasure of the Governor.

309. For Member, Broadband Enhancement Council, Robert L. Cole, Burlington, Mineral County, to serve at the will and pleasure of the Governor.

310. For Member, Broadband Enhancement Council, Robert Hinton, Buckhannon, Upshur County, to serve at the will and pleasure of the Governor.

311. For Member, Broadband Enhancement Council, Michael Shaffer, Buckhannon, Upshur County, to serve at the will and pleasure of the Governor.

312. For Member, Broadband Enhancement Council, Michael J. Holstine, Green Bank, Pocahontas County, to serve at the will and pleasure of the Governor.

313. For Member, Broadband Enhancement Council, Romie A. Hobbs, Ansted, Fayette County, to serve at the will and pleasure of the Governor.

314. For Member, Broadband Enhancement Council, Alissa Novoselick, Charleston, Kanawha County, to serve at the will and pleasure of the Governor.

315. For Member, Broadband Enhancement Council, Robert L. Morris, Elkins, Randolph County, to serve at the will and pleasure of the Governor.

316. For Member, Broadband Enhancement Council, Brittany Carns, Charleston, Kanawha County, to serve at the will and pleasure of the Governor.

317. For Member, West Virginia Center for Nursing Board of Directors, Pamela Alderman, Chapmanville, Logan County, for the term ending June 30, 2018.

318. For Member, West Virginia Center for Nursing Board of Directors, Shelia Kyle, Huntington, Cabell County, for the term ending June 30, 2016.

319. For Member, West Virginia Center for Nursing Board of Directors, Brenda Mason, Philippi, Barbour County, for the term ending June 30, 2016.

320. For Member, West Virginia Center for Nursing Board of Directors, Gregory B. Chiartas, Charleston, Kanawha County, for the term ending June 30, 2018.

321. For Member, West Virginia Center for Nursing Board of Directors, Mary Beth Barr, Petersburg, Grant County, for the term ending June 30, 2018.

322. For Member, West Virginia Center for Nursing Board of Directors, Ronald Moore, Charleston, Kanawha County, for the term ending June 30, 2018.

323. For Member, West Virginia Center for Nursing Board of Directors, Cynthia Persily, Charleston, Kanawha County, for the term ending June 30, 2020.

324. For Member, West Virginia Center for Nursing Board of Directors, Eugenia Cheryl Basham, Cool Ridge, Raleigh County, for the term ending June 30, 2016.

325. For Member, West Virginia Center for Nursing Board of Directors, Gerald Bragg, Charleston, Kanawha County, for the term ending June 30, 2016.

326. For Member, West Virginia Center for Nursing Board of Directors, Leah P. Salyers, Logan, Logan County, for the term ending June 30, 2016.

327. For Member, West Virginia Center for Nursing Board of Directors, R. Franklin Mace, Pinch, Kanawha County, for the term ending June 30, 2020.

328. For Member, Shepherd University Board of Governors, Chauncey Winbush, Elkridge, Maryland, for the term ending June 30, 2019.

329. For Member, Family Protection Services Board, Judy King, Morgantown, Monongalia County, for the term ending June 30, 2019.

330. For Member, Family Protection Services Board, Patricia M. Bailey, Beckley, Raleigh County, for the term ending June 30, 2019.

331. For Member, Family Protection Services Board, Pepper Arrowood, Charleston, Kanawha County, for the term ending June 30, 2019.

332. For Member, Family Protection Services Board, Trudi Blaylock, Charleston, Kanawha County, for the term ending June 30, 2019.

333. For Member, Family Protection Services Board, Samuel J. Leizear, Morgantown, Monongalia County, for the term ending June 30, 2019.

334. For Member, Consolidated Public Retirement Board, David Stover, Maben, Wyoming County, for the term ending June 30, 2020.

335. For Member, Consolidated Public Retirement Board, Mike Corsaro, South Charleston, Kanawha County, for the term ending June 30, 2020.

336. For Member, Consolidated Public Retirement Board, Michael S. Haney, Wheeling, Ohio County, for the term ending June 30, 2020.

337. For Member, Consolidated Public Retirement Board, Mike McKown, Charleston, Kanawha County, for the term ending June 30, 2020.

338. For Member, West Virginia Infrastructure and Jobs Development Council, Louis Spadafore, Clarksburg, Harrison County, for the term ending June 30, 2018.

339. For Member, West Virginia Infrastructure and Jobs Development Council, Parry G. Petroplus, Morgantown, Monongalia County, for the term ending June 30, 2018.

340. For Member, Workers' Compensation Board of Review, Rita F. Hedrick-Helmick, Charleston, Kanawha County, for the term ending December 31, 2020.

341. For Member, Library Commission, Dennis Taylor, Huntington, Cabell County, for the term ending June 30, 2018.

342. For Member, Library Commission, Mary Bland Strickland, Glenville, Gilmer County, for the term ending June 30, 2019.

343. For Member, Library Commission, Katy White, Charleston, Kanawha County, for the term ending June 30, 2019.

344. For Member, Library Commission, Betty Gunnoe, Martinsburg, Berkeley County, for the term ending June 30, 2016.

345. For Member, Library Commission, Connie Shumate, Bluefield, Mercer County, for the term ending June 30, 2017.

346. For Member, Library Commission, David B. Dalzell, Jr., Moundsville, Marshall County, for the term ending June 30, 2017.

347. For Member, Library Commission, David Nalker, Lewisburg, Greenbrier County, for the term ending June 30, 2017.

348. For Member, Library Commission, Charles A. Julian, Keyser, Mineral County, for the term ending June 30, 2018.

349. For Member, Library Commission, Debra K. Sullivan, Charleston, Kanawha County, for the term ending June 30, 2016.

350. For Member, Ethics Commission, Monte Williams, Morgantown, Monongalia County, for the term ending June 30, 2020.

351. For Member, Ethics Commission, Lawrence J. Tweel, Huntington, Cabell County, for the term ending June 30, 2020.

352. For Member, West Virginia Investment Management Board of Trustees, David H. McKinley, Wheeling, Ohio County, for the term ending January 31, 2021.

353. For Member, West Virginia Investment Management Board of Trustees, Steve Antoline, Mount Lookout, Nicholas County, for the term ending January 31, 2021.

354. For Member, West Virginia Investment Management Board of Trustees, Steve L. Smith, Poca, Putnam County, for the term ending January 31, 2022.

355. For Member, West Virginia Investment Management Board of Trustees, Marie L. Prezioso, Charleston, Kanawha County, for the term ending January 31, 2022.

356. For Member, West Virginia Public Port Authority, Patrick Ford, Weirton, Hancock County, for the term ending June 30, 2017.

357. For Member, West Virginia Public Port Authority, Newton Thomas, Jr., Charleston, Kanawha County, for the term ending June 30, 2018.

358. For Member, West Virginia Public Port Authority, Jim Llana, Clarksburg, Harrison County, for the term ending June 30, 2018.

359. For Member, West Virginia Public Port Authority, J. Eric Peters, Sistersville, Tyler County, for the term ending June 30, 2016.

360. For Member, West Virginia Public Port Authority, Gerald R. Sites, Petersburg, Grant County, for the term ending June 30, 2017.

361. For Member, West Virginia Public Port Authority, David Efaw, Blount, Kanawha County, for the term ending June 30, 2017.

362. For Member, West Virginia Public Port Authority, Mark Carroll, Buckhanon, Upshur County, for the term ending June 30, 2017.

363. For Member, West Virginia Public Port Authority, Stratus George Fotos, Huntington, Cabell County, for the term ending June 30, 2018.

364. For Member, West Virginia Public Port Authority, Robert Milam, Whitesville, Boone County, for the term ending June 30, 2017.

365. For Member, West Virginia Public Port Authority, Jacob Meck, Green Bank, Pocahontas County, for the term ending June 30, 2017.

366. For Member, West Virginia Emergency Medical Services Advisory Council, Stephen McIntire, Clarksburg, Harrison County, for the term ending June 30, 2017.

367. For Member, West Virginia Emergency Medical Services Advisory Council, Richard B. Rock, Clarksburg, Harrison County, for the term ending June 30, 2017.

368. For Member, West Virginia Emergency Medical Services Advisory Council, Jim Kranz, Charleston, Kanawha County, for the term ending June 30, 2017.

369. For Member, West Virginia Emergency Medical Services Advisory Council, Connie J. Hall, Coal City, Raleigh County, for the term ending June 30, 2017.

370. For Member, West Virginia Emergency Medical Services Advisory Council, Paul Seamann, Beckley, Raleigh County, for the term ending June 30, 2017.

371. For Member, West Virginia Emergency Medical Services Advisory Council, A. Gordon Merry III, Huntington, Cabell County, for the term ending June 30, 2017.

372. For Member, West Virginia Emergency Medical Services Advisory Council, Donna Steward, Springfield, Hampshire County, for the term ending June 30, 2017.

373. For Member, West Virginia Emergency Medical Services Advisory Council, Glen Satterfield, Fairmont, Marion County, for the term ending June 30, 2017.

374. For Member, West Virginia Emergency Medical Services Advisory Council, Lisa Hrutkay, Triadelphia, Ohio County, for the term ending June 30, 2018.

375. For Member, West Virginia Emergency Medical Services Advisory Council, Nancy Cartmill, Huntington, Cabell County, for the term ending June 30, 2017.

376. For Member, West Virginia Emergency Medical Services Advisory Council, David J. Weller, Hedgesville, Berkeley County, for the term ending June 30, 2017.

377. For Member, West Virginia Emergency Medical Services Advisory Council, Marsha Knight, Huntington, Cabell County, for the term ending June 30, 2017.

378. For Member, West Virginia Emergency Medical Services Advisory Council, William A. Weese, Jr., Man, Logan County, for the term ending June 30, 2017.

379. For Member, West Virginia Emergency Medical Services Advisory Council, Jeff Kady, McMechen, Marshall County, for the term ending June 30, 2018.

380. For Member, West Virginia Emergency Medical Services Advisory Council, Barry Kelly, Charleston, Kanawha County, for the term ending June 30, 2017.

381. For Member, West Virginia State University Board of Governors, E. Gail Pitchford, Charleston, Kanawha County, for the term ending June 30, 2019.

382. For Member, West Virginia State University Board of Governors, William W. Lipscomb, Institute, Kanawha County, for the term ending June 30, 2019.

383. For Member, Tourism Commission, Richard A. Atkinson III, South Charleston, Kanawha County, for the term ending May 1, 2020.

384. For Member, Tourism Commission, Kelly Palmer, Morgantown, Monongalia County, for the term ending May 1, 2019.

385. For Member, Tourism Commission, Peggy Myers-Smith, Morgantown, Monongalia County, for the term ending May 1, 2019.

386. For Member, Tourism Commission, John Klemish, White Sulphur Springs, Greenbrier County, for the term ending May 1, 2019.

387. For Member, Tourism Commission, Jeffrey T. Lusk, Man, Logan County, for the term ending May 1, 2019.

388. For Member, Tourism Commission, Ronald E. Marcus, Charles Town, Jefferson County, for the term ending May 1, 2016.

389. For Member, Tourism Commission, Joseph Manchin IV, Fairmont, Marion County, for the term ending May 1, 2016.

390. For Member, Tourism Commission, The Honorable Oshel B. Craigo, Nitro, Kanawha County, for the term ending May 1, 2019.

391. For Member, Tourism Commission, William T. Bright, Summersville, Nicholas County, for the term ending May 1, 2018.

392. For Member, Tourism Commission, Steve F. White, Charleston, Kanawha County, for the term ending May 1, 2018.

393. For Member, Tourism Commission, Sharon Horton Rowe, Lewisburg, Greenbrier County, for the term ending May 1, 2016.

394. For Member, Tourism Commission, David Arnold, Lansing, Fayette County, for the term ending May 1, 2019.

395. For Member, Tourism Commission, Stephen Hilliard, Wheeling, Ohio County, for the term ending May 1, 2016.

396. For Member, Women's Commission, Alicia Besenyei, Daniels, Raleigh County, for the term ending June 30, 2016.

397. For Member, West Virginia Board of Professional Surveyors, R. Michael Shepp, Shepherdstown, Jefferson County, for the term ending June 30, 2019.

398. For Member, West Virginia Board of Professional Surveyors, Nelson Douglass, Parkersburg, Wood County, for the term ending June 30, 2018.

399. For Member, West Virginia Board of Professional Surveyors, Tom Rayburn, Chapmanville, Logan County, for the term ending June 30, 2017.

400. For Member, West Virginia Board of Professional Surveyors, Sefton Stewart, Pineville, Wyoming County, for the term ending June 30, 2017.

401. For Member, West Virginia Board of Professional Surveyors, Paul Hill, Chapmanville, Logan County, for the term ending June 30, 2016.

402. For Member, State Personnel Board, Mark W. Carbone, Charleston, Kanawha County, for the term ending June 30, 2018.

403. For Member, State Personnel Board, Mark Dellinger, Charleston, Kanawha County, for the term ending June 30, 2017.

404. For Member, State Personnel Board, Jeff C. Woods, Hurricane, Putnam County, for the term ending June 30, 2017.

405. For Member, State Personnel Board, Anna Dailey, Charleston, Kanawha County, for the term ending June 30, 2017.

406. For Member, Surface Mine Board, The Honorable Jon Blair Hunter, Morgantown, Monongalia County, for the term ending June 30, 2016.

407. For Member, Surface Mine Board, Mark G. Schuerger, Charleston, Kanawha County, for the term ending June 30, 2016.

408. For Member, Surface Mine Board, James Smith, South Charleston, Kanawha County, for the term ending June 30, 2016.

409. For Member, Surface Mine Board, Ron Crites, Kingwood, Preston County, for the term ending June 30, 2018.

410. For Member, Surface Mine Board, Ed Grafton, Heaters, Braxton County, for the term ending June 30, 2016.

411. For Member, Surface Mine Board, Henry Rauch, Morgantown, Monongalia County, for the term ending June 30, 2018.

412. For Member, Surface Mine Board, Charles K. Meadows II, Gassaway, Braxton County, for the term ending June 30, 2019.

413. For Member, Surface Mine Board, Stephen Butler, French Creek, Upshur County, for the term ending June 30, 2019.

414. For Member, Athletic Commission, James Frio, Wheeling, Ohio County, for the term ending June 30, 2018.

415. For Member, West Virginia Board of Acupuncture, Kathryn Hastings, Charleston, Kanawha County, for the term ending June 30, 2017.

416. For Member, West Virginia Board of Acupuncture, Stacy L. Roman, Morgantown, Monongalia County, for the term ending June 30, 2018.

417. For Member, West Virginia Board of Acupuncture, Christina Peraino, Charleston, Kanawha County, for the term ending June 30, 2018.

418. For Member, West Virginia Board of Acupuncture, Tara Welty, Parkersburg, Wood County, for the term ending June 30, 2017.

419. For Member, Economic Development Authority, Jeff Vickers, Lewisburg, Greenbrier County, for the term ending June 30, 2019.

420. For Member, Economic Development Authority, Marcus W. Estlack, Parkersburg, Wood County, for the term ending June 30, 2017.

421. For Member, Economic Development Authority, Timothy R. Duke, Huntington, Cabell County, for the term ending June 30, 2018.

422. For Member, Economic Development Authority, Richard L. Slater, Hurricane, Putnam County, for the term ending June 30, 2018.

423. For Member, Economic Development Authority, Joe Eddy, Wellsburg, Brooke County, for the term ending June 30, 2019.

424. For Member, Economic Development Authority, Patrick J. Farrell, Huntington, Cabell County, for the term ending June 30, 2016.

425. For Member, Economic Development Authority, James Rick Barton, Parkersburg, Wood County, for the term ending June 30, 2016.

426. For Member, Southern West Virginia Community and Technical College Board of Governors, Wilma J. Zigmund, Logan, Logan County, for the term ending June 30, 2018.

427. For Member, Southern West Virginia Community and Technical College Board of Governors, Glenn T. Yost, Logan, Logan County, for the term ending June 30, 2016.

428. For Member, Southern West Virginia Community and Technical College Board of Governors, Kevin G. Zachary, Chapmanville, Logan County, for the term ending June 30, 2017.

429. For Member, Southern West Virginia Community and Technical College Board of Governors, Fletcher Raamie Barker, Jr., Chapmanville, Logan County, for the term ending June 30, 2017.

430. For Member, West Liberty University Board of Governors, James R. Stultz, Moundsville, Marshall County, for the term ending June 30, 2019.

431. For Member, West Liberty University Board of Governors, Jack C. Adams, McMurray, Pennsylvania, for the term ending June 30, 2016.

432. For Member, West Virginia Board of Education, Scott Rotruck, Morgantown, Monongalia County, for the term ending November 4, 2017.

433. For Member, Concord University Board of Governors, Myra Susan Rogers, Hinton, Summers County, for the term ending June 30, 2019.

434. For Member, Concord University Board of Governors, Richard Jarrell, Beckley, Raleigh County, for the term ending June 30, 2016.

435. For Member, Concord University Board of Governors, Brittany Anderson, Athens, Mercer County, for the term ending June 30, 2016.

436. For Member, Air Quality Board, Robert Orndorff, Bridgeport, Harrison County, for the term ending June 30, 2017.

437. For Member, Air Quality Board, Robert Thomas Hansen, Charleston, Kanawha County, for the term ending June 30, 2019.

438. For Member, Air Quality Board, J. Michael Koon, Weirton, Hancock County, for the term ending June 30, 2019.

439. For Member, Air Quality Board, Stanley B. Mills, Huntington, Cabell County, for the term ending June 30, 2016.

440. For Member, Air Quality Board, The Honorable Jon Blair Hunter, Morgantown, Monongalia County, for the term ending June 30, 2018.

441. For Member, West Virginia School of Osteopathic Medicine Board of Governors, Robert B. Holstein, Venice, Florida, for the term ending June 30, 2019.

442. For Member, West Virginia Municipal Pensions Oversight Board, John Kee, Charleston, Kanawha County, for the term ending January 1, 2019.

443. For Member, West Virginia Municipal Pensions Oversight Board, Stephen Neddo, Scott Depot, Putnam County, for the term ending January 1, 2018.

444. For Member, West Virginia Municipal Pensions Oversight Board, C. Seth Wilson, Morgantown, Monongalia County, for the term ending January 1, 2017.

445. For Member, West Virginia Municipal Pensions Oversight Board, Lisa K. Dooley, Madison, Boone County, for the term ending January 1, 2021.

446. For Member, West Virginia Municipal Pensions Oversight Board, John E. Dawson II, Hurricane, Putnam County, for the term ending January 1, 2020.

447. For Member, West Virginia Municipal Pensions Oversight Board, Michael Payne, Weirton, Hancock County, for the term ending January 1, 2020.

448. For Member, School Building Authority, Victor L. Gabriel, Bridgeport, Harrison County, for the term ending July 31, 2018.

449. For Member, School Building Authority, Robert Holroyd, Princeton, Mercer County, for the term ending July 31, 2018.

450. For Member, School Building Authority, Christopher G. Morris, Charleston, Kanawha County, for the term ending July 31, 2018.

451. For Member, School Building Authority, Steven L. Burton, Prichard, Wayne County, for the term ending July 31, 2018.

452. For Member, School Building Authority, T. Bart Willis, Logan, Logan County, for the term ending July 31, 2016.

453. For Member, West Virginia Board of Medicine, Ashish P. Sheth, Cross Lanes, Kanawha County, for the term ending September 30, 2019.

454. For Member, West Virginia Parole Board, Mark W. Neal, Spencer, Roane County, for the term ending June 30, 2021.

Notice of these appointments was previously provided to the appropriate legislative staff at the time the appointments were made.

Sincerely,

Earl Ray Tomblin  
Governor

cc: Clerk of the Senate  
Assistant Clerk of the Senate  
Senate Confirmations Chair

Which communication was received and referred to the Committee on Confirmations.

On motion of Senator Boley, consideration of the nominations immediately hereinbefore reported was made a special order of business for Thursday, March 10, 2016, at 11 a.m.

The Clerk then presented communications from His Excellency, the Governor, advising that on March 3, 2016, he had approved **Enr. Committee Substitute for Committee Substitute**

**for Senate Bill 387, Enr. Senate Bill 558, Enr. Committee Substitute for House Bill 4175 and Enr. Committee Substitute for House Bill 4366.**

The Senate proceeded to the fourth order of business.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Senate Bill 427**, Transferring funds from State Excess Lottery Fund to Department of Revenue.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Mike Hall,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (S. B. 427) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2122**, Making it illegal for first responders to photograph a corpse; Jonathan's Law.

And has amended same.

And,

**Eng. House Bill 4558**, Relating to victim notification and designation of additional individuals to receive notice of an offender's release.

And has amended same.

And reports the same back with the recommendation that they each do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Trump, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 2122 and Eng. H. B. 4558) contained in the preceding report from the Committee on the Judiciary were each taken up for immediate consideration, read a first time and ordered to second reading.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Eng. House Bill 2796**, Providing paid leave for certain state officers and employees during a declared state of emergency.

**Eng. House Bill 4324**, Authorizing information sharing by Workforce West Virginia.

**Eng. House Bill 4644**, Relating to jury fees.

And,

**Eng. House Bill 4674**, Relating to motor vehicle back-up lamps.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Craig Blair,  
*Chair.*

At the request of Senator Blair, unanimous consent being granted, the bills (Eng. H. B. 2796, 4324, 4644 and 4674) contained in the preceding report from the Committee on Government Organization were each taken up for immediate consideration, read a first time and ordered to second reading.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. House Bill 4157**, Supplementing, amending, and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation, Division of Highways.

**Eng. House Bill 4159**, Making a supplementary appropriation to the Public Services Commission – Motor Carrier Division.

And,

**Eng. House Bill 4160**, Making a supplementary appropriation to the Department of Revenue, Tax Division.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Mike Hall,  
*Chair.*

At the request of Senator Hall, unanimous consent being granted, the bills (Eng. H. B. 4157, 4159 and 4160) contained in the preceding report from the Committee on Finance were each taken up for immediate consideration, read a first time and ordered to second reading.

Senator Karnes, from the Committee on Natural Resources, submitted the following report, which was received:

Your Committee on Natural Resources has had under consideration

**Eng. Com. Sub. for House Bill 4279**, Relating to disposition of seized firearms.

And,

**Eng. Com. Sub. for House Bill 4330**, Relating to make unlawful to take a fish, water animal or other aquatic organism from state waters to stock a commercial pond or lake.

And reports the same back with the recommendation that they each do pass; but under the original double committee references first be referred to the Committee on the Judiciary.

Respectfully submitted,

Robert Karnes,  
*Chair.*

At the request of Senator Trump, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 4279 and 4330) were each taken up for immediate consideration, second committee references dispensed with, read a first time, and ordered to second reading.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

**Eng. Com. Sub. for House Bill 4310**, Relating to the West Virginia University Institute of Technology.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Dave Sypolt,  
*Chair.*

At the request of Senator Sypolt, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4310) contained in the preceding report from the Committee on Education was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Karnes, from the Committee on Natural Resources, submitted the following report, which was received:

Your Committee on Natural Resources has had under consideration

**Eng. House Bill 4346**, Relating to bear hunting and offenses and penalties.

And has amended same.

And,

**Eng. House Bill 4673**, Providing for a crime for the theft, damage or release of deer from private game farms.

And has amended same.

And reports the same back with the recommendation that they each do pass, as amended; but under the original double committee references first be referred to the Committee on the Judiciary.

Respectfully submitted,

Robert Karnes,  
*Chair.*

At the request of Senator Trump, unanimous consent being granted, the bills (Eng. H. B. 4346 and 4673) were each taken up for immediate consideration, second committee references dispensed with, read a first time, and ordered to second reading.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Eng. House Bill 4351**, Transferring the Cedar Lakes Camp and Conference Center from the West Virginia Board of Education to the Department of Agriculture.

And reports the same back with the recommendation that it do pass; but with the further recommendation that it first be referred to the Committee on Finance.

Respectfully submitted,

Craig Blair,  
*Chair.*

At the request of Senator Blair, unanimous consent being granted, the bill (Eng. H. B. 4351) contained in the preceding report from the Committee on Government Organization was taken up for immediate consideration, read a first time and ordered to second reading.

On motion of Senator Blair, the bill was then referred to the Committee on Finance.

Senator Karnes, from the Committee on Natural Resources, submitted the following report, which was received:

Your Committee on Natural Resources has had under consideration

**Eng. House Bill 4411**, Relating to penalty for illegally taking native brook trout.

And reports the same back with the recommendation that it do pass; but under the original double committee reference first be referred to the Committee on the Judiciary.

Respectfully submitted,

Robert Karnes,  
*Chair.*

At the request of Senator Karnes, unanimous consent being granted, the bill (Eng. H. B. 4411) contained in the preceding report from the Committee on Natural Resources was taken up for immediate consideration, read a first time, ordered to second reading and, under the original double committee reference, was then referred to the Committee on the Judiciary.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4505**, Allowing powerball winners to remain anonymous.

And,

**Eng. House Bill 4735**, Relating to the definition of health care provider, and clarifying that speech-language pathologists and audiologists are two separate providers.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Trump, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 4505 and Eng. H. B. 4735) contained in the preceding report from the Committee on the Judiciary were each taken up for immediate consideration, read a first time and ordered to second reading.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Eng. Com. Sub. for House Bill 4540**, Removing prohibition of disposal of certain electronics in landfills.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Craig Blair,  
*Chair.*

At the request of Senator Blair, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4540) contained in the preceding report from the Committee on Government Organization was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Eng. House Bill 4654**, Relating to the Executive Secretary of the Board of Registered Professional Nurses.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Craig Blair,  
*Chair.*

At the request of Senator Blair, unanimous consent being granted, the bill (Eng. H. B. 4654) contained in the preceding report from the Committee on Government Organization was taken up for immediate consideration, read a first time and ordered to second reading.

The Senate proceeded to the fifth order of business.

Senator Blair, from the committee of conference on matters of disagreement between the two houses, as to

**Eng. Senate Bill 509**, Removing 10-day requirement Division of Labor has to inspect amusement rides and attractions.

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 House to Engrossed Senate Bill 509 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 amendment of the House of Delegates, striking out everything after the enacting clause, and agree to the same as follows:

That §21-10-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

## **ARTICLE 10. AMUSEMENT RIDES AND AMUSEMENT ATTRACTIONS SAFETY ACT.**

### **§21-10-6. Permits; application; annual inspection.**

No operator or owner may knowingly permit the operation of an amusement ride or amusement attraction without a permit issued by the Division. Each year and at least fifteen days before the first time the amusement ride or amusement attraction is made available in this state for public use, an operator or owner shall apply for a permit to the Division on a form furnished by the Division and containing any information the Division may require. The Division shall, ~~upon application and~~ within ~~ten~~ thirty days of the first time in the calendar year the ride or attraction is made available in this state for public use, inspect all amusement rides and amusement attractions. The Division shall inspect all stationary rides and attractions at least once every year. The Division may inspect all mobile amusement rides and amusement attractions each time they

are disassembled and reassembled for use in this state. The Division may conduct inspections at any reasonable time without prior notice: *Provided*, That in lieu of performing its own inspection, the Division may accept inspection reports from special inspectors certified by the Division.;

And,

That both houses recede from their respective positions as to the title of the bill and agree to a new title as follows:

**Eng. Senate Bill 509**—A Bill to amend and reenact §21-10-6 of the Code of West Virginia, 1931, as amended, relating to Division of Labor inspection of amusement rides and amusement attractions.

Respectfully submitted,

Craig Blair, *Chair*, Ryan J. Ferns (*did not sign*), Herb Snyder, *Conferees on the part of the Senate*.

Lynne Arvon, *Chair*, Chris Stansbury, Phyllis White, *Conferees on the part of the House of Delegates*.

On motions of Senator Blair, severally made, the report of the committee of conference was taken up for immediate consideration and adopted.

Engrossed Senate Bill 509, as amended by the conference report, was then put upon its passage.

On the passage of the bill, as amended, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 509) passed with its conference amended title.

*Ordered,* That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

The Senate proceeded to the seventh order of business.

**Senate Concurrent Resolution 60**, Requesting interim study of feasibility of public virtual online schools.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Education; and then to the Committee on Rules.

**Senate Concurrent Resolution 61**, Requesting study on best methods to enhance communication between teachers, parents and students.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Education; and then to the Committee on Rules.

The Senate proceeded to the ninth order of business.

**Eng. Com. Sub. for House Bill 4146**, Providing insurance cover abuse-deterrent opioid analgesic drugs.

On second reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Carmichael, and by unanimous consent, further consideration of the bill was deferred until the conclusion of bills on today's first reading calendar.

**Eng. House Bill 4235**, Relating to the publication requirements of the administration of estates.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 4362**, Establishing a felony offense of strangulation.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

## **ARTICLE 2. CRIMES AGAINST THE PERSON.**

### **§61-2-9d. Strangulation; definitions; penalties.**

(a) As used in this section:

(1) “Bodily injury” means substantial physical pain, illness or any impairment of physical condition;

(2) “Strangle” means knowingly and willfully restricting another person’s air intake or blood flow by the application of pressure on the neck or throat;

(b) Any person who strangles another without that person’s consent and thereby causes the other person bodily injury or loss of consciousness is guilty of a felony and, upon conviction thereof, shall be fined not more than \$2,500 or imprisoned in a state correctional facility not less than one year or more than five years, or both fined and imprisoned.

The bill (Eng. H. B. 4362), as amended, was then ordered to third reading.

The Senate proceeded to the tenth order of business.

**Eng. Com. Sub. for House Bill 4604**, Relating to violations of the Ethics Act.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

The end of today's first reading calendar having been reached, the Senate returned to the consideration of

**Eng. Com. Sub. for House Bill 4146**, Providing insurance cover abuse-deterrent opioid analgesic drugs.

On second reading, coming up in deferred order, was read a second time.

The following amendment to the bill, from the Committee on Banking and Insurance, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §33-15-4m; that said code be amended by adding thereto a new section, designated §33-16-3y; that said code be amended by adding thereto a new section, designated §33-24-7n; that said code be amended by adding thereto a new section, designated §33-25-8k; and that said code be amended by adding thereto a new section, designated §33-25A-8m, all to read as follows:

## **CHAPTER 33. INSURANCE.**

### **ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.**

#### **§33-15-4m. Deductibles, copayments and coinsurance for abuse-deterrent opioid analgesic drugs.**

(a) As used in this section:

(1) "Abuse-deterrent opioid analgesic drug product" means a brand name or generic opioid analgesic drug product approved by the United States Food and Drug Administration with abuse-deterrent labeling that indicates its abuse-deterrent properties are expected to deter or reduce its abuse;

(2) "Cost-sharing" means any coverage limit, copayment, coinsurance, deductible or other out-of-pocket expense requirements;

(3) “Opioid analgesic drug product” means a drug product that contains an opioid agonist and is indicated by the United States Food and Drug Administration for the treatment of pain, regardless of whether the drug product:

(A) Is in immediate release or extended release form; or

(B) Contains other drug substances.

(b) Notwithstanding any provision of any accident and sickness insurance policy issued by an insurer, on or after January 1, 2017:

(1) Coverage shall be provided for at least one abuse-deterrent opioid analgesic drug product for each active opioid analgesic ingredient;

(2) Cost-sharing for brand name abuse-deterrent opioid analgesic drug products shall not exceed the lowest tier for brand name prescription drugs on the entity’s formulary for prescription drug coverage;

(3) Cost-sharing for generic abuse-deterrent opioid analgesic drug products covered pursuant to this section shall not exceed the lowest cost-sharing level applied to generic prescription drugs covered under the applicable health plan or policy; and

(4) An entity subject to this section may not require an insured or enrollee to first use an opioid analgesic drug product without abuse-deterrent labeling before providing coverage for an abuse-deterrent opioid analgesic drug product covered on the entity’s formulary for prescription drug coverage.

(c) Notwithstanding subdivision (3), subsection (b) of this section, an entity subject to this section may undertake utilization review, including preauthorization, for an abuse-deterrent opioid analgesic drug product covered by the entity, if the same utilization review requirements are applied to nonabuse-deterrent opioid analgesic drug products and with the same type of drug release, immediate or extended.

(d) For purposes of subsection (b) of this section, the lowest tier and the lowest cost-sharing level shall not mean the cost-sharing tier applicable to preventive care services which are required to be provided at no cost-sharing under the Patient Protection and Affordable Care Act.

## **ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.**

### **§33-16-3y. Deductibles, copayments and coinsurance for abuse-deterrent opioid analgesic drugs.**

(a) As used in this section:

(1) “Abuse-deterrent opioid analgesic drug product” means a brand name or generic opioid analgesic drug product approved by the United States Food and Drug Administration with abuse-deterrent labeling that indicates its abuse-deterrent properties are expected to deter or reduce its abuse;

(2) “Cost-sharing” means any coverage limit, copayment, coinsurance, deductible or other out-of-pocket expense requirements;

(3) “Opioid analgesic drug product” means a drug product that contains an opioid agonist and is indicated by the United States Food and Drug Administration for the treatment of pain, regardless of whether the drug product:

(A) Is in immediate release or extended release form; or

(B) Contains other drug substances.

(b) Notwithstanding any provision of any group accident and sickness insurance policy issued by an insurer pursuant to this article, on or after January 1, 2017:

(1) Coverage shall be provided for at least one abuse-deterrent opioid analgesic drug product for each active opioid analgesic ingredient;

(2) Cost-sharing for brand name abuse-deterrent opioid analgesic drug products shall not exceed the lowest tier for brand name prescription drugs on the entity's formulary for prescription drug coverage;

(3) Cost-sharing for generic abuse-deterrent opioid analgesic drug products covered pursuant to this section shall not exceed the lowest cost-sharing level applied to generic prescription drugs covered under the applicable health plan or policy; and

(4) An entity subject to this section may not require an insured or enrollee to first use an opioid analgesic drug product without abuse-deterrent labeling before providing coverage for an abuse-deterrent opioid analgesic drug product covered on the entity's formulary for prescription drug coverage.

(c) Notwithstanding subdivision (3), subsection (b) of this section, an entity subject to this section may undertake utilization review, including preauthorization, for an abuse-deterrent opioid analgesic drug product covered by the entity, if the same utilization review requirements are applied to nonabuse-deterrent opioid analgesic drug products and with the same type of drug release, immediate or extended.

(d) For purposes of subsection (b) of this section, the lowest tier and the lowest cost-sharing level shall not mean the cost-sharing tier applicable to preventive care services which are required to be provided at no cost-sharing under the Patient Protection and Affordable Care Act.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS,  
MEDICAL SERVICE CORPORATIONS,  
DENTAL SERVICE CORPORATIONS AND  
HEALTH SERVICE CORPORATIONS.**

**§33-24-7n. Deductibles, copayments and coinsurance for  
abuse-deterrent opioid analgesic drugs.**

(a) As used in this section:

(1) “Abuse-deterrent opioid analgesic drug product” means a brand name or generic opioid analgesic drug product approved by the United States Food and Drug Administration with abuse-deterrent labeling that indicates its abuse-deterrent properties are expected to deter or reduce its abuse;

(2) “Cost-sharing” means any coverage limit, copayment, coinsurance, deductible or other out-of-pocket expense requirements;

(3) “Opioid analgesic drug product” means a drug product that contains an opioid agonist and is indicated by the United States Food and Drug Administration for the treatment of pain, regardless of whether the drug product:

(A) Is in immediate release or extended release form; or

(B) Contains other drug substances.

(b) Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, on or after January 1, 2017:

(1) Coverage shall be provided for at least one abuse-deterrent opioid analgesic drug product for each active opioid analgesic ingredient;

(2) Cost-sharing for brand name abuse-deterrent opioid analgesic drug products shall not exceed the lowest tier for brand name prescription drugs on the entity’s formulary for prescription drug coverage;

(3) Cost-sharing for generic abuse-deterrent opioid analgesic drug products covered pursuant to this section shall not exceed the lowest cost-sharing level applied to generic prescription drugs covered under the applicable health plan or policy; and

(4) An entity subject to this section may not require an insured or enrollee to first use an opioid analgesic drug product without abuse-deterrent labeling before providing coverage for an abuse-

deterrent opioid analgesic drug product covered on the entity's formulary for prescription drug coverage.

(c) Notwithstanding subdivision (3), subsection (b) of this section, an entity subject to this section may undertake utilization review, including preauthorization, for an abuse-deterrent opioid analgesic drug product covered by the entity, if the same utilization review requirements are applied to nonabuse-deterrent opioid analgesic drug products and with the same type of drug release, immediate or extended.

(d) For purposes of subsection (b) of this section, the lowest tier and the lowest cost-sharing level shall not mean the cost-sharing tier applicable to preventive care services which are required to be provided at no cost-sharing under the Patient Protection and Affordable Care Act.

## **ARTICLE 25. HEALTH CARE CORPORATIONS.**

### **§33-25-8k. Deductibles, copayments and coinsurance for abuse-deterrent opioid analgesic drugs.**

(a) As used in this section:

(1) "Abuse-deterrent opioid analgesic drug product" means a brand name or generic opioid analgesic drug product approved by the United States Food and Drug Administration with abuse-deterrent labeling that indicates its abuse-deterrent properties are expected to deter or reduce its abuse;

(2) "Cost-sharing" means any coverage limit, copayment, coinsurance, deductible or other out-of-pocket expense requirements;

(3) "Opioid analgesic drug product" means a drug product that contains an opioid agonist and is indicated by the United States Food and Drug Administration for the treatment of pain, regardless of whether the drug product:

(A) Is in immediate release or extended release form; or

(B) Contains other drug substances.

(b) Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, on or after January 1, 2017:

(1) Coverage shall be provided for at least one abuse-deterrent opioid analgesic drug product for each active opioid analgesic ingredient;

(2) Cost-sharing for brand name abuse-deterrent opioid analgesic drug products shall not exceed the lowest tier for brand name prescription drugs on the entity's formulary for prescription drug coverage;

(3) Cost-sharing for generic abuse-deterrent opioid analgesic drug products covered pursuant to this section shall not exceed the lowest cost-sharing level applied to generic prescription drugs covered under the applicable health plan or policy; and

(4) An entity subject to this section may not require an insured or enrollee to first use an opioid analgesic drug product without abuse-deterrent labeling before providing coverage for an abuse-deterrent opioid analgesic drug product covered on the entity's formulary for prescription drug coverage.

(c) Notwithstanding subdivision (3), subsection (b) of this section, an entity subject to this section may undertake utilization review, including preauthorization, for an abuse-deterrent opioid analgesic drug product covered by the entity, if the same utilization review requirements are applied to nonabuse-deterrent opioid analgesic drug products and with the same type of drug release, immediate or extended.

(d) For purposes of subsection (b) of this section, the lowest tier and the lowest cost-sharing level shall not mean the cost-sharing tier applicable to preventive care services which are required to be provided at no cost-sharing under the Patient Protection and Affordable Care Act.

**ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION  
ACT.**

**§33-25A-8m. Deductibles, copayments and coinsurance for  
abuse-deterrent opioid analgesic drugs.**

(a) As used in this section:

(1) “Abuse-deterrent opioid analgesic drug product” means a brand name or generic opioid analgesic drug product approved by the United States Food and Drug Administration with abuse-deterrent labeling that indicates its abuse-deterrent properties are expected to deter or reduce its abuse;

(2) “Cost-sharing” means any coverage limit, copayment, coinsurance, deductible or other out-of-pocket expense requirements;

(3) “Opioid analgesic drug product” means a drug product that contains an opioid agonist and is indicated by the United States Food and Drug Administration for the treatment of pain, regardless of whether the drug product:

(A) Is in immediate release or extended release form; or

(B) Contains other drug substances.

(b) Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, on or after January 1, 2017:

(1) Coverage shall be provided for at least one abuse-deterrent opioid analgesic drug product for each active opioid analgesic ingredient;

(2) Cost-sharing for brand name abuse-deterrent opioid analgesic drug products shall not exceed the lowest tier for brand name prescription drugs on the entity’s formulary for prescription drug coverage;

(3) Cost-sharing for generic abuse-deterrent opioid analgesic drug products covered pursuant to this section shall not exceed the

lowest cost-sharing level applied to generic prescription drugs covered under the applicable health plan or policy; and

(4) An entity subject to this section may not require an insured or enrollee to first use an opioid analgesic drug product without abuse-deterrent labeling before providing coverage for an abuse-deterrent opioid analgesic drug product covered on the entity's formulary for prescription drug coverage.

(c) Notwithstanding subdivision (3), subsection (b) of this section, an entity subject to this section may undertake utilization review, including preauthorization, for an abuse-deterrent opioid analgesic drug product covered by the entity, if the same utilization review requirements are applied to nonabuse-deterrent opioid analgesic drug products and with the same type of drug release, immediate or extended.

(d) For purposes of subsection (b) of this section, the lowest tier and the lowest cost-sharing level shall not mean the cost-sharing tier applicable to preventive care services which are required to be provided at no cost-sharing under the Patient Protection and Affordable Care Act.

The bill (Eng. Com. Sub. for H. B. 4146), as amended, was then ordered to third reading.

The Senate proceeded to the thirteenth order of business.

At the request of Senator Plymale, the name of Senator Plymale was removed as a sponsor of **Senate Bill 569** (*Regulation of chronic pain clinics*).

At the request of Senator Takubo, and by unanimous consent, the Senate returned to the eleventh order of business and the introduction of guests.

Pending announcement of meetings of standing committees of the Senate, including a minority party caucus,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Saturday, March 5, 2016, at 9 a.m.

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## SATURDAY, MARCH 5, 2016

The Senate met at 9 a.m.

(Senator Cole, Mr. President, in the Chair.)

Prayer was offered by the Honorable Charles S. Trump IV, a senator from the fifteenth district.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Sue Cline, a senator from the ninth district.

Pending the reading of the Journal of Friday, March 4, 2016,

At the request of Senator Boley, unanimous consent being granted, the Journal was approved and the further reading thereof dispensed with.

The Senate proceeded to the second order of business and the introduction of guests.

The Senate then proceeded to the third order of business.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Com. Sub. for Senate Bill 13**, Increasing penalties for overtaking and passing stopped school buses.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting section and inserting in lieu thereof the following:

**ARTICLE 12. SPECIAL STOPS REQUIRED.****§17C-12-7. Overtaking and passing school bus; penalties; signs and warning lights upon buses; requirements for sale of buses; mounting of cameras; educational information campaign; limitation on idling.**

(a) This law shall be known as Haven's Law.

(b) The driver of a vehicle, upon meeting or overtaking from either direction any school bus which has stopped for the purpose of receiving or discharging any school children, shall stop the vehicle before reaching the school bus when there is in operation on the school bus flashing warning signal lights, as referred to in section eight of this article, and the driver may not proceed until the school bus resumes motion, or is signaled by the school bus driver to proceed or the visual signals are no longer actuated. This section applies wherever the school bus is receiving or discharging children including, but not limited to, any street, highway, parking lot, private road or driveway: *Provided*, That the driver of a vehicle upon a controlled access highway need not stop upon meeting or passing a school bus which is on a different roadway or adjacent to the highway and where pedestrians are not permitted to cross the roadway.

~~(b)~~ (c)(1) Where the actual identity of the operator of a motor vehicle operated in violation of subsection (a) of this section is known Any driver acting in violation of subsection (a) of this section then that driver is guilty of a misdemeanor and, upon conviction for a first offense, shall be fined not less than \$150 or more than \$500, or confined not less than two days nor more than six months and shall be fined not less than \$200 nor more than \$2,500: *Provided*, That such jail term shall include actual confinement of not less than twenty-four hours: *Provided, however*, That a person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense. Upon conviction of a second violation of subsection (a), the driver shall be fined \$500, or confined in jail not more than six months, or both fined and confined in jail for not

more than one week nor more than one year, and shall be fined not less than \$2,500 nor more than \$5,000. Upon conviction of a third or subsequent violation of subsection (a), the driver shall be fined \$500, and confined not less than twenty four hours in jail but not more than six months is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more than five years and the court may, in its discretion, impose a fine of not less than \$5,000 nor more than \$10,000.

(2) In addition to the penalties prescribed in subdivision (1) of this subsection, the Commissioner of Motor Vehicles shall, upon conviction, suspend the driver's license of the person so convicted:

(1) Of a first offense under subdivision (1) of this subsection, for a period of thirty days;

(2) Of a second offense under subdivision (1) of this subsection, for a period of ninety days; or

(3) Of a third or subsequent offense under subdivision (1) of this subsection, for a period of one hundred eighty days.

(e) (d) In addition to the penalties prescribed in subsections (b) of this section, the Commissioner of Motor Vehicles shall, upon conviction, suspend the driver's license of the person so convicted:

(1) Of a first offense under subsection (b) of this section, for a period of thirty days;

(2) Of a second offense under subsection (b) of this section, for a period of ninety days; or

(3) Of a third or subsequent offense under subsection (b) of this section, for a period of one hundred and eighty days.

Where the actual identity of the operator of a motor vehicle operated in violation of subsection (a) of this section is unknown but the license plate number of the motor vehicle is known, it may be inferred that the operator was an owner or lessee of the motor vehicle, and the Commissioner of Motor Vehicles shall

(1) For a first offense under subsection (b) of this section, assess fees of not less than \$200 nor more than \$2,500;

(2) For a second offense under subsection (b) of this section, assess fees of not less than \$2,500 nor more than \$5,000; and

(3) For a third or subsequent offense under subsection (b) of this section, assess fees of not less than \$5,000 nor more than \$10,000.

Where there is more than one registered owner or lessee, the inference created by this subsection shall apply to the first listed owner or lessee as found on the motor vehicle registration.

~~(d)~~ (e) Any driver of a vehicle who willfully violates the provisions of subsection (a) of this section and the violation causes serious bodily injury to any person other than the driver, is guilty of a felony and, upon conviction, shall be confined in a state correctional facility not less than ~~one two~~ years nor more than ~~three ten~~ years and fined not less than \$500 \$2,000 nor more than ~~\$2,000~~ \$15,000. Any driver of a vehicle who willfully violates the provisions of subsection (a) of this section and the violation causes a bodily injury to any person other than himself or herself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one week nor more than one year, or fined not less than \$1,000 nor more than \$5,000, or both.

~~(e)~~ (f) Any driver of a vehicle who willfully violates the provisions of subsection (a) of this section, and the violation causes death, is guilty of a felony and, upon conviction, shall be confined in a state correctional facility not less than ~~one three~~ years nor more than ~~ten fifteen~~ years and fined not less than \$1,000 \$5,000 nor more than ~~\$3,000~~ \$20,000: *Provided*, That any death charged under this subsection must occur within one year of the offense.

~~(f)~~ (g) Every bus used for the transportation of school children shall bear upon the front and rear of the bus a plainly visible sign containing the words "school bus" in letters not less than eight inches in height. When a contract school bus is being operated upon a highway for purposes other than the actual transportation of

children either to or from school, all markings on the contract school bus indicating “school bus” shall be covered or concealed. Any school bus sold or transferred to another owner by a county board of education, agency or individual shall have all flashing warning lights disconnected and all lettering removed or permanently obscured, except when sold or transferred for the transportation of school children.

~~(g)~~ (h) Every county board of education is hereby authorized to mount a camera on any school bus for the purpose of enforcing this section or for any other lawful purpose.

~~(h)~~ (i) To the extent that state, federal or other funds are available, the State Police shall conduct an information campaign to educate drivers concerning the provisions of this section and the importance of school bus safety.

~~(i)~~ (j) The State Board of Education shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code governing the idling of school buses.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 13**—A Bill to amend and reenact §17C-12-7 of the Code of West Virginia, 1931, as amended, relating to the offense of overtaking and passing school bus stopped for the purpose of receiving and discharging children; designated as “Haven’s Law”; increasing criminal penalties for the offense where the identity of the driver is known; providing for license suspension for the offense where the identity of the driver is known; providing for assessment of administrative fees against the registered owner or lessee in the event that the driver of the passing vehicle cannot be ascertained at time of alleged offense; and increasing penalties for persons convicted of the offense where bodily injury or serious bodily injury occur as a result of the offense.

On motion of Senator Carmichael, the Senate refused to concur in the foregoing House amendments to the bill (Eng. Com. Sub. for S. B. 13) and requested the House of Delegates to recede therefrom.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from The Clerk of the House of Delegates announced the amendment by that body to the title of the bill, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Com. Sub. for Com. Sub. for Senate Bill 27**, Permitting county commissions hire outside attorneys for collection of taxes through courts.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the title of the bill was reported by the Clerk:

**Eng. Com. Sub. for Com. Sub. for Senate Bill 27**—A Bill to amend and reenact §7-5-24 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11A-2-2 of said code, all relating to permitting county commissions to hire outside attorneys to prosecute actions or defend the county's interest in any proceeding before any United States Bankruptcy Court; providing for outside attorney to be reimbursed for actual expenses directly incurred in the representation; providing that engagements of outside counsel be in writing; requiring that hourly engagements with outside attorneys contain a cumulative cap of any hourly fees charged on a per-case basis; requiring that contingency fee agreements with outside attorneys contain a percentage cap on money or things of value recovered; and requiring attorney fees or costs be paid prior to distribution to taxing units.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment to the title of the bill.

Engrossed Committee Substitute for Committee Substitute for Senate Bill 27, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 27) passed with its House of Delegates amended title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, to take effect from passage, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Com. Sub. for Senate Bill 254**, Not allowing county park commissions to prohibit firearms in facilities.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page one, section five, line twelve, by striking out the word “court” and inserting in lieu thereof the word “commission”;

And,

On page one, section five, line thirteen, by striking out the word “court” and inserting in lieu thereof the word “commission”.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Senate Bill 254, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 254) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 254) takes effect from passage.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Com. Sub. for Senate Bill 283**, Creating crime when fire is caused by operation of a clandestine drug laboratory.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §60A-4-411 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**§60A-4-411. Operating or attempting to operate clandestine drug laboratories; offenses; penalties.**

(a) Any person who operates or attempts to operate a clandestine drug laboratory is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than two years nor more than ten years or fined not less than \$5,000 nor more than \$25,000, or both.

(b) Any person who operates or attempts to operate a clandestine drug laboratory and who as a result of, or in the course of doing so, causes to be burned any dwelling, outbuilding, building or structure of any class or character is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more than ten years or fined not less than \$1,000 nor more than \$5,000, or both imprisoned and fined.

~~(b)~~ (c) For purposes of this section, a “clandestine drug laboratory” means any property, real or personal, on or in which a person assembles any chemicals or equipment or combination thereof for the purpose of manufacturing methamphetamine, methylenedioxymethamphetamine or lysergic acid diethylamide in violation of the provisions of section four hundred one of this article.

(d) The offenses in subsections (a) and (b) of this section are separate and distinct offenses, and shall not be construed to be a lesser included offense of each other.

(e) For purposes of W.Va. Code §61-2-1, both subsection (a) and (b) of this section shall be deemed qualifying felony offenses of manufacturing and delivery of a controlled substance.

~~(e)~~ (f) Any person convicted of a violation of subsection (a) or (b) of this section shall be responsible for all reasonable costs, if any, associated with remediation of the site of the clandestine drug laboratory.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 283**—A Bill to amend and reenact §60A-4-411 of the Code of West Virginia, 1931, as amended, relating to creating a crime of causing the burning of a dwelling, outbuilding, building or other structure while operating or attempting to operate a clandestine drug laboratory; establishing criminal penalties; clarifying the offense as a separate and distinct offense from operation or attempted operation of a clandestine drug laboratory; making clear that operation or attempted operation of a clandestine drug lab is not a lesser included offense; providing that the offenses are qualifying felony offenses of manufacturing and delivery of a controlled substance for purposes of first degree murder; and providing for payment of all reasonable costs, if any, associated with remediation of the site of the clandestine drug laboratory upon conviction.

On motion of Senator Carmichael, the Senate refused to concur in the foregoing House amendments to the bill (Eng. Com. Sub. for S. B. 283) and requested the House of Delegates to recede therefrom.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage, to take effect from passage, of

**Eng. Senate Bill 379**, Relating to candidate filing fees.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the adoption of the committee of conference report, passage as amended by the conference report with its conference amended title, of

**Eng. Senate Bill 509**, Removing 10-day requirement Division of Labor has to inspect amusement rides and attractions.

A message from The Clerk of the House of Delegates announced the amendment by that body to the title of the bill, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Com. Sub. for Senate Bill 582**, Providing refundable tax credit for motor fuel sold for use or consumed in railroad diesel locomotives.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the title of the bill was reported by the Clerk:

**Eng. Com. Sub. for Senate Bill 582**—A Bill to amend and reenact §11-14C-9 of the Code of West Virginia, 1931, as amended, relating to providing a refundable exemption from the flat rate component of the state motor fuel excise tax on all gallons

of motor fuel sold for use or consumed in railroad diesel locomotives; setting a cap on the exemption per year; requiring a proportionate disbursement if claims exceed the cap; and allowing the Tax Commissioner to propose legislative rules to administer this exemption.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment to the title of the bill.

Engrossed Committee Substitute for Senate Bill 582, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 582) passed with its House of Delegates amended title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments, as amended by the House of Delegates, passage as amended, to take effect July 1, 2016, and requested the concurrence of the Senate in the House of Delegates amendment to the Senate amendments, as to

**Eng. Com. Sub. for House Bill 4228**, Relating to transportation network companies.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the Senate amendments to the bill was reported by the Clerk:

On page eight, section ten, by striking out all of subsection (c) and inserting in lieu thereof a new subsection, designated subsection (c), to read as follows:

(c) In a claims coverage investigation, transportation network companies and any insurer providing coverage under section eight of this article shall cooperate to facilitate the exchange of relevant information with directly involved parties and any insurer of the transportation network company driver if applicable, including the precise times that a transportation network company driver logged on and off of the transportation network company's digital network in the twelve hour period immediately preceding and in the twelve hour period immediately following the accident and disclose to one another a clear description of the coverage, exclusions and limits provided under any automobile insurance maintained under section eight of this article.

On motion of Senator Carmichael, the Senate concurred in the foregoing House of Delegates amendment to the Senate amendments to the bill.

Engrossed Committee Substitute for House Bill 4228, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sybolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4228) passed with its Senate amended title.

Senator Carmichael moved that the bill take effect July 1, 2016.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4228) takes effect July 1, 2016.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

### **Executive Communications**

Senator Cole (Mr. President) laid before the Senate the following communication from His Excellency, the Governor, which was read by the Clerk:

STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
CHARLESTON

March 3, 2016

### **VIA HAND DELIVERY**

The Honorable Tim Armstead  
Speaker, West Virginia House of Delegates  
Room 228M, Building 1  
State Capitol Complex

1900 Kanawha Blvd., East  
Charleston, West Virginia 25305

Re: Enrolled Committee Substitute for House Bill 4145

Dear Speaker Armstead:

Pursuant to the provisions of section fourteen, article VII of the Constitution of West Virginia, I hereby disapprove and return the Enrolled Committee Substitute for House Bill 4145. This bill authorizes, among other things, United States citizens or legal residents of at least twenty-one years of age to carry a concealed deadly weapon without a license, provided they are not otherwise prohibited from possessing a firearm under state or federal law. Law enforcement officers throughout West Virginia have voiced overwhelming opposition to this bill. In light of their concerns and in the interest of public safety, the exercise of my veto power is appropriate.

Further, I wish to point out that the tax credit provision in § 61-7-4(r) is ill-advised and unclear. *See* p. 9, lines 165-168. Not only will the tax credit have a negative fiscal impact on the state's budget, it will be difficult for the State Tax Department to administer. For example, the tax credit provision fails to identify the tax to which it applies, whether the credit is refundable, and whether it is a one-time credit or may be claimed in subsequent years.

In view of the foregoing, I hereby disapprove and return the Enrolled Committee Substitute for House Bill 4145.

Sincerely,

Earl Ray Tomblin  
Governor

cc: The Hon. William P. Cole III  
President of the Senate  
The Hon. Natalie E. Tennant  
Secretary of State

A message from The Clerk of the House of Delegates announced the reconsideration and passage of a bill disapproved and returned by the Governor with his objections, and requested the concurrence of the Senate in the passage, of

**Enr. Com. Sub. for House Bill 4145**, Relating to carry or use of a handgun or deadly weapon.

Senator Carmichael moved that in accordance with Section 14, Article VII of the Constitution of the State of West Virginia, the Senate proceed to reconsider

**Enr. Com. Sub. for House Bill 4145**, Relating to carry or use of a handgun or deadly weapon.

Heretofore disapproved and returned by His Excellency, the Governor, with his objections.

The question being on the adoption of Senator Carmichael's motion that the Senate reconsider Enrolled Committee Substitute for House Bill 4145, the same was put and prevailed.

The question now being on the passage of the bill, disapproved by the Governor.

Pending discussion,

The question being "Shall Enrolled Committee Substitute for House Bill 4145 pass?"

On the passage of the bill, the yeas were: Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Karnes, Kessler, Kirkendoll, Leonhardt, Maynard, Mullins, Plymale, Prezioso, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams and Cole (Mr. President)—23.

The nays were: Ashley, Beach, Facemire, Hall, Laird, Miller, Palumbo, Romano, Snyder, Woelfel and Yost—11.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Enr. Com.

Sub. for H. B. 4145) passed with its title, as a result of the objections of the Governor.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

The Clerk then presented a communication from His Excellency, the Governor, advising that on March 4, 2016, he had approved **Enr. Committee Substitute for House Bill 3019**.

The Senate proceeded to the fourth order of business.

Senator Maynard, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 4th day of March, 2016, 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. 2800)**, Adding law-enforcement officers' contact information and names of family members to the list of exemptions from public records requests.

**(Second Enrollment Com. Sub. for H. B. 4007)**, Relating generally to appointment of attorneys to assist the Attorney General.

And,

**(Com. Sub. for H. B. 4163)**, Providing the authority and procedure for municipalities to give notice to, and publish the names of, entities delinquent in paying business and occupation taxes.

Respectfully submitted,

Mark R. Maynard,  
*Chair, Senate Committee.*  
John B. McCuskey,  
*Chair, House Committee.*

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2588**, Relating to the filing of financial statements with the Secretary of State.

And has amended same.

**Eng. Com. Sub. for House Bill 4587**, Relating to violations associated with absent voters' ballots.

And has amended same.

And,

**Eng. House Bill 4725**, Relating to providing the procedures for the filling of vacancies in the offices of justices of the Supreme Court of Appeals, circuit judge, family court judge or magistrate and making certain clarifications.

And has amended same.

And reports the same back with the recommendation that they each do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Trump, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 2588 and 4587 and Eng. H. B. 4725) contained in the preceding report from the Committee on the Judiciary were each taken up for immediate consideration, read a first time and ordered to second reading.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. Com. Sub. for House Bill 2615**, West Virginia Small Business Capital Act.

And,

**Eng. Com. Sub. for House Bill 4188**, Relating to the development and implementation of a program to facilitate commercial sponsorship of rest areas.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Mike Hall,  
*Chair.*

At the request of Senator Hall, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 2615 and 4188) contained in the preceding report from the Committee on Finance were each taken up for immediate consideration, read a first time and ordered to second reading.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Eng. Com. Sub. for House Bill 2801**, Permitting county commissions and municipalities to designate areas of special interest which will not affect the use of property in those areas.

**Eng. Com. Sub. for House Bill 4225**, Relating to patriotic displays at public buildings.

And,

**Eng. Com. Sub. for House Bill 4319**, Including in the definition of "veteran" active members of the Guard and Reserve in order to exempt them from fees charged by the Secretary of State.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Craig Blair,  
*Chair.*

At the request of Senator Blair, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 2801, 4225 and 4319) contained in the preceding report from the Committee on Government Organization were each taken up for immediate consideration, read a first time and ordered to second reading.

On motion of Senator Blair, Engrossed Committee Substitute for House Bill 4319 was then referred to the Committee on Finance.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. Com. Sub. for House Bill 2823**, Eliminating the street and interurban and electric railways tax.

And,

**Eng. Com. Sub. for House Bill 4377**, Eliminating exemption from hotel occupancy taxes on rental of hotel and motel rooms for thirty or more consecutive days.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Mike Hall,  
*Chair.*

At the request of Senator Hall, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 2823 and 4377) contained in the preceding report from the Committee on Finance

were each taken up for immediate consideration, read a first time and ordered to second reading.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. Com. Sub. for House Bill 4209**, Relating generally to health care provider taxes.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Mike Hall,  
*Chair.*

At the request of Senator Hall, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4209) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4213**, Uniform Deployed Parents Custody and Visitation Act.

And has amended same.

And,

**Eng. House Bill 4489**, Relating generally to human trafficking.

And has amended same.

And reports the same back with the recommendation that they each do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Trump, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 4213 and Eng. H. B. 4489) contained in the preceding report from the Committee on the Judiciary were each taken up for immediate consideration, read a first time and ordered to second reading.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

**Eng. Com. Sub. for House Bill 4295**, Relating to the School Innovation Zones Act.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Dave Sypolt,  
*Chair.*

At the request of Senator Hall, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4295) was taken up for immediate consideration, second committee reference dispensed with, read a first time and ordered to second reading.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

**Eng. Com. Sub. for House Bill 4322**, Expanding the Learn and Earn Program.

And,

**Eng. House Bill 4617**, Authorizing legislative rules of the Higher Education Policy Commission regarding the Underwood-Smith Teacher Scholarship Program and Nursing Scholarship Program.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Dave Sypolt,  
*Chair.*

At the request of Senator Sypolt, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 4322 and Eng. H. B. 4617) contained in the preceding report from the Committee on Education were each taken up for immediate consideration, read a first time and ordered to second reading.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. Com. Sub. for House Bill 4433**, Allowing an adjustment to gross income for calculating the personal income tax liability of certain retirees.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Mike Hall,  
*Chair.*

At the request of Senator Hall, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4433) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4520**, Clarifying that certain hospitals have only one governing body whose meetings shall be open to the public.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Trump, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4520) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Eng. Com. Sub. for House Bill 4561**, Creating a special hiring process for West Virginia Division of Highways employees.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Craig Blair,  
*Chair.*

At the request of Senator Trump, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4561) contained in the preceding report from the Committee on Government Organization was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. Com. Sub. for House Bill 4612**, Relating generally to tax increment financing and economic opportunity development districts.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Mike Hall,  
*Chair.*

At the request of Senator Hall, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4612) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. House Bill 4705**, Relating to adding an additional type of West Virginia source income of nonresident individual.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Mike Hall,  
*Chair.*

At the request of Senator Hall, unanimous consent being granted, the bill (Eng. H. B. 4705) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Boso, from the Committee on Energy, Industry and Mining, submitted the following report, which was received:

Your Committee on Energy, Industry and Mining has had under consideration

**Eng. House Bill 4726**, Relating to coal mining generally.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Gregory L. Boso,  
*Chair.*

At the request of Senator Boso, unanimous consent being granted, the bill (Eng. H. B. 4726) contained in the preceding report from the Committee on Energy, Industry and Mining was taken up for immediate consideration, read a first time and ordered to second reading.

The Senate proceeded to the sixth order of business.

Senators Boley, Unger, Stollings and Ashley offered the following resolution:

**Senate Concurrent Resolution 63**—Requesting the Joint Committee on Government and Finance study the demand for, and shortage of, teachers throughout West Virginia.

Whereas, The West Virginia State Superintendent of Schools has stated that there are approximately six hundred classroom vacancies for educational personnel; and

Whereas, The Nationwide Listing of Teacher Shortage Areas produced by the United States Department of Education recognizes critical shortages of teachers in nearly every county of the state and in most disciplines in the curriculum from prekindergarten to grade twelve; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the demand for, and shortage of, teachers throughout West Virginia; and, be it

*Further Resolved,* That the areas to be investigated should include, but not be limited to, the following matters: The shortage of teachers, by subject, in the elementary grades, middle grades and high school grades based upon posted position openings; the number of teachers licensed or certified in West Virginia by subject in elementary, middle school and high school education for the past ten years; the number of students graduating from a West Virginia institution of higher education with an undergraduate degree in education for the past ten years; the number of teachers currently teaching outside their area of specialty, broken down by county and by elementary, middle and high school; and the current methods and requirements for teacher certification that exist for elementary and secondary education teachers in this state; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2017, on its findings, conclusions and recommendations, together with drafts of any legislation necessary 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.

Which, under the rules, lies over one day.

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for House Bill 4146**, Providing insurance cover abuse-deterrent opioid analgesic drugs.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Takubo—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4146) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 4235**, Relating to the publication requirements of the administration of estates.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Takubo—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4235) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. House Bill 4235**—A Bill to amend and reenact §44-3A-4, §44-3A-4a and §44-3A-32 of the Code of West Virginia, 1931, as amended, all relating to notice requirements for claims against an estate; requiring claims against estates to be filed within sixty days of publication of Class II legal advertisement; modifying language of advertisement to reflect sixty-day deadline for exhibiting claims against estate of decedent; authorizing fiduciary supervisor to proceed with supervision of estates following expiration of sixty-day deadline; permitting closure after sixty days following publication by short form settlements of estates; and barring recovery for claims against an estate not presented within specified time period except under certain circumstances.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 4362**, Establishing a felony offense of strangulation.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Takubo—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4362) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. House Bill 4362**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-2-9d, relating to crimes against the person; establishing the felony offense of strangulation; defining terms; and providing penalties.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

The Senate proceeded to the ninth order of business.

**Senate Bill 427**, Transferring funds from State Excess Lottery Fund to Department of Revenue.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Eng. Com. Sub. for House Bill 2122**, Making it illegal for first responders to photograph a corpse; Jonathan's Law.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-8-30, to read as follows:

**ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY  
AND DECENCY.**

**§61-8-30. Photography of a corpse or person being provided  
medical care or assistance; prohibitions;  
exceptions; Jonathan's Law.**

(a) As used in this section:

(1) "Disclose" means to sell, manufacture, give, provide, lend, trade, mail, deliver, transfer, publish, distribute, circulate, disseminate, present, exhibit, advertise, offer or otherwise make available or make known to any third party.

(2) "First responder" means law-enforcement officers, firefighters, emergency medical services personnel and other similar individuals authorized to respond to calls for public safety services or emergency medical assistance.

(b)(1) A first responder who is present at a motor vehicle accident or other emergency situation for the purpose of providing public safety services or medical care or assistance shall not photograph, film, videotape, record or otherwise reproduce in any manner the image of a human corpse or a person being provided medical care or assistance, except for a legitimate law-enforcement purpose, public safety purpose, health care purpose, insurance purpose, legal investigation or legal proceeding involving an injured or deceased person or pursuant to a court order.

(2) A first responder shall not knowingly disclose any photograph, film, videotape, record or other reproduction of the image of a human corpse or a person being provided medical care or assistance at the scene of a motor vehicle accident or other emergency situation without prior written consent of the injured person, the person's next-of-kin if the injured person cannot provide consent, or personal representative under law of a deceased person, unless that disclosure is for a legitimate law enforcement purpose, public safety purpose, health care purpose, insurance purpose, legal investigation or legal proceeding involving an injured or deceased person or pursuant to a court order.

(3) Any person who violates subdivision (1) or (2) of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500. For a second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for twenty-four hours and shall be fined not less than \$100 nor more than \$750. For a third or subsequent offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than twenty-four hours nor more than six months and shall be fined not less than \$1,000 nor more than \$5,000.

(c) This section shall be known as “Jonathan’s Law”.

The bill (Eng. Com. Sub. for H. B. 2122), as amended, was then ordered to third reading.

**Eng. House Bill 2796**, Providing paid leave for certain state officers and employees during a declared state of emergency.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 4157**, Supplementing, amending, and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation, Division of Highways.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 4159**, Making a supplementary appropriation to the Public Services Commission – Motor Carrier Division.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 4160**, Making a supplementary appropriation to the Department of Revenue, Tax Division.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 4279**, Relating to disposition of seized firearms.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 4310**, Relating to the West Virginia University Institute of Technology.

On second reading, coming up in regular order, was read a second time.

The following amendments to the bill, from the Committee on Education, were reported by the Clerk, considered simultaneously, and adopted:

On page two, section one, line twenty-seven, after the words “Virginia University” by inserting the word “Institute”;

On page three, section one, line fifty-two, by striking out the word “Colleagand” and inserting in lieu thereof the words “College and”;

On page four, section one, line sixty-four, after “(2)” by striking out the words “among West Virginia University Institute of Technology, West Virginia University, the County Commission of Kanawha County, the County Commission of Fayette, and the City of Smithers” and inserting in lieu thereof the words “among West Virginia University Institute of Technology, West Virginia University, the County Commission of Kanawha County, the County Commission of Fayette County, the City of Smithers, and the City of Montgomery, should it elect to do so”;

On page four, section one, line seventy-one, after the word “among” by striking out the words “West Virginia University Institute of Technology, West Virginia University, Marshall University, Concord University, and Bluefield State College” and inserting in lieu thereof the words “West Virginia University Institute of Technology, West Virginia University, Marshall University, Concord University, Bluefield State College and the West Virginia School of Osteopathic Medicine”;

And,

On page six, section two, line thirty-seven, after the word “with” by striking out the words “the County Commission of Kanawha County, the County Commission of Fayette County, and the City of Smithers” and inserting in lieu thereof the words “the County Commission of Kanawha County, the County Commission of Fayette County, the City of Smithers and the City of Montgomery, should it elect to do so”.

On motion of Senator Plymale, the following amendment to the bill (Eng. Com. Sub. for H. B. 4310) was next reported by the Clerk and adopted:

On page four, section one, line seventy, after the word “Collaboration” by inserting the words “in engineering and other appropriate programs”.

The bill (Eng. Com. Sub. for H. B. 4310), as amended, was then ordered to third reading.

**Eng. House Bill 4324**, Authorizing information sharing by Workforce West Virginia.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 4330**, Relating to make unlawful to take a fish, water animal or other aquatic organism from state waters to stock a commercial pond or lake.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 4346**, Relating to bear hunting and offenses and penalties.

On second reading, coming up in regular order, was read a second time.

The following amendments to the bill, from the Committee on Natural Resources, were reported by the Clerk, considered simultaneously, and adopted:

On page four, section twenty-two-a, lines seventy through seventy-two, after the word “wildlife.” by striking out the remainder of the paragraph;

And,

On page four, section twenty-two-a, line eighty, after the word “article” by changing the period to a colon and inserting the following proviso: Provided, That the claimant shall submit accurate information as to whether he or she is insured for the damages caused by the acts of bear on forms prescribed by the director, and all damage claims shall first be made by the claimant against any insurance policies before payment may be approved from the Bear Damage Fund. Claims for an award of compensation from the Bear Damage Fund shall be reduced or denied in the amount the claimant is actually reimbursed by insurance for the economic loss upon which the claim is based.

The bill (Eng. H. B. 4346), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4505**, Allowing powerball winners to remain anonymous.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 4540**, Removing prohibition of disposal of certain electronics in landfills.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 4558**, Relating to victim notification and designation of additional individuals to receive notice of an offender’s release.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

**ARTICLE 11A. VICTIM PROTECTION ACT OF 1984.**

**§61-11A-8. Notification to victim of offender's release, placement, or escape from custody.**

(a) At the time a criminal prosecution is commenced by the filing of a complaint, if the complaint charges a person with committing an offense described in subsection (e) of this section, then ~~in such case~~ the prosecuting attorney is required to provide notice, in writing or by telephone, to the victim or a family member that he or she may request that they be notified prior to or at the time of any release of the accused from custody pending judicial proceedings.

(b) If a person is convicted of an offense described in subsection (e) of this section, the prosecuting attorney is required to provide notice, in writing or by telephone, to the victim or a family member that he or she may request that they be notified prior to or at the time of sentencing if the convicted person will be placed on work release, home confinement or probation.

(c) If a person is convicted of an offense described in subsection (e) of this section and is imprisoned in a state correctional facility or confined in a county or regional jail, the commissioner of corrections, the regional jail supervisor or the sheriff, as the case may be, is required to provide notice, in writing or by telephone, to the victim or a family member that he or she may request that they be notified prior to or at the time of:

(1) Releasing the convicted person from imprisonment in any correctional facility;

(2) Releasing the convicted person from confinement in any ~~county or regional~~ jail;

(3) Placing the convicted person in a halfway house or other nonsecure facility to complete his or her sentence; or

(4) Any escape by the convicted person from a state correctional facility or a ~~county or regional~~ jail.

(d) The notice shall include instructions for the victim or the victim's family member on how to request the notification.

(e) Offenses which are subject to the provisions of this section are as follows:

(1) Murder;

(2) Aggravated robbery;

(3) Sexual assault in the first degree;

(4) Kidnapping;

(5) Arson;

(6) Any sexual offense against a minor; or

(7) Any violent crime against a person.

(f) The Commissioner of Corrections, a regional jail supervisor, a sheriff or a prosecuting attorney who receives a written request for notification shall provide notice, in writing or by telephone, to the last known address or addresses or telephone number or numbers provided by the victim or a member of the victim's family, or in the case of a minor child, to the custodial parent, guardian or custodian of the child, in accordance with the provisions of this section. In case of escape, notification shall be by telephone, if possible.

(g) If one or more family members of a victim request notification and if the victim is an adult and is alive and competent, notification shall be sent to the victim, if possible, notwithstanding

that ~~the victim~~ he or she did not request the notification. If the victim is deceased or an adult who is alive but not competent, the notice shall be sent to the first family member requesting notice in conformity with this section.

(h) If notification by telephone to a victim is attempted, notification is not complete unless it is given directly to the person requesting notification and after that person's identity has been verified. An attempted notification made to a voice mail or another recording device or to another member of the household is insufficient.

(i) For the purposes of this section, the following words or phrases defined in this subsection have the meanings ascribed to them. These definitions are applicable unless a different meaning clearly appears from the context.

(1) "Filing of a complaint" means the filing of a complaint in accordance with the ~~requirements of rules~~ West Virginia Rules of Criminal Procedure promulgated by the Supreme Court of Appeals or the provisions of this code.

(2) "Victim" means a victim of a crime listed in subsection (e) of this section who is alive and competent.

(3) "Victim's family member" means a member of the family of a victim of a crime listed in subsection (e) of this section who is not alive and competent.

(j) In addition to those persons required to be notified under this section, a victim may designate an additional adult individual to receive notice provided for by this section: *Provided, That the obligation to notify the additional individuals under this section only arises if the additional adult individual's contact information is provided in writing by the victim to the appropriate notifying entity.*

The bill (Eng. H. B. 4558), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4604**, Relating to violations of the Ethics Act.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

On page three, section four, lines forty-seven through forty-nine, by striking out all of subsection (e) and inserting in lieu thereof a new subsection, designated subsection (e), to read as follows:

(e) Unless consented to by both the respondent and complainant or unless the commission makes a good cause determination in writing the investigation and a determination as to probable cause shall not exceed eighteen months.

The bill (Eng. Com. Sub. for H. B. 4604), as amended, was then ordered to third reading.

**Eng. House Bill 4644**, Relating to jury fees.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 4654**, Relating to the Executive Secretary of the Board of Registered Professional Nurses.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 4673**, Providing for a crime for the theft, damage or release of deer from private game farms.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Natural Resources, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §19-2H-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

## **ARTICLE 2H. CAPTIVE CERVID FARMING ACT.**

### **§19-2H-11. Prohibited conduct; criminal penalties.**

(a) A person may not release or permit the release of any captive cervids from a captive cervid farming facility.

(b) A person may not cause the entry or introduction of wild cervids into a captive cervid farming facility.

(c) An owner may not cease operation of or abandon a captive cervid farming facility without complying with the requirements and rules promulgated under this article.

(d) Any person who violates subsection (a) or (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than ninety days, or fined not more than \$300, or both fined and confined for a first offense. Any person who violates subsection (a) or (b) of this section for a second or subsequent offense is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than one year, or fined not more than \$1,000, or both fined and confined.

(e) Any person who intentionally or knowingly violates subsection (a), (b) or (c) of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than three years, or fined not more than \$1,000, or both fined and imprisoned.

(f) A person may not kill, injure, take or release any captive cervid that is the property of another. A person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, may be fined not more than \$500 and pay restitution pursuant to sections four and five, article eleven-a, chapter sixty-one of this code.

The bill (Eng. Com. Sub. for H. B. 4673), as amended, was then ordered to third reading.

**Eng. House Bill 4674**, Relating to motor vehicle back-up lamps.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 4735**, Relating to the definition of health care provider, and clarifying that speech-language pathologists and audiologists are two separate providers.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senator Miller.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Carmichael, the Senate adjourned until Monday, March 7, 2016, at 11 a.m.

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## MONDAY, MARCH 7, 2016

The Senate met at 11 a.m.

(Senator Cole, Mr. President, in the Chair.)

Prayer was offered by Dean Meadows, Turkey Ridge Independent Baptist Church, Matheny, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Jeff Mullins, a senator from the ninth district.

Pending the reading of the Journal of Saturday, March 5, 2016,

At the request of Senator Walters, unanimous consent being granted, the Journal was approved and the further reading thereof dispensed with.

The Senate proceeded to the second order of business and the introduction of guests.

The Senate then proceeded to the third order of business.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Senate Bill 29**, Tolling statute of limitations in certain cases.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §55-2-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

## **ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.**

### **§55-2-21. Statutes of limitation tolled on claims assertible in civil actions when actions commence.**

(a) After a civil action is commenced, the running of any statute of limitation ~~shall be~~ is tolled for, and only for, the pendency of that civil action as to any claim ~~which~~ that has been or may be asserted ~~therein in the civil action~~ by counterclaim, whether compulsory or permissive, or cross-claim ~~or third-party complaint~~. *Provided*, That if ~~any such~~ a permissive counterclaim would be barred but for the

provisions of this section, ~~such~~ the permissive counterclaim may be asserted only in the action tolling the statute of limitations under this section. This section shall be deemed to toll the running of any statute of limitation with respect to any claim for which the statute of limitation has not expired on the effective date of this section, but only for so long as the action tolling the statute of limitations is pending.

(b) Any defendant who desires to file a third-party complaint shall have one hundred eighty days from the date of service of process of the original complaint, or the time remaining on the applicable statute of limitations, whichever is longer, to bring any third-party complaint against any non-party person or entity: Provided, That any new party brought into litigation by a third-party complaint shall be afforded, from the date of service of process of the third-party complaint, an additional 180-day period, or the remaining statute of limitations period, whichever is longer, to file any third-party complaint of its own, and any applicable statute of limitation shall be tolled during this time period.

(c) For purposes of this section, the term “third-party complaint” means a claim brought by a defendant against any person or entity that was not originally a party to the underlying civil action, where the new claim is made a part of the underlying civil action.

(d) This section tolls the running of any statute of limitation with respect to any claim for which the statute of limitation has not expired on the effective date of this section, but only for so long as the action tolling the statute of limitations is pending. This section does not limit the ability of a court to use the doctrine of equitable tolling or the discovery rule to toll the statute of limitations in any action, including any third-party complaint that would otherwise be subject to subsection (b) of this section.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Senate Bill 29, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 29) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Com. Sub. for Senate Bill 68**, Disallowing Health Care Authority to conduct rate review and set rates for hospitals.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §16-29B-19, §16-29B-19a, §16-29B-20, §16-29B-20a, §16-29B-21 and §16-29B-21a of the Code of West Virginia, 1931, as amended, be repealed; and that §16-29B-1, §16-29B-10 and §16-29B-27 of said code be amended and reenacted to read as follows:

**ARTICLE 29B. HEALTH CARE AUTHORITY.****§16-29B-1. Legislative findings; purpose.**

The Legislature hereby finds ~~and declares~~ that the health and welfare of the citizens of this state is being threatened by unreasonable increases in the cost of health care services, a fragmented system of health care, lack of integration and coordination of health care services, unequal access to primary and preventative care, lack of a comprehensive and coordinated health information system to gather and disseminate data to promote the availability of cost-effective, high-quality services and to permit effective health planning and analysis of utilization, clinical outcomes and cost and risk factors. In order to alleviate these threats: (1) Information on health care costs must be gathered; and (2) ~~a system of cost control must be developed; and~~ (3) an entity of state government must be given authority to ensure the containment of health care costs, to gather and disseminate health care information; to analyze and report on changes in the health care delivery system as a result of evolving market forces, ~~including the implementation of managed care;~~ and to assure that the state health plan, certificate of need program, ~~rate regulation program~~ and information systems serve to promote cost containment, access to care, quality of services and prevention. Therefore, the purpose of this article is to protect the health and well-being of the citizens of this state by guarding against unreasonable loss of economic resources as well as to ensure the continuation of appropriate access to cost-effective, high-quality health care services.

**§16-29B-10. Jurisdiction of the board.**

Notwithstanding any other provision of this code or state law, after July 1, ~~1984~~ 2016, the jurisdiction of the board or authority as to rates for health services care ~~shall extend to all hospitals as defined herein doing business in the State of West Virginia (with the exception of hospitals owned and operated by the federal government)~~ ceases to exist.

The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-

nine-a of this code requiring hospitals, as part of its annual financial disclosure filings, to provide to the authority the average patient charge of the twenty-five most frequently used out-patient diagnostic services. The authority shall publish the information on its website expressed in terminology that can be understood by the general public.

~~(b) Those costs or charges associated with individual health care providers or health care provider groups providing inpatient or outpatient services under a contractual agreement with hospitals (excluding simple admitting privileges) shall be under the jurisdiction of the board. The jurisdiction of the board shall not extend to the regulation of rates of private health care providers or health care groups providing inpatient or outpatient services under a contractual agreement with hospitals when the provision of such service is outside the hospital setting, and shall not extend to the regulation of rates of all other private health care providers practicing outside the hospital setting: *Provided*, That such practice outside of the hospital setting is not found to be an evasion of the purposes of this article.~~

#### **§16-29B-27. Penalties for violations.**

In addition to civil remedies set forth, any person or health care provider violating any provision of this article or any valid order or rule lawfully established hereunder shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$1,000. Each day of a continuing violation after conviction shall be considered a separate offense. ~~No fines assessed may be considered part of the hospital's costs in the regulation of its rates.~~

On motion of Senator Carmichael, the following amendment to the House of Delegates amendment to the bill (Eng. Com. Sub. for S. B. 68) was reported by the Clerk and adopted:

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 68**—A Bill to repeal §16-29B-19, §16-29B-19a, §16-29B-20, §16-29B-20a, §16-29B-21 and §16-29B-21a of the Code of West Virginia, 1931, as amended; and to amend and reenact §16-29B-1, §16-29B-10 and §16-29B-27 of said code, all relating to the powers of the Health Care Authority; eliminating authority of the Health Care Authority to conduct rate review; eliminating authority of the Health Care Authority to set rates for hospitals; and eliminating antiquated studies to be conducted by the Health Care Authority.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment, as amended.

Engrossed Committee Substitute for Senate Bill 68, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: Romano—1.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 68) passed with its Senate amended title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Com. Sub. for Senate Bill 102**, Conforming to federal Law-Enforcement Officers Safety Act.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

By striking out everything after the enacting section and inserting in lieu thereof the following:

That §7-4-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §30-29-12, all to read as follows:

## **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

### **ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.**

#### **§7-4-1. Duties of prosecuting attorney; further duties upon request of Attorney General.**

(a) ~~It shall be the duty of~~ The prosecuting attorney ~~to~~ shall attend to the criminal business of the state in the county in which he or she is elected and qualified, and when ~~he~~ the prosecuting attorney has information of the violation of any penal law committed within ~~such~~ the county, ~~he~~ the prosecuting attorney shall institute and prosecute all necessary and proper proceedings against the offender, and may in such case issue or cause to be issued a summons for any witness ~~he may deem~~ the prosecuting attorney considers material. Every public officer shall give ~~him~~ the prosecuting attorney information of the violation of any penal law committed within his or her county. ~~It shall also be the duty of~~ The prosecuting attorney ~~to~~ shall also attend to civil suits in ~~such~~ the county in which the state, or any department, commission or board thereof, is interested, and to advise, attend to, bring, prosecute or defend, as the case may be, all matters, actions, suits and proceedings in which such county or any county board of education is interested.

(b) (1) In furtherance of the prosecuting attorney's duty to prosecute criminal offenses committed in the county to which they have been assigned, the prosecuting attorney and assistant prosecuting attorneys under his or her supervision shall have the authority to arrest any person committing a violation of the criminal laws of the State of West Virginia, the United States or a violation of Rule 42 of the West Virginia Rules of Criminal Procedure which occur in the county courthouse and other buildings where court proceedings are held in which the prosecutor or assistant prosecutor is appearing before the court in a criminal matter and in the presence of the prosecuting attorney or assistant prosecuting attorney.

(2) For purposes of subdivision (1) of this subsection, the arrest authority of a prosecuting attorney or assistant prosecuting attorney shall be consistent with that authority vested in a deputy sheriff, within the geographic limitations of subdivision (b)(1).

(3) Should a prosecuting attorney or assistant prosecuting attorney desire to carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U. S. C. §926B, the following criteria must be met:

(A) The prosecuting attorney's office shall have a written policy authorizing the prosecuting attorney and his or her assistant prosecuting attorneys to carry a concealed firearm for self-defense purposes;

(B) There shall be in place in the office of the prosecuting attorney a requirement that the prosecuting attorney and assistant prosecuting attorneys must regularly qualify in the use of a firearm with standards therefore which are equal to or exceed those required of sheriff's deputies in the county in which the prosecuting attorney was elected or appointed;

(C) The office of the prosecuting attorney shall issue a photographic identification and certification card which identify the prosecuting attorney or assistant prosecuting attorneys as law enforcement employees of the prosecuting attorney's office

pursuant to the provisions of section twelve, article twenty-nine, chapter thirty of this code.

(4) A prosecuting attorney's office which institutes a policy pursuant to this subsection shall include in such policy a provision that precludes persons from participation in the concealed firearm program and persons subject to any disciplinary action which could result in loss of the authority conferred by this subsection to prosecute violations of criminal law and to arrest persons committing violations of State and Federal Criminal laws and West Virginia Rule of Criminal Procedure 42 and provisions which expressly preclude from participation persons prohibited by Federal or State law from possessing or receiving a firearm or those under the influence of alcohol or another intoxicating or hallucinatory drug or substance.

(5) Any prosecuting attorney or assistant prosecuting attorney who elects to participate in the program authorized by the provisions of this subsection shall be responsible, at his or her expense, for a suitable firearm and ammunition.

(6) It is the intent of the legislation in enacting the amendment to this section during the 2016 Regular Session of the Legislature to authorizing a prosecuting attorney and assistant prosecuting attorneys wishing to do so to meet the requirements of the Federal Law-Enforcement Officer's Safety Act, 18 U. S. C. §926B.

~~(c) It shall be the duty of~~ The prosecuting attorney ~~to~~ shall keep his or her office open in the charge of a responsible person during the hours when polls are open during general, primary and special county-wide election days, and the prosecuting attorney, or ~~his~~ the prosecuting attorney's assistant, if any, shall be available for the purpose of advising election officials. ~~It shall be the further duty of~~ The prosecuting attorney, when requested by the Attorney General, ~~to~~ shall perform or ~~to~~ assist the Attorney General in performing, in the county in which ~~he~~ the prosecuting attorney is elected, any legal duties required to be performed by the Attorney General, and which are not inconsistent with the duties of the prosecuting attorney as the legal representative of ~~such~~ the county. ~~It shall also be the duty of~~ The prosecuting attorney, when requested by the Attorney

General, ~~to~~ shall perform or ~~to~~ assist the Attorney General in performing, any legal duties required to be performed by the Attorney General, in any county other than that in which ~~such~~ the prosecuting attorney is elected, and for the performance of ~~any such~~ these duties in any county other than that in which ~~such~~ the prosecuting attorney is elected ~~he~~ the prosecuting attorney shall be paid his or her actual expenses.

Upon the request of the Attorney General the prosecuting attorney shall make a written report of the state and condition of the several causes in which the state is a party, pending in his or her county, and upon any matters referred to ~~him~~ the prosecuting attorney by the Attorney General as provided by law.

## CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

### ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

#### **§30-29-12. Law-enforcement officers to receive identification and certification to carry weapons off duty.**

(a) Every person employed by a West Virginia state, county or municipal agency who is a qualified law-enforcement officer within the meaning of 18 U. S. C. §926B shall receive an appropriate photo identification and certification of training required to carry a concealed firearm under the federal Law-Enforcement Officers Safety Act. 18 U. S. C. §926B. No currently employed officer may be charged a fee for the photo identification and certification. This subsection does not prohibit a law-enforcement agency from controlling the use of any department-owned weapon.

(b) When a qualified law-enforcement officer, within the meaning of 18 U. S. C. §926B retires from, or otherwise honorably ceases employment with, a West Virginia state, county or municipal agency, the agency shall provide, at no charge, an appropriate photo identification to show the former employee's status as an honorably separated or retired qualified retired law-enforcement officer within the meaning of 18 U. S. C. §926C.

Every West Virginia state, county or municipal agency which conducts firearms qualification for current employees shall offer its honorably retired or separated former employees an opportunity to participate in such firearms qualification on an annual basis. The former employees shall provide at their own expense an appropriate firearm and ammunition and may be charged a fee not to exceed \$25. Upon completion of the training and payment of any fee, the law-enforcement agency shall issue a new photo identification and certification which identifies the former employee as a “qualified retired law-enforcement officer” who has satisfied the annual training requirements of 18 U. S. C. §926C.

(c) A law-enforcement agency may, in its sole discretion, allow a person who honorably retired or separated from another agency as a qualified law-enforcement officer within the meaning of 18 U. S. C. §926B, the opportunity to participate in firearms qualification the agency provides its own former employees under subsection (b) of this section. A participant shall provide at their own expense an appropriate firearm and ammunition and may be charged a fee not to exceed \$50. Upon completion of the training and payment of any fee, the law-enforcement agency shall issue a certification which states that the retiree satisfied the training requirements of 18 U. S. C. 926C.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Committee Substitute for Senate Bill 102, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 102) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Senate Bill 271**, Conforming definition of attest services to Uniform Accountancy Act.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page ten, section seven, after line fifty-two, by inserting the following:

**§30-9-33. Mandatory Training in federal antitrust law and state action immunity.**

It shall be required of the West Virginia Board of Accountancy, and their representatives from the Attorney General's office, to obtain initial training on the subject of federal antitrust law and state action immunity by July 1, 2016, and thereafter on an annual basis. The purpose of the training is to provide those members with the knowledge to be able to identify the risks of any action that may be taken by the board that could be construed as possible antitrust violations.

**§30-9-34. Indemnification.**

In the event that a lawsuit is filed alleging violation of federal antitrust laws, the board may indemnify its board members and

current and former employees for expenses reasonably incurred in connection with judicial or administrative proceedings to which they are or may become parties by reason of the performance of their official duties.;

By striking out the enacting section and substituting therefor a new enacting section, to read as follows:

That §30-9-2, §30-9-3 and §30-9-7 of the Code of West Virginia, 1931 as amended, be amended and reenacted, and that said Code be amended by adding thereto two new sections, designated as §30-9-33 and §30-9-34, all to read as follows:;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Senate Bill 271**—A Bill to amend and reenact §30-9-2, §30-9-3 and §30-9-7 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto two new sections, designated as §30-9-33 and §30-9-34, all relating to regulation of the practice of accountancy; redefining attest services; protecting board members from civil liability; revising requirements for issuance of certificate as certified public accountant including criminal background check; requiring Mandatory Training in federal antitrust law and state action immunity for members of the board of accountancy and their representatives from the Attorney General's office; and providing for indemnification for board members.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Senate Bill 271, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings,

Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 271) passed with its House of Delegates amended title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Com. Sub. for Senate Bill 274**, Relating to increasing civil jurisdictional amount in magistrate courts.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page one, section one, lines four and five, by striking out the following: Circuit courts may send any civil case where the amount in controversy is \$10,000 or less to magistrate courts for trial.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 274**—A Bill to amend and reenact §50-2-1 of the Code of West Virginia, 1931, as amended,

relating to increasing the civil jurisdictional amount in magistrate courts from \$5,000 to \$10,000.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Senate Bill 274, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: Beach and Romano—2.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 274) passed with its House of Delegates amended title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Com. Sub. for Com. Sub. for Senate Bill 303**, Providing for 5-day resident fishing license.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Com. Sub. for Senate Bill 376**, Expanding authority of Secretary of State and State Police.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

On page two, section ten, lines twenty-five through thirty-one, by striking out all of subsection (d) and inserting in lieu thereof a new subsection, designated subsection (d), to read as follows:

(d) The Secretary of State shall propose rules for legislative approval to require applicants for any license or permit issued pursuant to this article that shall require each applicant to submit to a criminal history records check. The rule shall provide upon application that the applicant, shall submit to a state and national criminal history record check, as set forth in this subsection:

(1) The criminal history record check shall be based on fingerprints submitted to the West Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.

(2) The applicant shall meet all requirements necessary to accomplish the state and national criminal history record check, including:

(A) Submitting fingerprints for the purposes set forth in this section; and

(B) Authorizing the Secretary of State, 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 a license.

(3) The results of the state and national criminal history record check may not be released to or by a private entity except:

(A) To the individual who is the subject of the criminal history record check;

(B) With the written authorization of the individual who is the subject of the criminal history record check; or

(C) Pursuant to a court order.

(4) The criminal history record check and related records are not public records for the purposes of chapter twenty-nine-b of this code.

(5) The applicant shall ensure that the criminal history record check is completed as soon as possible after the date of the original application for registration.

(6) The applicant shall pay the actual costs of the fingerprinting and criminal history record check.

On motion of Senator Carmichael, the following amendments to the House of Delegates amendment to the bill (Eng. Com. Sub. for S. B. 376) were reported by the Clerk, considered simultaneously, and adopted:

On page one, section ten, by striking out the words “(d) The Secretary of State shall propose rules for legislative approval to require applicants for any license or permit issued pursuant to this article that shall require each applicant to submit to a criminal history records check. The rule shall provide upon application that the applicant, shall submit to a state and national criminal history record check, as set forth in this subsection:” and inserting in lieu thereof the following:

(d) The Secretary of State shall require each applicant to submit to a state and national criminal history record check, as set forth in this subsection:;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 376**—A Bill to amend and reenact §30-18-10 of the Code of West Virginia, 1931, as amended,

relating to background checks for applicants for private investigator and security guard licensure; requiring each applicant to submit to a state and national criminal history records check; requiring criminal history record check to be based on fingerprints submitted to West Virginia Secretary of State or its assigned agent for forwarding to Federal Bureau of Investigation; requiring applicant to meet all requirements necessary to accomplish criminal history records check; providing that results of criminal history record check may not be released to or by a private entity except under certain circumstances; providing criminal history record check and related records are not public records; directing applicant to ensure that criminal history record check is completed as soon as possible after date of original application for registration; and providing that applicant pay actual costs of fingerprinting and criminal history record check.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment, as amended.

Engrossed Committee Substitute for Senate Bill 376, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 376) passed with its Senate amended title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Senate Bill 437**, Updating and clarifying code relating to rules governing mixed martial arts.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

By striking out everything after the enacting section and inserting in lieu thereof the following:

**ARTICLE 5A. STATE ~~ATHLETIC~~ RING SPORTS COMMISSION.**

**§29-5A-1. Creation of commission; members; officers; seal and rules.**

The State ~~Boxing~~ Athletic Commission, formerly the State Boxing Commission, heretofore created, is hereby continued and renamed the State ~~Athletic~~ Ring Sports Commission. The commission shall consist of five persons appointed by the Governor, by and with the consent of the Senate, no more than three of whom shall belong to the same political party and no two of whom shall be residents of the same county at the same time. One member shall have at least three years of experience in the sport of boxing. One member shall have at least three years of experience in the sport of mixed martial arts. One member shall have at least three years of experience in the health care industry as a licensed physician, registered nurse, nurse practitioner or physicians assistant. Two members shall be citizen members who are not licensed under the provisions of this article and who do not perform any services related to the persons regulated under this article. The members shall serve without pay. At the expiration of the term of each member, his or her successor shall be appointed by the Governor for a term of four years. If there is a vacancy in the board,

the vacancy shall likewise be filled by appointment by the Governor and the Governor shall likewise have the power to remove any commissioner at his or her pleasure. Any three members of the commission shall constitute a quorum for the exercise of the power or authority conferred upon it. The members of the commission shall at the first meeting after their appointment elect one of their number chairman of the commission, and another of their number secretary of the commission, shall adopt a seal for the commission, and shall make such rules for the administration of their office, not inconsistent herewith, as they may consider expedient; and they may hereafter amend or abrogate such rules. The concurrence of at least three commissioners is necessary to render a choice or decision of the commission. The commission may, for any event, grant one or more of its members the authority to approve necessary changes to the roster of participants or the roster of officials within forty-eight hours of a scheduled event previously approved by the commission.

**§29-5A-3. Commission to have sole control of boxing, etc., matches; licenses; municipality not to tax boxing, etc., club.**

(a) The commission has sole direction, management and control of the jurisdiction over all amateur, professional and semiprofessional boxing, sparring matches and exhibitions, or any form thereof, to be conducted, held or given within the state by any club, individual, corporation or association. As used in this article, the term "boxing" includes any fighting event that includes or permits the striking of an opponent with a closed fist, even if wrestling moves, elements of martial arts or striking an opponent with the feet are also permitted. No boxing, sparring or exhibition may be conducted, held or given within the state except pursuant to the commission's authority and held in accordance with this article. The commission may issue and revoke the license to conduct, hold or give boxing or sparring matches or exhibitions to any club, corporation, association or individual. Every license is subject to rules the commission may prescribe. Every application for a license shall be on a blank form provided by the commission. No promoter's license may be granted to any club, corporation,

association or individual unless the signer of the application is a bona fide resident of the state of West Virginia. Upon application of the promoter's license, the promoter shall pay a state license fee of \$125 for one year. The fee is nonrefundable and shall be paid in the form of a certified check or money order issued to the Treasurer of the state of West Virginia to be deposited in the fund set forth in section three-b of this article. Nonprofit chartered and charitable organizations are exempt from this license fee for all amateur events. No municipal corporation may impose any license tax on boxing, sparring or exhibition clubs, notwithstanding the provisions of any section of the code respecting municipal taxes and licenses. The granting of a license to a club by the commission, or the holding of a license by a club, individual, corporation or association, does not prevent the commission from canceling or revoking the license to conduct an event as provided in this section.

(b) In exercising its jurisdiction over professional and semiprofessional boxing, sparring matches and exhibitions, the commission shall follow the current unified rules of boxing adopted by the Association of Boxing Commissions and requirements to enable the proper sanctioning of all participants, referees, judges and matches or exhibitions conducted under the rules described in subdivision (1), subsection (c), section twenty-four of this article and shall cooperate fully with the Association of Boxing Commissions in order that the sanctioning be extended to state boxers. The commission shall supervise all amateur boxing conducted in this state and any such contest shall follow the amateur rules for boxing as adopted by the United States Amateur Boxing Authority. For full contact boxing events and other boxing events that follow nontraditional rules, the commission may impose any limitations or restrictions reasonably necessary to guarantee the safety of the participants and the fair and honest conducting of the matches or exhibitions and may refuse to license any event that poses an unreasonable degree of risk to the participants.

(c) The State Ring Sports Commission is hereby authorized to propose emergency legislative rules pursuant to section fifteen, article three, chapter twenty-nine-a of this code to establish fees to be paid by promoters for each event. The fees are to be placed into

a fund for the sole purpose of employing an administrative secretary: *Provided*, That the fund may not be used until July 1, 2017 or as soon thereafter as funds are sufficient to fulfill this purpose: *Provided, however*, That nothing in this section shall alter any memorandums of understanding or other agreements between the State Ring Sports Commission, formerly the State Athletic Commission, and any other entity.

**§29-5A-3b. State Athletic Ring Sports Commission Fund.**

(a) All moneys collected shall be deposited in a special account in the State Treasury to be known as the State Athletic Ring Sports Commission Fund. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code: *Provided*, That for the fiscal year ending June 30, 2016, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature.

(b) A supplemental appropriation may be authorized by the Legislature for administrative expenditures that exceed collections in the fiscal years ending June 30, 2016, June 30, 2017, and June 30, 2018, or until such time as the commission collections are sufficient to fully fund its operations.

(c) All money collected and deposited in the State Athletic Ring Sports Commission Fund that remains after the commission satisfies its administrative operating obligations shall be surplus revenue funds available for appropriation: *Provided*, That the commission may retain surplus revenue funds as long as it allocates the surplus for a specific purpose and approves such funds be carried forward for use in the following fiscal year prior to the end of the fiscal year in which the revenues were collected.

**§29-5A-5. Expense of commission.**

On or before December 31 of each year, the secretary of the commission shall present to the Governor projected expenses for the following year. Such projections shall include all expenses and

revenues of the commission and its official headquarters. Necessary expenses incurred by the commission shall be submitted on a standard expense form to the Treasurer of the state of West Virginia to be paid from the State ~~Athletic~~ Ring Sports Commission Fund except in such circumstances referred to in subsection (b), section three-b of this article designating such expenses be paid from the General Fund.

**§29-5A-15. Reports by clubs to commission; bonds of applicants for license.**

Every club, corporation, association or individual which may hold or exercise any of the privileges conferred by this article, shall within twenty-four hours after the determination of any contest, furnish to the commission a written report, duly verified by one of its officers, showing the number of tickets sold for such contest and the amount of the gross proceeds thereof, and such other matters as the commission may prescribe. Before any license shall be granted to any club, corporation, association or individual to conduct, hold or give any boxing, sparring or exhibition, such applicant therefor shall execute and file with the commission a surety bond in the sum of which shall be at the discretion of said commission, to be approved as to form and the sufficiency of the security thereon by the said commission. Such bond shall cover all purses, awards and payments to be paid by the promoter. USA Boxing and the United States Olympic Team are exempt from the requirements for a surety bond.

**§29-5A-20. Licenses for contestants, referees and managers.**

No professional contestant, trainer, inspector, referee or professional manager may take part in any boxing contest or exhibition unless holding a license from the state that is issued by the commission upon payment of the following annual license fee schedule: Professional contestant \$25; trainer \$20; inspector \$30; referee \$30 and professional manager \$50. Semiprofessional contestants shall pay a license fee of \$10 for each event. Such fees shall accompany the application and shall be in the form of a certified check or money order and shall be issued to the Treasurer of the state of West Virginia to be deposited in the State ~~Athletic~~

Ring Sports Commission Fund. If a license is not granted, the Treasurer shall refund the full amount.

**§29-5A-24. Rules governing contestants and matches.**

(a) The commission shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(b) The commission shall propose such rules to regulate professional and semiprofessional boxers, professional or amateur mixed martial artists, professional and semiprofessional boxing matches and exhibitions and professional or amateur mixed martial arts matches and exhibitions: *Provided*, That for professional boxers and boxing matches and exhibitions, the commission rules shall comply with the current unified rules of boxing as adopted by the Association of Boxing Commissions; for professional mixed martial artists and mixed martial arts matches and exhibitions, the commission rules shall comply with the current unified rules of mixed martial arts as adopted by the Association of Boxing Commissions; for amateur boxers and boxing matches or exhibitions, the commission rules shall comply with the amateur rules for boxing as adopted by the United States Amateur Boxing Authority; and for amateur mixed martial artists and mixed martial arts matches or exhibitions, the commission rules shall follow the current unified rules for the International Sport Karate Association, the World Kickboxing Association or the International Sport Combat Federation of mixed martial arts as adopted by the Association of Boxing Commissions at any given match or exhibition. For full contact boxing and other boxing events that follow nontraditional rules, rules guaranteeing the safety of the participants and the fair and honest conducting of the matches or exhibitions are authorized.

(c) The commission shall propose separate rules for amateur boxers and amateur boxing, sparring matches and exhibitions as follows:

Rules which comply with the requirements of the rules of the current United States Amateur Boxing Authority to the extent that

any boxer complying with them will be eligible to participate in any state, national or international boxing match sanctioned by the current United States Amateur Boxing Authority or the International Amateur Boxing Association.

On motion of Senator Carmichael, the following amendment to the House of Delegates amendment to the bill (Eng. S. B. 437) was reported by the Clerk and adopted:

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Senate Bill 437**—A Bill to amend and reenact §29-5A-1, §29-5A-15 and §29-5A-24 of the Code of West Virginia, 1931, as amended, all relating to regulation of events by State Athletic Commission; renaming the State Athletic Commission to the State Ring Sports Commission; authorizing delegation of commission authority to approve certain event changes; authorizing the commission to propose emergency legislative rules relating to creation of a promoter's fee; requiring the promoter's fee be placed into a fund for the sole purpose of hiring an administrative secretary; eliminating requirements for certain bonds; and providing for rules to govern amateur mixed martial arts.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment, as amended.

Engrossed Senate Bill 437, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 437) passed with its Senate amended title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, to take effect July 1, 2016, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Senate Bill 483**, Marshall County LSIC waiver.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page two, section three-a, after line twenty-six, by adding a new subdivision, designated subdivision (3), to read as follows:

(3) Section one-a, article eight, chapter eighteen of this code is waived for the schools of Wyoming County for the purpose of increasing the compulsory school attendance age in Wyoming County from seventeen to eighteen years of age as a part of its countywide dropout prevention initiative as requested by letter dated February 25, 2016 and recommended by the Legislative Oversight Commission on Education Accountability on February 25, 2016.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Senate Bill 483**—A Bill to amend and reenact §18-5A-3a of the Code of West Virginia, 1931, as amended, relating to granting a local school improvement council waivers for the

purpose of increasing compulsory school attendance age in Marshall County and Wyoming County.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Senate Bill 483, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: Karnes—1.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 483) passed with its House of Delegates amended title.

Senator Carmichael moved that the bill take effect July 1, 2016.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: Karnes—1.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 483) takes effect July 1, 2016.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Com. Sub. for Senate Bill 500**, Authorizing Superintendent of State Police hold training classes to use West Virginia Automated Police Network.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage, to take effect from passage, of

**Eng. Senate Bill 507**, Exempting motor vehicles engaged in nonemergency transport of Medicaid recipients from PSC permit requirements.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amended title, passage as amended, of

**Eng. House Bill 4235**, Relating to the publication requirements of the administration of estates.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended, with its Senate amended title, of

**Eng. House Bill 4362**, Establishing a felony offense of strangulation.

The Senate proceeded to the fourth order of business.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Senate Concurrent Resolution 1**, Urging Congress propose regulation freedom amendment.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Eng. Com. Sub. for House Bill 2904**, Requiring the clerk of a county commission to maintain a county ordinance book.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Craig Blair,  
*Chair.*

At the request of Senator Blair, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2904) contained in the preceding report from the Committee on Government Organization was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

**Eng. Com. Sub. for House Bill 4171**, Relating to the public school calendar.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Dave Sypolt,  
*Chair.*

At the request of Senator Sypolt, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4171) contained in the preceding report from the Committee on Education was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Eng. House Bill 4246**, Changing the Martinsburg Public Library to the Martinsburg-Berkeley County Public Library.

**Eng. House Bill 4340**, Amending licensing requirements for an act which may be called Lynette's Law.

And,

**Eng. House Bill 4651**, Relating to professional examination requirements for hearing-aid dealers and fitters.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Craig Blair,  
*Chair.*

At the request of Senator Blair, unanimous consent being granted, the bills (Eng. H. B. 4246, 4340 and 4651) contained in the preceding report from the Committee on Government

Organization were each taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 4309**, Increasing criminal penalties for conviction of certain offenses of financial exploitation of an elderly person.

And has amended same.

And,

**Eng. House Bill 4378**, Relating to access to and receipt of certain information regarding a protected person by certain relatives of the protected person.

And has amended same.

And reports the same back with the recommendation that they each do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Trump, unanimous consent being granted, the bills (Eng. H. B. 4309 and 4378) contained in the preceding report from the Committee on the Judiciary were each taken up for immediate consideration, read a first time and ordered to second reading.

Senator Ferns, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

**Eng. House Bill 4334**, Clarifying the requirements for a license to practice as an advanced practice registered nurse and expanding prescriptive authority.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Government Organization.

Respectfully submitted,

Ryan J. Ferns,  
*Chair.*

At the request of Senator Blair, as chair of the Committee on Government Organization, unanimous consent was granted to dispense with the second committee reference of the bill contained in the foregoing report from the Committee on Health and Human Resources.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 4345**, Repealing the West Virginia Permitting and Licensing Information Act.

And,

**Eng. House Bill 4417**, Increasing wages protected from garnishment.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Trump, unanimous consent being granted, the bills (Eng. H. B. 4345 and 4417) contained in the preceding report from the Committee on the Judiciary were each taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4383**, Making individuals responsible for the costs relating to the filing of excessive false complaints.

And has amended same.

**Eng. Com. Sub. for House Bill 4448**, Clarifying that communication by a lender or debt collector which is allowed under the West Virginia Consumer Credit and Protection Act, likewise does not violate the provisions of the West Virginia Computer Crime and Abuse Act.

And has amended same.

**Eng. House Bill 4739**, Unclaimed Life Insurance Benefits Act.

And has amended same.

And,

**Eng. Com. Sub. for House Bill 4740**, Permitting that current members of the National Guard or Reserves may be excused from jury duty.

And has amended same.

And reports the same back with the recommendation that they each do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Trump, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 4383, 4448 and 4740 and Eng. H. B. 4739) contained in the preceding report from the Committee on the Judiciary were each taken up for immediate consideration, read a first time and ordered to second reading.

The Senate proceeded to the sixth order of business.

Senators Cole (Mr. President), Carmichael, Trump and Cline offered the following resolution:

**Senate Concurrent Resolution 64**—Requesting the West Virginia Division of Highways to study the 2015 West Virginia Division of Highways Performance Audit commissioned by the West Virginia Legislature and to report back to the Joint Committee on Government and Finance as to any and all actions taken by the Division of Highways in accordance with the performance audit.

Whereas, In 2015, the West Virginia Legislature passed H.B. 2008, which provided for an independent performance audit of the Division of Highways; and

Whereas, The Joint Committee on Government and Finance commissioned the accounting firm of Deloitte & Touche, LLP, to conduct a performance audit on the Division of Highways for fiscal years 2013, 2014 and 2015 in accordance with the provisions of W.Va. Code §17-2A-6a; and

Whereas, Deloitte & Touche, LLP, presented to the Joint Committee on Government and Finance, during the January 2016 Interim Committee Meetings, the Performance Audit Final Report; and

Whereas, The 2015 West Virginia Division of Highways Performance Audit identifies efficiencies that have the potential to save the Division of Highways up to \$25 to \$50 million annually; and

Whereas, The 2015 West Virginia Division of Highways Performance Audit identifies a number of efficiencies that are more

appropriately implemented by the Division of Highways, rather than through the passage of legislation; and

Whereas, It is the belief of the West Virginia Legislature that fixing the state's deteriorating roads is of the utmost importance; and

Whereas, It is the belief of the West Virginia Legislature that the recommendations of the 2015 West Virginia Division of Highways Performance Audit should be implemented by the Division of Highways as best as possible; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Legislature requests the West Virginia Division of Highways to study the 2015 West Virginia Division of Highways Performance Audit commissioned by the West Virginia Legislature and to report back to the Joint Committee on Government and Finance as to any and all actions taken by the Division of Highways in accordance with the performance audit; and, be it

*Further Resolved,* That the Division of Highways shall report to the Joint Committee on Government and Finance, prior to the 2017 regular session of the Legislature, as to any recommended efficiencies that have been implemented by the Division; and, be it

*Further Resolved,* That the Division of Highways shall report to the Joint Committee on Government and Finance, prior to the 2017 regular session of the Legislature, as to any recommended efficiencies that the Division believes it can and will be implementing in the future; and, be it

*Further Resolved,* That the Division of Highways shall report to the Joint Committee on Government and Finance, prior to the 2017 regular session of the Legislature, as to any recommended efficiencies that the Division cannot implement without further legislative action; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the 2017 regular session of the Legislature on the findings of the review performed by the Division of Highways

with drafts of any legislation necessary to effectuate the recommendations of the 2015 West Virginia Division of Highways Performance Audit.

Which, under the rules, lies over one day.

Senators Cline, Mullins, Unger, Kessler and Stollings offered the following resolution:

**Senate Resolution 61**—Designating March 7, 2016, as Wyoming County Day.

Whereas, Cradled in the southern tip of West Virginia, Wyoming County was created in 1850 from Logan County and named for the Delaware Indian word meaning “large plains”; and

Whereas, Wyoming County is rich in history and the remains of old coal mines, miners’ camps and coal tipples now draw tourists from many miles away; and

Whereas, Wyoming County has four entries on the National Register of Historic Places, including the Itmann Company Store and Office, built in 1923-1925, the county courthouse, built in 1916, the adjoining jail, built in 1929, and the Wyco Community Church, built in 1917; and

Whereas, Pineville, the county seat, is home to Castle Rock, a 165-foot sandstone cliff that towers over the mouth of Rockcastle Creek; and

Whereas, Wyoming County is home to many recreational attractions, such as the Hatfield-McCoy Trails, Castle Rock Trailhead, R. D. Bailey Lake and Twin Falls State Park; and

Whereas, Wyoming County is the home of notable West Virginians such as Mike D’Antoni, former head coach of the Phoenix Suns, Los Angeles Lakers and New York Knicks of the National Basketball Association, retired National Football League quarterback Kurt Warner, and Christy Martin, a female professional boxer known nationwide as the Coal Miner’s Daughter; and

Whereas, The Senate is proud to celebrate the history and culture of Wyoming County on this day at the Capitol; therefore, be it

*Resolved by the Senate:*

That the Senate hereby designates March 7, 2016, as Wyoming County Day; and, be it

*Further Resolved,* That the Senate recognizes the many contributions of the people of Wyoming County to the State of West Virginia; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to representatives from Wyoming County.

At the request of Senator Mullins, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with, and adopted.

On motion of Senator Carmichael, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and proceeded to the seventh order of business.

**Senate Concurrent Resolution 63,** Requesting study of demand for and shortage of teachers in WV.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Education; and then to the Committee on Rules.

The Senate then proceeded to the eighth order of business.

**Eng. Senate Bill 427,** Transferring funds from State Excess Lottery Fund to Department of Revenue.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: Miller—1.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 427) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: Miller—1.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 427) takes effect from passage.

*Ordered,* That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 2122,** Making it illegal for first responders to photograph a corpse; Jonathan's Law.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2122) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 2122**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-8-30, relating to making it illegal for first responders to photograph, film, videotape, record or otherwise reproduce in any manner the image of a human corpse or person being provided medical care or assistance except for enumerated purposes; defining terms; creating a criminal offense for first responders to photograph, film, videotape, record or otherwise reproduce in any manner the image of a human corpse or person being provided public safety services, medical care or assistance unless it is for a legitimate purpose associated with his or her employment; creating a criminal offense for first responders to knowingly disclose any photograph, film, videotape, record or other reproduction of the image of a human corpse or person being provided public safety services, medical care or assistance unless disclosure is for a legitimate cause associated with his or her employment; providing for exceptions to the criminal offenses; providing for criminal penalties; providing for enhanced penalties for subsequent offenses; and designating provision as “Jonathan’s Law”.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 2796**, Providing paid leave for certain state officers and employees during a declared state of emergency.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2796) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 4157**, Supplementing, amending, and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation, Division of Highways.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4157) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4157) takes effect from passage.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 4159**, Making a supplementary appropriation to the Public Services Commission – Motor Carrier Division.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4159) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4159) takes effect from passage.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 4160**, Making a supplementary appropriation to the Department of Revenue, Tax Division.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4160) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4160) takes effect from passage.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 4279**, Relating to disposition of seized firearms.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4279) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 4310**, Relating to the West Virginia University Institute of Technology.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending extended discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 4310 pass?”

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Ferns, Hall, Karnes, Leonhardt, Maynard, Mullins, Plymale, Prezioso, Stollings, Sypolt, Trump, Unger, Walters, Williams and Cole (Mr. President)—22.

The nays were: Facemire, Gaunch, Kessler, Kirkendoll, Laird, Miller, Palumbo, Romano, Snyder, Takubo, Woelfel and Yost—12.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4310) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Thereafter, at the request of Senator Beach, and by unanimous consent, the remarks by Senators Laird, Miller, Mullins and Boso regarding the passage of Engrossed Committee Substitute for

House Bill 4310 were ordered printed in the Appendix to the Journal.

On motion of Senator Carmichael, the Senate recessed until 1:30 p.m. today.

Upon expiration of the recess, the Senate reconvened and resumed consideration of its third reading calendar, the next bill coming up in numerical sequence being

**Eng. House Bill 4324**, Authorizing information sharing by Workforce West Virginia.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4324) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 4330**, Relating to make unlawful to take a fish, water animal or other aquatic organism from state waters to stock a commercial pond or lake.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4330) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4330) takes effect from passage.

*Ordered,* That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 4346**, Relating to bear hunting and offenses and penalties.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4346) passed.

The following amendment to the title of the bill, from the Committee on Natural Resources, was reported by the Clerk and adopted:

**Eng. House Bill 4346**—A Bill to amend and reenact §20-2-22a of the Code of West Virginia, 1931, as amended, relating to bear; clarifying bear hunting and baiting; requiring transported bear parts be tagged; revising provisions relating to bear damaging or destroying property; clarifying the issuance of depredation permits, recommendations and reports; providing bear damage claim limit for property used to feed or bait wildlife; clarifying that claims be made against personal insurance; requiring payments from bear damage fund be reduced by insurance payments; assessing points and suspensions against hunting and fishing license for criminal violations; and decreasing criminal penalties and fines.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4346) takes effect from passage.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 4505**, Allowing powerball winners to remain anonymous.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Yost and Cole (Mr. President)—32.

The nays were: Williams and Woelfel—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4505) passed.

On motion of Senator Trump, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 4505**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-22-15a; and to amend and reenact §29B-1-4 of said code, all relating to allowing powerball, mega millions and hot lotto ticket winners to remain anonymous; providing procedures by which such winners can request anonymity; and providing for an exemption under the Freedom of Information Act

for powerball, mega millions and hot lotto ticket winner information.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 4540**, Removing prohibition of disposal of certain electronics in landfills.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4540) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 4558**, Relating to victim notification and designation of additional individuals to receive notice of an offender's release.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings,

Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4558) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. House Bill 4558**—A Bill to amend and reenact §61-11A-8 of the Code of West Virginia, as amended, relating to victim notification and designation of additional individuals to receive notice of an offender's release, sentencing, placement or escape; providing an option to victims to designate an additional adult individual to receive notification; and requiring the victim to provide the additional adult individual's contact information in writing to the appropriate notifying entity.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 4604**, Relating to violations of the Ethics Act.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4604) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 4604**—A Bill to amend and reenact §6B-2-4 of the Code of West Virginia, 1931, as amended, relating to violations of the Ethics Act; establishing a deadline of eighteen months for the Ethics Commission to investigate and make a probable cause determination on a complaint; allowing extension past one year if consented by both respondent and complainant or unless Ethics Commission finds good cause in writing; changing the burden of proof needed to show a violation of the Ethics Act to a clear and convincing evidence standard; and extending the statute of limitations for filing complaints alleging violations of the Ethics Act from two years to five years.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 4644**, Relating to jury fees.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4644) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 4654**, Relating to the Executive Secretary of the Board of Registered Professional Nurses.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4654) passed.

The following amendment to the title of the bill, from the Committee on Government Organization, was reported by the Clerk and adopted:

**Eng. House Bill 4654**—A Bill to amend and reenact §30-7-4 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Board of Examiners for Registered Professional Nurses; and eliminating required qualifications of the executive secretary to the board.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4654) takes effect from passage.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 4673**, Providing for a crime for the theft, damage or release of deer from private game farms.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4673) passed.

The following amendment to the title of the bill, from the Committee on Natural Resources, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 4673**—A Bill to amend and reenact §19-2H-11 of the Code of West Virginia, 1931, as amended, relating to captive cervid; establishing a misdemeanor penalty to kill, injure, take or release captive cervid; and setting forth fines and restitution.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 4674**, Relating to motor vehicle back-up lamps.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4674) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 4735**, Relating to the definition of health care provider, and clarifying that speech-language pathologists and audiologists are two separate providers.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall,

Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4735) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

The Senate proceeded to the ninth order of business.

**Eng. Com. Sub. for House Bill 2588**, Relating to the filing of financial statements with the Secretary of State.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

**ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.**

**§3-8-5b. Where financial statements shall be filed; filing date prescribed.**

(a) The financial statements provided for in this article shall be filed, by or on behalf of candidates, with:

(1) The Secretary of State for legislative offices, circuit judge and family court judge, and for statewide and other offices to be

nominated or elected by the voters of a political division greater than a county;

(2) The clerk of the county commission by candidates for offices to be nominated or elected by the voters of a single county or a political division within a single county except circuit judge and family court judge; or

(3) The proper municipal officer by candidates for office to be nominated or elected to municipal office.

(b) The statements may be filed by mail, in person, or by facsimile or other electronic means of transmission: *Provided*, That the financial statements filed by or on behalf of candidates for Governor, Secretary of State, Attorney General, Auditor, Treasurer, Commissioner of Agriculture and Supreme Court of Appeals shall be filed electronically by the means of an Internet program ~~to be~~ that has been established by the Secretary of State on forms or in a format prescribed by the Secretary of State: *Provided, however*, That after January 1, 2018, unless a committee has been granted an exemption in case of hardship pursuant to subsection (c) of this section, all such statements required to be filed with the Secretary of State, on or behalf of a candidate for any elective office, shall be filed electronically by means of the internet program that has been established by the Secretary of State. If through or by no fault of the candidate, the candidate is unable to file the campaign financial statement, the candidate shall then file said statement in person, via facsimile or other electronic means of transmission, or by certified mail postmarked at the first reasonable opportunity.

(c) Committees required to report electronically may apply to the State Election Commission for an exemption from mandatory electronic filing in the case of hardship. An exemption may be granted at the discretion of the State Election Commission.

(d) For purposes of this article, the filing date of a financial statement shall, in the case of mailing, be the date of the postmark of the United States Postal Service, and in the case of hand delivery or delivery by facsimile or other electronic means of transmission,

the date delivered to the office of the Secretary of State or to the office of the clerk of the county commission, in accordance with the provisions of subsection (a) of this section, during regular business hours of ~~such~~ that office.

(e) The sworn financial statements required to be filed by this section with the Secretary of State shall be posted on the internet by the Secretary of State within ten business days from the date the financial statement ~~was~~ is filed.

The bill (Eng. Com. Sub. for H. B. 2588), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2615**, West Virginia Small Business Capital Act.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 2801**, Permitting county commissions and municipalities to designate areas of special interest which will not affect the use of property in those areas.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 2823**, Eliminating the street and interurban and electric railways tax.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 4188**, Relating to the development and implementation of a program to facilitate commercial sponsorship of rest areas.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 4209**, Relating generally to health care provider taxes.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 4213, Uniform Deployed Parents Custody and Visitation Act.**

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §48-1-233.3, §48-1-233.4 and §48-9-404 of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new chapter, designated §48A-1-101, §48A-1-102, §48A-1-103, §48A-1-104, §48A-1-105, §48A-1-106, §48A-1-107, §48A-2-201, §48A-2-202, §48A-2-203, §48A-2-204, §48A-2-205, §48A-3-301, §48A-3-302, §48A-3-303, §48A-3-304, §48A-3-305, §48A-3-306, §48A-3-307, §48A-3-308, §48A-3-309, §48A-3-310, §48A-4-401, §48A-4-402, §48A-4-403, §48A-4-404, §48A-5-501, §48A-5-502 and §48A-5-503, all to read as follows:

**CHAPTER 48A. UNIFORM DEPLOYED PARENTS  
CUSTODY AND VISITATION ACT.**

**ARTICLE 1. GENERAL PROVISIONS.**

**§48A-1-101. Short title.**

This chapter may be cited as the Uniform Deployed Parents Custody and Visitation Act.

**§48A-1-102. Definitions.**

In this chapter:

(1) “Adult” means an individual who has attained 18 years of age or who is an emancipated minor.

(2) “Care-taking authority” means the right to live with and care for a child on a day-to-day basis. The term includes physical custody, parenting time, right to access and visitation.

(3) “Child” means:

(A) An unemancipated individual who has not attained eighteen years of age;

(B) An adult son or daughter by birth or adoption, or under law of this state other than this chapter, who is the subject of a court order concerning custodial responsibility; or

(C) An adult son or daughter who is enrolled in a secondary school pursuing a high school diploma, until he or she graduates.

(4) “Close and substantial relationship” means a relationship in which a significant bond exists between a child and a nonparent.

(5) “Court” means a tribunal, authorized under law of this state, other than this chapter, to make, enforce or modify a decision regarding custodial responsibility.

(6) “Custodial responsibility” includes all powers and duties relating to care-taking authority and decision-making authority for a child. The term includes physical custody, legal custody, parenting time, right to access, visitation and authority to grant limited contact with a child.

(7) “Decision-making authority” means the power to make important decisions regarding a child, including decisions regarding the child’s education, religious training, health care, extracurricular activities and travel. The term does not include the power to make decisions that necessarily accompany a grant of care-taking authority.

(8) “Deploying parent” means a service member who is deployed or has been notified of impending deployment and is:

(A) A parent of a child under law of this state, other than this chapter; or

(B) An individual who has custodial responsibility for a child under law of this state, other than this chapter.

(9) “Deployment” means the movement or mobilization of a service member for more than ninety days, but fewer than eighteen months, pursuant to uniformed service orders that:

(A) Are designated as unaccompanied;

(B) Do not authorize dependent travel; or

(C) Otherwise do not permit the movement of family members to the location to which the service member is deployed.

(10) “Family member” means a sibling, aunt, uncle, cousin, stepparent or grandparent of a child or an individual recognized to be in a familial relationship with a child under law of this state, other than this chapter.

(11) “Limited contact” means the authority of a nonparent to visit a child for a limited time. The term includes authority to take the child to a place other than the residence of the child.

(12) “Nonparent” means an individual other than a deploying parent or other parent.

(13) “Other parent” means an individual who, in common with a deploying parent, is:

(A) A parent of a child under law of this state, other than this chapter; or

(B) An individual who has custodial responsibility for a child under law of this state, other than this chapter.

(14) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(15) “Return from deployment” means the conclusion of a service member’s deployment as specified in uniformed service orders.

(16) “Service member” means a member of a uniformed service.

(17) “Sign” means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound or process.

(18) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

(19) “Uniformed service” means:

(A) Active and reserve components of the Army, Navy, Air Force, Marine Corps or Coast Guard of the United States;

(B) The United States Merchant Marine;

(C) The commissioned corps of the United States Public Health Service;

(D) The commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or

(E) The National Guard of a state.

#### **§48A-1-103. Remedies for noncompliance.**

In addition to other remedies under law of this state, other than this chapter, if a court finds that a party to a proceeding under this chapter has acted in bad faith or intentionally failed to comply with this chapter or a court order issued under this chapter, the court may assess reasonable attorney fees and costs against the party and order other appropriate relief.

#### **§48A-1-104. Jurisdiction.**

(a) A court may issue an order regarding custodial responsibility under this chapter only if the court has jurisdiction

under the Uniform Child Custody Jurisdiction and Enforcement Act.

(b) If a court has issued a temporary order regarding custodial responsibility pursuant to article three of this chapter, the residence of the deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act during the deployment.

(c) If a court has issued a permanent order regarding custodial responsibility before notice of deployment and the parents modify that order temporarily by agreement pursuant to the provisions of this chapter, the residence of the deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act.

(d) If a court in another state has issued a temporary order regarding custodial responsibility as a result of impending or current deployment, the residence of the deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act.

(e) This section does not prevent a court from exercising temporary emergency jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act.

(f) Participation in an agreement or order under this article does not automatically grant the parties standing or a right to notice in proceedings under other provisions of this code.

**§48A-1-105. Notification required of deploying parent.**

(a) Except as otherwise provided in subsection (d) of this section and subject to subsection (c) of this section, a deploying parent shall notify, in a record, the other parent of a pending deployment not later than seven days after receiving notice of deployment, unless reasonably prevented from doing so by the circumstances of service. If the circumstances of service prevent giving notification within the seven days, the deploying parent shall give the notification as soon as reasonably possible.

(b) Except as otherwise provided in subsection (d) of this section and subject to subsection (c) of this section, each parent shall provide the other parent, in a record, with a plan for fulfilling that parent's share of custodial responsibility during deployment. Each parent shall provide the plan as soon as reasonably possible after notification of deployment is given under subsection (a) of this section.

(c) If a court order, currently in effect, prohibits disclosure of the address or contact information of the other parent, notification of deployment under subsection (a) of this section, or notification of a plan for custodial responsibility during deployment under subsection (b) of this section, may be made only to the issuing court. If the address of the other parent is available to the issuing court, the court shall forward the notification to the other parent. The court shall keep confidential the address or contact information of the other parent.

(d) Notification in a record under subsection (a) or (b) of this section is not required if the parents are living in the same residence and both parents have actual notice of the deployment or plan.

(e) In a proceeding regarding custodial responsibility, a court may consider the reasonableness of a parent's efforts to comply with this section.

**§48A-1-106. Duty to notify of change of address.**

(a) Except as otherwise provided in subsection (b) of this section, an individual to whom custodial responsibility has been granted during deployment pursuant to the provisions of this chapter shall notify the deploying parent and any other individual with custodial responsibility for a child of any change of the individual's mailing address or residence until the grant is terminated. The individual shall provide the notice to any court that has issued a custody or child support order which is in effect concerning the child.

(b) If a court order, currently in effect, prohibits disclosure of the address or contact information of an individual to whom

custodial responsibility has been granted, a notification under subsection (a) of this section may be made only to the court that issued the order. The court shall keep confidential the mailing address or residence of the individual to whom custodial responsibility has been granted.

**§48A-1-107. General consideration in custody proceeding of parent's military service.**

In a proceeding for custodial responsibility for a child of a service member, a court may not exclusively consider a parent's past deployment or possible future deployment in determining the best interest of the child, but may consider any significant impact on the best interest of the child relating to the parent's past or possible future deployment.

**ARTICLE 2. AGREEMENT ADDRESSING CUSTODIAL RESPONSIBILITY DURING DEPLOYMENT.**

**§48A-2-201. Form of agreement addressing custodial responsibility during deployment.**

(a) The parents of a child may enter into a temporary agreement under this article granting custodial responsibility during deployment.

(b) An agreement under subsection (a) of this section shall be:

(1) In writing; and

(2) Signed by both parents and any nonparent to whom custodial responsibility is granted.

(c) Subject to subsection (d) of this section, an agreement under subsection (a) of this section, if feasible, shall:

(1) Identify the destination, duration and conditions of the deployment that is the basis for the agreement;

(2) Specify the allocation of care-taking authority among the deploying parent, the other parent, and any nonparent;

(3) Specify any decision-making authority that accompanies a grant of care-taking authority;

(4) Specify any grant of limited contact to a nonparent;

(5) If under the agreement custodial responsibility is shared by the other parent and a nonparent or by other nonparents, provide a process to resolve any dispute that may arise;

(6) Specify the frequency, duration and means, including electronic means, by which the deploying parent will have contact with the child, any role to be played by the other parent in facilitating the contact and the allocation of any costs of contact;

(7) Specify the contact between the deploying parent and child during the time the deploying parent is on leave or is otherwise available;

(8) Acknowledge that any party's child-support obligation cannot be modified by the agreement and that changing the terms of the obligation during deployment requires modification in the appropriate court;

(9) Provide that the agreement will terminate according to the procedures specified in this article after the deploying parent returns from deployment; and

(10) If the agreement must be filed pursuant to section two hundred five of this article, specify which parent is required to file the agreement.

(d) The omission of any of the items specified in subsection (c) of this section does not invalidate an agreement under this section.

**§48A-2-202. Nature of authority created by agreement.**

(a) An agreement under this article is temporary and terminates pursuant to the provisions of this article after the deploying parent returns from deployment, unless the agreement has been terminated before that time by court order or modification under section two hundred three of this article. The agreement does not create an independent, continuing right to care-taking authority, decision-

making authority or limited contact in an individual to whom custodial responsibility is given.

(b) A nonparent who has care-taking authority, decision-making authority or limited contact by an agreement under this article has standing to enforce the agreement until it has been terminated by court order, by modification under section two hundred three of this article or under other provisions of this article.

**§48A-2-203. Modification of agreement.**

(a) By mutual consent, the parents of a child may modify an agreement regarding custodial responsibility made pursuant to this article.

(b) If an agreement is modified under subsection (a) of this section before deployment of a deploying parent, the modification shall be in writing and signed by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.

(c) If an agreement is modified under subsection (a) of this section during deployment of a deploying parent, the modification shall be agreed to in a record by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.

**§48A-2-204. Power of attorney.**

A deploying parent, by power of attorney, may delegate all or part of custodial responsibility to an adult nonparent for the period of deployment if no other parent possesses custodial responsibility under law of this state other than this chapter, or if a court order currently in effect prohibits contact between the child and the other parent. The deploying parent may revoke the power of attorney by signing a revocation of the power.

**§48A-2-205. Filing agreement or power of attorney with court.**

An agreement or power of attorney under this article shall be filed within a reasonable time with any court that has entered an order on custodial responsibility or child support that is in effect concerning the child who is the subject of the agreement or power.

The case number and heading of the pending case concerning custodial responsibility or child support shall be provided to the court with the agreement or power.

**ARTICLE 3. JUDICIAL PROCEDURE FOR GRANTING CUSTODIAL RESPONSIBILITY DURING DEPLOYMENT.**

**§48A-3-301. Proceeding for temporary custody order.**

(a) After a deploying parent receives notice of deployment and until the deployment terminates, a court may issue a temporary order granting custodial responsibility unless prohibited by the Servicemembers Civil Relief Act, 50 U. S. C. §3931 and §3932. A court may not issue a permanent order granting custodial responsibility without the consent of the deploying parent.

(b) At any time after a deploying parent receives notice of deployment, either parent may file a motion regarding custodial responsibility for a child during deployment. The motion shall be filed in a pending proceeding for custodial responsibility in a court with jurisdiction under section one hundred four, article one of this chapter or, if there is no pending proceeding in a court with jurisdiction under section one hundred four, article one of this chapter, in a new action for granting custodial responsibility during deployment.

**§48A-3-302. Expedited hearing.**

If a motion to grant custodial responsibility is filed under subsection (b), section three hundred one of this article before a deploying parent deploys, the court shall conduct an expedited hearing within ten days of receipt of the motion.

**§48A-3-303. Testimony by electronic means.**

In a proceeding under this article, a party or witness who is not reasonably available to appear in person may appear, provide testimony and present evidence by electronic means, unless the court finds good cause to require a personal appearance.

**§48A-3-304. Effect of prior judicial order or agreement.**

In a proceeding for a grant of custodial responsibility pursuant to this article, the following rules apply:

(1) A prior judicial order designating custodial responsibility in the event of deployment is binding on the court unless, the circumstances meet the requirements of law of this state other than this article for modifying a judicial order regarding custodial responsibility.

(2) The court shall enforce a prior written agreement between the parents for designating custodial responsibility in the event of deployment, including an agreement executed under section two hundred one, article two of this chapter, unless the court finds that the agreement is contrary to the best interest of the child.

**§48A-3-305. Grant of care-taking or decision-making authority to nonparent.**

(a) On motion of a deploying parent and in accordance with law of this state, other than this article, if it is in the best interest of the child, a court may grant care-taking authority to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship.

(b) Unless a grant of care-taking authority to a nonparent under subsection (a) of this section is agreed to by the other parent, the grant is limited to an amount of time not greater than:

(1) The amount of time granted to the deploying parent under a permanent custody order, unless the court adds unusual travel time necessary to transport the child; or

(2) In the absence of a permanent custody order that is currently in effect, the amount of time that the deploying parent habitually cared for the child before being notified of deployment, unless the court adds unusual travel time necessary to transport the child.

(c) A court may grant part of a deploying parent's decision-making authority, if the deploying parent is unable to exercise that

authority, to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship. If a court grants the authority to a nonparent, the court shall specify the decision-making powers granted, including decisions regarding the child's education, religious training, health care, extracurricular activities and travel.

**§48A-3-306. Grant of limited contact.**

On motion of a deploying parent, and in accordance with law of this state other than this chapter, unless the court finds that the contact would be contrary to the best interest of the child, a court shall grant limited contact to a nonparent who is a family member of the child or an individual with whom the child has a close and substantial relationship.

**§48A-3-307. Nature of authority created by temporary custody order.**

(a) A grant of authority under this article is temporary and terminates under article four of this chapter after the return of the deployed parent, unless the grant has been terminated before that time by court order. The grant does not create an independent, continuing right to care-taking authority, decision-making authority or limited contact in an individual to whom it is granted.

(b) A nonparent granted care-taking authority, decision-making authority or limited contact under this article has standing to enforce the grant until it is terminated by court order or under other provisions of this article.

**§48A-3-308. Content of temporary custody order.**

(a) An order granting custodial responsibility under this chapter shall:

(1) Designate the order as temporary; and

(2) Identify, to the extent feasible, the destination, duration and conditions of the deployment.

(b) If applicable, an order for custodial responsibility under this article shall:

(1) Specify the allocation of care-taking authority, decision-making authority or limited contact among the deploying parent, the other parent and any nonparent;

(2) If the order divides care-taking or decision-making authority between individuals, or grants care-taking authority to one individual and limited contact to another, provide a process to resolve any dispute that may arise;

(3) Provide for liberal communication between the deploying parent and the child during deployment, including through electronic means, unless contrary to the best interest of the child, and allocate any costs of communications;

(4) Provide for liberal contact between the deploying parent and the child during the time the deploying parent is on leave or otherwise available, unless contrary to the best interest of the child;

(5) Provide for reasonable contact between the deploying parent and the child after return from deployment until the temporary order is terminated, even if the time of contact exceeds the time the deploying parent spent with the child before entry of the temporary order; and

(6) Provide that the order will terminate pursuant to the provisions of this article after the parent returns from deployment.

**§48A-3-309. Order for child support.**

If a court has issued an order granting care-taking authority under this article, or an agreement granting care-taking authority has been executed under section two hundred one, article two of this chapter, the court may enter a temporary order for child support consistent with law of this state, other than this chapter, if the court has jurisdiction under the Uniform Interstate Family Support Act.

**§48A-3-310. Modifying or terminating grant of custodial responsibility to nonparent.**

(a) Except for an order under section three hundred five of this article, except as otherwise provided in subsection (b) of this section, and consistent with the Servicemembers Civil Relief Act, 50 U. S. C. §3931 and §3932, on motion of a deploying or other parent or any nonparent to whom care-taking authority, decision-making authority or limited contact has been granted, the court may modify or terminate the grant if the modification or termination is consistent with this article and it is in the best interest of the child. A modification is temporary and terminates pursuant to the provisions of this article after the deploying parent returns from deployment, unless the grant has been terminated before that time by court order.

(b) On motion of a deploying parent, the court shall terminate a grant of limited contact.

**ARTICLE 4. RETURN FROM DEPLOYMENT.**

**§48A-4-401. Procedure for terminating temporary grant of custodial responsibility established by agreement.**

(a) At any time after return from deployment, a temporary agreement granting custodial responsibility under section two hundred one, article two of this chapter may be terminated by an agreement to terminate signed by the deploying parent and the other parent.

(b) A temporary agreement under section two hundred one, article two of this chapter granting custodial responsibility terminates:

(1) If an agreement to terminate under subsection (a) of this section specifies a date for termination, on that date; or

(2) If the agreement to terminate does not specify a date, on the date the agreement to terminate is signed by the deploying parent and the other parent.

(c) In the absence of an agreement under subsection (a) of this section to terminate, a temporary agreement granting custodial responsibility terminates under this article sixty days after the deploying parent gives notice to the other parent that the deploying parent returned from deployment.

(d) If a temporary agreement granting custodial responsibility was filed with a court pursuant to section two hundred five of this article, an agreement to terminate the temporary agreement must also be filed with that court within a reasonable time after the signing of the agreement. The case number and heading of the case concerning custodial responsibility or child support must be provided to the court with the agreement to terminate.

**§48A-4-402. Consent procedure for terminating temporary grant of custodial responsibility established by court order.**

At any time after a deploying parent returns from deployment, the deploying parent and the other parent may file with the court an agreement to terminate a temporary order for custodial responsibility. After an agreement has been filed, the court shall issue an order terminating the temporary order effective on the date specified in the agreement. If a date is not specified, the order is effective immediately.

**§48A-4-403. Visitation before termination of temporary grant of custodial responsibility.**

After a deploying parent returns from deployment until a temporary agreement or order for custodial responsibility established under this chapter is terminated, the court shall issue a temporary order granting the deploying parent reasonable contact with the child unless it is contrary to the best interest of the child, even if the time of contact exceeds the time the deploying parent spent with the child before deployment.

**§48A-4-404. Termination by operation of law of temporary grant of custodial responsibility established by court order.**

(a) If an agreement between the parties to terminate a temporary order for custodial responsibility under the provisions of this chapter has not been filed, the order terminates sixty days after the deploying parent gives notice to the other parent and any nonparent granted custodial responsibility that the deploying parent has returned from deployment.

(b) A proceeding seeking to prevent termination of a temporary order for custodial responsibility is governed by law of this state other than this chapter.

**ARTICLE 5. MISCELLANEOUS PROVISIONS.**

**§48A-5-501. Uniformity of application and construction.**

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**§48A-5-502. Relation to Electronic Signatures in Global and National Commerce Act.**

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U. S. C. Section 7001 *et seq.*, but does not modify, limit, or supersede Section 101(c) of that act, 15 U. S. C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U. S. C. Section 7003(b).

**§48A-5-503. Savings clause.**

This chapter does not affect the validity of a temporary court order concerning custodial responsibility during deployment which was entered before the effective date of this chapter.

The bill (Eng. Com. Sub. for H. B. 4213), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4225**, Relating to patriotic displays at public buildings.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 4295**, Relating to the School Innovation Zones Act.

On second reading, coming up in regular order, was read a second time.

The following amendments to the bill, from the Committee on Education, were reported by the Clerk, considered simultaneously, and adopted:

On page three, section one, line six, by striking out the word “and”;

On page three, section one, line seven, after the word “pathways” by changing the comma to a semicolon and inserting the following: and

(5) The arts.;

On page four, section two, line six, by striking out the word “and”;

On page four, section two, line seven, after the word “pathways” by changing the comma to a semicolon and inserting the following: and

(5) The arts.;

On page four, section two, line ten, by striking out the words “entrepreneurship or career pathways” and inserting in lieu thereof the words “entrepreneurship, career pathways or the arts”;

On page five, section three, line two, by striking out the words “entrepreneurship or career pathways” and inserting in lieu thereof the words “entrepreneurship, career pathways or the arts”;

On page five, section three, line six, by striking out the word “In” and inserting in lieu thereof the word “in”;

On page five, section three, line seven, by striking out the words “entrepreneurship or career pathways” and inserting in lieu thereof the words “entrepreneurship, career pathways or the arts”;

On page five, section three, line fifteen, by striking out the words “as a as a” and inserting in lieu thereof the words “as a”;

On page five, section three, lines sixteen and seventeen, by striking out the words “(i) Science, technology, engineering and math (STEM); (ii) community school partnership; (iii) entrepreneurship; or (iv) career pathways” and inserting in lieu thereof the words “which may include: (i) Science, technology, engineering and math (STEM); (ii) community school partnership; (iii) entrepreneurship; (iv) career pathways; or (v) the arts”;

On page six, section three, line twenty-three, after the word “articulation” by inserting the word “of”;

On page seven, section four, line two, by striking out the words “entrepreneurship or career pathways” and inserting in lieu thereof the words “entrepreneurship, career pathways or the arts”;

On page eight, section four, line nineteen, after the word “other” by striking out the word “assessment” and inserting in lieu thereof the word “assessments”;

On page eight, section four, lines twenty-two through twenty-four, by striking out all of paragraphs (F) and (G) and inserting in lieu thereof a new paragraph, designated paragraph (F), to read as follows:

“(F) Progress among subgroups of students, including, but not limited to, low-income students and students receiving special education;”;

And by relettering the remaining paragraphs;

On page eight, section four, line forty-one, by striking out the words “rule, policy or statute exemptions” and inserting in lieu thereof the words “exemptions to rule, policy or statute”;

On page nine, section five, line sixteen, by striking out the word “goal” and inserting in lieu thereof the word “goals”;

On page eleven, section six, line twenty-three, by striking out the words “innovation in education plan” and inserting in lieu thereof the words “Innovation in Education Plan”;

And,

On page twelve, section six, line thirty-three, by striking out the word “or”.

The bill (Eng. Com. Sub. for H. B. 4295), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4322**, Expanding the Learn and Earn Program.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 4377**, Eliminating exemption from hotel occupancy taxes on rental of hotel and motel rooms for thirty or more consecutive days.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 4433**, Allowing an adjustment to gross income for calculating the personal income tax liability of certain retirees.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 4489**, Relating generally to human trafficking.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §61-2-17 of the Code of West Virginia, 1931, as amended, be repealed; that §15-9A-2 of said code be amended and reenacted; that §48-26-401 of said code be amended and reenacted; that §49-1-201 of said code be amended and reenacted; that §49-4-301 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §61-14-1, §61-14-2, §61-14-3, §61-14-4, §61-14-5, §61-14-6, §61-14-7, §61-14-8, §61-14-9 and §61-14-10; and that §62-1D-8 of said code be amended and reenacted, all to read as follows:

## **CHAPTER 15. PUBLIC SAFETY.**

### **ARTICLE 9A. DIVISION OF JUSTICE AND COMMUNITY SERVICES.**

#### **§15-9A-2. Division established; appointment of director.**

(a) The Division of Justice and Community Services is created. The purpose of the division is to provide executive and administrative support to the Governor's Committee on Crime Delinquency and Correction in the coordination of planning for the criminal justice system, to administer federal and state grant programs assigned to it by the actions of the Governor or Legislature and to perform such other duties as the Legislature may, from time to time, assign to the division. The division is the designated staffing agency for the Governor's Committee on Crime, Delinquency and Correction, and all of its subcommittees. The division may apply for grants and other funding from federal or state programs, foundations, corporations and organizations which funding is consistent with its responsibilities and the purposes assigned to it or the subcommittees it staffs. The Division of Justice and Community Services is hereby designated as the state

administrative agency responsible for criminal justice and juvenile justice systems, and various component agencies of state and local government, for the planning and development of state programs and grants which may be funded by federal, state or other allocations in the areas of community corrections, law-enforcement training and compliance, sexual assault forensic examinations, victim services, human trafficking and juvenile justice.

(b) The director of the division shall be named by the Governor to serve at his will and pleasure.

(c) The director of the division shall take and subscribe to an oath of office in conformity with article IV, section five of the Constitution of the State of West Virginia.

## **CHAPTER 48. DOMESTIC RELATIONS.**

### **ARTICLE 26. DOMESTIC VIOLENCE ACT.**

#### **§48-26-401. Powers and duties of board.**

(a) The board shall:

(1) Propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article and any applicable federal guidelines;

(2) Receive and consider applications for licensure of domestic violence programs, batterer intervention and prevention programs and monitored parenting and exchange programs;

(3) Assess the need for domestic violence programs, batterer intervention and prevention programs and monitored parenting and exchange programs, including licensure preapplication and application processes;

(4) Conduct licensure renewal reviews of domestic violence programs, batterer intervention and prevention programs and monitored parenting and exchange programs, that will ensure the

safety, well-being and health of the programs' participants and staff;

(5) For each fiscal year, expend from the Family Protection Fund a sum not to exceed fifteen percent for the costs of administering the provisions of this article, and direct the Department of Health and Human Resources to distribute one half of the remaining funds equally and the other half of the remaining funds in accordance with a formula determined by the board, to licensed domestic violence programs;

(6) Submit an annual report on the status of programs licensed under the provisions of this article to the Governor and the Joint Committee on Government and Finance;

(7) Conduct hearings as necessary under this article; and

(8) Collect data about licensed programs for use in the annual report of the board.

(b) The board may:

(1) Advise the Secretary of the Department of Health and Human Resources and the Chair of the Governor's Committee on Crime, Delinquency and Correction on matters of concern relative to their responsibilities under this article;

(2) Delegate to the Secretary of the Department of Health and Human Resources such powers and duties of the board as the board considers appropriate to delegate, including, but not limited to, the authority to approve, disapprove, revoke or suspend licenses;

(3) Advise administrators of state or federal funds of licensure violations and closures of programs; and

(4) Exercise all other powers necessary to implement the provisions of this article.

(c) The board shall develop a comprehensive list and inventory of services available in this state for victims of human trafficking

and provide the information developed to state, county and local law-enforcement law agencies.

(d) The board shall coordinate with the appropriate government agencies to develop a program to promote public awareness about human trafficking, victim remedies and services available to victims.

## **CHAPTER 49. CHILD WELFARE.**

### **ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

#### **§49-1-201. Definitions related, but not limited, to child abuse and neglect.**

When used in this chapter, terms defined in this sections have the meanings ascribed to them that relate to, but are not limited to, child abuse and neglect, except in those instances where a different meaning is provided or the context in which the word is used clearly indicates that a different meaning is intended.

“Abandonment” means any conduct that demonstrates the settled purpose to forego the duties and parental responsibilities to the child;

“Abused child” means a child whose health or welfare is being harmed or threatened by:

(A) A parent, guardian or custodian who knowingly or intentionally inflicts, attempts to inflict or knowingly allows another person to inflict, physical injury or mental or emotional injury, upon the child or another child in the home. Physical injury may include an injury to the child as a result of excessive corporal punishment;

(B) Sexual abuse, ~~or~~ sexual exploitation or commercial sexual exploitation;

(C) The sale or attempted sale of a child by a parent, guardian or custodian in violation of section fourteen-h, article two, chapter sixty-one of this code; or

(D) Domestic violence as defined in section two hundred two, article twenty-seven, chapter forty-eight of this code.

“Abusing parent” means a parent, guardian or other custodian, regardless of his or her age, whose conduct has been adjudicated by the court to constitute child abuse or neglect as alleged in the petition charging child abuse or neglect.

“Battered parent,” for the purposes of part six, article four of this chapter, means a respondent parent, guardian or other custodian who has been adjudicated by the court to have not condoned the abuse or neglect and has not been able to stop the abuse or neglect of the child or children due to being the victim of domestic violence as defined by section two hundred two, article twenty-seven, chapter forty-eight of this code which was perpetrated by the same person or persons determined to have abused or neglected the child or children.

“Child abuse and neglect services” means social services which are directed toward:

(A) Protecting and promoting the welfare of children who are abused or neglected;

(B) Identifying, preventing and remedying conditions which cause child abuse and neglect;

(C) Preventing the unnecessary removal of children from their families by identifying family problems and assisting families in resolving problems which could lead to a removal of children and a breakup of the family;

(D) In cases where children have been removed from their families, providing time-limited reunification services to the children and the families so as to reunify those children with their families or some portion thereof;

(E) Placing children in suitable adoptive homes when reunifying the children with their families, or some portion thereof, is not possible or appropriate; and

(F) Assuring the adequate care of children or juveniles who have been placed in the custody of the department or third parties.

“Condition requiring emergency medical treatment” means a condition which, if left untreated for a period of a few hours, may result in permanent physical damage; that condition includes, but is not limited to, profuse or arterial bleeding, dislocation or fracture, unconsciousness and evidence of ingestion of significant amounts of a poisonous substance.

“Imminent danger to the physical well-being of the child” means an emergency situation in which the welfare or the life of the child is threatened. These conditions may include an emergency situation when there is reasonable cause to believe that any child in the home is or has been sexually abused or sexually exploited, or reasonable cause to believe that the following conditions threaten the health, life or safety of any child in the home:

(A) Nonaccidental trauma inflicted by a parent, guardian, custodian, sibling or a babysitter or other caretaker;

(B) A combination of physical and other signs indicating a pattern of abuse which may be medically diagnosed as battered child syndrome;

(C) Nutritional deprivation;

(D) Abandonment by the parent, guardian or custodian;

(E) Inadequate treatment of serious illness or disease;

(F) Substantial emotional injury inflicted by a parent, guardian or custodian;

(G) Sale or attempted sale of the child by the parent, guardian or custodian;

(H) The parent, guardian or custodian’s abuse of alcohol or drugs or other controlled substance as defined in section one hundred one, article one, chapter sixty-a of this code, has impaired

his or her parenting skills to a degree as to pose an imminent risk to a child's health or safety; or

(I) Any other condition that threatens the health, life or safety of any child in the home.

“Neglected child” means a child:

(A) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's parent, guardian or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care or education, when that refusal, failure or inability is not due primarily to a lack of financial means on the part of the parent, guardian or custodian; or

(B) Who is presently without necessary food, clothing, shelter, medical care, education or supervision because of the disappearance or absence of the child's parent or custodian;

(C) “Neglected child” does not mean a child whose education is conducted within the provisions of section one, article eight, chapter eighteen of this code.

“Petitioner or co-petitioner” means the Department or any reputable person who files a child abuse or neglect petition pursuant to section six hundred one, article four of this chapter.

“Permanency plan” means the part of the case plan which is designed to achieve a permanent home for the child in the least restrictive setting available.

“Respondent” means all parents, guardians, and custodians identified in the child abuse and neglect petition who are not petitioners or co-petitioners.

“Sexual abuse” means:

(A) Sexual intercourse, sexual intrusion, sexual contact, or conduct proscribed by section three, article eight-c, chapter sixty-one, which a parent, guardian or custodian engages in, attempts to engage in, or knowingly procures another person to engage in with

a child notwithstanding the fact that for a child who is less than sixteen years of age the child may have willingly participated in that conduct or the child may have suffered no apparent physical injury or mental or emotional injury as a result of that conduct or, for a child sixteen years of age or older the child may have consented to that conduct or the child may have suffered no apparent physical injury or mental or emotional injury as a result of that conduct;

(B) Any conduct where a parent, guardian or custodian displays his or her sex organs to a child, or procures another person to display his or her sex organs to a child, for the purpose of gratifying the sexual desire of the parent, guardian or custodian, of the person making that display, or of the child, or for the purpose of affronting or alarming the child; or

(C) Any of the offenses proscribed in sections seven, eight or nine, article eight-b, chapter sixty-one of this code.

“Sexual assault” means any of the offenses proscribed in sections three, four or five, article eight-b, chapter sixty-one of this code.

“Sexual contact” means sexual contact as that term is defined in section one, article eight-b, chapter sixty-one of this code.

“Sexual exploitation” means an act where:

(A) A parent, custodian or guardian, whether for financial gain or not, persuades, induces, entices or coerces a child to engage in sexually explicit conduct as that term is defined in section one, article eight-c, chapter sixty-one of this code; or

(B) A parent, guardian or custodian persuades, induces, entices or coerces a child to display his or her sex organs for the sexual gratification of the parent, guardian, custodian or a third person, or to display his or her sex organs under circumstances in which the parent, guardian or custodian knows that the display is likely to be observed by others who would be affronted or alarmed.

“Sexual intercourse” means sexual intercourse as that term is defined in section one, article eight-b, chapter sixty-one of this code.

“Sexual intrusion” means sexual intrusion as that term is defined in section one, article eight-b, chapter sixty-one of this code.

“Serious physical abuse” means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

“Commercial sexual exploitation” means the sexual commodification of children’s bodies for the purposes of financial or material gain including, but not limited to, exploitation of children for sexual purposes, child sex tourism, child pornography and child sex trafficking.

#### **ARTICLE 4. COURT ACTIONS.**

##### **§49-4-301. Custody of a neglected child by law enforcement in emergency situations; protective custody; requirements; notices; petition for appointment of special guardian; discharge; immunity.**

(a) A child believed to be a neglected child or an abused child may be taken into custody without the court order otherwise required by section six hundred two of this article by a law-enforcement officer if:

(1) The child is without supervision or shelter for an unreasonable period of time in light of the child’s age and the ability to care for himself or herself in circumstances presenting an immediate threat of serious harm to that child; or

(2) That officer determines that the child is in a condition requiring emergency medical treatment by a physician and the child’s parents, parent, guardian or custodian refuses to permit the treatment, or is unavailable for consent. A child who suffers from a condition requiring emergency medical treatment, whose parents,

parent, guardian or custodian refuses to permit the providing of the emergency medical treatment, may be retained in a hospital by a physician against the will of the parents, parent, guardian or custodian, as provided in subsection (c) of this section.

(b) A child taken into protective custody pursuant to subsection (a) of this section may be housed by the department or in any authorized child shelter facility. The authority to hold the child in protective custody, absent a petition and proper order granting temporary custody pursuant to section six hundred two of this article, terminates by operation of law upon the happening of either of the following events, whichever occurs first:

(1) The expiration of ninety-six hours from the time the child is initially taken into protective custody; or

(2) The expiration of the circumstances which initially warranted the determination of an emergency situation.

No child may be considered in an emergency situation and custody withheld from the child's parents, parent, guardian or custodian presenting themselves, himself or herself in a fit and proper condition and requesting physical custody of the child. No child may be removed from a place of residence as in an emergency under this section until after:

(1) All reasonable efforts to make inquiries and arrangements with neighbors, relatives and friends have been exhausted; or if no arrangements can be made; and

(2) The state department may place in the residence a home services worker with the child for a period of not less than twelve hours to await the return of the child's parents, parent, guardian or custodian.

Prior to taking a child into protective custody as abandoned at a place at or near the residence of the child, the law-enforcement officer shall post a typed or legibly handwritten notice at the place the child is found, informing the parents, parent, guardian or custodian that the child was taken by a law-enforcement officer, the name, address and office telephone number of the officer, the place

and telephone number where information can continuously be obtained as to the child's whereabouts, and if known, the worker for the state department having responsibility for the child.

Following a first encounter with a child who reasonably appears to a law-enforcement officer to be a victim who has engaged in commercial sexual activity, that officer shall notify the Department of Health and Human Resources and the Domestic Violence Program serving the area where the child is found. The child may be eligible for services including, but not limited to, appropriate child welfare services under chapter forty-nine of this code, victim treatment programs, child advocacy services, shelter services, rape crisis services and domestic violence programs required by article twenty-six, chapter forty-eight of this code, or other social services.

(c) A child taken into protective custody pursuant to this section for emergency medical treatment may be held in a hospital under the care of a physician against the will of the child's parents, parent, guardian or custodian for a period not to exceed ninety-six hours. The parents, parent, guardian or custodian may not be denied the right to see or visit with the child in a hospital. The authority to retain a child in protective custody in a hospital as requiring emergency medical treatment terminates by operation of law upon the happening of either of the following events, whichever occurs first:

(1) When the condition, in the opinion of the physician, no longer required emergency hospitalization, or;

(2) Upon the expiration of ninety-six hours from the initiation of custody, unless within that time, a petition is presented and a proper order obtained from the circuit court.

(d) Prior to assuming custody of a child from a law-enforcement officer, pursuant to this section, a physician or worker from the department shall require a typed or legibly handwritten statement from the officer identifying the officer's name, address and office telephone number and specifying all the facts upon

which the decision to take the child into protective custody was based, and the date, time and place of the taking.

(e) Any worker for the department assuming custody of a child pursuant to this section shall immediately notify the parents, parent, guardian or custodian of the child of the taking of the custody and the reasons therefor, if the whereabouts of the parents, parent, guardian or custodian are known or can be discovered with due diligence; and if not, notice and explanation shall be given to the child's closest relative, if his or her whereabouts are known or can be discovered with due diligence within a reasonable time. An inquiry shall be made of relatives and neighbors, and if a relative or appropriate neighbor is willing to assume custody of the child, the child will temporarily be placed in custody.

(f) No child may be taken into custody under circumstances not justified by this section or pursuant to section six hundred two of this article without appropriate process. Any retention of a child or order for retention of a child not complying with the time limits and other requirements specified in this article shall be void by operation of law.

(g) *Petition for appointment of special guardian.* — Upon the verified petition of any person showing:

(1) That any person under the age of eighteen years is threatened with or there is a substantial possibility that the person will suffer death, serious or permanent physical or emotional disability, disfigurement or suffering; and

(2) That disability, disfigurement or suffering is the result of the failure or refusal of any parent, guardian or custodian to procure, consent to or authorize necessary medical treatment, the circuit court of the county in which the person is located may direct the appointment of a special guardian for the purposes of procuring, consenting to and giving authorization for the administration of necessary medical treatment. The circuit court may not consider any petition filed in accordance with this section unless it is accompanied by a supporting affidavit of a licensed physician.

(h) *Notice of petition.* — So far as practicable, the parents, guardian or custodian of any person for whose benefit medical treatment is sought shall be given notice of the petition for the appointment of a special guardian under this section. Notice is not necessary if it would cause a delay that would result in the death or irreparable harm to the person for whose benefit medical treatment is sought. Notice may be given in a form and manner as may be necessary under the circumstances.

(i) *Discharge of special guardian.* — Upon the termination of necessary medical treatment to any person under this section, the circuit court order the discharge of the special guardian from any further authority, responsibility or duty.

(j) *Immunity from civil liability.* — No person appointed special guardian in accordance with this article is civilly liable for any act done by virtue of the authority vested in him or her by order of the circuit court.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### **ARTICLE 14. HUMAN TRAFFICKING.**

#### **§61-14-1. Definitions.**

When used in this article, the following words and terms shall have meaning specified unless the context clearly indicates a different meaning:

“Adult” means an individual eighteen years of age or older.

“Coercion” means:

(1) The use or threat of force against, abduction of, serious harm to or physical restraint of an individual;

(2) The use of a plan, pattern or statement with intent to cause an individual to believe that failure to perform an act will result in the use of force against, abduction of, serious harm to, physical restraint of or deportation of an individual;

(3) The abuse or threatened abuse of law or legal process;

(4) The destruction or taking of, or the threatened destruction or taking of, an individual's identification document or other property; or

(5) The use of an individual's physical or mental impairment when the impairment has a substantial adverse effect on the individual's cognitive or volitional function.

"Commercial sexual activity" means sexual activity for which anything of value is given to, promised to or received by a person.

"Debt bondage" means inducing an individual to provide:

(1) Commercial sexual activity in payment toward or satisfaction of a real or purported debt; or

(2) Labor or services in payment toward or satisfaction of a real or purported debt if:

(A) The reasonable value of the labor or services is not applied toward the liquidation of the debt; or

(B) The length of the labor or services is not limited, and the nature of the labor or services is not defined.

"Forced labor" means labor or services that are performed or provided by another person and are obtained or maintained through the following:

(1) Threat, either implicit or explicit, deception or fraud, scheme, plan, or pattern or other action intended to cause a person to believe that, if the person did not perform or provide the labor or services that person or another person would suffer serious bodily harm, physical restraint or deportation: *Provided*, That this does not include work or services provided by a minor to the minor's parent or legal guardian so long as the legal guardianship or custody of the minor was not obtained for the purpose compelling the minor to participate in commercial sex acts or sexually explicit performance, or perform forced labor or services.

(2) Physically restraining or threatening to physically restrain a person;

(3) Abuse or threatened abuse of the legal process; or

(4) Destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document of another person: *Provided*, That “forced labor” does not mean labor or services required to be performed by a person in compliance with a court order or as a required condition of probation, parole, or imprisonment.

“Identification document” means a passport, driver’s license, immigration document, travel document or other government-issued identification document, including a document issued by a foreign government.

“Labor or services” means activity having economic value.

“Minor” means an individual less than eighteen years of age.

“Patronize” means giving, agreeing to give or offering to give anything of value to another person in exchange for commercial sexual activity.

“Person” means an individual, estate, business or nonprofit entity, or other legal entity. The term does not include a public corporation or government or governmental subdivision, agency or instrumentality.

“Protective custody” means custody within a hospital or other medical facility or a place previously designated for such custody by the Department of Health and Human Resources, subject to review by the court, including an authorized child shelter facility, group home or other institution; but such place shall not be a jail or place for the detention of criminal or juvenile offenders.

“Serious harm” means harm, whether physical or nonphysical, including psychological, economic or reputational, to an individual which would compel a reasonable individual of the same

background and in the same circumstances to perform or continue to perform labor or services or sexual activity to avoid incurring the harm.

“Sexual activity” means sexual contact, sexual intercourse or sexual intrusion, as defined in section one, article eight-b of this chapter, or sexually explicit conduct, as defined in section one, article eight-c of this chapter.

“Sexual servitude” means:

(1) Maintaining or making available a minor for the purpose of engaging the minor in commercial sexual activity; or

(2) Using coercion to compel an adult to engage in commercial sexual activity.

“Traffics” or “trafficking” means recruiting, transporting, transferring, harboring, receiving, providing, obtaining, isolating, maintaining or enticing an individual in furtherance of forced labor or sexual servitude.

“Victim” means an individual who is subjected to trafficking or to conduct that would have constituted trafficking had this article been in effect when the conduct occurred, regardless of whether a perpetrator is identified, apprehended, prosecuted or convicted.

#### **§61-14-2. Trafficking an individual; penalties.**

(a) Any person who knowingly and willfully traffics an adult is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than three nor more than fifteen years, fined not more than \$200,000, or both confined and fined.

(b) Any person who knowingly and willfully traffics a minor is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than five nor more than twenty years, fined not more than \$300,000, or both confined and fined.

#### **§61-14-3. Forced labor; penalties.**

(a) Any person who knowingly uses an adult in forced labor to provide labor or services, is guilty of a felony and, upon conviction,

shall be confined in a state correctional facility for not less than one nor more than five years, fined not more than \$100,000, or both confined and fined.

(b) Any person who knowingly uses a minor in forced labor to provide labor or services, is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than three nor more than fifteen years, fined not more than \$300,000, or both confined and fined.

**§61-14-4. Debt bondage; penalties.**

(a) Any person who knowingly uses an adult in debt bondage is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than one nor more than five years, fined not more than \$100,000, or both confined and fined.

(b) Any person who knowingly uses a minor in debt bondage is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than three nor more than fifteen years, fined not more than \$300,000, or both confined and fined.

**§61-14-5. Sexual servitude; penalties.**

(a) Any person who knowingly uses coercion to compel an adult to engage in commercial sexual activity is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than three, nor more than fifteen years, fined not more than \$200,000, or both confined and fined.

(b) Any person who knowingly maintains or makes available a minor for the purpose of engaging the minor in commercial sexual activity is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than five nor more than twenty years, fined not more than \$300,000, or both confined and fined.

(c) It is not a defense in a prosecution under subsection (b) of this section that the minor consented to engage in the commercial

sexual activity, or that the defendant believed the minor was an adult.

**§61-14-6. Patronizing a victim of sexual servitude; penalties.**

(a) Any person who knowingly patronizes an individual to engage in commercial sexual activity with a third party who is an adult, and who knows that such adult is a victim of sexual servitude, is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not less than one nor more than five years, fined not more than \$100,000, or both confined and fined.

(b) Any person who knowingly patronizes an individual to engage in commercial sexual activity with a third party who is a minor is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than three nor more than fifteen years, fined not more than \$300,000, or both confined and fined.

**§61-14-7. General provisions and other penalties.**

(a) Separate violations — For purposes of this article, each adult or minor victim is a separate offense.

(b) Aggravating circumstance. —

(1) If an individual is convicted of an offense under this article and the court makes a finding that the offense involved an aggravating circumstance, the individual may not be eligible for parole before serving three years in a state correctional facility.

(2) For purposes of this subsection, “aggravating circumstance” means the individual recruited, enticed or obtained the victim of the offense from a shelter or facility that serves runaway youths, children in foster care, the homeless or individuals subjected to human trafficking, domestic violence or sexual assault.

(c) Restitution. —

(1) The court shall order a person convicted of an offense under this article to pay restitution to the victim of the offense.

(2) A judgment order for restitution may be enforced by the state or a victim named in the order to receive the restitution in the same manner as a judgment in a civil action in accordance with section four, article eleven-a of this chapter, including filing a lien against the person, firm or corporation against whom restitution is ordered.

(3) The court shall order restitution under subdivision (1) of this subsection even if the victim is unavailable to accept payment of restitution.

(4) If the victim does not claim restitution ordered under subdivision (1) of this subsection for five years after entry of the order, the restitution shall be paid to the Crime Victims Compensation Fund created under section four, article two-a, chapter fourteen of this code.

(d) *Disgorgement.* — In addition to the fine and penalties set forth in this article, any business entity that engages in the offenses established in this article may be fined not more than \$500,000 for each violation, be required to disgorge profit from activity in violation of this article pursuant to section five, article thirteen of this chapter and be debarred from state and local government contracts.

(e) *Eligibility for Compensation Fund.* — Notwithstanding the definition of victim in section three, article two-a, chapter fourteen of this code a victim of any offense under this article is a victim for all purposes of article two-a, chapter fourteen of this code: *Provided,* That for purposes of subsection (b), section fourteen, article two-a, chapter fourteen of this code, if otherwise qualified, a victim of any offense under this article may not be denied eligibility solely for the failure to report to law enforcement within the designated time frame.

#### **§61-14-8. Immunity for minor victim of sex trafficking.**

(a) A minor is not criminally liable or subject to juvenile proceedings for an offense of prostitution in violation of subsection (b), section five, article eight of this chapter because it is presumed that he or she committed the offense as a direct result of being a victim.

(b) This section does not apply in a prosecution or a juvenile proceeding for soliciting, inducing, enticing or procuring a prostitute in violation of subsection (b), section five, article eight of this chapter, unless it is determined by the court that the minor was coerced into the criminal behavior.

(c) A minor who, under subsection (a) or (b) of this section, is not subject to criminal liability or a juvenile delinquency proceeding is presumed to be an abused child, in need of services under chapter forty-nine of this code and shall not be arrested or detained but placed under protective custody.

#### **§61-14-9. Immunity for adult victims of sex trafficking.**

(a) An adult determined to be a victim of sex trafficking as defined in section one of this article shall not be criminally liable for an offense of prostitution or soliciting, inducing, enticing or procuring a prostitute in violation of subsection (b), section five, article eight of this chapter if it is further determined by the court that he or she engaged in the criminal behavior only because he or she was coerced.

#### **§61-14-10. Petition to vacate and expunge conviction of sex trafficking victim.**

(a) Notwithstanding the age and criminal history limitations set forth in section twenty-six, article eleven of this chapter, an individual convicted of prostitution in violation of subsection (b), section five, article eight of this chapter as a direct result of being a victim of trafficking, may apply by petition to the circuit court in the county of conviction to vacate the conviction and expunge the record of conviction. The court may grant the petition upon a finding that the individual's participation in the offense was a direct result of being a victim of trafficking.

(b) A victim of trafficking seeking relief under this section shall not be required to complete any type of rehabilitation in order to obtain expungement.

(c) A petition filed under subsection (a) of this section, any hearing conducted on the petition, and any relief granted shall meet

the procedural requirements of section twenty-six, article eleven of this chapter: *Provided*, That a victim of trafficking is not subject to the age or criminal history limitations in that section.

## CHAPTER 62. CRIMINAL PROCEDURE.

### ARTICLE 1D. WIRETAPPING AND ELECTRONIC SURVEILLANCE ACT.

#### **§62-1D-8. County prosecuting attorney or duly appointed special prosecutor may apply for order authorizing interception.**

The prosecuting attorney of any county or duly appointed special prosecutor may apply to one of the designated circuit judges referred to in section seven of this article and such judge, in accordance with the provisions of this article, may grant an order authorizing the interception of wire, oral or electronic communications by an officer of the investigative or law-enforcement agency when the prosecuting attorney or special prosecutor has shown reasonable cause to believe the interception would provide evidence of the commission of: (i) Kidnapping or abduction as defined and prohibited by the provisions of sections fourteen and fourteen-a, article two, chapter sixty-one of this code and including threats to kidnap or demand ransom as defined and prohibited by the provisions of section fourteen-c of said article two ~~or~~; (ii) of any offense included and prohibited by section eleven, article four, chapter twenty-five of said code, sections eight, nine and ten, article five, chapter sixty-one of said code or section one, article eight, chapter sixty-two of said code to the extent that any of said sections provide for offenses punishable as a felony; ~~or~~ (iii) dealing, transferring or trafficking in any controlled substance or substances in the felonious violation of chapter sixty-a of this code; ~~or~~ (iv) of any offense included and prohibited by article fourteen, chapter sixty-one of this code; or (v) any aider or abettor to any of the foregoing offenses or any conspiracy to commit any of the foregoing offenses if any aider, abettor or conspirator is a party to the communication to be intercepted.

The bill (Eng. H. B. 4489), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4520**, Clarifying that certain hospitals have only one governing body whose meetings shall be open to the public.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 4561**, Creating a special hiring process for West Virginia Division of Highways employees.

On second reading, coming up in regular order, was read a second time.

The following amendments to the bill, from the Committee on Government Organization, were reported by the Clerk, considered simultaneously, and adopted:

On page one, section four-a, line three, by striking out the word “hourly”;

On page one, section four-a, line thirteen, by striking out the word “hourly”;

On page two, section four-a, line sixteen, by striking out the word “January” and inserting in lieu thereof the word “July”;

And,

On page three, section four-a, line forty-five, by striking out the word “January” and inserting in lieu thereof the word “July”.

The bill (Eng. Com. Sub. for H. B. 4561), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4587**, Relating to violations associated with absent voters’ ballots.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

## **ARTICLE 9. OFFENSES AND PENALTIES.**

### **§3-9-19. Violations concerning absent voters' ballots; penalties.**

(a) Any person who, with the intent to commit fraud, obtains, removes, or disseminates an absent ~~voters~~<sup>22</sup> voter's ballot, intimidates an absent voter, or completes or alters an absent ~~voters~~<sup>22</sup> voter's ballot, is guilty of a felony and, upon conviction thereof, shall be fined not less than \$10,000 nor more than \$20,000, imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

(b) Notwithstanding subsection (a) of this section, any person who, having procured an absent voter's official ballot or ballots, shall willfully neglect or refuse to return the same as provided in article three of this chapter, or who shall otherwise willfully violate any of the provisions of said article three of this chapter, ~~shall be~~ is guilty of a misdemeanor and, on conviction thereof, shall be fined not more than ~~two hundred and fifty dollars~~ \$250, or confined in ~~the county~~ jail for not more than three months. If the clerk of the ~~circuit court~~ county commission of any county, or any member of the board of ballot commissioners, or any member of the board of canvassers ~~shall refuse~~ refuses or ~~neglect~~ neglects to perform any of the duties required of him or her by any of the provisions of articles three, five and six of this chapter relating to voting by absentees or ~~shall disclose~~ discloses to any other person or persons how any absent voter voted, he or she shall, in each instance, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than ~~five hundred dollars~~ \$500, or confined in ~~the county~~ jail for not more than six months.

The bill (Eng. Com. Sub. for H. B. 4587), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4612**, Relating generally to tax increment financing and economic opportunity development districts.

On second reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Carmichael, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

**Eng. House Bill 4617**, Authorizing legislative rules of the Higher Education Policy Commission regarding the Underwood-Smith Teacher Scholarship Program and Nursing Scholarship Program.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 4705**, Relating to adding an additional type of West Virginia source income of nonresident individual.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 4725**, Relating to providing the procedures for the filling of vacancies in the offices of justices of the Supreme Court of Appeals, circuit judge, family court judge or magistrate and making certain clarifications.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 4726**, Relating to coal mining generally.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Energy, Industry and Mining, was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §22-3A-1, §22-3A-2, §22-3A-3, §22-3A-4, §22-3A-5, §22-3A-6, §22-3A-7, §22-3A-8, §22-3A-9 and §22-3A-10 of the Code of West Virginia, 1931, as amended, be repealed; that §16-4C-6c of said code be amended and reenacted; that §22-1-7 of said code be amended and reenacted; that §22-3-2, §22-3-4, §22-3-13, §22-3-13a, §22-3-22a, §22-3-30a of said code be amended and reenacted; that said code be amended by adding thereto six new sections, designated §22-3-34, §22-3-35, §22-3-36, §22-3-37 and §22-3-38; that §22-11-6 of said code be amended and reenacted; that §22A-1-13, §22A-1-14, §22A-1-15, §22A-1-19, §22A-1-20, §22A-1-31 and §22A-1-35 of said code be amended and reenacted; that §22A-1A-2 of said code be amended and reenacted; that §22A-2-3, §22A-2-8, §22A-2-14, §22A-2-20, §22A-2-25, §22A-2-36, §22A-2-55, §22A-2-66 and §22A-2-77 of said code be amended and reenacted; and that §22A-7-7 of said code be amended and reenacted; all to read as follows:

## **CHAPTER 16. PUBLIC HEALTH.**

### **ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.**

#### **§16-4C-6c. Certification requirements for emergency medical technician ~~industrial-mining~~.**

(a) Commencing July 1, ~~2014~~ 2016, an applicant for certification as an emergency medical technician ~~industrial-mining~~ shall:

(1) Be at least eighteen years old;

(2) Apply on a form prescribed by the ~~Commissioner~~ Director of Miners' Health, Safety and Training;

(3) Pay the application fee;

(4) Possess a valid cardiopulmonary resuscitation (CPR) certification;

(5) Successfully complete an emergency medical technician-~~industrial~~ mining education program authorized by the ~~Commissioner~~ Director of Miners' Health, Safety and Training in consultation with the Board of Miner Training, Education and Certification; and

(6) Successfully complete emergency medical technician-~~industrial~~ mining cognitive and skills examinations authorized by the ~~Commissioner~~ Director of Miners' Health, Safety and Training in consultation with the Board of Miner Training, Education and Certification.

(b) The emergency medical technician ~~industrial~~-mining certification is valid for three years.

(c) A certified emergency medical technician ~~industrial~~-mining ~~is only authorized to~~ may only practice ~~during his or her regular employment on industrial property on~~ mining operations, as defined in section three, article thirteen-c, chapter eleven of this Code. ~~For the purposes of this section, "industrial property" means property being used for production, extraction or manufacturing activities.~~

(d) To be recertified as an emergency medical technician ~~industrial~~-mining, a certificate holder shall:

(1) Apply on a form prescribed by the ~~Commissioner~~ Director of Miners' Health, Safety and Training;

(2) Pay the application fee;

(3) Possess a valid cardiopulmonary resuscitation (CPR) certification;

(4) Successfully complete one of the following:

(A) A one-time thirty-two hour emergency medical technician-~~industrial~~ mining recertification course authorized by the ~~Commissioner~~ Director of Miners' Health, Safety and Training in consultation with the Board of Miner Training, Education and Certification; or

(B) Three annual eight-hour retraining and testing programs authorized by the ~~Commissioner~~ Director of Miners' Health, Safety and Training in consultation with the Board of Miner Training, Education and Certification; and

(5) Successfully complete emergency medical technician-~~industrial mining~~ cognitive and skills recertification examinations authorized by the ~~Commissioner~~ Director of Miners' Health, Safety and Training in consultation with the Board of Miner Training, Education and Certification.

~~(e) Commencing July 1, 2014, the certification for emergency medical technician miner, also known as emergency medical technician mining, shall be known as the certification for emergency medical technician industrial, and the certification is valid until the original expiration date, at which time the person may recertify as an emergency medical technician industrial pursuant to this section.~~

~~(f)~~(e) The education program, training, courses, and cognitive and skills examinations required for certification and recertification as an emergency medical technician-miner, also known as emergency medical technician-mining, in existence on January 1, 2014, shall remain in effect for the certification and recertification of emergency medical technician-industrial until they are changed by legislative rule by the commissioner in consultation with the Board of Miner Training, Education and Certification.

~~(g)~~(f) The administration of the emergency medical technician ~~industrial mining~~ certification and recertification program by the ~~Commissioner~~ Director of Miners' Health, Safety and Training shall be done in consultation with the Board of Miner Training, Education and Certification.

~~(h)~~(g) The ~~Commissioner~~ Director of Miners' Health, Safety and Training shall propose rules for legislative approval, pursuant to the provisions of article three, chapter twenty-nine-a of this code, in consultation with the Board of Miner Training, Education and Certification, and may propose emergency rules, to:

(1) Establish emergency medical technician-~~industrial~~ mining certification and recertification courses and examinations;

(2) Authorize providers to administer the certification and recertification courses and examinations, including mine training personnel, independent trainers, community and technical colleges, and Regional Educational Service Agencies (RESA): *Provided*, That the mine training personnel and independent trainers must have a valid cardiopulmonary resuscitation (CPR) certification and must be an approved MSHA or OSHA certified instructor;

(3) Establish a fee schedule: *Provided*, That the application fee may not exceed \$10 and there shall be no fee for a certificate; and

(4) Implement the provisions of this section.

## **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

### **ARTICLE 1. ~~DIVISION~~ DEPARTMENT OF ENVIRONMENTAL PROTECTION.**

#### **§22-1-7. Offices within division.**

Consistent with the provisions of this article, the secretary shall, at a minimum, maintain the following offices within the division:

(1) The Office of Abandoned Mine Lands and Reclamation, which is charged, at a minimum, with administering and enforcing, under the supervision of the ~~director~~ secretary, the provisions of article two of this chapter;

(2) The Division of Mining and Reclamation, which is charged, at a minimum, with administering and enforcing, under the supervision of the ~~director~~ secretary, the provisions of articles three and four of this chapter;

(3) The Division of Air Quality, which is charged, at a minimum, with administering and enforcing, under the supervision of the ~~director~~ secretary, the provisions of article five of this chapter;

(4) The Office of Oil and Gas, which is charged, at a minimum, with administering and enforcing, under the supervision of the ~~director~~ secretary, the provisions of articles six, seven, eight, nine and ten of this chapter; and

(5) The Division of Water and Waste Management, which is charged, at a minimum, with administering and enforcing, under the supervision of the ~~director~~ secretary, the provisions of articles eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen and twenty of this chapter; ~~and~~.

~~(6) The Office of Explosives and Blasting, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of article three-a of this chapter.~~

### **ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.**

#### **§22-3-2. Legislative findings and purpose; jurisdiction vested in Division of Environmental Protection; authority of ~~director~~ secretary; inter-departmental cooperation.**

(a) The Legislature finds that it is essential to the economic and social well-being of the citizens of the State of West Virginia to strike a careful balance between the protection of the environment and the economical mining of coal needed to meet energy requirements.

(1) Further, the Legislature finds that there is great diversity in terrain, climate, biological, chemical and other physical conditions in parts of this nation where mining is conducted; that the State of West Virginia in particular needs an environmentally sound and economically healthy mining industry; and ~~by reason of the above therefor~~ it may be necessary for the ~~director~~ secretary to promulgate rules which vary from federal regulations as is provided for in sections 101 (f) and 201 (c)(9) of the federal Surface Mining Control and Reclamation Act of 1977, as amended, "Public Law 95-87."

(2) Further, the Legislature finds that unregulated surface coal mining operations may result in disturbances of surface and underground areas that burden and adversely affect commerce, public welfare and safety by destroying or diminishing the utility of land for commercial, industrial, residential, recreational, agricultural and forestry purposes; by causing erosion and landslides; by contributing to floods; by polluting the water and river and stream beds; by destroying fish, aquatic life and wildlife habitats; by impairing natural beauty; by damaging the property of citizens; by creating hazards dangerous to life and property; and by degrading the quality of life in local communities, all where proper mining and reclamation is not practiced.

(3) Further, the Legislature finds that the reasonable control of blasting associated with surface mining within the State of West Virginia is in the public interest and will promote the protection of the citizens of the State of West Virginia and their property without sacrificing economic development. It is the policy of the State of West Virginia, in cooperation with other governmental agencies, public and private organizations, and the citizens of this state, to use reasonable means and measures to prevent harm from the effects of blasting to its property and citizens.

(b) Therefore, it is the purpose of this article to:

(1) Expand the established and effective statewide program to protect the public and the environment from the adverse effects of surface-mining operations;

(2) Assure that the rights of surface and mineral owners and other persons with legal interest in the land or appurtenances to land are adequately protected from ~~such~~ the operations;

(3) Assure that surface-mining operations are not conducted where reclamation as required by this article is not feasible;

(4) Assure that surface-mining operations are conducted in a manner to adequately protect the environment;

(5) Assure that adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with the surface-mining operations;

(6) Assure that adequate procedures are provided for public participation where appropriate under this article;

(7) Assure the exercise of the full reach of state common law, statutory and constitutional powers for the protection of the public interest through effective control of surface-mining operations; ~~and~~

(8) Assure that the coal production essential to the nation's energy requirements and to the State's economic and social well-being is provided; and

(9) Vest in the secretary the authority to enforce all of the laws, regulations and rules established to regulate blasting consistent with the authority granted in sections thirty-four through thirty-nine of this article.

(c) In recognition of these findings and purposes, the Legislature ~~hereby~~ vests authority in the ~~director~~ secretary of the ~~Division~~ Department of Environmental Protection to:

(1) Administer and enforce the provisions of this article as it relates to surface mining to accomplish the purposes of this article;

(2) Conduct hearings and conferences or appoint persons to conduct them in accordance with this article;

(3) Promulgate, administer and enforce rules pursuant to this article;

(4) Enter into a cooperative agreement with the Secretary of the United States Department of the Interior to provide for state regulation of surface-mining operations on federal lands within West Virginia consistent with section 523 of the federal Surface Mining Control and Reclamation Act of 1977, as amended; and

(5) Administer and enforce rules promulgated pursuant to this chapter to accomplish the requirements of programs under the

federal Surface Mining Control and Reclamation Act of 1977, as amended.

(d) The ~~director~~ secretary of the ~~Division~~ Department of Environmental Protection and the director of the Office of Miners Health, Safety and Training shall cooperate with respect to each agency's programs and records to effect an orderly and harmonious administration of the provisions of this article. The ~~director~~ secretary of the ~~Division~~ Department of Environmental Protection may avail himself or herself of any services which may be provided by other state agencies in this State and other states or by agencies of the federal government, and may reasonably compensate them for ~~such~~ those services. Also, he or she may receive any federal funds, state funds or any other funds, and enter into cooperative agreements, for the reclamation of land affected by surface mining.

**§22-3-4. Reclamation; duties and functions of ~~director~~ secretary.**

(a) The ~~director~~ secretary shall administer the provisions of this article relating to surface-mining operations. The ~~director~~ secretary has within his or her jurisdiction and supervision all lands and areas of the State, mined or susceptible of being mined, for the removal of coal and all other lands and areas of the State deforested, burned over, barren or otherwise denuded, unproductive and subject to soil erosion and waste. Included within ~~such~~ the lands and areas are lands seared and denuded by chemical operations and processes, abandoned coal mining areas, swamplands, lands and areas subject to flowage easements and backwaters from river locks and dams, and river, stream, lake and pond shore areas subject to soil erosion and waste. The jurisdiction and supervision exercised by the ~~director~~ secretary shall be consistent with other provisions of this chapter.

(b) The ~~director~~ has the authority to: secretary may:

(1) ~~Promulgate rules~~ Propose rules for promulgation, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article: *Provided*, That the ~~director~~ secretary shall give notice by

publication of the public hearing required in article three, chapter twenty-nine-a of this code: *Provided, however,* That any forms, handbooks or similar materials having the effect of a rule as defined in article three, chapter twenty-nine-a of this code were issued, developed or distributed by the director pursuant to or as a result of a rule are subject to the provisions of article three, chapter twenty-nine-a of this code;

(2) Make investigations or inspections necessary to ensure complete compliance with the provisions of this code;

(3) Conduct hearings or appoint persons to conduct hearings under provisions of this article or rules adopted by the ~~director~~ secretary; and for the purpose of any investigation or hearing ~~hereunder~~ under this article, the ~~director~~ secretary or his or her designated representative, may administer oaths or affirmations, subpoena witnesses, compel their attendance, take evidence and require production of any books, papers, correspondence, memoranda, agreements or other documents or records relevant or material to the inquiry;

(4) Enforce the provisions of this article as provided ~~herein~~ in this article; ~~and~~

(5) Appoint such advisory committees as may be of assistance to the ~~director~~ secretary in the development of programs and policies: *Provided,* That such advisory committees shall, in each instance, include members representative of the general public; and

(6) In relation to blasting on all surface-mining operations and all surface-blasting activities related to underground mining operations:

(A) Regulate blasting on all surface-mining operations;

(B) Implement and oversee the preblast survey process, as set forth in section thirteen-a, article three of this chapter;

(C) Maintain and operate a system to receive and address questions, concerns and complaints relating to mining operations;

(D) Set the qualifications for individuals and firms performing preblast surveys;

(E) Educate, train, examine and certify blasters; and

(F) Propose rules for legislative approval pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code for the implementation of sections thirty-four through thirty-nine of this article.

(c)(1) After the ~~director~~ secretary has adopted the rules required by this article, any person may petition the ~~director~~ secretary to initiate a proceeding for the issuance, amendment or appeal of a rule under this article.

(2) The petition shall be filed with the ~~director~~ secretary and shall set forth the facts which support the issuance, amendment or appeal of a rule under this article.

(3) The ~~director~~ secretary may hold a public hearing or may conduct such investigation or proceeding as he or she considers appropriate in order to determine whether the petition should be granted or denied.

(4) Within ninety days after filing of a petition described in subdivision (1) of this subsection, the ~~director~~ secretary shall either grant or deny the petition. If the ~~director~~ secretary grants the petition, he or she shall promptly commence an appropriate proceeding in accordance with the provisions of chapter twenty-nine-a of this code. If the ~~director~~ secretary denies the petition, he or she shall notify the petitioner in writing setting forth the reasons for the denial.

**§22-3-13. General environmental protection performance standards for surface mining; variances.**

(a) Any permit issued by the ~~director~~ secretary pursuant to this article to conduct surface mining operations shall require that the surface mining operations meet all applicable performance standards of this article and other requirements set forth in legislative rules proposed by the ~~director~~ secretary.

(b) The following general performance standards are applicable to all surface mines and require the operation, at a minimum, to:

(1) Maximize the utilization and conservation of the solid fuel resource being recovered to minimize re-affecting the land in the future through surface mining;

(2) Restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood so long as the use or uses do not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution and the permit applicant's ~~applicant's~~ declared proposed land use following reclamation is not considered to be impractical or unreasonable, inconsistent with applicable land use policies and plans, involves unreasonable delay in implementation or is violative of federal, state or local law;

(3) Except as provided in subsection (c) of this section, with respect to all surface mines, backfill, compact where advisable to ensure stability or to prevent leaching of toxic materials and grade in order to restore the approximate original contour: *Provided*, That in surface mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade and compact, where advisable, using all available overburden and other spoil and waste materials to attain the lowest practicable grade, but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials in order to achieve an ecologically sound land use compatible with the surrounding region: *Provided, however*, That in surface mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric

expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall, after restoring the approximate contour, backfill, grade and compact, where advisable, the excess overburden and other spoil and waste materials to attain the lowest grade, but not more than the angle of repose, and to cover all acid-forming and other toxic materials in order to achieve an ecologically sound land use compatible with the surrounding region and the overburden or spoil shall be shaped and graded in a way as to prevent slides, erosion and water pollution and revegetated in accordance with the requirements of this article: *Provided further*, That the ~~director~~ secretary shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code governing variances to the requirements for return to approximate original contour or highwall elimination and where adequate material is not available from surface mining operations permitted after the effective date of this article for: (A) Underground mining operations existing prior to August 3, 1977; or (B) for areas upon which surface mining prior to July 1, 1977, created highwalls;

(4) Stabilize and protect all surface areas, including spoil piles, affected by the surface mining operation to effectively control erosion and attendant air and water pollution;

(5) Remove the topsoil from the land in a separate layer, replace it on the backfill area or, if not utilized immediately, segregate it in a separate pile from other spoil and, when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful vegetative cover by quick growing plants or by other similar means in order to protect topsoil from wind and water erosion and keep it free of any contamination by other acid or toxic material: *Provided*, That if topsoil is of insufficient quantity or of poor quality for sustaining vegetation, or if other strata can be shown to be more suitable for vegetation requirements, then the operator shall remove, segregate and preserve in a like manner any other strata which is best able to support vegetation;

(6) Restore the topsoil or the best available subsoil which is best able to support vegetation;

(7) Ensure that all prime farmlands are mined and reclaimed in accordance with the specifications for soil removal, storage, replacement and reconstruction established by the United States Secretary of Agriculture and the Soil Conservation Service pertaining thereto. The operator, at a minimum, shall: (A) Segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity and, if not utilized immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material; (B) segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of the horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil and, if not utilized immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material; (C) replace and regrade the root zone material described in paragraph (B) of this subdivision with proper compaction and uniform depth over the regraded spoil material; and (D) redistribute and grade in a uniform manner the surface soil horizon described in paragraph (A) of this subdivision;

(8) Create, if authorized in the approved surface mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities in accordance with rules promulgated by the ~~director~~ secretary;

(9) Where augering is the method of recovery, seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the ~~director~~ secretary determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public welfare and safety: *Provided*, That the ~~director~~ secretary may prohibit augering if

necessary to maximize the utilization, recoverability or conservation of the mineral resources or to protect against adverse water quality impacts;

(10) Minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quality and quantity of water in surface and groundwater systems both during and after surface mining operations and during reclamation by: (A) Avoiding acid or other toxic mine drainage by such measures as, but not limited to: (i) Preventing or removing water from contact with toxic producing deposits; (ii) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses; and (iii) casing, sealing or otherwise managing boreholes, shafts and wells and keep acid or other toxic drainage from entering ground and surface waters; (B) conducting surface mining operations so as to prevent to the extent possible, using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event may contributions be in excess of requirements set by applicable state or federal law; (C) constructing an approved drainage system pursuant to paragraph (B) of this subdivision, prior to commencement of surface mining operations, the system to be certified by a person approved by the ~~director~~ secretary to be constructed as designed and as approved in the reclamation plan; (D) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines; (E) unless otherwise authorized by the ~~director~~ secretary, cleaning out and removing temporary or large settling ponds or other siltation structures after disturbed areas are revegetated and stabilized, and depositing the silt and debris at a site and in a manner approved by the ~~director~~ secretary; (F) restoring recharge capacity of the mined area to approximate premining conditions; and (G) any other actions prescribed by the ~~director~~ secretary;

(11) With respect to surface disposal of mine wastes, tailings, coal processing wastes and other wastes in areas other than the mine working excavations: (A) Stabilize all waste piles in designated areas through construction in compacted layers,

including the use of noncombustible and impervious materials if necessary, and assure the final contour of the waste pile will be compatible with natural surroundings and that the site will be stabilized and revegetated according to the provisions of this article; and (B) assure that the construction of any coal waste pile or other coal waste storage area utilizes appropriate technologies, such as capping or the use of liners, or any other demonstrated technologies or measures which are consistent with good engineering practices, to prevent an acid mine drainage discharge;

(12) Design, locate, construct, operate, maintain, enlarge, modify and remove or abandon, in accordance with standards and criteria developed pursuant to subsection (f) of this section, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes or other liquid and solid wastes and used either temporarily or permanently as dams or embankments;

(13) Refrain from surface mining within five hundred feet of any active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners: *Provided*, That the ~~director~~ secretary shall permit an operator to mine near, through or partially through an abandoned underground mine or closer to an active underground mine if: (A) The nature, timing and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are coordinated jointly by the operators involved and approved by the ~~director~~ secretary; and (B) the operations will result in improved resource recovery, abatement of water pollution or elimination of hazards to the health and safety of the public: *Provided, however*, That any breakthrough which does occur shall be sealed;

(14) Ensure that all debris, acid-forming materials, toxic materials or materials constituting a fire hazard are treated or buried and compacted, or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters, and that contingency plans are developed to prevent sustained combustion: *Provided*, That the operator shall remove or bury all metal, lumber, equipment and other debris resulting from the operation before grading release;

(15) Ensure that explosives are used only in accordance with existing state and federal law and the rules promulgated by the ~~director~~ secretary, which shall include provisions to:

(A) Maintain for a period of at least three years and make available for public inspection, upon written request, a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole and the order and length of delay in the blasts; and

(B) Require that all blasting operations be conducted by persons certified by the ~~Office of Explosives and Blasting Division~~ of Mining and Reclamation.

(16) Ensure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface mining operations. Time limits shall be established by the ~~director~~ secretary requiring backfilling, grading and planting to be kept current: *Provided*, That where surface mining operations and underground mining operations are proposed on the same area, which operations must be conducted under separate permits, the ~~director~~ secretary may grant a variance from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground mining operations prior to reclamation:

(A) If the ~~director~~ secretary finds in writing that:

(i) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations;

(ii) The proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple disturbance of the surface;

(iii) The applicant has satisfactorily demonstrated that the plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and that permits necessary for the underground mining operations have been issued by the appropriate authority;

(iv) The areas proposed for the variance have been shown by the applicant to be necessary for the implementing of the proposed underground mining operations;

(v) No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation as required by this article; and

(vi) Provisions for the off-site storage of spoil will comply with subdivision (22), subsection (b) of this section;

(B) If the ~~director~~ secretary has promulgated specific rules to govern the granting of the variances in accordance with the provisions of this subparagraph and has imposed any additional requirements as the ~~director~~ secretary considers necessary;

(C) If variances granted under the provisions of this paragraph are reviewed by the ~~director~~ secretary not more than three years from the date of issuance of the permit: *Provided*, That the underground mining permit shall terminate if the underground operations have not commenced within three years of the date the permit was issued, unless extended as set forth in subdivision (3), section eight of this article; and

(D) If liability under the bond filed by the applicant with the ~~director~~ secretary pursuant to subsection (b), section eleven of this article is for the duration of the underground mining operations and until the requirements of subsection (g), section eleven of this article and section twenty-three of this article have been fully complied with;

(17) Ensure that the construction, maintenance and post-mining conditions of access and haul roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property: *Provided*, That access roads constructed for and used to provide infrequent service to surface facilities, such as ventilators or monitoring devices, are exempt from specific construction criteria provided adequate stabilization to control erosion is achieved through alternative measures;

(18) Refrain from the construction of roads or other access ways up a stream bed or drainage channel or in proximity to the channel so as to significantly alter the normal flow of water;

(19) Establish on the regraded areas, and all other lands affected, a diverse, effective and permanent vegetative cover of the same seasonal variety native to the area of land to be affected or of a fruit, grape or berry producing variety suitable for human consumption and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area, except that introduced species may be used in the revegetation process where desirable or when necessary to achieve the approved post-mining land use plan;

(20) Assume the responsibility for successful revegetation, as required by subdivision (19) of this subsection, for a period of not less than five growing seasons, as defined by the ~~director~~ secretary, after the last year of augmented seeding, fertilizing, irrigation or other work in order to assure compliance with subdivision (19) of this subsection: *Provided*, That when the ~~director~~ secretary issues a written finding approving a long-term agricultural post-mining land use as a part of the mining and reclamation plan, the director may grant exception to the provisions of subdivision (19) of this subsection: *Provided, however*, That when the director approves an agricultural post-mining land use, the applicable five growing seasons of responsibility for revegetation begins on the date of initial planting for the agricultural post-mining land use;

On lands eligible for remining assume the responsibility for successful revegetation, as required by subdivision (19) of this subsection, for a period of not less than two growing seasons, as defined by the director after the last year of augmented seeding, fertilizing, irrigation or other work in order to assure compliance with subdivision (19) of this subsection;

(21) Protect off-site areas from slides or damage occurring during surface mining operations and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area: *Provided*, That spoil material may be placed outside the permit area if approved by the ~~director~~ secretary after a finding

that environmental benefits will result from the placing of spoil material outside the permit area;

(22) Place all excess spoil material resulting from surface mining activities in a manner that: (A) Spoil is transported and placed in a controlled manner in position for concurrent compaction and in a way as to assure mass stability and to prevent mass movement; (B) the areas of disposal are within the bonded permit areas and all organic matter is removed immediately prior to spoil placements; (C) appropriate surface and internal drainage system or diversion ditches are used to prevent spoil erosion and movement; (D) the disposal area does not contain springs, natural water courses or wet weather seeps, unless lateral drains are constructed from the wet areas to the main under drains in a manner that filtration of the water into the spoil pile will be prevented; (E) if placed on a slope, the spoil is placed upon the most moderate slope among those upon which, in the judgment of the ~~director~~ secretary, the spoil could be placed in compliance with all the requirements of this article, and is placed, where possible, upon, or above, a natural terrace, bench or berm, if placement provides additional stability and prevents mass movement; (F) where the toe of the spoil rests on a downslope, a rock toe buttress, of sufficient size to prevent mass movement, is constructed; (G) the final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses; (H) the design of the spoil disposal area is certified by a qualified registered professional engineer in conformance with professional standards; and (I) all other provisions of this article are met: *Provided*, That where the excess spoil material consists of at least eighty percent, by volume, sandstone, limestone or other rocks that do not slake in water and will not degrade to soil material, the ~~director~~ secretary may approve alternate methods for disposal of excess spoil material, including fill placement by dumping in a single lift, on a site-specific basis: *Provided, however*, That the services of a qualified registered professional engineer experienced in the design and construction of earth and rockfill embankment are utilized: *Provided further*, That the approval may not be unreasonably withheld if the site is suitable;

(23) Meet any other criteria necessary to achieve reclamation in accordance with the purposes of this article, taking into consideration the physical, climatological and other characteristics of the site;

(24) To the extent possible, using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife and related environmental values, and achieve enhancement of these resources where practicable; and

(25) Retain a natural barrier to inhibit slides and erosion on permit areas where outcrop barriers are required: *Provided*, That constructed barriers may be allowed where: (A) Natural barriers do not provide adequate stability; (B) natural barriers would result in potential future water quality deterioration; and (C) natural barriers would conflict with the goal of maximum utilization of the mineral resource: *Provided, however*, That at a minimum, the constructed barrier shall be of sufficient width and height to provide adequate stability and the stability factor shall equal or exceed that of the natural outcrop barrier: *Provided further*, That where water quality is paramount, the constructed barrier shall be composed of impervious material with controlled discharge points; and.

~~(26) The director shall promulgate for review and consideration by the West Virginia Legislature legislative rules or emergency rules during the 2016 Regular Session of the West Virginia Legislature, revisions to rules for contemporaneous reclamation as required under subdivision (16), subsection (b) of this section. The secretary shall specifically consider the adoption of federal standards codified at 30 C. F. R. §§816.100-116 (1983) and 30 C. F. R. §§817.100-116 (1983) when proposing revisions to the state rule.~~

(c)(1) The ~~director~~ secretary may prescribe procedures pursuant to which he or she may permit surface mining operations for the purposes set forth in subdivision (3) of this subsection.

(2) Where an applicant meets the requirements of subdivisions (3) and (4) of this subsection, a permit without regard to the requirement to restore to approximate original contour set forth in

subsection (b) or (d) of this section may be granted for the surface mining of coal where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge or hill, except as provided in paragraph (A), subdivision (4) of this subsection, by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining and capable of supporting post-mining uses in accordance with the requirements of this subsection.

(3) In cases where an industrial, commercial, agricultural, commercial forestry, residential or public facility including recreational uses is proposed for the post-mining use of the affected land, the ~~director~~ secretary may grant a permit for a surface mining operation of the nature described in subdivision (2) of this subsection where: (A) The proposed post-mining land use is determined to constitute an equal or better use of the affected land, as compared with premining use; (B) the applicant presents specific plans for the proposed post-mining land use and appropriate assurances that the use will be: (i) Compatible with adjacent land uses; (ii) practicable with respect to achieving the proposed use; (iii) obtainable according to data regarding expected need and market; (iv) supported by commitments from public agencies where appropriate; (v) practicable with respect to private financial capability for completion of the proposed use; (vi) planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the post-mining land use; and (vii) designed by a person approved by the ~~director~~ secretary in conformance with standards established to assure the stability, drainage and configuration necessary for the intended use of the site; (C) the proposed use would be compatible with adjacent land uses, and existing state and local land use plans and programs; (D) the ~~director~~ secretary provides the county commission of the county in which the land is located and any state or federal agency which the ~~director~~ secretary, in his or her discretion, determines to have an interest in the proposed use, an opportunity of not more than sixty days to review and comment on the proposed use; and (E) all other requirements of this article will be met.

(4) In granting any permit pursuant to this subsection, the ~~director~~ secretary shall require that: (A) A natural barrier be retained to inhibit slides and erosion on permit areas where outcrop barriers are required: *Provided*, That constructed barriers may be allowed where: (i) Natural barriers do not provide adequate stability; (ii) natural barriers would result in potential future water quality deterioration; and (iii) natural barriers would conflict with the goal of maximum utilization of the mineral resource: *Provided, however*, That, at a minimum, the constructed barrier shall be sufficient in width and height to provide adequate stability and the stability factor shall equal or exceed that of the natural outcrop barrier: *Provided further*, That where water quality is paramount, the constructed barrier shall be composed of impervious material with controlled discharge points; (B) the reclaimed area is stable; (C) the resulting plateau or rolling contour drains inward from the outcrops except at specific points; (D) no damage will be done to natural watercourses; (E) spoil will be placed on the mountaintop bench as is necessary to achieve the planned post-mining land use: *And provided further*, That all excess spoil material not retained on the mountaintop shall be placed in accordance with the provisions of subdivision (22), subsection (b) of this section; and (F) ensure stability of the spoil retained on the mountaintop and meet the other requirements of this article.

(5) All permits granted under the provisions of this subsection shall be reviewed not more than three years from the date of issuance of the permit; unless the applicant affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

(d) In addition to those general performance standards required by this section, when surface mining occurs on slopes of twenty degrees or greater, or on lesser slopes as may be defined by rule after consideration of soil and climate, no debris, abandoned or disabled equipment, spoil material or waste mineral matter will be placed on the natural downslope below the initial bench or mining cut: *Provided*, That soil or spoil material from the initial cut of earth in a new surface mining operation may be placed on a limited

specified area of the downslope below the initial cut if the permittee can establish to the satisfaction of the ~~director~~ secretary that the soil or spoil will not slide and that the other requirements of this section can still be met.

(e) The ~~director~~ secretary may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code that permit variances from the approximate original contour requirements of this section: *Provided*, That the watershed control of the area is improved: *Provided, however*, That complete backfilling with spoil material is required to completely cover the highwall, which material will maintain stability following mining and reclamation.

(f) The ~~director~~ secretary shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code for the design, location, construction, maintenance, operation, enlargement, modification, removal and abandonment of new and existing coal mine waste piles. In addition to engineering and other technical specifications, the standards and criteria developed pursuant to this subsection shall include provisions for review and approval of plans and specifications prior to construction, enlargement, modification, removal or abandonment; performance of periodic inspections during construction; issuance of certificates of approval upon completion of construction; performance of periodic safety inspections; and issuance of notices and orders for required remedial or maintenance work or affirmative action: *Provided*, That whenever the ~~director~~ secretary finds that any coal processing waste pile constitutes an imminent danger to human life, he or she may, in addition to all other remedies and without the necessity of obtaining the permission of any person prior or present who operated or operates a pile or the landowners involved, enter upon the premises where any coal processing waste pile exists and may take or order to be taken any remedial action that may be necessary or expedient to secure the coal processing waste pile and to abate the conditions which cause the danger to human life: *Provided, however*, That the cost reasonably incurred in any remedial action taken by the ~~director~~ secretary under this subsection may be paid for initially by

funds appropriated to the division for these purposes and the sums expended shall be recovered from any responsible operator or landowner, individually or jointly, by suit initiated by the Attorney General at the request of the ~~director~~ secretary. For purposes of this subsection, operates or operated means to enter upon a coal processing waste pile, or part of a coal processing waste pile, for the purpose of disposing, depositing, dumping coal processing wastes on the pile or removing coal processing waste from the pile, or to employ a coal processing waste pile for retarding the flow of or for the impoundment of water.

(g) The secretary shall promulgate for review and consideration by the West Virginia Legislature during the 2017 Regular Session of the West Virginia Legislature revisions to the rules for minimizing the disturbances to the prevailing hydrologic balance at a mine site and in associated off-site areas both during and after surface mining operations and during reclamation as required under subdivision (10), subsection (b) of this section, including specifically the rules for stormwater runoff and control plans. The secretary shall specifically conform these rules to the federal standards codified at 30 C.F.R. §816.41 (1983) and 30 C.F.R. §816.45-47 (1983) when proposing revisions to the state rule. The secretary shall not propose rules more stringent than the federal standards codified at 30 C.F.R. §816.41 (1983) and 30 C.F.R. §816.45-47 (1983) when proposing revisions to the state rule.

### **§22-3-13a. Preblast survey requirements.**

(a) At least thirty days prior to commencing blasting, as defined in section twenty-two-a of this article, an operator or an operator's designee shall make the following notifications in writing to all owners and occupants of man-made dwellings or structures that the operator or operator's designee will perform preblast surveys in accordance with subsection (f) of this section:

(1) For surface mining operations that are less than two hundred acres in a single permitted area or less than three hundred acres of contiguous or nearly contiguous area of two or more permitted areas, the required notifications shall be to all owners and

occupants of man-made dwellings or structures within five tenths of a mile of the permitted area or areas;

(2) For all other surface mining operations, the required notifications shall be to all owners and occupants of man-made dwellings or structures within five tenths of a mile of the permitted area or areas or seven tenths of a mile of the proposed blasting site, whichever is greater; and

(3) For permitted surface disturbance of underground mines, the required notifications shall be to all owners and occupants of man-made dwellings or structures within five tenths of a mile of the permitted surface area or areas.

(b) ~~Within thirty days of the effective date of this section, any~~ Any operator identified in subdivision (2), subsection (a) of this section that has already completed preblast surveys for man-made dwellings or structures within five tenths of a mile of the permit area and has commenced operations by the effective date of this section shall notify in writing all additional owners and occupants of man-made dwellings or structures within seven tenths of a mile of the proposed blasting site. Except for those dwellings or structures for which the operator secures a written waiver or executes an affidavit in accordance with the requirements of subsection (c) of this section, the operator or the operator's designee must perform the additional preblast surveys in accordance with subsection (f) of this section. ~~within ninety days of the effective date of this section.~~

(c) An occupant or owner of a man-made dwelling or structure within the areas described in subdivision (1) or (2), subsection (a) of this section may waive the right to a preblast survey in writing. If a dwelling is occupied by a person other than the owner, both the owner and the occupant must waive the right to a preblast survey in writing. If an occupant or owner of a man-made dwelling or structure refuses to allow the operator or the operator's designee access to the dwelling or structure and refuses to waive in writing the right to a preblast survey or to the extent that access to any portion of the structure, underground water supply or well is impossible or impractical under the circumstances, the preblast

survey shall indicate that access was refused, impossible or impractical. The operator or the operator's designee shall execute a sworn affidavit explaining the reasons and circumstances surrounding the refusals. The ~~office of explosives and blasting~~ Division of Mining and Reclamation may not determine the preblast survey to be incomplete because it indicates that access to a particular structure, underground water supply or well was refused, impossible or impractical. The operator shall send copies of all written waivers and affidavits executed pursuant to this subsection to the ~~office of explosives and blasting~~ Division of Mining and Reclamation.

(d) If a preblast survey was waived by the owner and was within the requisite area and the property was sold, the new owner may request a preblast survey from the operator.

(e) An owner within the requisite area may request, from the operator, a preblast survey on structures constructed after the original preblast survey.

(f) The preblast survey shall include:

(1) The names, addresses or description of structure location and telephone numbers of the owner and the residents of the structure being surveyed and the structure number from the permit blasting map;

(2) The current home insurer of the owner and the residents of the structure;

(3) The names, addresses and telephone numbers of the surface mining operator and the permit number;

(4) The current general liability insurer of the surface mining operator;

(5) The name, address and telephone number of the person or firm performing the preblast survey;

(6) The current general liability insurer of the person or firm performing the preblast survey;

(7) The date of the preblast survey and the date it was mailed or delivered to the ~~office of explosives and blasting~~ Division of Mining and Reclamation.

(8) A general description of the structure and its appurtenances, including, but not limited to: (A) The number of stories; (B) the construction materials for the frame and the exterior and interior finish; (C) the type of construction including any unusual or substandard construction; and (D) the approximate age of the structure;

(9) A general description of the survey methods and the direction of progression of the survey, including a key to abbreviations used;

(10) Written documentation and drawings, videos or photographs of the preblast defects and other physical conditions of all structures, appurtenances and water sources which could be affected by blasting;

(11) Written documentation and drawings, videos or photographs of the exterior and interior of the structure to indicate preblast defects and condition;

(12) Written documentation and drawings, videos or photographs of the exterior and interior of any appurtenance of the structure to indicate preblast defects and condition;

(13) Sufficient exterior and interior photographs or videos, using a variety of angles, of the structure and its appurtenances to indicate preblast defects and the condition of the structure and appurtenances;

(14) Written documentation and drawings, videos or photographs of any unusual or substandard construction technique and materials used on the structure or its appurtenances or both structure and appurtenances;

(15) Written documentation relating to the type of water supply, including a description of the type of system and treatment being used, an analysis of untreated water supplies, a water analysis

of water supplies other than public utilities and information relating to the quantity and quality of water;

(16) When the water supply is a well, written documentation, where available, relating to the type of well; the well log; the depth, age and type of casing or lining; the static water level; flow data; the pump capacity; the drilling contractor; and the source or sources of the documentation;

(17) A description of any portion of the structure and appurtenances not documented or photographed and the reasons;

(18) The signature of the person performing the survey; and

(19) Any other information required by the ~~chief~~ secretary which additional information shall be established by rule in accordance with article three, chapter twenty-nine-a of this code.

(g) Except for additional preblast surveys prepared within one hundred twenty days of the effective date of this section, pursuant to subsection (b) of this section, the preblast survey shall be submitted to the ~~office of explosives and blasting~~ Division of Mining and Reclamation at least fifteen days prior to the commencement of any production blasting. The ~~office of explosives and blasting~~ Division of Mining and Reclamation shall review each preblast survey as to form and completeness only and notify the operator of any deficiencies: *Provided*, That once all required surveys have been reviewed and accepted by the ~~office of explosives and blasting~~ Division of Mining and Reclamation, blasting may commence sooner than fifteen days after submittal. The ~~office of explosives and blasting~~ Division of Mining and Reclamation shall provide a copy of the preblast survey to the owner or occupant.

(h) The surface mining operator shall file notice of the preblast survey or the waiver in the office of the county clerk of the county commission of the county where the man-made dwelling or structure is located to notify the public that a preblast survey has been conducted or waived. The notice shall be on a form prescribed

by the ~~office of explosives and blasting~~ Division of Mining and Reclamation.

(i) The ~~chief of the office of explosives and blasting~~ secretary shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code dealing with preblast survey requirements and setting the qualifications for individuals and firms performing preblast surveys.

(j) The provisions of this section do not apply to the extraction of minerals by underground mining methods.

**§22-3-22a. Blasting restrictions; site specific blasting design requirement.**

(a) For purposes of this section, the term “production blasting” means blasting that removes the overburden to expose underlying coal seams and does not include construction blasting.

(b) For purposes of this section, the term “construction blasting” means blasting to develop haul roads, mine access roads, coal preparation plants, drainage structures or underground coal mine sites and does not include production blasting.

(c) For purposes of this section, the term “protected structure” means any of the following structures that are situated outside the permit area: An occupied dwelling; a temporarily unoccupied dwelling which has been occupied within the past ninety days; a public building; a structure for commercial purposes; a school; a church; a community or institutional building; and a public park or a water well.

(d) Production blasting is prohibited within three hundred feet of a protected structure or within one hundred feet of a cemetery.

(e) Blasting within one thousand feet of a protected structure shall have a site-specific blast design approved by the ~~office of explosives and blasting~~ Division of Mining and Reclamation. The site-specific blast design shall limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts to do the following:

(1) Prevent injury to persons; (2) prevent damage to public and private property outside the permit area; (3) prevent adverse impacts on any underground mine; (4) prevent change in the course, channel or availability of ground or surface water outside the permit area; and (5) reduce dust outside the permit area.

In the development of a site-specific blasting plan, consideration shall be given, but is not limited to, the physical condition, type and quality of construction of the protected structure, the current use of the protected structure and the concerns of the owner or occupant living in the protected structures identified in the blasting schedule notification area.

(f) An owner or occupant of a protected structure may waive the blasting prohibition within three hundred feet. If a protected structure is occupied by a person other than the owner, both the owner and the occupant of the protected structure shall waive the blasting prohibition within three hundred feet in writing. The operator shall send copies of all written waivers executed pursuant to this subsection to the ~~office of explosives and blasting~~ Division of Mining and Reclamation. Written waivers executed and filed with the ~~office of explosives and blasting~~ Division of Mining and Reclamation are valid during the life of the permit or any renewals of the permit and are enforceable against any subsequent owners or occupants of the protected structure.

(g) The provisions of this section do not apply to the following: (1) Underground coal mining operations; (2) the surface operations and surface impacts incident to an underground coal mine; and (3) the extraction of minerals by underground mining methods or the surface impacts of the underground mining methods: *Provided*, That nothing contained in this section may be construed to exempt any coal mining operation from the general performance standards as contained in section thirteen of this article and any rules promulgated pursuant to said section.

**§22-3-30a. Blasting requirements; liability and civil penalties in the event of property damage.**

(a) Blasting shall be conducted in accordance with the rules and laws established to regulate blasting.

(b) If the ~~Division~~ Department of Environmental Protection establishes after an inspection that a blast at a surface coal mine operation as defined by the provisions of subdivision (2), subsection (a), section thirteen-a of this article was not in compliance with the regulations governing blasting parameters and resulted in property damage to a protected structure, as defined in section twenty-two-a of this article, other than water wells, the following penalties shall be imposed for each permit area or contiguous permit areas where the blasting was out of compliance:

(1) For the first offense, the operator shall be assessed a penalty of not less than \$1,000 nor more than \$5,000.

(2) For the second offense and each subsequent offense within one year of the first offense, the surface mining operator shall be assessed a penalty of not less than \$5,000 nor more than \$10,000.

(3) For the third offense and any subsequent offense within one year of the first offense, or for the failure to pay any assessment set forth within a reasonable time established by the ~~director~~ secretary, the surface mining operator's permit is subject to an immediate issuance of a cessation order, as set out in section sixteen of this article. The cessation order shall only be released upon written order of the ~~director~~ secretary of the ~~Division~~ Department of Environmental Protection when the following conditions have been met:

(A) A written plan has been established and filed with the ~~director~~ secretary assuring that additional violations will not occur;

(B) The permittee has provided compensation for the property damages or the assurance of adequate compensation for the property damages that have occurred; and

(C) A permittee shall provide such monetary and other assurances as the ~~director~~ secretary considers appropriate to compensate for future property damages. The monetary assurances required shall be in an amount at least equal to the amount of compensation required in paragraph (B), subdivision (3) of this subsection.

(4) In addition to the penalties described in subdivisions (1), (2) and (3) of this subsection for the second and subsequent offenses on any one permitted area regardless of the time period, the owner of the protected structure is entitled to a rebuttable presumption that the property damage is a result of the blast if: (A) A preblast survey was performed; and (B) the blasting site to which the second or subsequent offense relates is within seven tenths of a mile of the protected structure.

(5) No more than one offense may arise out of any one shot. For purposes of this section, “shot” means a single blasting event composed of one or multiple detonations of explosive material or the assembly of explosive materials for this purpose. One “shot” may be composed of numerous explosive charges detonated at intervals measured in milliseconds.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, the ~~Division~~ Department of Environmental Protection may not impose penalties, as provided for in subsection (b) of this section, on an operator for the violation of any rule identified in subsection (b) of this section that is merely administrative in nature.

(d) The remedies provided in this section are not exclusive and may not bar an owner or occupant from any other remedy accorded by law.

(e) Where inspection by the ~~Division~~ Department of Environmental Protection establishes that production blasting, in violation of section twenty-two-a of this article, was done within three hundred feet of a protected structure, without an approved site-specific blast design or not in accordance with an approved site-specific blast design for production blasting within one thousand feet of any protected structure as defined in section twenty-two-a of this article or within one hundred feet of a cemetery, the monetary penalties and revocation, as set out in subsection (b) of this section, apply.

(f) All penalties and liabilities as set forth in subsection (b) of this section shall be assessed by the ~~director~~ secretary, collected by

the ~~director~~ secretary and deposited with the Treasurer of the State of West Virginia in the General School Fund.

(g) The ~~director~~ secretary shall propose rules for legislative approval pursuant to article three, chapter twenty-nine-a of this code for the implementation of this section.

(h) The provisions of this section do not apply to the extraction of minerals by underground mining methods: *Provided*, That nothing contained in this section may be construed to exempt any coal mining operation from the general performance standards as contained in section thirteen of this article and any rules promulgated pursuant thereto.

**§22-3-34. Office of explosives and blasting terminated; transfer of functions; responsibilities, personnel and assets.**

The office of explosives and blasting within the Department of Environmental Protection is hereby terminated, and its authority and functions are transferred to the Division of Mining and Reclamation. With this transfer, all records, assets, and contracts, along with the rights and obligations thereunder, obtained or signed on behalf of the office of explosives and blasting are hereby transferred and assigned to the Division of Mining and Reclamation. The secretary shall transfer from the office of explosives and blasting to the Division of Mining and Reclamation any personnel and assets presently used in the performance of the duties and functions required by sections thirty-four through thirty-seven of this article.

**§22-3-35. Legislative rules on surface-mining blasting; disciplinary procedures for certified blasters.**

(a) All authority to promulgate rules pursuant to article three, chapter twenty-nine-a of this code is hereby transferred from the office of explosives and blasting to the Division of Mining and Reclamation as of the effective date of enactment of this section and article during the 2016 session of the Legislature: *Provided*, That any rule promulgated by the office of explosives and blasting

shall remain in force and effect as though promulgated by the Division of Mining and Reclamation until the secretary amends the rules in accordance with the provisions of article three, chapter twenty-nine-a of this code. Any rules promulgated by the secretary shall include, but not be limited to, the following:

(1) A procedure for the review, modification and approval, prior to the issuance of any permit, of any blasting plan required to be submitted with any application for a permit to be issued by the secretary pursuant to article three of this chapter, which sets forth procedures for the inspection and monitoring of blasting operations for compliance with blasting laws and rules, and for the review and modification of the blasting plan of any operator against whom an enforcement action is taken by the Department of Environmental Protection;

(2) Specific minimum requirements for preblast surveys, as set forth in section thirteen-a, article three of this chapter;

(3) A procedure for review of preblast surveys required to be submitted under section thirteen-a, article three of this chapter;

(4) A procedure for the use of seismographs for production blasting which shall be made part of the blasting log;

(5) A procedure to warn of impending blasting to the owners or occupants adjoining the blasting area;

(6) A procedure to limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts based upon the physical conditions of the site so as to: (A) Prevent injury to persons; (B) prevent damage to public and private property outside the permit area; (C) prevent adverse impacts on any underground mine; (D) prevent change in the course, channel or availability of ground or surface water outside the permit area; and (E) reduce dust outside the permit area;

(7) Provisions for requiring mining operators to publish the planned blasting schedule in a newspaper of general circulation in the locality of the mining operation;

(8) Provisions for requiring mining operators to provide adequate advance written notice of the proposed blasting schedule to local governments, owners and occupants living within the distances prescribed in subsection (a), section thirteen-a, article three of this chapter;

(9) Provisions for establishing a process for the education, training, examination and certification of blasters working on surface-mining operations;

(10) Provisions for establishing disciplinary procedures for all certified blasters responsible for blasting on surface-mining operations conducted within this state in violation of any law or rule promulgated by the Department of Environmental Protection to regulate blasting; and

(11) Provisions for establishing a fee on each quantity of explosive material used for any purpose on surface mining operations, which fee shall be calculated to generate sufficient money to provide for the operation of the explosives and blasting program and the Division of Energy. The secretary shall deposit all moneys received from these fees into a special revenue fund in the State Treasury known as the Mountaintop Removal Fund to be expended by the secretary and the Division of Energy in the performance of their duties.

### **§22-3-36. Claims process for blasting.**

(a) The Division of Mining and Reclamation shall establish and manage a process for the filing, administration and resolution of claims related to blasting.

(b) Claims which may be filed and determined under the provisions of this section shall be those arising from both of the following:

(1) Damage to property arising from blasting activities conducted pursuant to a permit granted under article three of this chapter; and

(2) The damage is incurred by a claimant who is the owner or occupant of the property.

(c) The claims process established by the Division of Mining and Reclamation shall include the following:

(1) An initial determination by the Division of Mining and Reclamation of the merit of the claim; and

(2) An arbitration process whereby the claim can be determined and resolved by an arbitrator in a manner which is inexpensive, prompt and fair to all parties.

(d) If the operator disagrees with the initial determination made by the Division of Mining and Reclamation and requests arbitration, then the following shall apply:

(1) Any party may be represented by a representative of their choice;

(2) At the request of the claimant, the Division of Mining and Reclamation shall provide the claimant with representation in the arbitration process, which representation shall not necessarily be an attorney-at-law; and

(3) If the claim is upheld, in whole or in part, then the operator shall pay the costs of the proceeding, as well as reasonable representation fees and costs of the claimant, in an amount not to exceed \$1,000.

(e) Participation in the claims process created by this section shall be voluntary for the claimant. However, once the claimant has submitted a claim for determination under the provisions of this section, it is intended that the finding of the Division of Mining and Reclamation, if not taken to arbitration, shall be final. If arbitration is requested, it is intended that the results of such arbitration shall be final. The Division of Mining and Reclamation shall provide written notification to the claimant of the provisions of this subsection and shall secure a written acknowledgment from the claimant prior to processing a claim pursuant to the provisions of this section.

(f) The operator shall pay any claim for which the operator is adjudged liable within thirty days of a final determination. If the claim is not paid within thirty days, the secretary shall issue a cessation order pursuant to section sixteen, article three of this chapter for all sites operated by the operator.

(g) No permit to mine coal shall be granted unless the permit applicant agrees to be subject to the terms of this section.

(h) To fulfill its responsibilities pursuant to this section, the Division of Mining and Reclamation may retain the services of inspectors, experts and other persons or firms as may be necessary.

**§22-3-37. Rules, orders and permits to remain in effect regarding blasting; proceedings not affected.**

(a) All orders, determinations, rules, permits, grants, contracts, certificates, licenses, waivers, bonds, authorizations and privileges which have been issued, made, granted or allowed to become effective prior to the enactment of this article shall remain in effect according to their terms until modified, terminated, superseded, set aside or revoked pursuant to this article, by a court of competent jurisdiction, or by operation of law.

(b) Any proceedings, including notices of proposed rule-making, or any application for any license, permit or certificate pending before the division are not affected by this enactment.

**§22-3-38. Transfer of personnel and assets.**

The secretary shall transfer to the Division of Mining and Reclamation any personnel and assets presently used to perform or used in the performance of the duties and functions required by sections thirty-four through thirty-nine of this article.

**ARTICLE 11. WATER POLLUTION CONTROL ACT.**

**§22-11-6. Requirement to comply with standards of water quality and effluent limitations.**

All persons affected by rules establishing water quality standards and effluent limitations shall promptly comply ~~therewith~~ with the rules: *Provided*, That:

(1) Where necessary and proper, the secretary may specify a reasonable time for persons not complying with ~~such~~ the standards and limitations to comply ~~therewith~~ with the rules and upon the expiration of ~~any such~~ that period of time, the secretary shall revoke or modify any permit previously issued which authorized the discharge of treated or untreated sewage, industrial wastes or other wastes into the waters of this state which result in reduction of the quality of ~~such~~ the waters below the standards and limitations established therefor by rules of the board or secretary;

(2) For purposes of both this article and sections 309 and 505 of the federal Water Pollution Control Act, compliance with a permit issued pursuant to this article shall be ~~deemed~~ considered compliance for purposes of both this article and sections 301, 302, 303, 306, 307 and 403 of the federal Water Pollution Control Act and with all applicable state and federal water quality standards, except for any ~~such~~ standard imposed under section 307 of the federal Water Pollution Control Act for a toxic pollutant injurious to human health. Notwithstanding any provision of this code or rule or permit condition to the contrary, water quality standards themselves shall not be considered “effluent standards or limitations” for the purposes of both this article and sections 309 and 505 of the federal Water Pollution Control Act and shall not be independently or directly enforced or implemented except through the development of terms and conditions of a permit issued pursuant to this article. Nothing in this section, however, prevents the secretary from modifying, reissuing or revoking a permit during its term. The provisions of this section addressing compliance with a permit are intended to apply to all existing and future discharges and permits without the need for permit modifications; and

(3) The Legislature finds that there are concerns within West Virginia regarding the applicability of the research underlying the federal selenium criteria to a state such as West Virginia which has high precipitation rates and free-flowing streams and that the alleged environmental impacts that were documented in applicable federal research have not been observed in West Virginia and, further, that considerable research is required to determine if selenium is having an impact on West Virginia streams, to validate

or determine the proper testing methods for selenium and to better understand the chemical reactions related to selenium mobilization in water.

(4) The Legislature finds that the EPA has been contemplating a revision to the federally recommended criteria for several years, but has yet to issue a revised standard.

(5) Because of the uncertainty regarding the applicability of the current selenium standard, the secretary is hereby directed to develop within six months of the effective date of this subdivision an implementation plan for the current selenium standard that will include, at minimum, the following:

(A) Implementing the criteria as a threshold standard;

(B) A monitoring plan that will include chemical speciation of any selenium discharge;

(C) A fish population survey and monitoring plan that will be implemented at a representative location to assess any possible impacts from selenium discharges if the threshold criteria are exceeded; and

(D) The results of the monitoring will be reported to the department for use in the development of state-specific selenium criteria.

(6) Within twenty-four months of the effective date of this subdivision, the secretary shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine of this code which establish a state-specific selenium standard that protects aquatic life. Concurrent with proposing a legislative rule, the secretary shall also submit the proposed standard and supporting documentation to the administrator of the Environmental Protection Agency. The secretary shall also consult with and consider research and data from the West Virginia Water Research Institute at West Virginia University, the regulated community and other appropriate groups in developing the state-specific selenium standard.

(7) Within thirty days of the effective date of this section, the secretary shall promulgate an emergency rule revising the statewide aluminum water quality criteria for the protection of aquatic life to incorporate aluminum criteria values using a hardness-based equation. Concurrent with issuing an emergency rule, the secretary shall also submit the proposed revisions and supporting documentation to the administrator of the Environmental Protection Agency.

(8) The secretary shall, within ninety days of receipt of any completed request for a site specific water quality criterion, approve or deny the request. Any denial of an application shall detail the specific basis for the denial and any revisions needed to the application. Any denial of a request may be appealed to the environmental quality board pursuant to section twenty-one of this article.

## **CHAPTER 22A. MINERS' HEALTH, SAFETY AND TRAINING.**

### **ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING; ADMINISTRATION; ENFORCEMENT.**

#### **§22A-1-13. Employment of surface mine inspectors; eligibility; qualifications; examinations; salary; provisions relating to underground mine inspectors applicable to surface mine inspectors.**

(a) The office shall employ as many surface mine inspectors as the director determines to be reasonably necessary in fully and effectively carrying out the applicable provisions of this chapter.

(b) To be eligible for employment as a surface mine inspector the applicant shall be: (1) ~~A~~ a citizen of West Virginia, in good health, not less than twenty-four years of age, of good character and reputation and of temperate habits; (2) a person who has had at least five years of practical experience in coal mines, at least two years of which have been ~~in~~ on surface mines in this State: *Provided*, That graduation from any accredited college of mining engineering

may be considered the equivalent of two years of practical experience; and (3) a person who has a good theoretical and practical knowledge of surface mines, surface mining methods, sound safety practices and applicable mining laws and rules. For the purpose of this section, practical experience means the performance of normal mining duties requiring a person to hold a certificate of competency and qualification as an experienced surface miner prior to actually performing ~~such~~ the duties.

(c)(1) In order to qualify for appointment as a surface mine inspector, an eligible applicant shall submit to written, oral and practical examinations administered by the Mine Inspectors' Examining Board and furnish evidence of good health, character and other facts establishing eligibility as the board may require. The examinations shall relate to the duties to be performed by a surface mine inspector and, subject to the approval of the mine inspectors' examining board, may be prepared by the director.

(2) If the board finds after investigation and examination that an applicant is: (A) Eligible for appointment; and (B) has passed each required examination with a grade of at least seventy-five percent, or an overall combined average score of eighty percent, the board shall add the applicant's name and grades to the register of qualified eligible candidates and promptly certify its action in writing to the director. The director shall then appoint one of the candidates from the three having the highest grades.

(d) Surface mine inspectors shall be paid an annual salary of not less than \$37,332, which shall be fixed by the director, who shall take into consideration ability, performance of duty, and experience. Surface mine inspectors shall devote all of their time to the duties of the office.

(e) Except as expressly provided in this section to the contrary, all provisions of this article relating to the eligibility, qualification, appointment, tenure, and removal of underground mine inspectors, as well as those provisions relating to compensatory time and reimbursement for necessary expenses, are applicable to surface mine inspectors.

**§22A-1-14. Director and inspectors authorized to enter mines; duties of inspectors to examine mines; no advance notice of an inspection; reports after fatal accidents.**

(a) The director, or his or her authorized representative, has authority to visit, enter, and examine any mine, whether underground or on the surface, and may call for the assistance of any district mine inspector or inspectors whenever assistance is necessary in the examination of any mine. The operator of every coal mine shall furnish the director or his or her authorized representative proper facilities for entering the mine and making examination or obtaining information.

(b) If miners or one of their authorized representatives, have reason to believe, at any time, that dangerous conditions are existing or that the law is not being complied with, they may request the director to have an immediate investigation made; Provided, That miners are always encouraged to work with mine management with regards to safety concerns.

(c) Mine inspectors shall devote their full-time and undivided attention to the performance of their duties, and they shall examine all of the mines in their respective districts at least four times annually, and as often, in addition thereto, as the director may direct, or the necessities of the case or the condition of the mine or mines may require, with no advance notice of inspection provided to any person, and they shall make a personal examination of each working face and all entrances to abandoned parts of the mine where gas is known to liberate, for the purpose of determining whether an imminent danger, referred to in section fifteen of this article, exists in the mine, or whether any provision of article two of this chapter is being violated or has been violated within the past forty-eight hours in the mine. No other person shall, with the intent of undermining the integrity of an unannounced mine inspection, provide advance notice of any inspection or of an inspector's presence at a mine to any person at that mine. Any person who, with the requisite intent, knowingly causes or conspires to provide advance notice of any inspection or of an inspector's presence at a

mine is guilty of a felony and, upon conviction thereof, shall be fined not more than \$15,000 or imprisoned in a state correctional facility not less than one year and not more than five years, or both fined and imprisoned.

(d) In addition to the other duties imposed by this article and article two of this chapter, it is the duty of each inspector to note each violation he or she finds and issue a finding, order, or notice, as appropriate for each violation so noted. During the investigation of any accident, any violation may be noted whether or not the inspector actually observes the violation and whether or not the violation exists at the time the inspector notes the violation, so long as the inspector has clear and convincing evidence the violation has occurred or is occurring.

(e) ~~On or after July 1, 2012, an~~ An inspector shall require the operator or other employer to investigate all complaints received by the Office of Miners' Health, Safety and Training involving a certified person's substance abuse or alcohol related impairment at a mine. Within thirty days following notification by the Office of Miners' Health, Safety and Training to the operator or other employer of the complaint, the operator or other employer shall file with the Director a summary of its investigation into the alleged substance abuse or alcohol related impairment of a certified person.

(f) The mine inspector shall visit the scene of each fatal accident occurring in any mine within his or her district and shall make an examination into the particular facts of the accident; make a report to the director, setting forth the results of the examination, including the condition of the mine and the cause or causes of the fatal accident, if known, and all the reports shall be made available to the interested parties, upon written requests.

(g) At the commencement of any inspection of a coal mine by an authorized representative of the director, the authorized representative of the miners at the mine, as well as a salaried employee of management, at the time of the inspection shall be given an opportunity to accompany the authorized representative of the director on the inspection.

**§22A-1-15. Findings, orders and notices.**

(a) If upon any inspection of a coal mine an authorized representative of the director finds that an imminent danger exists, the representative shall determine the area throughout which the danger exists and shall immediately issue an order requiring the operator of the mine or the operator's agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3) and (4), subsection (e) of this section, to be withdrawn from and to be prohibited from entering the area until an authorized representative of the director determines that the imminent danger no longer exists.

(b) If upon any inspection of a coal mine an authorized representative of the director finds that there has been a violation of the law, but the violation has not created an imminent danger, he or she shall issue a notice to the operator or the operator's agent fixing a reasonable time for the abatement of the violation. If upon the expiration of the period of time, as originally fixed or subsequently extended, an authorized representative of the director finds that the violation has not been totally abated, and if the director also finds that the period of time should not be further extended, the director shall find the extent of the area affected by the violation and shall promptly issue an order requiring the operator of the mine or the operator's agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3) and (4), subsection (e) of this section, to be withdrawn from and to be prohibited from entering the area until an authorized representative of the director determines that the violation has been abated.

(c) If upon any inspection of a coal mine an authorized representative of the director finds that an imminent danger exists in an area of the mine, in addition to issuing an order pursuant to subsection (a) of this section, the director shall review the compliance record of the mine.

(1) A review of the compliance record conducted in accordance with this subsection shall, at a minimum, include a review of the following:

(A) Any closure order issued pursuant to subsection (a) of this section;

(B) Any closure order issued pursuant to subsection (b) of this section;

(C) Any enforcement measures taken pursuant to this chapter, other than those authorized under subsections (a) and (b) of this section;

(D) Any evidence of the operator's lack of good faith in abating significant and substantial violations at the mine;

(E) Any accident, injury or illness record that demonstrates a serious safety or health management problem at the mine; and

~~(F) The number of employees at the mine, the size, layout and physical features of the mine and the length of time the mine has been in operation; and~~

~~(G)~~ (F) Any mitigating circumstances.

(2) If, after review of the mine's compliance record, the director determines that the mine has a history of repeated significant and substantial violations of a particular standard caused by unwarrantable failure to comply or a history of repeated significant and substantial violations of standards related to the same hazard caused by unwarrantable failure to comply and the history or histories demonstrate the operator's disregard for the health and safety of miners, the director shall issue a closure order for the entire mine or area throughout which the director determines the dangerous condition exists and shall immediately issue an order requiring the operator of the mine or the operator's agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3) and (4), subsection (e) of this section, to be withdrawn from and to be prohibited from entering the mine or area throughout which the director determines the dangerous condition until a thorough inspection of the mine or area has been conducted by the office and the director determines that the operator has abated all violations related to the imminent danger and any violations unearthed in the course of the inspection.

(d) All employees on the inside and outside of a mine who are idled as a result of the posting of a withdrawal order by a mine

inspector shall be compensated by the operator at their regular rates of pay for the period they are idled, but not for more than the balance of the shift. If the order is not terminated prior to the next working shift, all the employees on that shift who are idled by the order are entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four hours of the shift.

(e) The following persons are not required to be withdrawn from or prohibited from entering any area of the coal mine subject to an order issued under this section:

(1) Any person whose presence in the area is necessary, in the judgment of the operator or an authorized representative of the director, to eliminate the condition described in the order;

(2) Any public official whose official duties require him or her to enter the area;

(3) Any representative of the miners in the mine who is, in the judgment of the operator or an authorized representative of the director, qualified to make coal mine examinations or who is accompanied by such a person and whose presence in the area is necessary for the investigation of the conditions described in the order; and

(4) Any consultant to any of the persons set forth in this subsection.

(f) Notices and orders issued pursuant to this section shall contain a detailed description of the conditions or practices which cause and constitute an imminent danger or a violation of any mandatory health or safety standard and, where appropriate, a description of the area of the coal mine from which persons must be withdrawn and prohibited from entering.

(g) Each notice or order issued under this section shall be given promptly to the operator of the coal mine or the operator's agent by an authorized representative of the director issuing the notice or order and all the notices and orders shall be in writing and shall be

signed by the representative and posted on the bulletin board at the mine.

(h) A notice or order issued pursuant to this section may be modified or terminated by an authorized representative of the director.

(i) Each finding, order and notice made under this section shall promptly be given to the operator of the mine to which it pertains by the person making the finding, order or notice.

(j) *Definitions.* — For the purposes of this section only, the following terms have the following meanings:

(1) “Unwarrantable failure” means aggravated conduct, constituting more than ordinary negligence, by a mine operator in relation to a violation of this chapter of the code; and

(2) “Significant and substantial violation” shall have the same meaning as that established in 6 FMSHRC 1 (1984).

#### **§22A-1-19. Judicial review.**

(a) Any order or decision issued by the director under this law, ~~except an order or decision under section fifteen of this article is~~ subject to judicial review by the circuit court of the county in which the mine affected is located ~~or the circuit court of Kanawha County~~ upon the filing in such court or with the judge thereof in vacation of a petition by any person aggrieved by the order or decision praying that the order or decision be modified or set aside, in whole or in part, except that the court shall not consider such petition unless such person has exhausted the administrative remedies available under this law and files within thirty days from date of such order or decision.

(b) The party making such appeal shall forthwith send a copy of such petition for appeal, by registered mail, to the other party. Upon receipt of such petition for appeal, the director shall promptly certify and file in such court a complete transcript of the record upon which the order or decision complained of was issued. The court shall hear such petition on the record made before the

director. The findings of the director, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate or modify any order or decision or may remand the proceedings to the director for such further action as it may direct.

(c) In the case of a proceeding to review any order or decision issued by the director under this law, except an order or decision pertaining to an order issued under subsection (a), section fifteen of this article or an order or decision pertaining to a notice issued under subsection (b), section fifteen of this article, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings if:

(A) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(B) The person requesting such relief shows that there is a substantial likelihood that the person will prevail on the merits of the final determination of the proceeding; and

(C) Such relief will not adversely affect the health and safety of miners in the coal mine.

(d) The judgment of the court is subject to review only by the Supreme Court of Appeals of West Virginia upon a writ of certiorari filed in such court within sixty days from the entry of the order and decision of the circuit court upon such appeal from the director.

(e) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the order or decision of the director.

(f) Subject to the direction and control of the attorney general, attorneys appointed for the director may appear for and represent the director in any proceeding instituted under this section.

**§22A-1-20. Injunctions.**

The director may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the circuit court of the county in which the mine is located ~~or the circuit court of Kanawha County~~, whenever the operator or the operator's agent: (a) Violates or fails or refuses to comply with any order or decision issued under this law;<sup>2</sup> or (b) interferes with, hinders or delays the director or his or her authorized representative in carrying out the provisions of this law;<sup>2</sup> or (c) refuses to admit such representatives to the mine;<sup>2</sup> or (d) refuses to permit the inspection of the mine, or the investigation of an accident or occupational disease occurring in, or connected with, such mine;<sup>2</sup> or (e) refuses to furnish any information or report requested by the director in furtherance of the provisions of this law;<sup>2</sup> or (f) refuses to permit access to, and copying of, such records as the director determines necessary in carrying out the provisions of this law. ~~Each~~ The court shall have jurisdiction to provide such relief as may be appropriate. Except as otherwise provided herein, any relief granted by the court to enforce an order under clause (a) of this section shall continue in effect until the completion or final termination of all proceedings for review of such order under this law, unless, prior thereto, the circuit court granting such relief sets it aside or modifies it. In any action instituted under this section to enforce an order or decision issued by the director after a public hearing, the findings of the director, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

**§22A-1-31. Withdrawal of certification.**

(a) *Charge of breach of duty.* - A mine inspector or the director may charge a mine foreman, assistant mine foreman, fire boss or any other certified person with neglect or failure to perform any duty mandated pursuant to this article or article two of this chapter. The charge shall state the name of the person charged, the duty or duties he or she is alleged to have violated, the approximate date and place so far as is known of the violation of duty, the capacity of the person making the charge, and shall be verified on the basis of information and belief or personal knowledge. The charge is initiated by filing it with the director or with the board of appeals.

A copy of any charge filed with the board of appeals or any member thereof, shall be transmitted promptly to the director. The director shall maintain a file of each charge and of all related documents which shall be open to the public.

(b) *Evaluation of charge by board of appeals.* - Within twenty days after receipt of the charge the board shall evaluate the charge and determine whether or not a violation of duty has been stated. In making such a determination the board shall evaluate all documents submitted to it by all persons to determine as nearly as possible the substance of the charge and if the board of appeals is unable to determine the substance of the charge it may request the director to investigate the charge. Upon request, the director shall cause the charge to be investigated and report the results of the investigation to the board of appeals within ten days of the director's receipt of the charge. If the board determines that probable cause exists to support the allegation that the person charged has violated his or her duty, the board by the end of the twenty-day period shall set a date for hearing which date shall be within eighty days of the filing of the charge. Notice of the hearing or notice of denial of the hearing for failure to state a charge and a copy of the charge shall be mailed by certified mail, return receipt requested, to the charging party, the charged party, the director, the representative of the miner or miners affected and to any interested person of record. Thereafter the board shall maintain the file of the charge which shall contain all documents, testimony and other matters filed which shall be open for public inspection.

(c) *Hearing.* - The board of appeals shall hold a hearing, may appoint a hearing examiner to take evidence and report to the board of appeals within the time allotted, may direct or authorize taking of oral depositions under oath by any participant, or adopt any other method for the gathering of sworn evidence which affords the charging party, the charged party, the director and any interested party of record due process of law and a fair opportunity to present and make a record of evidence. Any member of the board shall have the power to administer oaths. The board may subpoena witnesses and require production of any books, papers, records or other documents relevant or material to the inquiry. The board shall

consider all evidence offered in support of the charge and on behalf of the persons so charged at the time and place designated in the notice. Each witness shall be sworn and a transcript shall be made of all evidence presented in any such hearing. No continuance shall be granted except for good cause shown.

The board of appeals may accept as evidence a notarized affidavit of drug testing procedures and results from a Medical Review Officer (MRO) in lieu of live testimony by the MRO. If the Board of Appeals desires testimony in lieu of a notarized affidavit, the MRO may testify under oath telephonically or by an Internet based program in lieu of physically attending the hearing.

At the conclusion of the hearing the board shall proceed to determine the case upon consideration of all the evidence offered and shall render a decision containing its findings of fact and conclusions of law. If the board finds by a preponderance of the evidence that the certificate or certificates of the charged person should be suspended or revoked, as hereinafter provided, it shall enter an order to that effect. No renewal of the certificate shall be granted except as herein provided.

(d) *Failure to cooperate.* - Any person charged who without just cause refuses or fails to appear before the board or cooperate in the investigation or gathering of evidence shall forfeit his or her certificate or certificates for a period to be determined by the board, not to exceed five years, and such certificate or certificates may not be renewed except upon a successful completion of the examination prescribed by the law for mine foremen, assistant mine foremen, fire bosses or other certified persons.

(e) *Penalties.* - The board may suspend or revoke the certificate or certificates of a charged party for a minimum of thirty days or more including an indefinite period or may revoke permanently the certificate or certificates of the charged party, as it sees fit, subject to the prescribed penalties and monetary fines imposed elsewhere in this chapter.

(f) *Integrity of penalties imposed.* - No person whose certification is suspended or revoked under this provision can

perform any duties under any other certification issued under this chapter, during the period of the suspension imposed herein.

(g) Any party adversely affected by a final order or decision issued by the board hereunder is entitled to judicial review thereof pursuant to section four, article five, chapter twenty-nine-a of this code.

### **§22A-1-35. Mine rescue teams.**

(a) ~~It is the responsibility of the~~ The operator to shall provide mine rescue coverage at each active underground mine.

(b) Mine rescue coverage may be provided by:

(1) Establishing at least two mine rescue teams which are available at all times when miners are underground; or

(2) Entering into an arrangement for mine rescue services which assures that at least two mine rescue teams are available at all times when miners are underground.

(3) A West Virginia Office of Miners' Health, Safety and Training Mine Rescue Team may serve as a second or backup team for mines within the state and qualify as one of the two teams required under subdivision (1) of this subsection and in accordance with 30 CFR, Part 49.20(4). The operator shall contact the office and obtain the state's agreement to serve as a backup team in the form of a written notification signed by the director and this notification shall be kept posted at the mine.

(c) As used in this section, mine rescue teams shall be considered available where teams are capable of presenting themselves at the mine site(s) within a reasonable time after notification of an occurrence which might require their services. Rescue team members will be considered available even though performing regular work duties or while in an off-duty capacity. The requirement that mine rescue teams be available does not apply when teams are participating in mine rescue contests or providing rescue services to another mine.

(d) In the event of a fire, explosion or recovery operations in or about any mine, the director is hereby authorized to assign any mine rescue team to said mine to protect and preserve life and property. The director may also assign mine rescue and recovery work to inspectors, instructors or other qualified employees of the office as he or she deems necessary.

(e) The ground travel time between any mine rescue station and any mine served by that station shall not exceed two hours. To ensure adequate rescue coverage for all underground mines, no mine rescue station may provide coverage for more than seventy mines within the two-hour ground travel limit as defined in this subsection.

(f) Each mine rescue team shall consist of five members and one alternate, who are fully qualified, trained and equipped for providing emergency mine rescue service. Each mine rescue team shall be trained by a state certified mine rescue instructor.

(g) Each member of a mine rescue team must have been employed in an underground mine for a minimum of one year. For the purpose of mine rescue work only, miners who are employed on the surface but work regularly underground meet the experience requirement. The underground experience requirement is waived for those members of a mine rescue team on the effective date of this statute.

(h) An applicant for initial mine rescue training shall pass, on at least an annual basis, a physical examination by a licensed physician certifying his or her fitness to perform mine rescue work. A record that such examination was taken, together with pertinent data relating thereto, shall be kept on file by the operator and a copy shall be furnished to the director.

(i) Upon completion of the initial training, all mine rescue team members shall receive at least forty hours of refresher training annually. This training shall be given at least four hours each month, or for a period of eight hours every two months, and shall include:

(1) Sessions underground at least once every six months;

(2) The wearing and use of a breathing apparatus by team members for a period of at least two hours, while under oxygen, once every two months;

(3) Where applicable, the use, care, capabilities and limitations of auxiliary mine rescue equipment, or a different breathing apparatus;

(4) Mine map training and ventilation procedures.

(j) When engaged in rescue work required by an explosion, fire or other emergency at a mine, all members of mine rescue teams assigned to rescue operations shall, during the period of their rescue work, be employees of the operator of the mine where the emergency exists, and shall be compensated by the operator at the rate established in the area for such work. In no case shall this rate be less than the prevailing wage rate in the industry for the most skilled class of inside mine labor. During the period of their emergency employment, members of mine rescue teams shall be protected by the workers' compensation subscription of ~~such emergency employer~~ the mine operator.

(k) During the recovery work and prior to entering any mine at the start of each shift, all rescue or recovery teams shall be properly informed of existing conditions and work to be performed by the designated company official in charge.

(1) For every two teams performing rescue or recovery work underground, one six-member team shall be stationed at the mine portal.

(2) Each rescue or recovery team performing work with a breathing apparatus shall be provided with a backup team of equal number, stationed at each fresh air base.

(3) ~~Two-way~~ The mine operator shall provide two-way communication and a lifeline or its equivalent ~~shall be provided~~ at each fresh air base for all mine rescue or recovery teams and no mine rescue team member shall advance more than one thousand

feet in by the fresh air base: *Provided*, That if a life may possibly be saved and existing conditions do not create an unreasonable hazard to mine rescue team members, the rescue team may advance a distance agreed upon by those persons directing the mine rescue or recovery operations: *Provided, however*, That the mine operator shall provide a lifeline or its equivalent ~~shall be provided~~ in each fresh air base for all mine rescue or recovery teams.

(4) A rescue or recovery team shall immediately return to the fresh air base when the atmospheric pressure of any member's breathing apparatus depletes to sixty atmospheres, or its equivalent.

(1) Mine rescue stations shall provide a centralized storage location for rescue equipment. This storage location may be either at the mine site, affiliated mines or a separate mine rescue structure. All mine rescue teams shall be guided by the mine rescue apparatus and auxiliary equipment manual. Each mine rescue station shall be provided with at least the following equipment:

(1) Twelve self-contained oxygen breathing apparatuses, each with a minimum of two hours capacity, and any necessary equipment for testing such breathing apparatuses;

(2) A portable supply of liquid air, liquid oxygen, pressurized oxygen, oxygen generating or carbon dioxide absorbent chemicals, as applicable to the supplied breathing apparatuses and sufficient to sustain each team for six hours while using the breathing apparatuses during rescue operations;

(3) One extra, fully charged, oxygen bottle for each self-contained compressed oxygen breathing apparatus, as required under subdivision (1) of this subsection;

(4) One oxygen pump or a cascading system, compatible with the supplied breathing apparatuses;

(5) Twelve permissible cap lamps and a charging rack;

(6) Two gas detectors appropriate for each type of gas which may be encountered at the mines served;

(7) Two oxygen indicators ~~or two flame safety lamps~~;

(8) One portable mine rescue communication system or a sound-powered communication system. The wires or cable to the communication system shall be of sufficient tensile strength to be used as a manual communication system. The communication system shall be at least one thousand feet in length; and

(9) Necessary spare parts and tools for repairing the breathing apparatuses and communication system, as presently prescribed by the manufacturer.

(m) Mine rescue apparatuses and equipment shall be maintained in a manner that will ensure readiness for immediate use. A person trained in the use and care of breathing apparatuses shall inspect and test the apparatuses at intervals not exceeding thirty days and shall certify by signature and date that the inspections and tests were done. When the inspection indicates that a corrective action is necessary, the corrective action shall be made and recorded by said person. The certification and corrective action records shall be maintained at the mine rescue station for a period of one year and made available on request to an authorized representative of the director.

(n) Authorized representatives of the director have the right of entry to inspect any designated mine rescue station.

(o) When an authorized representative finds a violation of any of the mine rescue requirements, the representative shall take appropriate corrective action in accordance with section fifteen of this article.

(p) Operators affiliated with a station issued an order by an authorized representative will be notified of that order and that their mine rescue program is invalid. The operators shall have twenty-four hours to submit to the director a revised mine rescue program.

(q) Every operator of an underground mine shall develop and adopt a mine rescue program for submission to the director within thirty days of the effective date of this statute: *Provided*, That a new program need only be submitted when conditions exist as defined

in subsection (p) of this section, or when information contained within the program has changed.

(r) A copy of the mine rescue program shall be posted at the mine and kept on file at the operator's mine rescue station or rescue station affiliate and the state regional office where the mine is located. A copy of the mine emergency notification plan filed pursuant to 30 CFR §49.9(a) will satisfy the requirements of subsection (q) of this section if submitted to the director.

(s) The operator shall immediately notify the director of any changed conditions materially affecting the information submitted in the mine rescue program.

**ARTICLE 1A. OFFICE OF MINERS' HEALTH, SAFETY  
AND TRAINING; ADMINISTRATION;  
SUBSTANCE ABUSE.**

**§22A-1A-2. Board of Appeals hearing procedures.**

(a) Any hearing conducted after the temporary suspension of a certified person's certificate pursuant to this article, shall be conducted within sixty days of the temporary suspension. The Board of Appeals shall make every effort to hold the hearing within forty days of the temporary suspension.

(b) All hearings of the Board of Appeals pursuant to this section shall be conducted in accordance with the provisions of subsection (c), section thirty-one, article one of this chapter. In addition to the rules and procedures in section thirty-one, article one of this chapter in hearings under this section, the Board of Appeals may accept as evidence a notarized affidavit of drug testing procedures and results from a Medical Review Officer (MRO) in lieu of live testimony by the MRO. If the Board of Appeals desires testimony in lieu of a notarized affidavit, the MRO may testify under oath telephonically or by an Internet based program in lieu of physically attending the hearing. The Board of Appeals may suspend the certificate or certificates of a certified person for violation of this article or for any other violation of this chapter pertaining to substance abuse. The Board of Appeals may impose further

disciplinary actions for repeat violations. The director shall have the authority to propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code to establish the disciplinary actions referenced in this section following the receipt of recommendations from the Board of Coal Mine Health and Safety following completion of the study required pursuant to section fourteen, article six of this chapter. The legislative rules authorized by this subsection shall not, however, include any provisions requiring an employer to take or refrain from taking any specific personnel action or mandating any employer to establish or maintain an employer-funded substance abuse rehabilitation program.

(c) No person whose certification is suspended or revoked under this section may perform any duties under any other certification issued under this chapter, during the period of the suspension imposed by the Board of Appeals.

(d) Any party adversely affected by a final order or decision issued by the Board of Appeals hereunder is entitled to judicial review thereof pursuant to section four, article five, chapter twenty-nine-a of this code.

## **ARTICLE 2. UNDERGROUND MINES.**

### **§22A-2-3. Fans.**

(a) The ventilation of mines, the systems for which extend for more than two hundred feet underground and which are opened after the effective date of this article, shall be produced by a mechanically operated fan or mechanically operated fans. Ventilation by means of a furnace is prohibited in any mine. The fan or fans shall be kept in continuous operation, unless written permission to do otherwise be granted by the director. In case of interruption to a ventilating fan or its machinery whereby the ventilation of the mine is interrupted, immediate action shall be taken by the mine operator or the operator's management personnel, in all mines, to cut off the power and withdraw the men from the face regions or other areas of the mine affected. If ventilation is restored in fifteen minutes, the face regions and other

places in the affected areas where gas (methane) is likely to accumulate, shall be reexamined by a certified person; and if found free of explosive gas, power may be restored and work resumed. If ventilation is not restored in fifteen minutes, all underground employees shall be removed from the mine, all power shall be cut off in a timely manner, and the underground employees shall not return until ventilation is restored and the mine examined by certified persons, mine examiners or other persons holding a certificate to make preshift examination. If ventilation is restored to the mine before miners reach the surface, the miners may return to underground working areas only after an examination of the areas is made by a certified person and the areas are determined to be safe.

(b) All main fans installed after the effective date of this article shall be located on the surface in fireproof housings offset not less than fifteen feet from the nearest side of the mine opening, equipped with fireproof air ducts, provided with explosion doors or a weak wall, and operated from an independent power circuit. In lieu of the requirements for the location of fans and pressure-relief facilities, a fan may be directly in front of, or over a mine opening: *Provided*, That such opening is not in direct line with possible forces coming out of the mine if an explosion occurs: *Provided, however*, That there is another opening having a weak wall stopping or explosion doors that would be in direct line with forces coming out of the mine. All main fans shall be provided with pressure-recording gauges or water gauges. A daily inspection shall be made of all main fans and machinery connected therewith by a certified electrician and a record kept of the same in a book prescribed for this purpose or by adequate facilities provided to permanently record the performance of the main fans and to give warning of an interruption to a fan.

(c) Auxiliary fans and tubing shall be permitted to be used in lieu of or in conjunction with line brattice to provide adequate ventilation to the working faces: *Provided*, That auxiliary fans be so located and operated to avoid recirculation of air at any time. Auxiliary fans shall be approved and maintained as permissible.

(d) If the auxiliary fan is stopped or fails, the electrical equipment in the place shall be stopped and the power disconnected at the power source until ventilation in the working place is restored. During such stoppage, the ventilation shall be by means of the primary air current conducted into the place in a manner to prevent accumulation of methane.

(e) In places where auxiliary fans and tubing are used, the ventilation between shifts, weekends and idle shifts shall be provided to face areas with line brattice or the equivalent to prevent accumulation of methane.

(f) The director may require that when continuous mine equipment is being used, all face ventilating systems using auxiliary fans and tubing shall be provided with machine-mounted diffuser fans, and such fans shall be continuously operated during mining operations.

(g) In the event of a fire or explosion in any coal mine, the ventilating fan or fans shall not intentionally be started, stopped, speed increased or decreased or the direction of the air current changed without the approval of the general mine foreman, and, if he or she is not immediately available, a representative of the Office of Miners' Health, Safety and Training. A duly authorized representative of the employees should be consulted if practical under the circumstances.

**§22A-2-8. Duties; ventilation; loose coal, slate or rocks; props; drainage of water; man doors; instruction of apprentice miners.**

(a) The duties of the mine foreman shall be to keep a careful watch over the ventilating apparatus, the airways, traveling ways, pumps and drainage. He or she shall see that, as the miners advance their excavations, proper breakthroughs are made so as to ventilate properly the mine; that all loose coal, slate and rock overhead in the working places and along the haulways are removed or carefully secured so as to prevent danger to persons employed in such mines, and that sufficient suitable props, caps, timbers, roof bolts or other approved methods of roof supports are furnished for

the places where they are to be used and delivered at suitable points. The mine foreman shall have all water drained or hauled out of the working places where practicable, before the miners enter, and such working places shall be kept dry as far as practicable while the miners are at work. It shall be the duty of the mine foreman to see that proper crosscuts are made, and that the ventilation is conducted by means of such crosscuts through the rooms by means of checks or doors placed on the entries or other suitable places, and he or she shall not permit any room to be opened in advance of the ventilation current. The mine foreman, or other certified persons designated by him or her, shall measure the air current with an anemometer or other approved device at least weekly at the inlet and outlet at or near the faces of the advanced headings, and shall keep a record of such measurements in a book or upon a form prescribed by the director. Signs directing the way to outlets or escapeways shall be conspicuously placed throughout the mine.

(b) After July 1, 1971, hinged man doors, at least thirty inches square or the height of the coal seam, shall be installed between the intake and return at intervals of three hundred feet when the height of the coal is below forty-eight inches and at intervals of ~~five~~ six hundred feet when the height of the coal is above forty-eight inches.

(c) The duties of the mine foreman and assistant mine foreman shall include the instruction of apprentice miners in the hazards incident to any new work assignments; to assure that any individual given a work assignment in the working face without prior experience on the face is instructed in the hazards incident thereto and supervised by a miner with experience in the tasks to be performed.

#### **§22A-2-14. Safety inspections; removal of gases.**

It shall be the duty of the mine foreman, assistant mine foreman or fire boss to examine all working places under his or her supervision for hazards at least once every two hours during each coal-producing shift, or more often if necessary for safety. In all mines such examinations shall include tests with an approved detector for methane and oxygen deficiency, ~~which tests for oxygen deficiency may be with a permissible flame safety lamp: *Provided,*~~

~~That a flame safety lamp may be used for methane testing when a malfunction occurs with a methane detector~~ It shall also be his or her duty to remove as soon as possible after its discovery any accumulations of explosive or noxious gases in active workings, and where practicable, any accumulations of explosive or noxious gases in the worked out and abandoned portions of the mine. It shall be the duty of the mine foreman, assistant mine foreman or fire boss to examine each mine within three hours prior to the beginning of a shift and before any miner in such shift enters the active workings of the mine.

**§22A-2-20. Preparation of danger signal by fire boss or certified person acting as such prior to examination; report; records open for inspection.**

(a) It is the duty of the fire boss, or a certified person acting as such, to prepare a danger signal (a separate signal for each shift) with red color at the mine entrance at the beginning of his or her shift or prior to his or her entering the mine to make his or her examination and, except for those persons already on assigned duty, no person except the mine owner, operator or agent, and only then in the case of necessity, shall pass beyond this danger signal until the mine has been examined by the fire boss or other certified person and the mine or certain parts thereof reported by him or her to be safe. When reported by him or her to be safe, the danger sign or color thereof shall be changed to indicate that the mine is safe in order that employees going on shift may begin work. Each person designated to make the fire boss examinations shall be assigned a definite underground area of the mine, and, in making his or her examination shall examine all active working places in the assigned area and make tests with an approved device for accumulations of methane and oxygen deficiency; examine seals and doors; examine and test the roof, face and ribs in the working places and on active roadways and travelways, approaches to abandoned workings, accessible falls in active sections and areas where any person is scheduled to work or travel underground. He or she shall place his or her initials and the date at or near the face of each place he or she examines. Should he or she find a condition which he or she

considers dangerous to persons entering the areas, he or she shall place a conspicuous danger sign at all entrances to the place or places. Only persons authorized by the mine management may enter the places while the sign is posted and only for the purpose of eliminating the dangerous condition. Upon completing his or her examination he or she shall report by suitable communication system or in person the results of this examination to a certified person trained as a certified miner with at least two years mining experience designated by mine management to receive and record the report, at a designated station on the surface of the premises of the mine or underground, before other persons enter the mine to work in coal-producing shifts. He or she shall also record the results of his or her examination with ink or indelible pencil in a book prescribed by the director, kept for the purpose at a place on the surface of the mine designated by mine management. All records of daily and weekly reports, as prescribed herein, shall be open for inspection by interested persons.

(b) *Supplemental examination.* - When it becomes necessary to have workers enter areas of the mine not covered during the preshift examination, a supplemental examination shall be performed by a fire boss or certified person acting as such within three hours before any person enters the area. The fire boss or certified person acting as such shall examine the area for hazardous conditions, determine if air is traveling in its proper direction and test for oxygen deficiency and methane.

(c) Each examined area shall be certified by date, time and the initials of the examiner.

(d) The results of the examination shall be recorded with ink or indelible pencil by the examiner in the book referenced in subsection (a) of this section before he or she leaves the mine on that shift.

### **ROOF-FACE-RIBS**

**§22A-2-25. Roof control programs and plans; refusal to work under unsupported roof.**

(a) Each operator shall undertake to carry out on a continuing basis a program to improve the roof control system of each coal mine and the means and measures to accomplish such system. The roof and ribs of all active underground roadways, travelways and working places shall be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs. A roof control plan and revisions thereof suitable to the roof conditions and mining systems of each coal mine and approved by the director shall be adopted and set out in printed form before new operations. The safety committee of the miners of each mine where such committee exists shall be afforded the opportunity to review and submit comments and recommendations to the director and operator concerning the development, modification or revision of such roof control plans. The plan shall show the type of support and spacing approved by the director. Such plan shall be reviewed periodically, at least every six months by the director, taking into consideration any falls of roof or rib or inadequacy of support of roof or ribs. A copy of the plan shall be furnished to the director or his or her authorized representative and shall be available to the miners and their representatives.

(b) The operator, in accordance with the approved plan, shall provide at or near each working face and at such other locations in the coal mine, as the director may prescribe, an ample supply of suitable materials of proper size with which to secure the roof thereof of all working places in a safe manner. Safety posts, jacks, or other approved devices shall be used to protect the workmen when roof material is being taken down, crossbars are being installed, roof bolt holes are being drilled, roof bolts are being installed and in such other circumstances as may be appropriate. Loose roof and overhanging or loose faces and ribs shall be taken down or supported. When overhangs or brows occur along rib lines they shall be promptly removed. All sections shall be maintained as near as possible on center. Except in the case of recovery work, supports knocked out shall be replaced promptly. Apprentice miners shall not be permitted to set temporary supports on a

working section without the direct immediate supervision of a certified miner.

(c) The operator of a mine has primary responsibility to prevent injuries and deaths resulting from working under unsupported roof. Every operator shall require that no person may proceed beyond the last permanent support unless adequate temporary support is provided or temporary support is not required under an approved roof control plan and absence of such support will not pose a hazard to the miners.

(d) The immediate supervisor of any area in which unsupported roof is located shall not direct or knowingly permit any person to proceed beyond the last permanent support unless adequate temporary support is provided or temporary support is not required under an approved roof control plan and absence of such support will not pose a hazard to the miners.

(e) No miner shall proceed beyond the last permanent support in violation of a direct or standing order of an operator, a foreman or an assistant foreman, unless adequate temporary support is provided or temporary support is not required under an approved roof control plan and absence of such support will not pose a hazard to the miner.

(f) The immediate supervisor of each miner who will be engaged in any activity involving the securing of roof or rib during a shift shall, at the onset of any such shift, orally review those parts of the roof control plan relevant to the type of mining and roof control to be pursued by such miner. ~~The time and parts of the plan reviewed shall be recorded in a log book kept for such purpose. Each log book entry so recorded shall be signed by such immediate supervisor making such entry.~~

(g) Any action taken against a miner due, in whole or in part, to his or her refusal to work under unsupported roof, where such work would constitute a violation of this section, is prohibited as an act of discrimination pursuant to section twenty-two, article one of this chapter. Upon a finding of discrimination by the appeals

board pursuant to subsection (b), section twenty-two, article one of this chapter, the miner shall be awarded by the appeals board all reliefs available pursuant to subsections (b) and (c), section twenty-two, article one of this chapter.

## HOISTING

### **§22A-2-36. Hoisting machinery; telephones; safety devices; hoisting engineers and drum runners.**

(a) The operator of every coal mine worked by shaft shall provide and maintain a metal tube, telephone or other approved means of communication from the top to the bottom and intermediate landings of such shafts, suitably adapted to the free passage of sound, through which conversation may be held between persons at the top and at the bottom of the shaft; a standard means of signaling; an approved safety catch, bridle chains, automatic stopping device, or automatic overwind; a sufficient cover overhead on every cage used for lowering or hoisting persons; an approved safety gate at the top of the shaft; and an adequate brake on the drum of every machine used to lower or hoist persons in such shaft. Such operator shall have the machinery used for lowering and hoisting persons into or out of the mine kept in safe condition, equipped with a reliable indicator, and inspected once in each twenty-four hours by a qualified electrician. Where a hoisting engineer is required, he or she shall be readily available at all times when men are in the mine. He or she shall operate the empty cage up and down the shaft at least one round trip at the beginning of each shift, ~~and after the hoist has been idle for one hour or more before hoisting or lowering men;~~ there shall be cut out around the side of the hoisting shaft or driven through the solid strata at the bottom thereof, a traveling way, not less than five feet high and three feet wide to enable a person to pass the shaft in going from one side of it to the other without passing over or under the cage or other hoisting apparatus. Positive stop blocks or derails shall be placed near the top and at all intermediate landings of slopes and surface inclines and at approaches to all shaft landings. A waiting station with sufficient room, ample clearance from moving equipment, and adequate seating facilities shall be provided where men are required to wait for man trips or man

cages, and the miners shall remain in such station until the man trip or man cage is available.

(b) No operator of any coal mine worked by shaft, slope or incline, shall place in charge of any engine or drum used for lowering or hoisting persons employed in such mine any but competent and sober engineers or drum runners; and no engineer or drum runner in charge of such machinery shall allow any person, except such as may be designated for this purpose by the operator, to interfere with any part of the machinery; and no person shall interfere with any part of the machinery; and no person shall interfere with or intimidate the engineer or drum runner in the discharge of his or her duties. Where the mine is operated or worked by shaft or slope, a minimum space of two and one-half square feet per person shall be available for each person on any cage or car where men are transported. In no instance shall more than twenty miners be transported on a cage or car without the approval of the director. No person shall ride on a loaded cage or car in any shaft, slope, or incline: *Provided*, That this does not prevent any trip rider from riding in the performance of his or her authorized duties. No engineer is required for automatically operated cages, elevators, or platforms. Cages and elevators shall have an emergency power source unless provided with other escapeway facilities.

(c) Each automatic elevator shall be provided with a telephone or other effective communication system by which aid or assistance can be obtained promptly.

(d) A stop switch shall be provided in the automatic elevator compartment that will permit the elevator to be stopped at any location in the shaft.

#### **§22A-2-55. Protective equipment and clothing.**

(a) Welders and helpers shall use proper shields or goggles to protect their eyes. All employees shall have approved goggles or shields and use the same where there is a hazard from flying particles or other eye hazards.

(b) Employees engaged in haulage operations and all other persons employed around moving equipment on the surface and underground shall wear snug-fitting clothing.

(c) Protective gloves shall be worn when material which may injure hands is handled, but gloves with gauntleted cuffs shall not be worn around moving equipment.

(d) Safety hats and safety-toed shoes shall be worn by all persons while in or around a mine: *Provided*, That metatarsal guards are not required to be worn by persons when working in those areas of underground mine workings which average less than forty-eight inches in height as measured from the floor to the roof of the underground mine workings.

(e) Approved eye protection shall be worn by all persons while being transported in open-type man trips.

(f) (1) A self-contained self-rescue device approved by the director shall be worn by each person underground or kept within his or her immediate reach and the device shall be provided by the operator. The self-contained self-rescue device shall be adequate to protect a miner for one hour or longer. Each operator shall train each miner in the use of the device and refresher training courses for all underground employees shall be held once each quarter. Quarters shall be based on a calendar year.

(2) In addition to the requirements of subdivision (1) of this subsection, the operator shall also provide caches of additional self-contained self-rescue devices throughout the mine in accordance with a plan approved by the director. Each additional self-contained self-rescue device shall be adequate to protect a miner for one hour or longer. The total number of additional self-contained self-rescue devices, the total number of storage caches and the placement of each cache throughout the mine shall be established by rule pursuant to subsection (i) of this section. A luminescent sign with the words "SELF-CONTAINED SELF-RESCUER" or "SELF-CONTAINED SELF-RESCUERS" shall be conspicuously posted at each cache and luminescent direction signs shall be posted leading to each cache. Lifeline cords or other similar device, with

reflective material at twenty-five foot intervals, shall be attached to each cache from the last open crosscut to the surface. The operator shall conduct weekly inspections of each cache and each lifeline cord or other similar device to ensure operability.

(3) Any person that, without the authorization of the operator or the director, knowingly removes or attempts to remove any self-contained self-rescue device or lifeline cord from the mine or mine site with the intent to permanently deprive the operator of the device or lifeline cord or knowingly tampers with or attempts to tamper with the device or lifeline cord shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than ten years or fined not less than \$10,000 nor more than \$100,000, or both.

(g) (1) A wireless emergency communication device approved by the director and provided by the operator shall be worn by each person underground: Provided, That if a miner's wireless emergency communications device shall malfunction or cease to operate then such miner shall be assigned to be in sight or sound of a certified miner until such time an operating device shall be delivered. The wireless emergency communication device shall, at a minimum, be capable of receiving emergency communications from the surface at any location throughout the mine. Each operator shall train each miner in the use of the device and provide refresher training courses for all underground employees during each calendar year. The operator shall install in or around the mine any and all equipment necessary to transmit emergency communications from the surface to each wireless emergency communication device at any location throughout the mine.

(2) Any person that, without the authorization of the operator or the director, knowingly removes or attempts to remove any wireless emergency communication device or related equipment, from the mine or mine site with the intent to permanently deprive the operator of the device or equipment or knowingly tampers with or attempts to tamper with the device or equipment shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than

ten years or fined not less than \$10,000 nor more than \$100,000, or both fined and confined.

(h) (1) A wireless tracking device approved by the director and provided by the operator shall be worn by each person underground. In the event of an accident or other emergency, the tracking device shall, at a minimum, be capable of providing real-time monitoring of the physical location of each person underground: *Provided*, That no person shall discharge or discriminate against any miner based on information gathered by a wireless tracking device during nonemergency monitoring. Each operator shall train each miner in the use of the device and provide refresher training courses for all underground employees during each calendar year. The operator shall install in or around the mine all equipment necessary to provide real-time emergency monitoring of the physical location of each person underground.

(2) Any person that, without the authorization of the operator or the director, knowingly removes or attempts to remove any wireless tracking device or related equipment, approved by the director, from a mine or mine site with the intent to permanently deprive the operator of the device or equipment or knowingly tampers with or attempts to tamper with the device or equipment shall be guilty of a felony and, upon conviction ~~thereof~~, shall be imprisoned in a state correctional facility for not less than one year nor more than ten years or fined not less than \$10,000 nor more than \$100,000, or both fined and confined.

(i) The director may promulgate emergency and legislative rules to implement and enforce this section pursuant to the provisions of article three, chapter twenty-nine-a of this code.

**§22A-2-66. Accident; notice; investigation by Office of Miners' Health, Safety and Training.**

(a) For the purposes of this section, the term accident means:

(1) The death of an individual at a mine;

(2) An injury to an individual at a mine which has a reasonable potential to cause death;

- (3) The entrapment of an individual;
  - (4) The unplanned inundation of a mine by a liquid or gas;
  - (5) The unplanned ignition or explosion of gas or dust;
  - (6) The unplanned ignition or explosion of a blasting agent or an explosive;
  - (7) An unplanned fire in or about a mine not extinguished within five minutes of ignition;
  - (8) An unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use or an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage;
  - (9) A coal or rock outburst that causes withdrawal of miners or which disrupts regular mining activity for more than one hour;
  - (10) An unstable condition at an impoundment, refuse pile or culm bank which requires emergency action in order to prevent failure, or which causes individuals to evacuate an area, or the failure of an impoundment, refuse pile or culm bank;
  - (11) Damage to hoisting equipment in a shaft or slope which endangers an individual or which interferes with use of the equipment for more than thirty minutes; and
  - (12) An event at a mine which causes death or bodily injury to an individual not at the mine at the time the event occurs.
- (b) Whenever any accident occurs in or about any coal mine or the machinery connected therewith, it is the duty of the operator or the mine foreman in charge of the mine to give notice, within fifteen minutes of ascertaining the occurrence of an accident, to the Mine and Industrial Accident Emergency Operations Center at the statewide telephone number established by the Director of the Division of Homeland Security and Emergency Management pursuant to the provisions of article five-b, chapter fifteen of this code stating the particulars of the accident: *Provided*, That the

operator or the mine foreman in charge of the mine may comply with this notice requirement by immediately providing notice to the appropriate local organization for emergency services as defined in section eight, article five of said chapter, or the appropriate local emergency telephone system operator as defined in article six, chapter twenty-four of this code: *Provided, however,* That if, immediately upon ascertaining the occurrence of an accident, the operator or the mine foreman in charge of the mine provides notice to the local organization for emergency services as defined in section eight, article five, chapter fifteen of this code, or the appropriate local emergency telephone system operator as defined in article six, chapter twenty-four of this code, then, in order to comply with this subsection, the operator or mine foreman in charge of the mine shall also give notice to the Mine and Industrial Accident Emergency Operations Center at the statewide number identified in this subsection within fifteen minutes of completing the telephone call to the local organization for emergency services or the appropriate local emergency telephone system operator, as applicable: *Provided further,* That nothing in this subsection shall be construed to relieve the operator from any reporting or notification requirement under federal law.

(c) The Director of the Office of Miners' Health, Safety and Training shall impose, pursuant to rules authorized in this section, a civil administrative penalty of up to \$100,000 on the operator if it is determined that the operator or the mine foremen in charge of the mine failed to give immediate notice as required in this section. The director may later amend the assessment of a penalty under this section if so warranted: *Provided,* That the director may waive imposition of the civil administrative penalty at any time if he or she finds that the failure to give immediate notice was caused by circumstances wholly outside the control of the operator: *Provided, however,* That the assessment of the civil administrative penalty set forth in this subsection may be appealed to the Board of Appeals, and the Board of Appeals may, by ~~unanimous vote~~ a vote of two Board of Appeals Members, reduce the amount of the civil administrative penalty upon a finding of mitigating circumstances warranting the imposition of a lesser amount.

(d) If anyone is fatally injured, the inspector shall immediately go to the scene of the accident and make recommendations and render assistance as he or she may deem necessary for the future safety of the men and investigate the cause of the explosion or accident and make a record. He or she shall preserve the record with the other records in his or her office. The cost of the investigation records shall be paid by the Office of Miners' Health, Safety and Training. A copy shall be furnished to the operator and other interested parties. To enable him or her to make an investigation, he or she has the power to compel the attendance of witnesses and to administer oaths or affirmations. The director has the right to appear and testify and to offer any testimony that may be relevant to the questions and to cross-examine witnesses.

**§22A-2-77. ~~Monthly~~ Quarterly report by operator of mine; exception as to certain inactive mines.**

On or before the end of each ~~calendar month~~ quarter, the operator of each mine, regulated under the provisions of this chapter or article three or four, chapter twenty-two of this code, shall file with the director a report with respect thereto covering the next preceding ~~calendar month~~ quarter which shall reflect the number of accidents which have occurred at each such mine, the number of persons employed, the days worked and the actual raw tonnage mined. Quarters are based on a calendar year. Such report shall be made upon forms furnished by the director. Other provisions of this section to the contrary notwithstanding, no such report shall be required with respect to any mine on approved inactive status if no employees were present at such mine at any time during the next preceding calendar month.

**ARTICLE 7. BOARD OF MINER TRAINING, EDUCATION AND CERTIFICATION.**

**§22A-7-7. Continuing education requirements for underground mine foreman-fire boss.**

(a) ~~An existing underground mine foreman fire boss certified pursuant to this article shall complete the continuing education requirements in this section within two years from the effective~~

~~date of this section and every two years thereafter.~~ An underground mine foreman-fire boss certified pursuant to this article on or after the effective date of this section shall complete the continuing education requirements in this section within two years of their certification and every two years thereafter. The continuing education requirements of this section may not be satisfied by the completion of other training requirements mandated by the provisions of this chapter.

(b) In order to receive continuing education credit pursuant to this section, a mine foreman-fire boss shall satisfactorily complete a mine foreman-fire boss continuing education course approved by the board and taught by a qualified instructor approved by the director. The mine foreman-fire boss shall not suffer a loss in pay while attending a continuing education course. The mine foreman-fire boss shall submit documentation to the office certified by the instructor that indicates the required continuing education has been completed prior to the deadlines set forth in this subsection: *Provided*, That a mine foreman-fire boss may submit documentation of continuing education completed in another state for approval and acceptance by the board.

(c) The mine foreman-fire boss shall complete at least eight hours of continuing education every two years.

(d) The content of the continuing education course shall include, but not be limited to:

(1) Selected provisions of this chapter and 30 U. S. C. § 801, *et seq.*;

(2) Selected provisions of the West Virginia and federal underground coal mine health and safety rules and regulations;

(3) The responsibilities of a mine foreman-fire boss;

(4) Selected policies and memoranda of the Office of Miners' Health, Safety and Training, the Board of Coal Mine Health and Safety, ~~and~~ the Board of Miner Training, Education and Certification, and from any safety analysis performed by the company.

(5) A review of fatality and accident trends in underground coal mines; and

(6) Other subjects as determined by the Board of Miner Training, Education and Certification. The board shall solicit input from mining companies on the substance of the training and discuss how the training shall be scheduled during the year.

(e) The board may approve alternative training programs tailored to specific mines.

(f) ~~Failure~~ A mine foreman-fire boss who fails to complete the requirements of this section shall result in suspension of a mine foreman fire boss certification have his or her certification suspended pending completion of the continuing education requirements. During the pendency of the suspension, the individual may not perform statutory duties assigned to a mine foreman-fire boss under West Virginia law. The office shall send notice of any suspension to the last address the certified mine foreman-fire boss reported to the director. If the requirements are not met within two years of the suspension date, the director may file a petition with the board of appeals pursuant to the procedures set forth in section thirty-one, article one of this chapter and, upon determining that the requirements have not been met, the board of appeals may revoke the mine foreman-fire boss' certification, which shall not be renewed except upon successful completion of the examination prescribed by law for mine foremen-fire bosses or upon completion of other training requirements established by the board: *Provided*, That an individual having his or her mine foreman-fire boss certification suspended pursuant to this section who also holds a valid mine foreman-fire boss certification from another state may have the suspension lifted by completing training requirements established by the board.

(g) The office shall make a program of instruction that meets the requirements for continuing education set forth in this section regularly available in regions of the State, based on demand, for individuals possessing mine foreman-fire boss certifications who are not serving in a mine foreman-fire boss capacity: *Provided*,

That the office may collect a fee from program participants to offset the cost of the program.

(h) The office shall make available to operators and other interested parties a list of individuals whose mine foreman-fire boss certification is in suspension or has been revoked.

On motion of Senator Kessler, the following amendments to the Energy, Industry and Mining committee amendment to the bill (Eng. H. B. 4726) were reported by the Clerk, considered simultaneously, and adopted:

On page forty-one, section six, subdivision (8), after the word “denial” by inserting the words “or approval”;

On page forty-one, section six, subdivision (8), after the words “the denial” by inserting the words “or approval”;

And,

On page forty-one, section six, subdivision (8), after the words “Any denial” by inserting the words “or approval”.

The question now being on the adoption of the Energy, Industry and Mining committee amendment to the bill, as amended, the same was put and prevailed.

The bill (Eng. H. B. 4726), as amended, was then ordered to third reading.

The Senate proceeded to the thirteenth order of business.

Senator Karnes called attention to today being the birthday of Elijah Karnes, son of the Honorable Robert Karnes, a senator from the eleventh district, and on behalf of the Senate extended felicitations and good wishes to Elijah Karnes.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Tuesday, March 8, 2016, at 11 a.m.

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## TUESDAY, MARCH 8, 2016

The Senate met at 11 a.m.

(Senator Cole, Mr. President, in the Chair.)

Prayer was offered by Dr. Darrell Cummings, Bethlehem Apostolic Temple, Wheeling, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Ryan J. Ferns, a senator from the first district.

Pending the reading of the Journal of Monday, March 7, 2016,

At the request of Senator Maynard, unanimous consent being granted, the Journal was approved and the further reading thereof dispensed with.

The Senate proceeded to the second order of business and the introduction of guests.

The Senate then proceeded to the third order of business.

A message from The Clerk of the House of Delegates announced that that body had refused to recede from its amendments, and requested the appointment of a committee of conference of three from each house on the disagreeing votes of the two houses, as to

**Eng. Com. Sub. for Senate Bill 13**, Increasing penalties for overtaking and passing stopped school buses.

The message further announced the appointment of the following conferees on the part of the House of Delegates:

Delegates Hanshaw, Ireland and Byrd.

On motion of Senator Carmichael, the Senate agreed to the appointment of a conference committee on the bill.

Whereupon, Senator Cole (Mr. President) appointed the following conferees on the part of the Senate:

Senators Carmichael, Ashley and Kessler.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amendment to the House of Delegates amendments to, and the passage as amended, with its Senate amended title, of

**Eng. Com. Sub. for Senate Bill 68**, Disallowing Health Care Authority to conduct rate review and set rates for hospitals.

A message from The Clerk of the House of Delegates announced that that body had refused to recede from its amendments, and requested the appointment of a committee of conference of three from each house on the disagreeing votes of the two houses, as to

**Eng. Com. Sub. for Senate Bill 283**, Creating crime when fire is caused by operation of a clandestine drug laboratory.

The message further announced the appointment of the following conferees on the part of the House of Delegates:

Delegates Weld, Soboyna and Shaffer.

On motion of Senator Carmichael, the Senate agreed to the appointment of a conference committee on the bill.

Whereupon, Senator Cole (Mr. President) appointed the following conferees on the part of the Senate:

Senators Ferns, Boso and Woelfel.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amendment to the House of Delegates amendments to, and the passage as amended, with its Senate amended title, of

**Eng. Senate Bill 437**, Updating and clarifying code relating to rules governing mixed martial arts.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Senate Bill 476**, Relating to driving restrictions in school zones.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

By striking out everything after the enacting section and inserting in lieu thereof the following:

## **ARTICLE 6. SPEED RESTRICTIONS.**

### **§17C-6-1. Speed limitations generally; penalty.**

(a) No person may drive a vehicle on a highway at a speed greater than is reasonable and prudent under the existing conditions and the actual and potential hazards. In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highways in compliance with legal requirements and the duty of all persons to use due care.

(b) Where no special hazard exists that requires lower speed for compliance with subsection (a) of this section, the speed of any vehicle not in excess of the limits specified in this section or established as authorized in this section is lawful, but any speed in

excess of the limits specified in this subsection or established as authorized in this section is unlawful. The following speed limits apply:

(1) Fifteen miles per hour in a school zone during school recess or while children are going to or leaving school during opening or closing hours. A school zone is all school property, including school grounds and any street or highway abutting the school grounds and extending one hundred twenty-five feet along the street or highway from the school grounds. The West Virginia Division of Highways shall erect signage indicating the place of entry and exit of each school zone. Upon a formal vote and a written request by a county board of education to expand a school zone to a road that is adjacent to school property, the West Virginia Division of Highways shall, upon a determination by the Division that such action is needed and necessary for the safety of the school children, expand the school zone by erecting new signage indicating the expanded school zone's location and speed limit within ninety days of receiving the request. The speed restriction does not apply to vehicles traveling on a controlled-access highway which is separated from the school or school grounds by a fence or barrier approved by the Division of Highways;

(2) Twenty-five miles per hour in any business or residence district; and

(3) Fifty-five miles per hour on open country highways, except as otherwise provided by this chapter.

The speeds set forth in this section may be altered as authorized in sections two and three of this article.

(c) The driver of every vehicle shall, consistent with the requirements of subsection (a) of this section, drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway and when a special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(d) The speed limit on controlled access highways and interstate highways, where no special hazard exists that requires a lower speed, shall be not less than fifty-five miles per hour and the speed limits specified in subsection (b) of this section do not apply.

(e) Unless otherwise provided in this section, any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100; upon a second conviction within one year thereafter, shall be fined not more than \$200; and, upon a third or subsequent conviction within two years thereafter, shall be fined not more than \$500: *Provided*, That if the third or subsequent conviction is based upon a violation of the provisions of this section where the offender exceeded the speed limit by fifteen miles per hour or more, then upon conviction, shall be fined not more than \$500 or confined in ~~the county or regional~~ jail for not more than six months, or both fined and confined.

(f) Any person who violates the provisions of subdivision (1), subsection (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500: *Provided*, That if the conviction is based upon a violation of the provisions of subdivision (1), subsection (b) of this section where the offender exceeded the speed limit by fifteen miles per hour or more in the presence of one or more children, then upon conviction, shall be fined not less than \$100 nor more than \$500 or confined in ~~the regional or county~~ jail for not more than six months, or both fined and confined: *Provided*, that if the signage required by subdivision (1) is not present in the school zone at the time of the violation, then any person who violates said provision is guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than \$25.

(g) If an owner or driver is arrested under the provisions of this section for the offense of driving above the posted speed limit on a controlled access highway or interstate highway and if the evidence shows that the motor vehicle was being operated at ten miles per hour or less above the speed limit, then, upon conviction thereof, that person shall be fined not more than \$5, plus court costs.

(h) Any person operating a commercial motor vehicle engaged in the transportation of coal on the coal resource transportation road system who violates subsection (a), (b) or (c) of this section shall, upon conviction, be subject to fines in triple the amount otherwise provided in subsection (e) of this section.

(i) If an owner or driver is convicted under the provisions of this section for the offense of driving above the speed limit on a controlled access highway or interstate highway of this state and if the evidence shows that the motor vehicle was being operated at ten miles per hour or less above the speed limit, then notwithstanding the provisions of section four, article three, chapter seventeen-b of this code, a certified abstract of the judgment on the conviction shall not be transmitted to the Division of Motor Vehicles: *Provided*, That the provisions of this subsection do not apply to conviction of owners or drivers who have been issued a commercial driver's license as defined in chapter seventeen-e of this code, if the offense was committed while operating a commercial vehicle.

(j) If an owner or driver is convicted in another state for the offense of driving above the maximum speed limit on a controlled access highway or interstate highway and if the maximum speed limit in the other state is less than the maximum speed limit for a comparable controlled access highway or interstate highway in this state, and if the evidence shows that the motor vehicle was being operated at ten miles per hour or less above what would be the maximum speed limit for a comparable controlled access highway or interstate highway in this state, then notwithstanding the provisions of section four, article three, chapter seventeen-b of this code, a certified abstract of the judgment on the conviction shall not be transmitted to the Division of Motor Vehicles or, if transmitted, shall not be recorded by the division, unless within a reasonable time after conviction, the person convicted has failed to pay all fines and costs imposed by the other state: *Provided*, That the provisions of this subsection do not apply to conviction of owners or drivers who have been issued a commercial driver's license as defined in chapter seventeen-e of this code, if the offense was committed while operating a commercial vehicle.

On motion of Senator Carmichael, the following amendments to the House of Delegates amendment to the bill (Eng. S. B. 476) were reported by the Clerk, considered simultaneously, and adopted:

On pages one and two, section one, subsection (b), subdivision (1), after the word “shall” by striking out the comma and the words “upon a determination by the division that such action is needed and necessary for the safety of the school children,”;

On page two, section one, subsection (b), subdivision (1), after the word “request” by changing the period to a colon and inserting the following proviso: *Provided*, That the school zone may not be expanded more than one hundred twenty-five feet along an adjacent road unless the division determines that the additional extension is needed and necessary for the safety of the school children.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Senate Bill 476**—A Bill to amend and reenact §17C-6-1 of the Code of West Virginia, 1931, as amended, relating to driving restrictions in school zones; requiring Division of Highways to erect signage indicating place of entry and exit of each school zone; authorizing county boards of education to formally vote and request in writing for expansion of school zone to a road adjacent to school property; requiring Division of Highways to expand school zones accordingly; requiring Division of Highways to erect new signage to indicate expanded school zone’s location and speed limit within ninety days of receiving request; providing that school zone may not be expanded more than one hundred twenty-five feet along adjacent road unless Division of Highways determines that additional extension is needed and necessary for safety of school children; establishing new offense for violation of school zone speed limit if required signage not present; reducing fine for violation of school zone speed limit if required signage not present; and making technical corrections.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment, as amended.

Engrossed Senate Bill 476, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 476) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Senate Bill 658**, Allowing licensed professionals donate time to care of indigent and needy in clinical setting.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the adoption of

**Senate Concurrent Resolution 21**, US Army S/SGT Delmer R. Jones Memorial Bridge.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the adoption of

**Senate Concurrent Resolution 23**, Johnny Mack Bryant Memorial Bridge.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the adoption of

**Senate Concurrent Resolution 25**, US Army PFC Cornelius Vance Memorial Bridge.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the adoption of

**Senate Concurrent Resolution 28**, US Marine Corps CPL Ronald “Duke” Varney Memorial Bridge.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the adoption of

**Senate Concurrent Resolution 29**, US Army SSG Landon Clair Ray and US Army SPC4 Garry Dwight Haynes Memorial Bridge.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the adoption of

**Senate Concurrent Resolution 31**, US Air Force Staff Sgt Bethel Howard McNeely and US Marine Staff Sgt Clyde Elmo Bryant Bridge.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the adoption of

**Senate Concurrent Resolution 42**, US Navy LCDR Helen Elizabeth Peck Memorial Bridge.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended, with its Senate amended title, of

**Eng. Com. Sub. for House Bill 2122**, Making it illegal for first responders to photograph a corpse; Jonathan’s Law.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments, as amended by the House of Delegates, passage as amended with

its Senate amended title, to take effect from passage, and requested the concurrence of the Senate in the House of Delegates amendment to the Senate amendments, as to

**Eng. Com. Sub. for House Bill 2852**, Relating to legalizing and regulating the sale and use of fireworks.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the Senate amendments to the bill was reported by the Clerk:

On page seven, section seven, beginning on line thirty-three, by striking out all of subsection (g).

On motion of Senator Carmichael, the Senate concurred in the foregoing House of Delegates amendment to the Senate amendments to the bill.

Engrossed Committee Substitute for House Bill 2852, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2852) passed with its Senate amended title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2852) takes effect from passage.

*Ordered,* That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the passage by that body, to take effect from passage, and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4046**—A Bill to amend and reenact article 2, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Administration; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain agencies and commissions under Department of Administration to repeal certain legislative, procedural or interpretative rules that are no longer authorized or are obsolete; authorizing the Department of Administration to promulgate a legislative rule relating to the purchasing division; repealing Department of Administration legislative rule relating to the availability of state surplus buildings and equipment to charity food banks; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to benefit determination and appeal; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the Teachers' Defined Contribution System; authorizing the

Consolidated Public Retirement Board to promulgate a legislative rule relating to the Teachers' Retirement System; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to refund, reinstatement, retroactive service, loan and correction of error interest factors; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to service credit for accrued and unused sick leave; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the West Virginia State Police; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the Deputy Sheriff Retirement System; authorizing the Ethics Commission to promulgate a legislative rule relating to the public use of names or likenesses; repealing Ethics Commission legislative rule relating to advisory opinions; repealing Ethics Commission legislative rule relating to guidelines and standards for determining the existence of disqualifying financial interests; repealing Ethics Commission legislative rule relating to contributions; authorizing the Division of Personnel to promulgate a legislative rule relating to the administrative rule of the West Virginia Division of Personnel; repealing State Building Commission procedural rule relating to procedural rules for meetings; repealing Public Employees Insurance Agency procedural rules relating to procedural rules for the Public Employees Insurance Agency Advisory Board; and repealing Board of Risk and Insurance Management legislative rule relating to discontinuation of professional malpractice insurance.

Referred to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amended title, passage as amended, of

**Eng. Com. Sub. for House Bill 4505**, Allowing powerball winners to remain anonymous.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amended title, passage as amended, of

**Eng. House Bill 4654**, Relating to the Executive Secretary of the Board of Registered Professional Nurses.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**Com. Sub. for House Concurrent Resolution 3**—Requesting the Division of Highways to name the section of County Route 45/20, known as Coldstream Road, beginning at a point, latitude 39.336997, longitude -78.494499 and ending a point, latitude 39.349509, longitude -78.511901, along the North River, Hiatt Run and Maple Run, in Hampshire County, the “North River Mills Historic Trace”.

Referred to the Committee on Transportation and Infrastructure.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**House Concurrent Resolution 4**—Requesting the Division of Highways to name bridge number 14-50-14.95 (14A125), locally known as Frenchburg Curve Bridge, carrying U.S. Route 50, over the North Fork of the Little Cacapon River, near Augusta, Hampshire County, West Virginia, map coordinates 39.31518 - 78.65962, the “CSA LTG Thomas J. ‘Stonewall’ Jackson Bridge”.

Referred to the Committee on Transportation and Infrastructure.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**House Concurrent Resolution 8**—Requesting the Division of Highways to name bridge number 18-25-1.03 (18A-108), (38.79972, 81.69202), locally known as Harpold Bridge, carrying County Route 25 over Mill Creek in Jackson County, the “Harry Ripley Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**House Concurrent Resolution 11**—Designating April 2 as West Virginia Autism Awareness Day.

Referred to the Committee on Rules.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**Com. Sub. for House Concurrent Resolution 12**—Requesting the Division of Natural Resources to designate the Cheat Mountain Salamander as the State symbol of environmental stewardship.

Referred to the Committee on Rules.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**Com. Sub. for House Concurrent Resolution 13**—Requesting the Division of Highways to name the Indian Creek Bridge #3, bridge number 32-122-8.95 (32A056), latitude 37.52981, longitude -80.65837, carrying West Virginia Route 122 over Indian Creek, in Monroe County, the “U.S. Army SP4 Everette R. Johnson Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**House Concurrent Resolution 20**—Urging the United States Congress to provide funding for the West Virginia National Guard to sustain and enhance its capabilities in its role in a regional catastrophe and to modernize the antiquated avionics of its fleet of C130s and other aircraft to meet global airspace requirements for 2020.

Referred to the Committee on Rules.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**Com. Sub. for House Concurrent Resolution 34**—Requesting the Division of Highways to name bridge number 06-25/11-0.01 (06A304) (38.35666, -82.12754) locally known as New Girl Scout Camp Bridge, carrying County Route 25/11 over Mud River in Cabell County, the “U.S. Marine Corps PFC Billy Joe Vickers Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**House Concurrent Resolution 47**—Requesting the Division of Highways to name Bridge Number 50-52-54.27 (50A115) (37.85563, -82.41411), locally known as Marrowbone Creek Bridge, carrying US 52 over Marrowbone Creek in Wayne County, as the “U.S. Army SFC Jesse Muncy Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**Com. Sub. for House Concurrent Resolution 51—** Requesting the Division of Highways to name bridge number 52-64-2.07 (52A135) (39-63045, -80.47918), locally known as Smith Bridge, carrying County Route 64 over Long Drain in Wetzel County, the “U.S. Army PFC Danny Mire Stoneking Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**Com. Sub. for House Concurrent Resolution 54—** Requesting the Division of Highways to name Bridge Number 39-73/73-8.46 (39A143) (39.65892, -79.63833), locally known as Bruceton Mills Bridge, carrying County Route 73/73 over Big Sandy Creek in Bruceton Mills, Preston County, the “U.S. Army PFC Byron ‘Bray’ Kelley Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**Com. Sub. for House Concurrent Resolution 56—** Requesting the Division of Highways to name Bridge Number 31-77-1.15 (31A212) (39.53532, -79.97705), locally known as Booths Creek Bridge, carrying CR 77 over Booths Creek in Monongalia county, the “U.S. Army CPL Robert Eugene Jackson Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**Com. Sub. for House Concurrent Resolution 57**—Requesting the Division of Highways to name bridge number 12-220-10.31 (12A081) (38.98846, -79.12465), locally known as Petersburg Bridge, carrying US 220 over the south branch of the Potomac River in Grant County, the “U.S. Army PVT Leander Reel Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**Com. Sub. for House Concurrent Resolution 72**—Requesting the Division of Highways to name Bridge Number 02-13-0.81 (02A172) (39.46979, -77.97913), locally known as New North Tennessee Avenue Bridge, carrying County Route 13 over Tuscarora Creek in Berkeley County, be named the “Max G. Parkinson Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**House Concurrent Resolution 78**—Requesting the Joint Committee on Government and Finance study professional and occupational licensing boards.

Referred to the Committee on Government Organization; and then to the Committee on Rules.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**House Concurrent Resolution 86**—Designating April 16, 2016, as World Voice Day.

Referred to the Committee on Rules.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**House Concurrent Resolution 93**—Requesting the Joint Committee on Government and Finance study the motor vehicle code.

Referred to the Committee on Government Organization; and then to the Committee on Rules.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**House Concurrent Resolution 94**—Requesting the Joint Committee on Government and Finance study the holdings of public property by departments, agencies, commissions, bureaus and boards of the state.

Referred to the Committee on Government Organization; and then to the Committee on Rules.

### **Executive Communications**

Senator Cole (Mr. President) laid before the Senate the following communication from His Excellency, the Governor:

STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
CHARLESTON

March 7, 2016

The Honorable William P. Cole III, President  
Senate of West Virginia, Office of the President  
State Capitol  
Building 1, Room 229-M  
Charleston, West Virginia 25305

The Honorable Tim Armstead, Speaker  
West Virginia House of Delegates, Office of the Speaker  
State Capitol  
Building 1, Room 228-M  
Charleston, West Virginia 25305

Dear President Cole and Speaker Armstead:

After submission of my recommended FY 2017 Executive Budget on January 13, 2016, there have been a few areas that required adjustments.

My recommended FY 2017 Executive Budget included retirement contributions based on the best estimates available at that time. Those estimated retirement contribution numbers have been updated and the final contribution amounts for West Virginia's retirement systems are now available. Due to these changes in the final actuarial valuations for the Teachers' Retirement System (TRS), State Police Retirement System-Plan A, the Judges' Retirement System (JRS), and Public Employees Retirement System (PERS), various line items throughout the Budget Bill can be adjusted. These adjustments amount to an increase of \$15,395,217 in the required contributions for the various retirement systems in FY 2017 for the General Revenue and Lottery Funds. Various other adjustments in the General Revenue and Lottery Funds result in a net change of \$-2,300,781. These changes are balanced using additional Lottery surpluses that are anticipated to become available at the end of the current fiscal year.

Various other changes in appropriations of other funds, federal funds, federal block grants, and claims against the state are also required.

Therefore, pursuant to Section 51, Article VI of the Constitution of the State of West Virginia, I submit revisions to the FY 2017 Budget Bill for the TITLE II – APPROPRIATIONS as follows:

**Section 1. Appropriations from general revenue.**

Funds appropriated for the Public Employees Retirement System (PERS), are adjusted in numerous line items throughout the Governor's Recommended FY 2017 Budget Bill in General Revenue. Please see the attached spreadsheet for the adjustments relating to the January 29, 2016 final actuarial estimation. The total reduction for PERS in the General Revenue Fund is \$5,119,262.

**Judicial**

*Supreme Court – General Judicial, Fund 0180, Fiscal Year 2017, Org 2400*

(To adjust the Judges' Retirement System appropriation due to the revised request from the Supreme Court of Appeals dated February 23, 2016.)

- Decrease "Judges' Retirement System" Appropriation 11000 by \$2,000,000.

**Executive**

*Governor's Office, Fund 0101, Fiscal Year 2017, Org 0100*

(To remove the reappropriated language directed to GO HELP.)

- Remove from reappropriation language "*GO HELP (fund 0101, appropriation 11600)*,".

**Department of Administration**

*Public Employees Insurance Agency, Fund 0200, Fiscal Year 2017, Org 0225*

(To properly distribute funding to the appropriate accounts.)

- Increase various funds in the total amount of \$43,234,724 for General Revenue to properly distribute the employers share to the appropriate accounts. Please see the attached spreadsheet for the adjustments.

- Decrease “Public Employees’ Insurance Matching” Appropriation 01200, by \$43,487,151.

### **Department of Commerce**

*West Virginia Development Office, Fund 0256, Fiscal Year 2017, Org 0307*

(To move funding for the National Youth Science Camp.)

- Add “National Youth Science Camp” Appropriation 13200 for \$246,500.

### **Department of Education**

*State Board of Education – State Department of Education, Fund 0313, Fiscal Year 2017, Org 0402*

(To adjust the Teachers’ Retirement Savings Realized appropriations due to the January 29, 2016 final actuarial estimation.)

- Increase “Teachers’ Retirement Savings Realized” Appropriation 09500 by \$5,256,000.

*State Board of Education – State Aid to Schools, Fund 0317, Fiscal Year 2017, Org 0402*

(To adjust the State Aid Formula Teachers’ Retirement System and the Retirement Systems – Unfunded Liability appropriations due to the January 29, 2016 final actuarial estimation.)

- Decrease “Teachers’ Retirement System” Appropriation 01900 by \$143,000.
- Increase “Retirement Systems – Unfunded Liability” Appropriation 77500 by \$15,066,000. (To adjust School Aid Formula based on final local share numbers and updated fiscal note.)

- Decrease “Other Current Expenses” Appropriation 02200 by \$400,888.
- Increase “Professional Educators” Appropriation 15100 by \$447,669.
- Increase “Service Personnel” Appropriation 15200 by \$1,413,980.
- Increase “Fixed Charges” Appropriation 15300 by \$160,469.
- Decrease “Transportation” Appropriation 15400 by \$2,964,338.
- Increase “Improved Instructional Programs” Appropriation 15600 by \$1,010,300.
- Increase “21st Century Strategic Technology Learning Growth” Appropriation 93600 by \$753,411.
- Increase “Less Local Share” line by \$1,920,312 from (\$467,519,563 to (\$469,439,875).
- Decrease “Public Employees’ Insurance Matching” Appropriation by \$678,138 (revision due to SB452 fiscal note).

### **Department of Education and the Arts**

*Office of the Secretary – Fund 0294, Fiscal Year 2017, Org 0431*

(To move funding for the National Youth Science Camp.)

- Delete “National Youth Science Camp” Appropriation 13200 for \$246,500.

(To correct a drafting error.)

- Delete the language, “From the above appropriation for S.T.E.M Education and Grant Program (fund 0294,

appropriation 71900) \$125,000 is for The Challenger Learning Center at Wheeling Jesuit University.”

### **Department of Health and Human Resources**

*Division of Health – Central Office, Fund 0407, Fiscal Year 2017, Org 0506*

(To adjust funding for the Tobacco Education Program.)

- Decrease “Primary Care Support” Appropriation 62800 by \$600,000.
- Increase “Tobacco Education Program” Appropriation 90600 by \$600,000.

*Division of Human Services, Fund 0403, Fiscal Year 2017, Org 0511*

(To decrease the appropriation for Medical Services. This funding is moved to Lottery Surpluses.)

- Decrease “Medical Services” Appropriation 18900 by \$13,094,436.

### **Department of Military Affairs and Public Safety**

*West Virginia State Police, Fund 0453, Fiscal Year 2017, Org 0612*

(To adjust the appropriation due to the January 29, 2016 final actuarial estimation for State Police Plan A Retirement.)

- Increase “Retirement Systems – Unfunded Liability” Appropriation 77500 by \$2,406,000.

### **Bureau of Senior Services**

*Bureau of Senior Services, Fund 0420, Fiscal Year 2017, Org 0508*

(To move part of the appropriation for Title XIX Waiver from the Lottery Fund)

- Increase “Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens” Appropriation 53900 by \$181,906.

### **Section 3. Appropriations from other funds.**

#### **Department of Administration**

*Department of Administration – Office of the Secretary –  
Employee Pension and Health Care Benefit Fund, Fund 2044,  
Fiscal Year 2017, Org 0201*

(To adjust the appropriation to allow for the full transfer of the Teachers’ Realized Savings Realized.)

- Increase “Current Expenses” Appropriation 13000 by \$5,256,000.

#### **Department of Commerce**

*Division of Forestry, Fund 3081, Fiscal Year 2017, Org 0305*

(To adjust the spending authority for Personal Services and Employee Benefits.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$200,000.

### **Section 4. Appropriation from lottery net profits.**

Funds appropriated for the Public Employees Retirement System (PERS), are adjusted in various line items throughout the Governor’s Recommended FY 2017 Budget Bill in Lottery Net Profits. Please see the attached spreadsheet for the adjustments relating to the January 29, 2016 final actuarial estimation. The total reduction for PERS in the Lottery Fund is \$70,521.

Funds that were originally appropriated to the Public Employees Insurance Agency in General Revenue are adjusted in various line items throughout the Governor’s Recommended FY 2017 Budget Bill in Lottery Net Profits. Please see the attached

spreadsheet for the adjustments. The total increases various funds in the total amount of \$252,427 for Lottery Revenue.

### **Bureau of Senior Services**

*Bureau of Senior Services, Lottery Senior Citizens Fund, Fund 5405, Fiscal Year 2017, Org 0508*

(To adjust the appropriation for Title XIX Waiver moved to General Revenue.)

- Decrease “Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens” Appropriation 53900 by \$181,906.

### **Section 6. Appropriations of federal funds.**

#### **Department of Health and Human Resources**

*Division of Human Services, Fund 8722, Fiscal Year 2017, Org 0511*

(To adjust the appropriation for Medical Services related to children that are provided services under Medicaid, but qualify at the CHIP rate.)

- Increase “Medical Services” Appropriation 18900 by \$20,062,773.

### **Section 7. Appropriation from federal block grants.**

#### **Department of Commerce**

*WorkForce West Virginia – Workforce Investment Act, Fund 8749, Fiscal Year 2017, Org 0323*

(To adjust an improvement based on federal grant requirements.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$750,000.

- Decrease “Current Expenses” Appropriation 13000 by \$750,000.

### **Section 8. Awards for claims against the state.**

Amend the language to read as follows:

*“There are hereby appropriated for fiscal year 2017, from the fund as designated, in the amounts as specified, general revenue funds in the amount of \$447,066, special revenue funds in the amount of \$89,910, and state road funds in the amount of \$983,485 for payment of claims against the state.”*

### **Section 10. Appropriations from lottery net profits surplus accrued.**

#### **Bureau of Senior Services**

*Bureau of Senior Services – Lottery Senior Citizens Fund, Fund 5405, Fiscal Year 2017, Org 0508*

(To adjust the appropriation from surplus lottery revenue based on most recent estimates.)

- Increase “Senior Services Medicaid Transfer – Lottery Surplus” Appropriation 68199 by \$1,000,000.

### **Section 11. Appropriations from state excess lottery revenue surplus accrued.**

#### **Department of Health and Human Resources**

*Division of Human Services, Fund 5365, Fiscal Year 2017, Org 0511*

(To adjust the appropriation from surplus lottery revenue based on most recent estimates.)

- Increase “Medical Services – Lottery Surplus” Appropriation 68100 by \$12,094,436.

Thank you for your prompt attention of this matter. Your cooperation is always appreciated. Should you have any questions or required additional information, please call me at any time.

Sincerely,

Earl Ray Tomblin  
Governor

cc: The Honorable Mike Hall, Chairman  
The Honorable Eric Nelson, Chairman  
State Budget Office

Which communication was received and referred to the Committee on Finance.

The Senate proceeded to the fourth order of business.

Senator Maynard, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 7th day of March, 2016, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

**(Com. Sub. for S. B. 421)**, Terminating behavioral health severance and business privilege tax.

**(Com. Sub. for S. B. 582)**, Providing refundable tax credit for motor fuel sold for use or consumed in railroad diesel locomotives.

And,

**(Com. Sub. for S. B. 594)**, Requiring State Auditor consider for payment claim submitted by electronically generated invoice.

Respectfully submitted,

Mark R. Maynard,  
*Chair, Senate Committee.*  
Steve Westfall,  
*Vice Chair, House Committee.*

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 2494**, Creating a provisional plea process in criminal cases.

And has amended same.

**Eng. Com. Sub. for House Bill 4360**, Increasing the criminal penalty for the unlawful practice of law.

And has amended same.

And,

**Eng. House Bill 4578**, Creating a criminal offense of conspiracy to violate the drug laws.

And has amended same.

And reports the same back with the recommendation that they each do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Trump, unanimous consent being granted, the bills (Eng. H. B. 2494 and 4578 and Eng. Com. Sub. for H. B. 4360) contained in the preceding report from the Committee on the Judiciary were each taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4009**, Letting Our Counties Act Locally Act.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Trump, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4009) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, ordered to second reading and, under the original double committee reference, was then referred to the Committee on Finance, with amendments from the Committee on the Judiciary pending.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

**Eng. Com. Sub. for House Bill 4014**, Preventing the State Board of Education from implementing common core academic standards and assessments.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Dave Sypolt,  
*Chair.*

At the request of Senator Sypolt, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4014) contained in the preceding report from the Committee on Education was taken up

for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4080**, Department of Veterans' Assistance, rule relating to VA headstones or markers.

**Eng. Com. Sub. for House Bill 4502**, Allowing reciprocity agreements with contiguous states to establish regulations, licensing requirements and taxes for small businesses.

**Eng. Com. Sub. for House Bill 4517**, Limiting the ability of an agent under a power of attorney to take self-benefiting actions.

**Eng. Com. Sub. for House Bill 4636**, Increasing the penalties for violating the Whistle-blower Law.

And,

**Eng. House Bill 4738**, Relating to the offense of driving in an impaired state.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Trump, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 4080, 4502, 4517 and 4636 and Eng. H. B. 4738) contained in the preceding report from the Committee on the Judiciary were each taken up for immediate consideration, read a first time and ordered to second reading.

Senator Gaunch, from the Committee on Banking and Insurance, submitted the following report, which was received:

Your Committee on Banking and Insurance has had under consideration

**Eng. Com. Sub. for House Bill 4265**, Relating to payment by the West Virginia Municipal Bond Commission or state sinking fund commission or the governing body issuing the bonds.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

C. Edward Gaunch,  
*Chair.*

At the request of Senator Hall, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4265) was taken up for immediate consideration, second committee reference dispensed with, read a first time and ordered to second reading.

Senator Gaunch, from the Committee on Banking and Insurance, submitted the following report, which was received:

Your Committee on Banking and Insurance has had under consideration

**Eng. House Bill 4315**, Relating to air-ambulance fees for emergency treatment or air transportation.

And reports the same back with the recommendation that it do pass; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

C. Edward Gaunch,  
*Chair.*

At the request of Senator Hall, unanimous consent being granted, the bill (Eng. H. B. 4315) was taken up for immediate consideration, second committee reference dispensed with, read a first time and ordered to second reading.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. House Bill 4351**, Transferring the Cedar Lakes Camp and Conference Center from the West Virginia Board of Education to the Department of Agriculture.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 4, 2016;

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Mike Hall,  
*Chair.*

Senator Ferns, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

**Eng. Com. Sub. for House Bill 4365**, Relating to the certificate of need process.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Ryan J. Ferns,  
*Chair.*

At the request of Senator Ferns, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4365) contained in the preceding report from the Committee on Health and Human Resources was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. Com. Sub. for House Bill 4487**, Relating to state retirement systems.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 3, 2016;

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Mike Hall,  
*Chair.*

Senator Leonhardt, from the Committee on Military, submitted the following report, which was received:

Your Committee on Military has had under consideration

**Eng. Com. Sub. for House Bill 4507**, Providing an employer may grant preference in hiring to a veteran or disabled veteran.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on the Judiciary.

Respectfully submitted,

Kent Leonhardt,  
*Chair.*

At the request of Senator Trump, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4507) was taken up for immediate consideration, second committee reference dispensed with, read a first time and ordered to second reading.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. Com. Sub. for House Bill 4519**, Allowing certain municipalities to elect to participate in the West Virginia Municipal Police Officers and Firefighters Retirement System.

With an amendment from the Committee on Pensions pending;

Now on second reading, having been read a first time and referred to the Committee on Finance on March 3, 2016;

And reports the same back with the recommendation that it do pass as amended by the Committee on Pensions to which the bill was first referred.

Respectfully submitted,

Mike Hall,  
*Chair.*

Senator Gaunch, from the Committee on Banking and Insurance, submitted the following report, which was received:

Your Committee on Banking and Insurance has had under consideration

**Eng. House Bill 4655**, Prohibiting insurers, vision care plan or vision care discount plans from requiring vision care providers to provide discounts on noncovered services or materials.

And has amended same.

And,

**Eng. House Bill 4734**, Relating to mine subsidence insurance.

And has amended same.

And reports the same back with the recommendation that they each do pass, as amended; but under the original double committee references first be referred to the Committee on the Judiciary.

Respectfully submitted,

C. Edward Gaunch,  
*Chair.*

At the request of Senator Gaunch, unanimous consent being granted, the bills (Eng. H. B. 4655 and 4734) contained in the preceding report from the Committee on Banking and Insurance were each taken up for immediate consideration, read a first time and ordered to second reading.

Engrossed House Bill 4655, under the original double committee reference, was then referred to the Committee on the Judiciary, with amendments from the Committee on Banking and Insurance pending.

At the request of Senator Trump, as chair of the Committee on the Judiciary, unanimous consent was granted to dispense with the second committee reference of Engrossed House Bill 4734 contained in the foregoing report from the Committee on Banking and Insurance.

The Senate proceeded to the seventh order of business.

**Senate Concurrent Resolution 1**, Urging Congress propose regulation freedom amendment.

On unfinished business, coming up in regular order, was reported by the Clerk.

The question being on the adoption of the resolution, the same was put and prevailed.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Senate Concurrent Resolution 64**, Requesting DOH study 2015 performance audit and report to Joint Committee on Government and Finance any action taken as result of audit.

On unfinished business, coming up in regular order, was reported by the Clerk.

At the request of Senator Carmichael, unanimous consent being granted, the resolution was taken up for immediate consideration and reference to a committee dispensed with.

The question being on the adoption of the resolution, the same was put and prevailed.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for House Bill 2588**, Relating to the filing of financial statements with the Secretary of State.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: Miller—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2588) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 2588**—A Bill to amend and reenact §3-8-5b of the Code of West Virginia, 1931, as amended, relating to the filing of financial statements with Secretary of State; requiring all candidates who file financial statements with Secretary of State to file electronically beginning January 1, 2018; making candidates required to file electronically eligible for exemption in the case of hardship; providing for exceptions in instances where a candidate has been unable to file the financial statement; directing candidates unable to file financial statement electronically to file by certified mail; and providing for exceptions in the case of hardship.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 2615**, West Virginia Small Business Capital Act.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2615) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 2801**, Permitting county commissions and municipalities to designate areas of special interest which will not affect the use of property in those areas.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2801) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 2823**, Eliminating the street and interurban and electric railways tax.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2823) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 4188**, Relating to the development and implementation of a program to facilitate commercial sponsorship of rest areas.

On third reading, coming up in regular order, was read a third time.

Pending discussion,

At the request of Senator Kessler, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

**Eng. Com. Sub. for House Bill 4209**, Relating generally to health care provider taxes.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: Karnes—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4209) passed with its title.

Senator Carmichael moved that the bill take effect July 1, 2016.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: Karnes—1.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4209) takes effect July 1, 2016.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 4213**, Uniform Deployed Parents Custody and Visitation Act.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4213) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 4213**—A Bill to repeal §48-1-233.3 of the Code of West Virginia, 1931, as amended, and to repeal §48-1-233.4 of said code; to repeal §48-9-404 of said code; and to amend said code by adding thereto a new chapter, designated §48A-1-101, §48A-1-102, §48A-1-103, §48A-1-104, §48A-1-105, §48A-1-106, §48A-1-107, §48A-2-201, §48A-2-202, §48A-2-203, §48A-2-204, §48A-2-205, §48A-3-301, §48A-3-302, §48A-3-303, §48A-3-304, §48A-3-305, §48A-3-306, §48A-3-307, §48A-3-308, §48A-3-309, §48A-3-310, §48A-4-401, §48A-4-402, §48A-4-403, §48A-4-404, §48A-5-501, §48A-5-502 and §48A-5-503, all relating to adopting the Uniform Deployed Parents Custody and Visitation Act; providing short title; defining terms; providing for enforcement through assessment of attorney fees and costs; jurisdiction of the court; establishing procedures to determine matters of child custody and visitation when parents are deployed in military or other national service; requiring notices from deployed parent; requiring person with custodial responsibility to notify regarding change of address; providing for out-of-court agreements and establishing minimum requirements therefor; prohibiting consideration of past or future deployments in determining the best interest of the child; authority created by agreement; authorizing orders for payment of child support during deployment; providing for modification and termination of orders and agreements; delegation and filing of power of attorney to adult nonparent; temporary custody orders; expedited hearings; testimony by electronic means; rules regarding prior judicial order or agreement; granting care-taking or decision-making authority to nonparent; granting limited contact; setting forth contact for temporary custody orders; and giving guidance for interpretation and construction in conjunction with other laws and orders.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 4225**, Relating to patriotic displays at public buildings.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4225) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 4295**, Relating to the School Innovation Zones Act.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 4295 pass?”

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4295) passed.

The following amendment to the title of the bill, from the Committee on Education, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 4295**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5B-14; and to amend said code by adding thereto a new article, designated §18-5E-1, §18-5E-2, §18-5E-3, §18-5E-4, §18-5E-5, §18-5E-6 and §18-5E-7, all relating to education innovation; terminating funding for Innovation Zones and Local Solution Dropout Prevention and Recovery Innovation Zones; setting forth purpose of Innovation in Education Act; defining Innovation in Education school; allowing incorporation of more than one of certain attributes into an Innovation in Education school's program design; setting forth certain requirements for Innovation in Education school; authorizing soliciting, accepting and expending gifts, donations and grants with certain limits; authorizing State Board of Education designation of Innovation in Education school; requiring state board rule for implementation and authorizing emergency rule if necessary; requiring rule to include certain provisions pertaining to the application process, minimum contents of the application, and the process by which the state board will review performance and student success, reaffirm or reconsider designation, and identify exemplary schools; allowing state board to provide for West Virginia Department of Education to independently assess applicants; setting forth requirements applicable to the state board when making a designation determination; setting forth items that Innovation in Education Plan must include; requiring operational agreement between school principal and county board of education; specifying minimum contents of operational agreement; requiring performance report on and evaluations of Innovation in Education school; allowing county superintendent to make certain recommendations to the county board and state board in the evaluation; allowing the state board to take certain actions based on the county superintendent's evaluation and a data analysis

conducted by the Department one of which is the termination of the Innovation in Education designation in certain instances; and creating Innovation in Education Fund.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 4322**, Expanding the Learn and Earn Program.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4322) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 4377**, Eliminating exemption from hotel occupancy taxes on rental of hotel and motel rooms for thirty or more consecutive days.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings,

Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4377) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 4433**, Allowing an adjustment to gross income for calculating the personal income tax liability of certain retirees.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4433) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins,

Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4433) takes effect from passage.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 4489**, Relating generally to human trafficking.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4489) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. House Bill 4489**—A Bill to repeal §61-2-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §15-9A-2 of said code; to amend and reenact §48-26-401; to amend and

reenact §49-1-201 of said code; to amend and reenact §49-4-301 of said code; to amend said code by adding thereto a new article, designated §61-14-1, §61-14-2, §61-14-3, §61-14-4, §61-14-5, §61-14-6, §61-14-7, §61-14-8, §61-14-9 and §61-14-10; and to amend and reenact §62-1D-8 of said code, all relating generally to human trafficking; designating the Division of Justice and Community Services to be the state administrative agency responsible for criminal justice and juvenile justice systems for the planning and development of state programs and grants relating to human trafficking; designating the Family Protection Services Board to be the body responsible for the development of a comprehensive list and inventory of available services regarded trafficking victims to provide to state, county and local law-enforcement agencies; establishing that the Family Protection Services Board shall work in collaboration with the appropriate government agencies to devise a program to promote public awareness about human trafficking, victim remedies and services; adding commercial sexual exploitation to the definition of abused child and defining the term; describing the appropriate procedure to be followed by a law-enforcement officer upon encountering a child who appears to be a victim who has engaged in commercial sexual activity and listing the services available to child victims; eliminating existing criminal offense and penalties for human trafficking; creating felony offenses and penalties for trafficking an individual; defining terms; creating felony offenses and penalties for using an individual in forced labor; creating felony offenses and penalties for using an individual in debt bondage; creating felony offenses and penalties for compelling an adult through coercion to engage in commercial sexual activity; creating a felony offense for maintaining or making available a minor for the purpose of engaging in commercial sexual activity; clarifying that consent of minor and misbelief as to age are not defenses to prosecution for sexual servitude offense; creating a felony offense of patronizing an individual to engage in commercial sexual activity; clarifying that each victim shall be considered a separate offense; limiting ability for parole in circumstances where the court makes a finding of aggravated circumstances; defining aggravated circumstances; providing for restitution to victims and the enforcement of a judgment order for restitution; directing unclaimed restitution to be

paid to the Crime Victims Compensation Fund; providing for disgorgement of profits and debarment from state and local government contracts; making victims eligible for compensation under the Crime Victims Compensation Fund; providing for criminal immunity for offense of prostitution for minors so charged; defining a trafficked minor as an abused child in need of services who shall not be arrested or detained but put under protective custody and establishing that a child who is determined to be a victim may also be granted immunity for soliciting, inducing, enticing or procuring a prostitute if it is determined by the court that he or she was coerced into the criminal behavior; authorizing immunity for adults engaged in prostitution or in soliciting, inducing, enticing or procuring a prostitute upon a determination that they are a victim and only engaged in the activity due to coercion; providing for expungement of prostitution conviction for victims of trafficking; and authorizing law enforcement to use wiretaps to conduct investigations.

*Ordered,* That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 4520,** Clarifying that certain hospitals have only one governing body whose meetings shall be open to the public.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4520) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

At the request of Senator Maynard, and by unanimous consent, the Senate returned to the second order of business and the introduction of guests.

The Senate again proceeded to the third order of business.

A message from The Clerk of the House of Delegates announced that that body had requested the return of

**Eng. Senate Bill 437**, Updating and clarifying code relating to rules governing mixed martial arts.

On motion of Senator Carmichael, the Senate acceded to the House of Delegates request for the return of the bill.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

The Senate again proceeded to the eighth order of business, the next bill coming up in numerical sequence being

**Eng. Com. Sub. for House Bill 4561**, Creating a special hiring process for West Virginia Division of Highways employees.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kessler, Leonhardt, Maynard, Mullins, Palumbo, Plymale, Prezioso, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—26.

The nays were: Beach, Facemire, Kirkendoll, Laird, Miller, Romano, Snyder and Unger—8.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4561) passed.

The following amendment to the title of the bill, from the Committee on Government Organization, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 4561**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-6-4a, relating to requiring the Commissioner of the Division of Highways and the Director of the Division of Personnel to collaborate to develop a special hiring procedure for personnel positions in the Division of Highways; establishing requirements for the special hiring procedure; exempting the Division of Highways and the Division of Personnel from classified service hiring procedures upon implementation of the special hiring process; exceptions; establishing reporting requirements; and requiring emergency and legislative rulemaking.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 4587**, Relating to violations associated with absent voters' ballots.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4587) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 4587**—A Bill to amend and reenact §3-9-19 of the Code of West Virginia, 1931, as amended, relating to violations associated with absent voters' ballots; changing reference of clerk of circuit court to clerk of county commission; making clerk of county commission guilty of misdemeanor if he or she refuses or neglects to perform duties required by him or her related to voting by absentees; making clerk of county commission guilty of misdemeanor if he or she discloses to any other person or persons how any absent voter voted; changing gender references; and making other technical and grammatical changes relating to the language in the misdemeanor provisions of this section.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 4617**, Authorizing legislative rules of the Higher Education Policy Commission regarding the Underwood-Smith Teacher Scholarship Program and Nursing Scholarship Program.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4617) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 4705**, Relating to adding an additional type of West Virginia source income of nonresident individual.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4705) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4705) takes effect from passage.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 4725**, Relating to providing the procedures for the filling of vacancies in the offices of justices of the Supreme Court of Appeals, circuit judge, family court judge or magistrate and making certain clarifications.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4725) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. Senate Bill 4725**—A Bill to amend and reenact §3-10-3 of the Code of West Virginia, 1931, as amended, relating to providing the procedures for the filling of vacancies in the offices of justices of the Supreme Court of Appeals, circuit judge, family court judge or magistrate; providing that persons appointed to

offices of justice of the Supreme Court of Appeals, circuit judge, family court judge and magistrate shall continue to serve if the unexpired term be less than two years; providing for elections to fill unexpired terms under certain circumstances based on when vacancy occurs; and making certain clarifications.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 4726**, Relating to coal mining generally.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed House Bill 4726 pass?”

Senator Sypolt requested a ruling from the Chair as to whether he should be excused from voting under Senate Rule 43.

The Chair replied that any impact on Senator Sypolt would be as a member of a class of persons and that he would be required to vote.

On the passage of the bill, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kirkendoll, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel and Cole (Mr. President)—30.

The nays were: Beach, Kessler, Laird and Yost—4.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4726) passed.

On motion of Senator Boso, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. House Bill 4726**—A Bill to repeal §22-3A-1, §22-3A-2, §22-3A-3, §22-3A-4, §22-3A-5, §22-3A-6, §22-3A-7, §22-3A-8, §22-3A-9 and §22-3A-10 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-4C-6c of said code; to amend and reenact §22-1-7 of said code; to amend and reenact §22-3-2, §22-3-4, §22-3-13, §22-3-13a, §22-3-22a and §22-3-30a of said code; to amend said code by adding thereto six new sections, designated §22-3-34, §22-3-35, §22-3-36, §22-3-37, and §22-3-38; to amend and reenact §22-11-6 of said code; to amend and reenact §22A-1-13, §22A-1-14, §22A-1-15, §22A-1-19, §22A-1-20, §22A-1-31 and §22A-1-35 of said code; to amend and reenact §22A-1A-2 of said code; to amend and reenact §22A-2-3, §22A-2-8, §22A-2-14, §22A-2-20, §22A-2-25, §22A-2-36, §22A-2-55, §22A-2-66 and §22A-2-77 of said code; and to amend and reenact §22A-7-7 of said code, all relating generally to coal mining; making findings; eliminating the Department of Environmental Protection Office of Explosives and Blasting and consolidating the remaining duties and responsibilities related to blasting to the Department of Environmental Protection Division of Mining and Reclamation; adding blasting oversight; providing that the Department of Environmental Protection to revise rules on hydrologic protection and stormwater runoff analyses on mining operations and to promulgate rules that conform with the federal regulations requirements to minimize the disturbances to the prevailing hydrologic balance at a mine site and in associated off-site areas; providing that cumulative hydrologic impact assessment may be conducted; requiring a statement of probable hydrologic consequences and to prevent flooding; modifying certain findings, ventilation requirements, and roof or rib requirements; requiring the Department of Environmental Protection to follow deadlines for approving or denying applications for site specific water quality criteria; providing that state mine rescue teams may serve as backup mine rescue teams for mines in this state; providing that the Board of Mine Health and Safety to have the authority to propose rules for the use of diesel equipment in the state's mines; transferring certification authority to the Director of the Office of Miners' Health Safety and Training for mining emergency medical technicians; requiring the State Board of Appeals to allow evidence of testing procedures and test results be introduced through

notarized affidavits from Medical Review Officers and testify if necessary; providing for telephonic testimony under oath; providing that the penalty for not reporting accidents in fifteen minutes to the Office of Miners' Health, Safety and Training be modified to up to \$100,000; providing that the Director of Office of Miners' Health, Safety and Training shall have the authority to modify assessed penalties and penalties may be modified by the State Board of Appeals based on a vote of two Board members; providing a method incase a miners' wireless emergency communications device fails; and allowing company input into state supervisory training and how it is scheduled during the year.

*Ordered,* That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

The Senate proceeded to the ninth order of business.

**Eng. Com. Sub. for House Bill 2904**, Requiring the clerk of a county commission to maintain a county ordinance book.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Government Organization, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF  
THE GOVERNOR, SECRETARY OF STATE AND  
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;  
MISCELLANEOUS AGENCIES, COMMISSIONS,  
OFFICES, PROGRAMS, ETC.**

**ARTICLE 2. SECRETARY OF STATE.**

**§5-2-4. Accessible county records; required information.**

(a) The Secretary of State shall maintain a website with certain county information. The website shall be updated annually.

(b) On or before January 31, 2018, the county officer information website shall be updated by the Secretary of State.

(c) The website shall contain the following minimum information regarding county officials:

(1) The official title and name of each county office holder;

(2) The contact information for each county office holder, including telephone number, facsimile number, office location and mailing address;

(3) The electronic mail address of each elected county office holder where available; and

(4) The website of each county commission, where available.

## **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

### **ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

#### **§7-1-3pp. Accessible county records; required information.**

(a) Beginning July 1, 2017, each county commission may maintain a website that provides the following information without charge:

(1) The title and name of each elected county office holder;

(2) The contact information of each elected county office holder, including office telephone number, facsimile number, office location and mailing address;

(3) The government electronic mail address of each elected county office holder;

(4) A copy of each county ordinance as adopted;

(5) A copy of the approved meeting minutes; and

(6) A schedule of regular meeting days for each calendar year.

(b) Beginning on or before December 31, 2017, and each year thereafter, the Secretary of State shall obtain the following information:

(1) A list of each elected county official by title, with the name of the elected official;

(2) The office contact information for each county office holder; and

(3) The website address of the county commission website, where available.

### **§7-1-7. Record books.**

(a) Beginning on July 1, 2017, the county commission shall, within sixty days of adoption, through the clerk of the commission, enter into a separate book the complete record of all ordinances adopted by the county commission. The clerk shall list, along with each ordinance in the book, the provision of the West Virginia Code authorizing each ordinance. The clerk shall maintain the book in his or her office and shall make available a copy to the county sheriff. Compiling all such ordinances adopted by the county commission and publishing the same on a publically available internet website as delineated in section three-pp of this article shall constitute full compliance with the provisions of this section.

(b) The county ~~court~~ commission of every county shall provide two record books for the use of the ~~court~~ county commission, in one of which shall be entered all the proceedings of such ~~court~~ county commission in relation to contested elections, all matters of probate, the appointment of appraisers of the estates of decedents and the appointment and qualification of personal representatives, guardians, committees and curators, and the settlement of their accounts, and all matters relating to apprentices; and in the other of said books shall be entered all the other proceedings of such ~~court~~ county commission: *Provided, however,* That said-~~court~~ county commission shall provide and keep such additional or different record books as may be specially required by law.

The bill (Eng. Com. Sub. for H. B. 2904), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4171**, Relating to the public school calendar.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 4246**, Changing the Martinsburg Public Library to the Martinsburg-Berkeley County Public Library.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 4309**, Increasing criminal penalties for conviction of certain offenses of financial exploitation of an elderly person.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §55-7I-1, §55-7I-2, §55-7I-3, §55-7I-4, §55-7I-5 and §55-7I-6; and that §61-2-29b of said code be amended and reenacted, all to read as follows:

**CHAPTER 55. ACTIONS, SUITS AND ARBITRATION;  
JUDICIAL SALE.**

**ARTICLE 7I. FINANCIAL EXPLOITATION OF AN  
ELDERLY PERSON, PROTECTED  
PERSON OR INCAPACITATED ADULT.**

**§55-7I-1. Action for financial exploitation of an elderly person, protected person or incapacitated adult; definitions.**

(a) Any elderly person, protected person or incapacitated adult against whom an act of financial exploitation has been committed may bring an action under this article against any person who has committed an act of financial exploitation against him or her.

(b) For the purposes of this article:

(1) “Incapacitated adult” has the same meaning as prescribed under section twenty-nine, article two, chapter sixty-one of this code;

(2) “Elderly person” means a person who is sixty-five years or older;

(3) “Financial exploitation” or “financially exploit” means the intentional misappropriation or misuse of funds or assets of an elderly person, protected person or incapacitated adult, but shall not apply to a transaction or disposition of funds or assets where the defendant made a good-faith effort to assist the elderly person, protected person or incapacitated adult with the management of his or her money or other things of value; and

(4) “Protected person” means any person who is defined as a “protected person” in section four, article one, chapter forty-four-a of this code and who is subject to the protections of chapter forty-four-a or forty-four-c of this code.

**§55-7I-2. Restriction of defenses, standing alone, based on legal relationship.**

Notwithstanding any provision of this code to the contrary, acting in a position of trust and confidence, including, but not limited to, as guardian, conservator, trustee or attorney for or holding power of attorney for an elderly person, protected person or incapacitated adult shall not, standing alone, constitute a defense to an action brought under this article.

**§55-7I-3. Court authorized remedies.**

(a) In an action brought against a person under this article upon a finding that an elderly person, protected person or incapacitated adult has been financially exploited, the court may order:

(1) The return of property or assets improperly obtained, controlled or used; and

(2) An award of actual damages to the person who brought the action for any damages incurred or for the value of the property or assets lost as a result of the violation or violations of this article.

(b) In addition to the remedies provided in subsection (a) of this section, a court may order the following:

(1) For violations committed by a person who is not in a position of trust and confidence, payment of two times the amount of damages incurred or value of property or assets lost; and

(2) For violations committed by a person in a position of trust and confidence, and payment of treble damages.

**§55-7I-4. Attorneys' fees; court costs and burden of proof; statute of limitations.**

(a) The court may award reasonable attorneys' fees and costs to a person that brings an action under this section and prevails.

(b) The standard of proof in proving that a person committed financial exploitation in an action pursuant to this article is a preponderance of the evidence.

(c) An action under this article shall be brought within two years from the date of the violation or from the date of discovery, whichever is later in time.

**§55-7I-5. Action to freeze assets; burden of proof; options the court may exercise.**

(a) An elderly person, protected person or incapacitated adult may bring an action to enjoin the alleged commission of financial

exploitation and may petition the court to freeze the assets of the person allegedly committing the financial exploitation in an amount equal to, but not greater than, the alleged value of lost property or assets for purposes of restoring to the victim the value of the lost property or assets. The burden of proof required to freeze the assets of a person allegedly committing financial exploitation shall be a preponderance of the evidence. Upon a finding that the elderly person, protected person or incapacitated adult has been formally exploited, the court may:

(1) Grant injunctive relief;

(2) Order the violator to, in escrow an amount of money equivalent to the value of the misappropriated assets for distribution to the aggrieved elderly person, protected person or incapacitated adult;

(3) Order the violator to return to the elderly person, protected person or incapacitated person any real or personal property which was misappropriated; or

(4) Provide for the appointment of a receiver;

(b) In an action under section one of this article, the court may void or limit the application of contracts or clauses resulting from the financial exploitation.

(c) In an action brought under this article, upon the filing of the complaint or on the appearance of any defendant, claimant or other party, or at any later time, the court may require the plaintiff, defendant, claimant or other party or parties to post security, or additional security, in a sum the court directs to pay all costs, expenses and disbursements that are awarded against that party or that the party may be directed to pay by any interlocutory order, by the final judgment or after appeal.

**§55-7I-6. Penalty for violation of injunction; retention of jurisdiction.**

Any person who violates the terms of an order issued under section five of this article shall be subject to proceeding for

contempt of court. The court issuing the injunction may retain jurisdiction if, in its discretion, it determines that to do so is in the best interest of the elderly person, protected person or incapacitated adult. Whenever the court determines that an injunction issued under section five of this article has been violated, the court may award reasonable costs to the party asserting that a violation has occurred.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### **ARTICLE 2. CRIMES AGAINST THE PERSON.**

#### **§61-2-29b. Financial exploitation of an elderly person, protected person or incapacitated adult; penalties; definitions.**

(a) Any person who financially exploits an elderly person, protected person or an incapacitated adult ~~shall be guilty of larceny and subject to the penalties contained in section thirteen, article three of this chapter~~ in the amount of less than \$1,000 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in jail for not more than one year, or both fined and confined.

(b) Any person who financially exploits an elderly person, protected person or an incapacitated adult in the amount of \$1,000 or more is guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000 and imprisoned in a state correctional facility not less than two nor more than twenty years.

(c) Any person convicted of a violation of this section shall, in addition to any other penalties at law, be subject to an order of restitution.

~~(b)~~ (d) In determining the value of the money, goods, property or services referred to in subsection (a) of this section, it shall be permissible to cumulate amounts or values where such money, goods, property or services were fraudulently obtained as part of a common scheme or plan.

~~(e)~~ (e) Financial institutions and their employees, as defined by section one, article two-a, chapter thirty-one-a of this code and as permitted by subsection (13), section four of said article, others engaged in financially related activities, as defined by section one, article eight-c, chapter thirty-one-a of this code, caregivers, relatives and other concerned persons are permitted to report suspected cases of financial exploitation to state or federal law-enforcement authorities, the county prosecuting attorney and to the Department of Health and Human Resources, Adult Protective Services Division or Medicaid Fraud Division, as appropriate. Public officers and employees are required to report suspected cases of financial exploitation to the appropriate entities as stated above. The requisite agencies shall investigate or cause the investigation of the allegations.

~~(d)~~ (f) When financial exploitation is suspected and to the extent permitted by federal law, financial institutions and their employees or other business entities required by federal law or regulation to file suspicious activity reports and currency transaction reports shall also be permitted to disclose suspicious activity reports or currency transaction reports to the prosecuting attorney of any county in which the transactions underlying the suspicious activity reports or currency transaction reports occurred.

~~(e)~~ (g) Any person or entity that in good faith reports a suspected case of financial exploitation pursuant to this section is immune from civil liability founded upon making that report.

~~(f)~~ (h) For the purposes of this section:

(1) “Incapacitated adult” means a person as defined by section twenty-nine of this article;

(2) “Elderly person” means a person who is sixty-five years or older;

(3) “Financial exploitation” or “financially exploit” means the intentional misappropriation or misuse of funds or assets of an elderly person, protected person or incapacitated adult, but shall not apply to a transaction or disposition of funds or assets where the

accused made a good-faith effort to assist the elderly person, protected person or incapacitated adult with the management of his or her money or other things of value; and

(4) “Protected person” means any person who is defined as a “protected person” in section four, article one, chapter forty-four-a of this code and who is subject to the protections of chapter forty-four-a or forty-four-c of this code.

~~(g)~~ (i) Notwithstanding any provision of this code to the contrary, acting as guardian, conservator, trustee or attorney for or holding power of attorney for an elderly person, protected person or incapacitated adult shall not, standing alone, constitute a defense to a violation of subsection (a) of this section.

The bill (Eng. H. B. 4309), as amended, was then ordered to third reading.

**Eng. House Bill 4340**, Amending licensing requirements for an act which may be called Lynette’s Law.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 4345**, Repealing the West Virginia Permitting and Licensing Information Act.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 4378**, Relating to access to and receipt of certain information regarding a protected person by certain relatives of the protected person.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

### ARTICLE 3. GUARDIANSHIP AND CONSERVATORSHIP ADMINISTRATION.

#### **§44A-3-17. Petition by certain persons for access to persons in guardianship; hearing and court order.**

(a) As used in this section, unless the context otherwise requires, "relative" means a spouse, parent, grandparent, stepparent, child, grandchild, sibling or half sibling. The term includes said relationships that are created as a result of adoption. Additionally, as used in this section and section eighteen of this article, "relative" includes any person who has a family-type relationship with a protected person and any person with whom the protected person resided immediately prior to the time guardianship was sought.

(b) A relative may file a petition in circuit court seeking access to and information about a protected person which may include the opportunity to have visitation and contact with the protected person. The petition may be filed in the circuit court of the county in which the protected person resides or if the protected person has been admitted to a health care facility in a county other than that in which he or she resides in the circuit court of the county in which the health care facility is located.

(c) The court shall schedule a hearing on the petition within sixty days of the petition being filed: *Provided*, That if the petition alleges that the protected person's health is in significant decline or he or she is at imminent risk of death, an emergency hearing shall be scheduled as soon as practicable. The court may continue a hearing for good cause shown.

(d) Service of process upon the guardian shall be by personal service, consistent with the West Virginia Rules of Civil Procedure. Service of the petition shall be effected at least ten days prior to the scheduled hearing date: *Provided*, That where an emergency hearing is sought pursuant to subsection (c) of this section, service of process upon the guardian shall be as far in advance of the scheduled hearing date as possible.

(e) Upon notice and hearing the court may:

(1) Deny the petition;

(2) Order the guardian to allow the petitioner access to the protected person upon finding, by a preponderance of the evidence, that the guardian is preventing access by the petitioner to the protected person, that the protected person is desirous of contact with the petitioner.

(f) In determining whether to order that the petitioner shall have access to the protected person, the court shall consider the best interests of the protected person.

(g) The court may, in its discretion, award the prevailing party in an action brought under this section court costs and reasonable attorney's fees. Court costs and attorney's fees awarded under this subsection may not be paid from the protected person's estate.

(h) If the court grants the petition it may, in its discretion, retain jurisdiction over the matter and modify its order consistent with the best interests of the protected person.

(i) The provisions of this section apply to all guardianship of protected persons regardless of the date guardianship was established.

**§44A-3-18. Guardian's duty to inform certain relatives about protected person's health and residence.**

(a) The provisions of this section apply to relatives who have been granted access to a protected person under section seventeen of this article.

(b) Except as provided by subsection (d) of this section, the guardian of a protected person shall as soon as practicable inform such relatives if:

(1) The protected person dies;

(2) The protected person is admitted to a medical facility for a period of three days or more;

(3) The protected person's residence has changed; or

(4) The protected person is staying at a location other than his or her usual place of residence for a period that exceeds two calendar weeks.

(c) In the case of the death of the protected person, the guardian shall inform the relative of any funeral arrangements and the location of the protected person's final resting place.

(d) A relative entitled to receive information regarding a protected person under this section may waive the notice required thereof by this section by providing a written waiver to the guardian. A guardian shall file any such written waiver with the court.

The bill (Eng. H. B. 4378), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4383**, Making individuals responsible for the costs relating to the filing of excessive false complaints.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

**ARTICLE 30. EXCESSIVE FILING OF FALSE COMPLAINTS.**

**§5-30-1. Filing of false claims; suspension of investigatory obligations; notice; exceptions; civil actions and remedies.**

(a) For purposes of this section:

(1) “Complaint” means a claim, allegation, report or action that prompts a required inspection or investigation by an agency or department of the state, excluding any complaint filed in the courts of this state.

(2) “False complaint” means a complaint received by an agency or department of the state that the agency or department of the state determines, after investigation, that the person who filed the complaint did so knowing the material statements in the complaint were not true, filed a complaint in reckless disregard of the truth or falsity of the statements contained therein or filed a complaint which constitutes an abuse of process.

(b) If any agency or department of the state that is required by statute, rule, regulation or policy to conduct inspections or investigate complaints by individuals to determine whether there is violation of a statute, rule or regulation determines, by clear and convincing evidence, that a person filed a false complaint, as defined in this section, may, in its sole discretion, suspend any obligations with respect to such required inspections or investigations as to that individual if the agency or department determines that the individual has made three or more false complaints in a two-month period: *Provided*, That any such suspension shall not last longer than six months and the agency or department may still undertake any inspections or investigations as a result of a complaint by the individual within this time period: *Provided, however*, That the agency or department must maintain written records of, at least, the name and telephone number of the person making the complaint to avail itself of the provisions of this section.

(c) Any individual whose complaint is determined to be a false complaint shall be advised of the same, in writing, within forty-eight hours of the conclusion of the inspection or investigation. A copy of this article shall be provided with the written notice. The agency shall also forward a copy of any such written communication to the Governor, the Speaker of the House and the President of the Senate.

(d) This article does not apply to any agency or department inspections or investigations that are required in the event of emergencies or the West Virginia State Police.

(e) In the event an agency or department subject to this article suspends its obligations to an individual, the agency or department is authorized to file a civil action against the individual and, upon proof by a preponderance of the evidence that any of the complaints giving rise to the suspension were false complaints, is entitled to recover its actual costs associated with the inspection or investigation and resolution of those false complaints, plus attorney's fees and costs, as well as any injunctive or equitable relief.

(f) Nothing in this article is intended to affect or supersede any other available legal or administrative remedies of any agency or department.

The bill (Eng. Com. Sub. for H. B. 4383), as amended, was then ordered to third reading.

**Eng. House Bill 4417**, Increasing wages protected from garnishment.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 4448**, Clarifying that communication by a lender or debt collector which is allowed under the West Virginia Consumer Credit and Protection Act, likewise does not violate the provisions of the West Virginia Computer Crime and Abuse Act.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

On page one, section fourteen-a, line three, after the word "another" by inserting the word "person".

The bill (Eng. Com. Sub. for H. B. 4448), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4612**, Relating generally to tax increment financing and economic opportunity development districts.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Finance, was reported by the Clerk and adopted:

On page fourteen, section fourteen, line seven, after the word “one-c” by inserting a comma and the words “chapter twenty-one of this code”.

On motion of Senator Romano, the following amendments to the bill (Eng. Com. Sub. for H. B. 4612) were next reported by the Clerk and considered simultaneously:

On page fourteen, after section four, by inserting two new sections, designated sections seven and ten, to read as follows:

**§7-11B-7. Creation of a development or redevelopment or district.**

(a) County commissions and the governing bodies of Class I and II municipalities, upon their own initiative or upon application of an agency or a developer, may propose creation of a development or redevelopment district and designate the boundaries of the district: *Provided*, That a district may not include noncontiguous land.

(b) The county commission or municipality proposing creation of a development or redevelopment district shall then hold a public hearing at which interested parties are afforded a reasonable opportunity to express their views on the proposed creation of a development or redevelopment district and its proposed boundaries.

(1) Notice of the hearing shall be published as a Class II legal advertisement in accordance with section two, article three, chapter fifty-nine of this code.

(2) The notice shall include the time, place and purpose of the public hearing, describe in sufficient detail the tax increment financing plan, the proposed boundaries of the development or redevelopment district and, when a development or redevelopment project plan is being proposed, the proposed tax increment financing obligations to be issued to finance the development or redevelopment project costs.

(3) Prior to the first day of publication, a copy of the notice shall be sent by first-class mail to the Director of the Development Office and to the chief executive officer of all other local levying bodies having the power to levy taxes on real and tangible personal property located within the proposed development or redevelopment district.

(4) All parties who appear at the hearing shall be afforded an opportunity to express their views on the proposal to create the development or redevelopment district and, if applicable, the development or redevelopment project plan and proposed tax increment financing obligations.

(c) After the public hearing, the county commission, or the governing body of the municipality, shall finalize the boundaries of the development or redevelopment district, the development or redevelopment project plan, or both, and submit the same to the Director of the Development Office for his or her review and approval. The director, within sixty days after receipt of the application, shall approve the application as submitted, reject the application or return the application to the county commission or governing body of the municipality for further development or review in accordance with instructions of the Director of the Development Office. A development or redevelopment district or development or redevelopment project plan may not be adopted by the county commission or the governing body of a municipality until after it has been approved by the Executive Director of the Development Office.

(d) Upon approval of the application by the Development Office, the county commission may enter an order and the governing body of the municipality proposing the district or development or redevelopment project plan may adopt an ordinance, that:

(1) Describes the boundaries of a development or redevelopment district sufficiently to identify with ordinary and reasonable certainty the territory included in the district, which boundaries shall create a contiguous district;

(2) Creates the development or redevelopment district as of a date provided in the order or ordinance;

(3) Assigns a name to the development or redevelopment district for identification purposes.

(A) The name may include a geographic or other designation, shall identify the county or municipality authorizing the district and shall be assigned a number, beginning with the number one.

(B) Each subsequently created district in the county or municipality shall be assigned the next consecutive number;

(4) Contains findings that the real property within the development or redevelopment district will be benefitted by eliminating or preventing the development or spread of slums or blighted, deteriorated or deteriorating areas, discouraging the loss of commerce, industry or employment, increasing employment or any combination thereof;

(5) Approves the development or redevelopment project plan, if applicable;

(6) Establishes a tax increment financing fund as a separate fund into which all tax increment revenues and other revenues designated by the county commission, or governing body of the municipality, for the benefit of the development or redevelopment district shall be deposited, and from which all project costs shall be paid, which may be assigned to and held by a trustee for the benefit of bondholders if tax increment financing obligations are issued by

the county commission or the governing body of the municipality;  
and

(7) Provides that ad valorem property taxes on real and tangible personal property having a tax situs in the development or redevelopment district shall be assessed, collected and allocated in the following manner, commencing upon the date of adoption of such order or ordinance and continuing for so long as any tax increment financing obligations are payable from the tax increment financing fund, hereinafter authorized, are outstanding and unpaid:

(A) For each tax year, the county assessor shall record in the land and personal property books both the base assessed value and the current assessed value of the real and tangible personal property having a tax situs in the development or redevelopment district;

(B) Ad valorem taxes collected from regular levies upon real and tangible personal property having a tax situs in the district that are attributable to the lower of the base assessed value or the current assessed value of real and tangible personal property located in the development project area shall be allocated to the levying bodies in the same manner as applicable to the tax year in which the development or redevelopment project plan is adopted by order of the county commission or by ordinance adopted by the governing body of the municipality;

(C) The tax increment with respect to real and tangible personal property in the development or redevelopment district shall be allocated and paid into the tax increment financing fund and shall be used to pay the principal of and interest on tax increment financing obligations issued to finance the costs of the development or redevelopment projects in the development or redevelopment district. Any levying body having a development or redevelopment district within its taxing jurisdiction shall not receive any portion of the annual tax increment except as otherwise provided in this article; and

(D) In no event shall the tax increment include any taxes collected from excess levies, levies for general obligation bonded

indebtedness or any levies other than the regular levies provided for in article eight, chapter eleven of this code.

(e) Proceeds from tax increment financing obligations issued under this article may only be used to pay for costs of development and redevelopment projects to foster economic development in the development or redevelopment district or land contiguous thereto.

(f) Notwithstanding subsection (e) of this section, a county commission may not enter an order approving a development or redevelopment project plan unless the county commission expressly finds and states in the order that the development or redevelopment project is not reasonably expected to occur without the use of tax increment financing.

(g) Notwithstanding subsection (e) of this section, the governing body of a municipality may not adopt an ordinance approving a development or redevelopment project plan unless the governing body expressly finds and states in the ordinance that the development or redevelopment project is not reasonably expected to occur without the use of tax increment financing.

(h) No county commission shall establish a development or redevelopment district any portion of which is within the boundaries of a Class I, II, III or IV municipality without the formal consent of the governing body of such municipality.

(i) A tax increment financing plan that has been approved by a county commission or the governing body of a municipality may be amended by following the procedures set forth in this article for adoption of a new development or redevelopment project plan.

(j) The county commission may modify the boundaries of the development or redevelopment district, from time to time, or extend the length of existence of development or redevelopment districts as set forth in section ten of this article, by entry of an order modifying the order creating the development or redevelopment district.

(k) The governing body of a municipality may modify the boundaries of the development or redevelopment district, from

time to time, or extend the length of existence of development or redevelopment districts as set forth in section ten of this article, by amending the ordinance establishing the boundaries of the district.

(l) Before a county commission or the governing body of a municipality may amend such an order or ordinance, the county commission or municipality shall give the public notice, hold a public hearing and obtain the approval of the Director of the Development Office, following the procedures for establishing a new development or redevelopment district. In the event any tax increment financing obligations are outstanding with respect to the development or redevelopment district, any change in the boundaries shall not reduce the amount of tax increment available to secure the outstanding tax increment financing obligations.

**§7-11B-10. Termination of development or redevelopment district.**

(a) No development or redevelopment district may be in existence for a period longer than thirty years and no tax increment financing obligations may have a final maturity date later than the termination date of the area or district: Provided, That for any existing development or redevelopment district for which tax increment financing obligations have been issued by a county commission, or the governing body of a municipality, prior to December 31, 2008, that existing development or redevelopment district may be in existence for a period of forty years.

(b) The county commission or governing body of the municipality creating the development or redevelopment district may set a shorter period for the existence of the district. In this event, no tax increment financing obligations may have a final maturity date later than the termination date of the district.

(c) Upon termination of the district, no further ad valorem tax revenues shall be distributed to the tax increment financing fund of the district.

(d) The county commission shall adopt, upon the expiration of the time periods set forth in this section, an order terminating the

development or redevelopment district created by the county commission: *Provided*, That no district shall be terminated so long as bonds with respect to the district remain outstanding.

(e) The governing body of the county commission shall repeal, upon the expiration of the time periods set forth in this section, the ordinance establishing the development or redevelopment district: *Provided*, That no district shall be terminated so long as bonds with respect to the district remain outstanding.;

And,

By striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

That §7-11B-3, §7-11B-4, §7-11B-7, §7-11B-10, §7-11B-14, §7-11B-21 and §7-11B-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto two new sections, designated §7-11B-29 and §7-11B-30; that §7-22-5, §7-22-7, §7-22-8, §7-22-12 and §7-22-14 of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §7-22-23 and §7-22-24; that §8-38-5, §8-38-7, §8-38-8, §8-38-12 and §8-38-14 of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §8-38-23 and §8-38-24; and that §11-10-11a of said code be amended and reenacted, all to read as follows:.

Following extended discussion,

The question being on the adoption of Senator Romano's amendments to the bill, the same was put and did not prevail.

The bill (Eng. Com. Sub. for H. B. 4612), as amended by the Committee on Finance, was then ordered to third reading.

**Eng. House Bill 4651**, Relating to professional examination requirements for hearing-aid dealers and fitters.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 4739, Unclaimed Life Insurance Benefits Act.**

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

**ARTICLE 13D. UNCLAIMED LIFE INSURANCE BENEFITS ACT.****§33-13D-1. Definitions.**

(a) Definitions. — For purposes of this section:

(1) “Account owner” means the owner of a retained asset account who is a resident of this state.

(2) “Annuity contract” means an annuity contract issued in this state. The term “annuity contract” shall not include an annuity used to fund an employment-based retirement plan or program where: (1) The insurer does not perform the record-keeping services; or (2) the insurer is not committed by terms of the annuity contract to pay death benefits to the beneficiaries of specific plan participants.

(3) “Death Master File” means the United States Social Security Administration’s Death Master File or any other database or service that is at least as comprehensive as the United States Social Security Administration’s Death Master File for determining whether a person has died.

(4) “Death Master File match” means a search of the Death Master File that results in a match of the person’s first and last name and Social Security number or the first and last name and date of birth of an insured, annuity owner or retained asset account holder.

(5) “Knowledge of death” shall, for the purposes of this section, mean: (a) Receipt of an original or valid copy of a certified death

certificate; or (b) a Death Master File match validated by the insurer in accordance with section two of this article.

(6) “Person” means the policy insured, annuity contract owner, annuitant or account owner, as applicable under the policy, annuity contract or retained asset account at issue in this act.

(7) “Policy” means any policy or certificate of life insurance issued in this state that provides a death benefit. The term “policy” shall not include: (i) Any policy or certificate of life insurance that provides a death benefit under an employee benefit plan: (a) subject to the Employee Retirement Income Security Act of 1974, as periodically amended; or (b) under any federal employee benefit program; or (ii) any policy or certificate of life insurance that is used to fund a preneed funeral contract or prearrangement; or (iii) any policy or certificate of credit life or accidental death insurance; or (iv) any policy issued to a group master policyholder for which the insurer does not provide record-keeping services.

(8) “Record-keeping services” means those circumstances under which the insurer has agreed with a group policy or contract customer to be responsible for obtaining, maintaining and administering in its own or its agents’ systems information about each individual insured under an Insured’s group insurance contract (or a line of coverage thereunder), at least the following information: (1) Social Security number or name and date of birth; and (2) beneficiary designation information; (3) coverage eligibility; (4) benefit amount; and (5) premium payment status.

(9) “Retained asset account” means any mechanism whereby the settlement of proceeds payable under a policy or annuity contract is accomplished by the insurer or an entity acting on behalf of the insurer depositing the proceeds into an account with check- or draft-writing privileges, where those proceeds are retained by the insurer or its agent, pursuant to a supplementary contract not involving annuity contract benefits other than death benefits.

### **§33-13D-2. Insurer conduct.**

(a) An insurer shall perform a comparison of its insureds’ in-force policies, annuity contracts and account owners against a Death Master File to identify potential death master file matches of

its insureds, annuitants and account owners, on at least an annual basis, by using the full Death Master File once and thereafter using the Death Master File update files for future comparisons to identify potential Death Master File matches. The comparison using the full Death Master File should be completed within two years of the effective date of this article and must be completed on policies in force as of 1986, and all policies issued thereafter: *Provided*, That the Insurance Commissioner shall promulgate legislative rules requiring that the comparison against a Death Master File be completed on policies issued at earlier times if the commissioner determines that reliable technology and data exist to make such comparison accurate and cost-effective to match to the established Master Death Database.

(b) The insurer comparison of policies, annuity contracts and account owners shall be conducted first to the extent that such records are available electronically and then using the most easily accessible insurer data for records that are not available electronically.

(c) This section shall not apply to policies or annuity contracts for which the insurer is receiving premiums from outside the policy value, by check, bank draft, payroll deduction or any other similar method of active premium payment within the eighteen months immediately preceding the Death Master File comparison.

(d) Nothing in this section shall limit the insurer from requesting a valid death certificate as part of any claims validation process.

(e) For those potential matches identified as a result of a Death Master File match, or if an insurer learns of the possible death of a person otherwise, then the insurer shall, within ninety days of a Death Master File match:

(1) Complete a good faith effort, which shall be documented by the insurer, to confirm the death of the person against other available records and information;

(2) Review its records to determine whether the deceased person has any other products with the insurer;

(3) Determine whether benefits may be due in accordance with any applicable policy, annuity contract or retained asset account.

(f) Every insurer shall implement procedures to account for:

(1) Common nicknames, initials used in lieu of a first or middle name, use of a middle name, compound first and middle names, and interchanged first and middle names;

(2) Compound last names, maiden or married names, and hyphens, blank spaces or apostrophes in last names;

(3) Transposition of the “month” and “date” portions of the date of birth; and

(4) Incomplete Social Security number.

(g) If the beneficiary or other authorized representative has not communicated with the insurer within the ninety-day period, the insurer shall take reasonable steps and use good faith efforts, which shall be documented by the insurer, to locate and contact the beneficiary or beneficiaries or other authorized representative on any such policy, annuity contract or retained asset account, including, but not limited to, sending the beneficiary information regarding the insurer’s claims process, including the need to provide an official death certificate if applicable under the policy, annuity contract or retained asset account.

(h) To the extent permitted by law, the insurer may disclose minimum necessary personal information about a person or beneficiary to a person who the insurer reasonably believes may be able to assist the insurer in locating the beneficiary or a person otherwise entitled to payment of the claims proceeds.

(i) An insurer or its service provider shall not charge any beneficiary or other authorized representative for any fees or costs associated with a Death Master File search or verification of Death Master File match conducted pursuant to this section.

(j) The benefits from a policy, annuity contract or a retained asset account, plus any applicable accrued contractual interest shall first be payable to the designated beneficiaries or owners, and in the event said beneficiaries or owners cannot be found, shall be paid to the state as unclaimed property pursuant to article eight, chapter thirty-six of this code.

(k) The West Virginia Office of the Insurance Commissioner has exclusive authority to promulgate such rules and regulations as may be required or reasonably necessary to implement the provisions of this section.

(l) The commissioner may, in his or her reasonable discretion, make an order to:

(1) Limit an insurer's Death Master File comparisons required under subsection (a) of this section to the insurer's electronic searchable files or approve a plan and timeline for conversion of the insurer's files to searchable electronic files upon a demonstration of hardship by the insurer;

(2) Exempt an insurer from the Death Master File comparisons required under subsection (a) of this section or permitting an insurer to perform such comparisons less frequently than annually upon a demonstration of hardship by the insurer; or

(3) Phase-in compliance with this section according to a plan and timeline approved by the commissioner.

The bill (Eng. H. B. 4739), as amended, was then ordered to third reading.

**Eng. House Bill 4740**, Permitting that current members of the National Guard or Reserves may be excused from jury duty.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §52-1-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

## **ARTICLE 1. PETIT JURIES.**

### **§52-1-11. Excuses from jury service.**

(a) The court, upon request of a prospective juror or on its own initiative, shall determine on the basis of information provided on the juror qualification form or interview with the prospective juror or other competent evidence whether the prospective juror should be excused from jury service. The clerk shall enter this determination in the space provided on the juror qualification form.

(b) A person who is not disqualified for jury service under section eight of this article may be excused from jury service by the court upon a showing of undue hardship, extreme inconvenience, or public necessity, for a period the court deems necessary, at the conclusion of which the person shall reappear for jury service in accordance with the court's direction.

(c) A person who is not disqualified for jury service under section eight of this article may be excused from jury service by the court if the person is a current member of the National Guard or reserves.

The bill (Eng. H. B. 4740), as amended, was then ordered to third reading.

The Senate proceeded to the tenth order of business.

**Eng. House Bill 4334**, Clarifying the requirements for a license to practice as an advanced practice registered nurse and expanding prescriptive authority.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Carmichael, the Senate recessed until 5 p.m. today.

Upon expiration of the recess, the Senate reconvened and, at the request of Senator Carmichael, and by unanimous consent, returned to the fourth order of business.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Senate Bill 269**, Budget Bill.

And reports back a committee substitute for same with the following title:

**Com. Sub. for Senate Bill 269** (originating in the Committee on Finance)—A Bill making appropriations of public money out of the Treasury in accordance with section fifty-one, article VI of the Constitution.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Mike Hall,  
*Chair.*

At the request of Senator Hall, unanimous consent being granted, the bill (Com. Sub. for S. B. 269) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Walters, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**Senate Concurrent Resolution 53**, Harry C. “Buck” Markley, Jr. Memorial Bridge.

And reports back a committee substitute for same as follows:

**Com. Sub. for Senate Concurrent Resolution 53** (originating in the Committee on Transportation and Infrastructure)—Requesting Division of Highways name bridge number 25-218-4.69 (25A219), carrying West Virginia Route 218 over Buffalo Creek, and connecting the town of Farmington to U. S. Route 250 in Marion County, the “Harry C. ‘Buck’ Markley Jr. Memorial Bridge”.

Whereas, Harry C. “Buck” Markley, was born on May 27, 1935, in Farmington, West Virginia. He was the son of Harry and Virginia Pyles Markley. He graduated from Farmington High School and worked in Marion County at Wall Plaster and Angelucci Trucking before transitioning to the coal fields of the Four States, Blacksville and Grant Town mines. He served as a federal mine inspector from 1972 through 1996 and was a member of the Four States, Blacksville and the federal mine rescue teams; and

Whereas, Harry Markley was a devoted public servant, serving on the Farmington Town Council and as Mayor of Farmington for eighteen years, as well as serving with the Farmington Volunteer Fire Department for forty-five years, and forty years as chief of Company Seven. During Harry Markley’s career in public service he also served on the Marion County Fire Board. As Mayor, Harry Markley took the steps necessary to make Farmington easily accessible by leading the effort to reconstruct the bridge connecting Farmington to U. S. Route 250 in 1985; and

Whereas, Harry Markley passed away on June 23, 2015, in his home in Marion County. He has been an outstanding citizen and leader of Farmington and it is fitting that Harry C. “Buck” Markley

Jr.'s legacy is memorialized on the very bridge that he helped to create; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 25-218-4.69 (25A219), carrying West Virginia Route 218 over Buffalo Creek, and connecting the town of Farmington to U. S. Route 250 in Marion County, the "Harry C. 'Buck' Markley Jr. Memorial Bridge"; and, be it

*Further Resolved,* That the Commissioner of the Division of Highways is hereby requested to have made and be placed signs identifying the "Harry C. 'Buck' Markley 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 and to Mayor Donna Costello.

With the recommendation that the committee substitute be adopted.

Respectfully submitted,

Chris Walters,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the resolution (Com. Sub. for S. C. R. 53) contained in the preceding report from the Committee on Transportation and Infrastructure was taken up for immediate consideration.

The question being on the adoption of the resolution, the same was put and prevailed.

*Ordered,* That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Senator Walters, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**Senate Concurrent Resolution 54**, Union Army CPT John Bond Memorial Bridge.

**Senate Concurrent Resolution 56**, Judge Ronald G. Pearson Bridge.

And,

**Senate Concurrent Resolution 59**, U. S. Army SPC 4 Everette R. Johnson Memorial Bridge.

And reports the same back with the recommendation that they each be adopted.

Respectfully submitted,

Chris Walters,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the resolutions (S. C. R. 54, 56 and 59) contained in the preceding report from the Committee on Transportation and Infrastructure were taken up for immediate consideration and considered simultaneously.

The question being on the adoption of the resolutions, the same was put and prevailed.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Senator Walters, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**Senate Concurrent Resolution 55**, Dewey “Duke” Maynard Memorial Road.

And reports back a committee substitute for same as follows:

**Com. Sub. for Senate Concurrent Resolution 55** (originating in the Committee on Transportation and Infrastructure)—Requesting portion of Sweetwater Road on U. S. Route 35 near Dunlow, Wayne County, West Virginia, beginning at longitude, latitude: 37.980503, -82.359323 and ending at longitude, latitude: 38.010280, -82.306155, be named “The Dewey ‘Duke’ Maynard Memorial Road”.

Whereas, Dewey “Duke” Maynard was born January 18, 1941, at Holden in Logan County, West Virginia, the youngest son of the late Hardin and Genevie McNeeley Maynard. He was married to Icie Moore Maynard for 47 years. On January 14, 2010, Dewey “Duke” Maynard died at the age of 69 after suffering from a debilitating neurological disease that robbed him of his pride and mobility. Duke was survived by his wife, daughter and son-in-law, Robin Lee and J. T. Spaulding; a son and daughter-in-law, Dewey Lee Maynard, Jr.; and Sueann Maynard, all of Dunlow, West Virginia; and

Whereas, He was a retiree of the Laborers’ Local 543 and from his own business, Maynard Logging; a member of the Masonic Blue Lodge in Crum, WV; and was a 32nd Degree Master Mason; and

Whereas, Duke was well loved throughout his community, especially by those he visited each Christmas Eve for 21 years, providing gifts and playing Santa Claus for the school children; and

Whereas, Dewey “Duke” Maynard lived in the area near this roadway his entire life and was a kind and generous man who donated personal time and money to local youth and high school sports programs; and

Whereas, He served as a Republican Committeeman for several years, promoting community involvement in the democratic process and personally ensuring that the elderly had transportation to polling places; and

Whereas, In 1991, “Duke” created and gathered signatures on a petition to request that the Department of Highways place guardrails on Sweet Water Road for the sole purpose of protecting the school buses that traveled the road; and

Whereas, He was widely known to help those who had lost their jobs by hiring them for odd jobs and aiding them to obtain membership in the Laborers’ Local 543. He helped many neighbors purchase groceries at his own great financial burden and gathered clothes and food for neighbors who had lost their homes to fire or natural disasters. He was named an Honorary Wayne County Deputy Sheriff by Sheriff Toby Shy and was called upon to locate burned vehicles and stolen property and to assist deputies in carrying out their duties by helping them find remote areas and people they were not familiar with; and

Whereas, Naming a portion of Sweetwater Road on U. S. Route 35 near Dunlow, Wayne County, West Virginia, beginning at longitude, latitude: 37.980503, -82.359323 and ending at longitude, latitude: 38.010280, -82.306155, “The Dewey ‘Duke’ Maynard Memorial Road” would be a fitting tribute and honor to the memory of Dewey “Duke” Maynard who was a loving husband and father and a valuable asset to his community, county and state; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name a portion of Sweetwater Road on U. S. Route 35 near Dunlow, Wayne County, West Virginia, beginning at longitude, latitude: 37.980503, -82.359323 and ending at longitude, latitude: 38.010280, -82.306155, “The Dewey ‘Duke’ Maynard Memorial Road”; and, be it

*Further Resolved*, That the Division of Highways is requested to have made and be placed signs identifying the road as the “The Dewey ‘Duke’ Maynard Memorial Road”; and, be it

*Further Resolved*, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner

of the Division of Highways and the surviving relatives of Dewey 'Duke' Maynard.

With the recommendation that the committee substitute be adopted.

Respectfully submitted,

Chris Walters,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the resolution (Com. Sub. for S. C. R. 55) contained in the preceding report from the Committee on Transportation and Infrastructure was taken up for immediate consideration.

The question being on the adoption of the resolution, the same was put and prevailed.

*Ordered,* That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

**Senate Concurrent Resolution 61**, Requesting study on best methods to enhance communication between teachers, parents and students.

And,

**Senate Concurrent Resolution 63**, Requesting study of demand for and shortage of teachers in WV.

And reports the same back with the recommendation that they each be adopted; but under the original double committee references first be referred to the Committee on Rules.

Respectfully submitted,

Dave Sypolt,  
*Chair.*

The resolutions, under the original double committee references, were then referred to the Committee on Rules.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

**Eng. Com. Sub. for House Bill 2202**, Relating to more equitable disbursement of funds to county boards.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Dave Sypolt,  
*Chair.*

At the request of Senator Sypolt, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2202) contained in the preceding report from the Committee on Education was taken up for immediate consideration, read a first time, ordered to second reading and, under the original double committee reference, was then referred to the Committee on Finance, with amendments from the Committee on Education pending.

Senator Walters, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**Eng. Com. Sub. for House Bill 2826**, Requiring the Commissioner of the Division of Highways to approve points of access to and from state highways to real property used or to be used for commercial, industrial or mercantile purposes; “Sarah Nott’s Law”.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on the Judiciary.

Respectfully submitted,

Chris Walters,  
*Chair.*

At the request of Senator Trump, as chair of the Committee on the Judiciary, unanimous consent was granted to dispense with the second committee reference of the bill contained in the foregoing report from the Committee on Transportation and Infrastructure.

At the request of Senator Walters, and by unanimous consent, the bill (Eng. Com. Sub. for H. B. 2826) was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Takubo, from the Committee on Economic Development, submitted the following report, which was received:

Your Committee on Economic Development has had under consideration

**Eng. Com. Sub. for House Bill 2897**, Young Entrepreneur Reinvestment Act.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Tom Takubo,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2897) contained in the preceding report from the Committee on Economic Development was taken up for immediate consideration, read a first time, ordered to second reading and, under the original double committee reference, was then referred to the Committee on Finance, with an amendment from the Committee on Economic Development pending.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4053**, Department of Environmental Protection, Air Quality, rule relating to the control of annual nitrogen oxide emissions.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4060**, Relating generally to the promulgation of administrative rules by the Department of Military Affairs and Public Safety.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Walters, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**Eng. Com. Sub. for House Bill 4168**, Creating a special motor vehicle collector license plate.

And has amended same.

And,

**Eng. Com. Sub. for House Bill 4239**, Relating to construction of a modern highway from Pikeville, Kentucky to Beckley, West Virginia.

And has amended same.

And reports the same back with the recommendation that they each do pass, as amended; but under the original double committee references first be referred to the Committee on Finance.

Respectfully submitted,

Chris Walters,  
*Chair.*

At the request of Senator Hall, as chair of the Committee on Finance, unanimous consent was granted to dispense with the second committee reference of Engrossed Committee Substitute for House Bill 4168 contained in the foregoing report from the Committee on Transportation and Infrastructure.

At the request of Senator Walters, and by unanimous consent, Engrossed Committee Substitute for House Bill 4168 was taken up

for immediate consideration, read a first time and ordered to second reading.

At the request of Senator Walters, unanimous consent being granted, Engrossed Committee Substitute for House Bill 4239 contained in the preceding report from the Committee on Transportation and Infrastructure was taken up for immediate consideration, read a first time, ordered to second reading and, under the original double committee reference, was then referred to the Committee on Finance, with amendments from the Committee on Transportation and Infrastructure pending.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4237**, Supporting and Strengthening Families Act.

And has amended same.

**Eng. Com. Sub. for House Bill 4317**, Limiting factors in parenting plans.

And has amended same.

And,

**Eng. Com. Sub. for House Bill 4606**, Relating to the recusal of certain public officials from voting for appropriation of moneys to nonprofit entities.

And has amended same.

And reports the same back with the recommendation that they each do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

**Eng. Com. Sub. for House Bill 4301**, Relating to a framework for initiating comprehensive transformation of school leadership.

And,

**Eng. House Bill 4461**, Relating to School Building Authority School Major Improvement Fund eligibility.

And reports the same back with the recommendation that they each do pass; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Dave Sypolt,  
*Chair.*

At the request of Senator Hall, as chair of the Committee on Finance, unanimous consent was granted to dispense with the second committee references of the bills contained in the foregoing report from the Committee on Education.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4307**, Clarifying that a firearm may be carried for self defense in state parks, state forests and state recreational areas.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 4411**, Relating to penalty for illegally taking native brook trout.

And has amended same.

Now on second reading, having been read a first time and referred to the Committee on the Judiciary on March 4, 2016;

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Boso, from the Committee on Energy, Industry and Mining, submitted the following report, which was received:

Your Committee on Energy, Industry and Mining has had under consideration

**Eng. Com. Sub. for House Bill 4435**, Authorizing the Public Service Commission to approve expedited cost recovery of electric utility coal-fired boiler modernization and improvement projects.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Gregory L. Boso,  
*Chair.*

Senator Walters, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**Eng. Com. Sub. for House Bill 4554**, Allowing an increase of gross weight limitations on certain roads in Greenbrier County.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Chris Walters,  
*Chair.*

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4586**, Ensuring that the interest of protected persons, incarcerated persons and unknown owners are protected in condemnation actions filed by the Division of Highways.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Walters, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**Eng. House Bill 4732**, Relating to performance metrics for the West Virginia Division of Highways.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Government Organization.

Respectfully submitted,

Chris Walters,  
*Chair.*

At the request of Senator Walters, unanimous consent being granted, the bill (Eng. H. B. 4732) contained in the preceding report from the Committee on Transportation and Infrastructure was taken up for immediate consideration, read a first time, ordered to second reading and, under the original double committee reference, was then referred to the Committee on Government Organization, with amendments from the Committee on Transportation and Infrastructure pending.

Senator Walters, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**Com. Sub. for House Concurrent Resolution 5**, U.S. Army PV2 Eskridge A. Waggoner Memorial Bridge.

And has amended same.

And reports the same back with the recommendation that it be adopted, as amended.

Respectfully submitted,

Chris Walters,  
*Chair.*

Senator Walters, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**Com. Sub. for House Concurrent Resolution 7**, U.S. Army PFC Cecil Ray Ball Memorial Bridge.

**Com. Sub. for House Concurrent Resolution 10**, U.S. Marine Corps GySgt Lionel Collins Memorial Road.

**Com. Sub. for House Concurrent Resolution 15**, U.S. Marine Corps PFC Clayton Andrew Craft Memorial Bridge.

**Com. Sub. for House Concurrent Resolution 18**, U.S. Air Force Staff Sergeant William Henry 'Bill' Whitman Memorial Highway.

And,

**Com. Sub. for House Concurrent Resolution 41**, U.S. Army Air Corps CPT Kenneth R. Winters, Sr. Memorial Bridge.

And reports the same back with the recommendation that they each be adopted.

Respectfully submitted,

Chris Walters,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the resolutions (Com. Sub. for H. C. R. 7, 10, 15, 18 and 41) contained in the preceding report from the Committee on Transportation and Infrastructure were taken up for immediate consideration and considered simultaneously.

The question being on the adoption of the resolutions, the same was put and prevailed.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

Senator Walters, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**Com. Sub. for House Concurrent Resolution 17**, SGT Larry Joseph Whitt Bridge.

And has amended same.

And reports the same back with the recommendation that it be adopted, as amended.

Respectfully submitted,

Chris Walters,  
*Chair.*

Pending announcement of meetings of standing committees of the Senate, including the Committee on Rules,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Wednesday, March 9, 2016, at 11 a.m.

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WEDNESDAY, MARCH 9, 2016

The Senate met at 11 a.m.

(Senator Cole, Mr. President, in the Chair.)

Prayer was offered by Pastor Jake Steele, Wayne Methodist Church, Wayne, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Craig Blair, a senator from the fifteenth district.

Pending the reading of the Journal of Tuesday, March 8, 2016,

At the request of Senator Ashley, unanimous consent being granted, the Journal was approved and the further reading thereof dispensed with.

The Senate proceeded to the second order of business and the introduction of guests.

The Senate then proceeded to the third order of business.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Com. Sub. for Senate Bill 39**, Regulating off-road motorcycles within Hatfield-McCoy Recreation Area.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Senate Bill 94**, Designating State Police Superintendent as administrator and enforcer of motor vehicle inspection program.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Senate Bill 323**, Correcting statute subsection designations regarding trespassing on property.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Senate Bill 329**, Eliminating sunset provision for commission to study residential placement of children.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Senate Bill 334**, Identifying coyote as fur-bearing animal and woodchuck as game animal.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page two, section two, line twenty-three, after “(m)” by inserting the words “canis latrans var., more commonly known as”;

And,

On page two, section two, line twenty-seven, after the words “(h) the” by inserting the words “marmota monax, more commonly known as”.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Senate Bill 334, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 334) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, to take effect from passage,

and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Com. Sub. for Senate Bill 343**, Authorizing prosecuting attorneys designate law-enforcement officers and investigators as custodians of records.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §52-2-11, to read as follows:

## **ARTICLE 2. GRAND JURIES.**

### **§52-2-11. Materials subpoenaed by grand jury; authorizing custodian possession and use thereof.**

(a) For purposes of this section:

(1) “Prosecuting attorney” means a prosecuting attorney, assistant prosecuting attorney or duly appointed special prosecuting attorney.

(2) “Investigator” means an investigator employed by a prosecuting attorney’s office or an employee of a state agency authorized by the provisions of this code to perform criminal investigations.

(b) Notwithstanding any provision of this code to the contrary, records, items or other evidence subpoenaed, received and ratified by a grand jury may, in the discretion of the prosecuting attorney, be permitted to be delivered to a designated law-enforcement officer or investigator who may serve as the custodian of the

records, items or other evidence. The designated custodian conducting an investigation to which the subpoenaed records, items or other evidence are relevant may keep, review and analyze the records and otherwise use the subpoenaed materials for legitimate investigative purposes. Should circumstances arise which require the designation of a successor custodian, the successor custodian shall comply with the provisions of subsection (c) of this section.

(c) Prior to providing a subpoenaed record, item or other evidence to a designated custodian as authorized by subsection (a) of this section, the prosecuting attorney shall prepare and have the law-enforcement officer or investigator execute a disclosure statement acknowledging that the record, item or other evidence is secret under Rule 6(e) of the West Virginia Rules of Criminal Procedure. The prosecuting attorney shall file all disclosure statements, under seal, with the clerk of the circuit court. The existence or contents of any record, item or other evidence subject to the provisions of this section may be disclosed to another law-enforcement officer or investigator for legitimate investigative purposes with the written authorization of the prosecuting attorney and that officer's or investigator's execution of a disclosure statement.

(d) The designated custodian may retain the record, item or other evidence in his or her possession, care, custody or control until the termination of the investigation or prosecution.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 343**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §52-2-11, relating to grand juries generally; defining terms; authorizing prosecuting attorneys to designate law-enforcement officers or investigators as custodians of records, documents and other evidence subpoenaed, that has been received, reviewed and ratified by the grand jury; authorizing designated custodians conducting an investigation to keep, review and analyze

records, items or other evidence and to otherwise use the subpoenaed materials for legitimate investigative purposes; allowing for successor custodians; requiring custodians to execute disclosure statements to preserve grand jury secrecy; requiring the prosecuting attorney to file all disclosure statements, under seal, with the clerk of the circuit court; authorizing custodians to share subpoenaed materials with other law-enforcement officers and investigators for legitimate investigative purposes with the written authorization of the prosecuting attorney and that officer's or investigator's execution of a disclosure statement; and providing that a designated custodian may retain the record, item or other evidence in his or her possession, care, custody or control until the termination of the investigation or prosecution.

On motion of Senator Carmichael, the Senate refused to concur in the foregoing House amendments to the bill (Eng. Com. Sub. for S. B. 343) and requested the House of Delegates to recede therefrom.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Senate Bill 346**, Updating projects managed by Project Management Office.

A message from The Clerk of the House of Delegates announced the amendment by that body to the title of the bill, passage as amended, to take effect from passage, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Senate Bill 349**, Updating meaning of federal adjusted gross income.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the title of the bill was reported by the Clerk:

**Eng. Senate Bill 349**—A Bill to amend and reenact §11-21-9 and §11-21-71a of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Personal Income Tax; updating the meaning of federal taxable income and certain other terms used in West Virginia Personal Income Tax; changing certain due dates; and specifying effective dates.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment to the title of the bill.

Engrossed Senate Bill 349, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 349) passed with its House of Delegates amended title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 349) takes effect from passage.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Com. Sub. for Senate Bill 104**, Classifying Marshall University Forensic Science Center as a criminal justice agency.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page two, section twenty-four-c, line fifteen, by striking out all of subsection (e);

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 104**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-2-24c, relating to declaring the Forensic DNA Analysis Laboratory of the Marshall University Forensic Science Center to be engaged in administration of criminal justice as that term is defined in 28 C. F. R. 20.3(b); requiring Marshall University Forensic Science Center and the West Virginia State

Police to confer as to available grants and similar possible funding sources and applications therefor; affording West Virginia State Police primacy of decision-making over Marshall University Forensic Science Center as to which entity may apply for certain grants; and directing West Virginia State Police and Marshall University Forensic Science Center to execute an agreement to ensure compliance with the section provisions.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Senate Bill 104, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 104) passed with its House of Delegates amended title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Com. Sub. for Senate Bill 400**, Reducing amount of sales tax proceeds dedicated to School Major Improvement Fund.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Senate Bill 415**, Lengthening maximum term of negotiable certificates of deposit municipal funds can hold.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Senate Bill 426**, Continuing Office of Coalfield Community Development.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Senate Bill 439**, Eliminating requirement that budget director approve requisitions for personal services payment under certain circumstances.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Senate Bill 461**, Updating WV Workforce Investment Act to WV Workforce Innovation and Opportunity Act.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Senate Bill 469**, Clarifying what personal funds are exempt from levy following judgment.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §38-5A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §38-8-1 of said code be amended and reenacted, all to read as follows:

## **CHAPTER 38. LIENS.**

### **ARTICLE 5A. SUGGESTIONS OF SALARY AND WAGES OF PERSONS ENGAGED IN PRIVATE EMPLOYMENT.**

#### **§38-5A-3. Application for suggestee execution against salary or wages; extent of lien and continuing levy; exemption; priority among suggestee executions.**

(a) A judgment creditor may apply to the court in which the judgment was recovered or a court having jurisdiction of the same, without notice to the judgment debtor, for a suggestee execution against any money due or to become due within one year after the issuance of such execution to the judgment debtor as salary or wages arising out of any private employment. If satisfactory proof shall be made, by affidavit or otherwise, of such facts and the fact that the amount due or to become due as salary or wages after the deduction of all state and federal taxes exceeds in any week ~~thirty~~ fifty times the federal minimum hourly wage then in effect, the court, if not a court of record, or if a court of record the clerk thereof, shall issue a suggestee execution against the salary or wages of the judgment debtor and upon presentation of such execution by the officer to whom delivered for collection to the person or persons from which such salary or wages are due and owing or thereafter may become due and owing to the judgment debtor, the execution and the expenses thereof shall become a lien and continuing levy upon the salary or wages due or to become due to the judgment debtor within one year after the issuance of the same, unless sooner vacated or modified as hereinafter provided, to an amount equal to twenty percent thereof and no more, but in no event shall the payments in satisfaction of such an execution reduce the amount payable to the judgment debtor to an amount per week that is less than ~~thirty~~ fifty times the federal minimum hourly wage then in effect. Only one such execution shall be satisfied, at one time, except that in the event two or more such executions have

been served and satisfaction of the one having priority is completed without exhausting the amount of the salary or wages then due and payable that is subject to suggestion under this article the balance of such amount shall be paid in satisfaction, in the order of their priority, of junior suggestee executions against such salary or wages theretofore served.

(b) The suggestee execution by the judgment creditor provided in this section shall include, to the extent possible, the present address, the last four digits of the Social Security number and date of birth of the judgment debtor, which information shall be made available for the purpose of properly identifying the judgment debtor whose salary or wages are being levied upon.

## **ARTICLE 8. EXEMPTIONS FROM LEVY.**

### **§38-8-1. Exemptions of personal property.**

(a) Any individual residing in this state, or the dependent of such individual, may set apart and hold as exempt from execution or other process the following personal property:

(1) Such individual's interest, not to exceed \$5,000 in value, in one motor vehicle;

(2) Such individual's interest, not to exceed \$8,000 in aggregate value, in household goods, furniture, toys, animals, appliances, books and wearing apparel that are held primarily for the personal, family or household use of such individual;

(3) Such individual's aggregate interest, not to exceed \$3,000, in any implements, professional books or tools of such individual's trade;

(4) Such individual's funds on deposit in a federally insured financial institution, ~~wages or salary~~ not to exceed ~~the greater of:~~ (i) ~~\$1,000~~ \$1,100; or (ii) ~~one hundred twenty five percent of the amount of the annualized federal poverty level of such individual's household divided by the number of pay periods for such individual per year;~~ and

(5) Funds on deposit in an individual retirement account (IRA), including a simplified employee pension (SEP), in the name of such individual: *Provided*, That the amount is exempt only to the extent it is not, or has not been, subject to an excise or other tax on excess contributions under Section 4973 or Section 4979 of the Internal Revenue Code of 1986, or both sections, or any successor provisions, regardless of whether the tax is or has been paid.

(b) Notwithstanding the foregoing, in no case may an individual residing in this state, or the dependent of such individual, exempt from execution or other process more than \$15,000 in the aggregate in personal property listed in subdivisions (1), (2), (3) and (4), subsection (a) of this section.

(c) Wages or salary are automatically exempt from execution or other process but only to the extent set forth in section three, article five-a of this chapter. No person may file for an exemption of wages or salary pursuant to this section in an amount above that set forth in section three, article five-a of this chapter.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Senate Bill 469**—A Bill to amend and reenact §38-5A-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §38-8-1 of said code, all relating to suggestions of salary and wages of persons engaged in private employment and exemptions from levy; increasing the amount of salary or wages that are protected from a suggestee execution from thirty times the federal minimum hourly wage then in effect to fifty times the federal minimum hourly wage then in effect; removing wages and salary from items subject to the one-time, \$15,000 exemption; providing that wages and salary are automatically exempted from levy execution up to a certain amount; and clarifying that wages and salary above that automatic exemption may not be exempted from levy.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Senate Bill 469, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 469) passed with its House of Delegates amended title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Com. Sub. for Senate Bill 474**, Exempting DEP construction and reclamation contracts from review and approval.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage, to take effect from passage, of

**Eng. Senate Bill 515**, Authorizing payment of certain claims against state.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Com. Sub. for Senate Bill 581**, Eliminating sunset provision terminating pilot domestic violence court program.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, to take effect from passage, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Com. Sub. for Senate Bill 591**, Relating to voter registration list maintenance and combined voter registration and driver licensing fund.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §3-2-3, §3-2-4a and §3-2-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said Code be amended by adding thereto a new section, designated as §3-2-23a, all to read as follows:

## **ARTICLE 2. REGISTRATION OF VOTERS.**

### **§3-2-3. State authority relating to voter registration; chief election official.**

(a) The Secretary of State, as chief election official of the state as provided in section six, article one-a of this chapter, shall have general supervision of the voter registration procedures and practices and the maintenance of voter registration records in the state and shall have authority to require reports and investigate violations to ensure the proper conduct of voter registration throughout the state and all of its subdivisions. Upon written notice to the clerk of the county commission of a county of the need for voter registration record maintenance and the failure of that clerk to complete such maintenance within ninety days of the notice, the Secretary of State may make changes in the voter registration data necessary to comply with list maintenance requirements of sections

four-a, twenty-three, twenty-five, twenty-six and twenty-seven of this article: *Provided*, that the secretary shall send the notice by certified mail, return receipt requested.

(b) The Secretary of State, as chief election official of the state, is responsible for implementing, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained and administered at the state level that contains the name and registration information of every legally registered voter in the state and assigns a unique identifier to each legally registered voter in the state.

(c) The Secretary of State is hereby designated as the chief election official responsible for the coordination of this state's responsibilities under 42 U.S.C. §1973gg, *et seq.*, the "National Voter Registration Act of 1993". The Secretary of State shall have general supervision of voter registration procedures and practices at agencies and locations providing services as required by the provisions of this article and shall have the authority to propose procedural, interpretive and legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code for application for registration, transmission of applications, reporting and maintenance of records required by the provisions of this article and for the development, implementation and application of other provisions of this article.

#### **§3-2-4a. Statewide voter registration database.**

(a) The Secretary of State shall implement and maintain a single, official, statewide, centralized, interactive computerized voter registration database of every legally registered voter in the state, as follows:

(1) The statewide voter registration database shall serve as the single system for storing and managing the official list of registered voters throughout the state.

(2) The statewide voter registration database shall contain the name, registration information and voter history of every legally registered voter in the state.

(3) In the statewide voter registration database, the Secretary of State shall assign a unique identifier to each legally registered voter in the state.

(4) The statewide voter registration database shall be coordinated with other agency databases within the state and elsewhere, as appropriate.

(5) The Secretary of State, any clerk of the county commission, or any authorized designee of the Secretary of State or clerk of the county commission, may obtain immediate electronic access to the information contained in the statewide voter registration database.

(6) The clerk of the county commission shall electronically enter voter registration information into the statewide voter registration database on an expedited basis at the time the information is provided to the clerk.

(7) The Secretary of State shall provide necessary support to enable every clerk of the county commission in the state to enter information as described in subdivision (6) of this subsection.

(8) The statewide voter registration database shall serve as the official voter registration list for conducting all elections in the state.

(b) The provisions of subdivision (6), subsection (a) of this section notwithstanding, the Secretary of State or any clerk of a county commission shall perform maintenance with respect to the statewide voter registration database on a regular basis as follows:

(1) If an individual is to be removed from the statewide voter registration database he or she shall be removed in accordance with the provisions of 42 U. S. C. §1973gg, *et seq.*, the National Voter Registration Act of 1993.

(2) The Secretary of State shall coordinate the statewide voter registration database with state agency records and shall establish procedures for the removal of names of individuals who are not qualified to vote ~~because of~~ due to felony status or death. No state agency may withhold information regarding a voter's status as deceased or as a felon unless ordered by a court of law.

(c) The list maintenance performed under subsection (b) of this section shall be conducted in a manner that ensures that:

(1) The name of each registered voter appears in the statewide voter registration database;

(2) Only voters who are not registered, who have requested in writing that their voter registration be canceled, or who are not eligible to vote are removed from the statewide voter registration database;

(3) Duplicate names are eliminated from the statewide voter registration database; and

(4) Deceased individuals' names are eliminated from the statewide voter registration database.

(d) The Secretary of State and the clerks of all county commissions shall provide adequate technological security measures to prevent the unauthorized access to the statewide voter registration database established under this section.

(e) The Secretary of State shall ensure, and may perform such maintenance necessary to ensure, that voter registration records in the state are accurate and updated regularly, including the following:

(1) A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters. Under the system, consistent with 42 U. S. C. §1973gg, *et seq.*, registrants who have not responded to a notice sent pursuant to section twenty six, article two of this chapter, who have not otherwise updated their voter registration address, and who have not voted in two consecutive general elections for federal

office shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote;

(2) By participation in programs across state lines to share data specifically for voter registration to ensure that voters who have moved across state lines or become deceased in another state are removed in accordance with state law and 42 U. S. C. §1973gg, *et seq.*; and

(3) Through safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

(f) Applications for voter registration may ~~only~~ be accepted only when the following information is provided:

(1) Except as provided in subdivision (2) of this subsection and notwithstanding any other provision of law to the contrary, an application for voter registration may not be accepted or processed unless the application includes:

(A) In the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number;

(B) In the case of an applicant who has been issued an identification card by the Division of Motor Vehicles, the applicant's identification number; or

(C) In the case of any other applicant, the last four digits of the applicant's Social Security number; and

(2) If an applicant for voter registration has not been issued a current and valid driver's license, Division of Motor Vehicles identification card, or a Social Security number, the Secretary of State shall assign the applicant a number which will serve to identify the applicant for voter registration purposes. The number assigned under this subdivision shall be the unique identifying number assigned under the statewide voter registration database.

(g)(1) The Secretary of State and the Commissioner of the Division of Motor Vehicles shall enter into an agreement to match

and transfer applicable information in the statewide voter registration database with information in the database of the Division of Motor Vehicles to the extent required to enable each official to verify the accuracy of the information provided on applications for voter registration.

(2) The Secretary of State and the Commissioner of the Division of Motor Vehicles shall enter into an agreement for the Division of Motor Vehicles to provide all name fields, residence and mailing address fields, driver's license or state identification number, last four digits of the Social Security number, date of birth, license or identification issuance and expiration dates, and current record status of individuals eligible to register to vote to the Secretary of State for the purpose of voter registration list maintenance comparison through an interstate data-sharing agreement designated by the Secretary of State as permitted by subdivision (2), subsection (e) of this section.

(h) The Commissioner of the Division of Motor Vehicles shall enter into an agreement with the Commissioner of Social Security under 42 U. S. C. §401, *et seq.*, the Social Security Act. All fees associated with this agreement shall be paid for from moneys in the fund created under section twelve of this article.

**§3-2-12. Combined voter registration and driver licensing fund; transfer of funds.**

(a) Fifty cents of each license fee collected pursuant to the provisions of section one, article three, chapter seventeen of this code shall be paid into the State Treasury to the credit of a special revenue fund to be known as the Combined Voter Registration and Driver Licensing Fund. The moneys so credited to such fund may be used by the Secretary of State for the following purposes:

(1) Printing and distribution of combined driver licensing or other agency applications and voter registration forms, or for the printing of voter registration forms to be used in conjunction with driver licensing or other agency applications;

(2) Printing and distribution of mail voter registration forms for purposes of this article;

(3) Supplies, postage and mailing costs for correspondence relating to voter registration for agency registration sites and for the return of completed voter registration forms to the appropriate state or county election official;

(4) Reimbursement of postage and mailing costs incurred by clerks of the county commissions for sending a verification mailing, confirmation of registration or other mailings directly resulting from an application to register, change or update a voter's registration through a driver licensing or other agency;

(5) Reimbursement to state funded agencies designated to provide voter registration services under this chapter for personnel costs associated with the time apportioned to voter registration services and assistance;

(6) The purchase, printing and distribution of public information and other necessary materials or equipment to be used in conjunction with voter registration services provided by state funded agencies designated pursuant to the provisions of this article;

(7) The development of a statewide program of uniform voter registration computerization for use by each county registration office and the Secretary of State, purchase of uniform voter registration software, payment of software installation costs and reimbursement to the county commissions of not more than fifty percent of the cost per voter for data entry or data conversion from a previous voter registration software program;

(8) Payment of up to fifty percent of the costs of conducting a joint program with participating counties to identify ineligible voters by using the United States postal service information as provided in section twenty-five of this article: *Provided*, That such assistance shall be available only to counties which maintain voter registration lists on the statewide uniform voter data system; ~~and~~

(9) Payment of any dues or fees associated with a program to match and transfer data to and from other states;

(10) Resources related to voter registration and list maintenance; and

~~(9)~~ (11) Payment or reimbursement of other costs associated with implementation of the requirements of the National Voter Registration Act of 1993 (42 U. S. C. §1973gg): *Provided*, That revenue received by the fund in any fiscal year shall first be allocated to the purposes set forth in subdivisions (1) through ~~(8)~~ (10), inclusive, of this subsection.

(b) The Secretary of State shall promulgate rules pursuant to the provisions of chapter twenty-nine-a of this code to provide for the administration of the fund established in subsection (a) of this section.

(c) Any balance in the fund created by subsection (a) of this section which exceeds \$100,000 as of June 30, 2017, and on June 30 of each year thereafter, shall be transferred to the General Revenue Fund.

**§3-2-23a. Cancellation of registration of deceased or ineligible voter.**

The Secretary may propose legislative rules regarding the maintenance of the security and privacy of the voter registration records and the procedures to be followed by clerks of the county commission and the Secretary to make changes in voter registration records, including cancellations.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 591**—A Bill to amend and reenact §3-2-3, §3-2-4a, and §3-2-12 of the Code of West Virginia, 1931, as amended, and to amend said Code by adding thereto a new section, designated as §3-2-23a; all relating to additional duties for

the Secretary of State relating to voter registration; authorization of the Secretary of State to undertake voter registration list maintenance; voter registration list maintenance generally; authorizing the Secretary of State to undertake voter registration list maintenance in a county if within ninety days of providing written notice to the clerk of the county commission of the need for voter registration list maintenance the clerk has failed to complete such maintenance; delineating notice requirements; the Combined Voter Registration and Driver Licensing Fund; authorizing Secretary of State to enter into agreement with Division of Motor Vehicles for Division of Motor Vehicles to provide certain information; setting forth information to be provided by Division of Motor Vehicles; permitting Secretary of State to use information for voter registration list maintenance comparison through interstate data-sharing agreement as designated by Secretary of State; identifying additional permissible uses of funds in Combined Voter Registration and Driver Licensing Fund; providing for periodic transfer of funds from that fund to the General Revenue Fund under certain circumstances; cancellation of registration of deceased or ineligible voters generally; and providing rule-making authority to the Secretary of State to accomplish the provisions of the bill.

On motion of Senator Carmichael, the following amendment to the House of Delegates amendments to the bill was reported by the Clerk and adopted:

**Eng. Com. Sub. for Senate Bill 591**—A Bill to amend and reenact §3-2-3, §3-2-4a, and §3-2-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated as §3-2-23a, all relating generally to creation and maintenance of voter registration lists generally; creating additional duties for Secretary of State relating to voter registration; authorizing Secretary of State to undertake voter registration list maintenance in a county under certain circumstances; requiring Secretary of State to provide written notice to clerk of county commission of need for voter registration record maintenance and allow ninety days before undertaking voter registration list maintenance in a county; delineating notice requirements; clarifying duty of Secretary of State to perform certain ongoing voter registration database maintenance; directing Secretary of

State to enter into agreement with Division of Motor Vehicles for Division of Motor Vehicles to provide certain information regarding persons eligible to vote; setting forth information to be provided by Division of Motor Vehicles; permitting Secretary of State to use information for voter registration list maintenance comparison through interstate data-sharing agreement as designated by Secretary of State; identifying additional permissible uses of funds in Combined Voter Registration and Driver Licensing Fund; providing for periodic transfer of funds from that fund to General Revenue Fund under certain circumstances; authorizing cancellation of registration of deceased or ineligible voters; and granting certain rule-making authority to Secretary of State.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments, as amended.

Engrossed Committee Substitute for Senate Bill 591, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 591) passed with its Senate amended title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 591) takes effect from passage.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Com. Sub. for Senate Bill 592**, Relating to pipeline safety.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Senate Bill 648**, Allowing local authorities permit flashing traffic signals during low traffic times.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Senate Bill 656**, Creating Upper Kanawha Valley Resiliency and Revitalization Program.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Senate Bill 678**, Relating to ownership and use of conduit providing telephone service.

### **Executive Communications**

Senator Cole (Mr. President) laid before the Senate the following communication from His Excellency, the Governor, regarding annual reports, which communication was received:

STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
CHARLESTON

March 8, 2016

**EXECUTIVE MESSAGE NO. 3**  
**2016 REGULAR SESSION**

The Honorable William P. Cole, III  
President, Senate of West Virginia  
State Capitol, Rm 229M  
Charleston, West Virginia 25305

Dear Mr. President:

Pursuant to the provisions of section twenty, article one, chapter five of the Code of West Virginia, I hereby certify that the following annual reports have been received in the Office of the Governor:

Accountancy, West Virginia Board of; Annual Report FY June 30, 2014 – June 30, 2015

Acupuncture, West Virginia Board of; Annual Report 2014-2015 Fiscal Year

Aeronautic Commission, West Virginia; Annual Report 2015

Alcohol Beverage Control Administration, West Virginia Department of Revenue; Annual Report FY 2015

Architects Board, State of West Virginia; Annual Report Fiscal Years 2013 & 2014; 2014 Fiscal year fee schedule

Attorney General, Office of the; Annual Report 2015

Barbers & Cosmetologists, Board of; Annual Report 2015

Benedum Foundation; Annual Report 2014

Boxley; Sustainability Report 2014

Chiropractic, West Virginia Board of; Biennium Report July 1, 2013-June 30, 2015

Citizen Review Panel, West Virginia; Annual Report October 1, 2014-September 30, 2015

Closing the Expectations Gap: Achieve- National Education Summit on High Schools; Annual Report 2014

Coal Mine Health & Safety, Board of; Annual Report 2015

Commercial Motor Vehicle Weight and Safety Enforcement Advisory Committee; Annual Report 2015

Consumer Advocate Division, Public Service Commission; Annual Report 2016

Consumer Protection and Antitrust Division, West Virginia Attorney General; Annual Report November 20, 2014-November 19, 2015

Consumer Advocate, West Virginia Insurance Commission, Office of the; Annual Report 2015

Contractors Association of West Virginia; Annual Report 2015

Corrections, West Virginia Department of Military Affairs & Public Safety, Division of; Annual Report 2015

Counseling, West Virginia Board of; Annual Report 2013-2015

Crime Victims Compensation Fund, Court of Claims; Annual Report 2015

Deaf and Hard of Hearing, West Virginia Commission for the; Annual Report 2015

Dietitians, West Virginia Board of Licensed; Annual Report FY 2015

Drinking Water Treatment Revolving Fund, West Virginia; Annual Report year ending June 30, 2015

Energy, West Virginia Division of; Annual Report December 2014-November 2015

Engineers, West Virginia Board of Registration for Professional; Annual Report 2015

Entrepreneurial Studies & Development, Center of; WV Listening Tour Summary Report 2014

Environmental Protection, Department of; Annual Report Fiscal Year 2013-14

Family Protection Services Board; Annual Report 2013-2014

Financial Institutions, West Virginia Division of; Annual Report FY June 30, 2015

Fire Commission, West Virginia State; Annual Report FY 2015

Greater Kanawha Valley Foundation; Annual Report 2015 Annual Report

Grievance Board, West Virginia Department of Administration, Public Employees; Annual Report 2015

Health Care Authority, West Virginia; Annual Report 2015

Hearing Aid Dealers Licensure Board, West Virginia; Annual Report Fiscal Year 2014-2015

Herbert Henderson Office of Minority Affairs; Annual Report 2015

Infrastructure & Jobs Development Council, West Virginia; Annual Report year ended June 30, 2015

Insurance Commissioner, West Virginia Office of; Annual Report 2014

Interstate Insurance Product Regulation Commission (IIPRC);  
Annual Report 2014 period ending December 31, 2014

Interstate Mining Compact Commission; Annual Report 2014

James “Tiger” Morton Catastrophic Illness Commission;  
Annual Report 2015

JP Morgan Chase and Co.; Annual Report 2014

Lincoln Primary Care Center, Inc.; Annual Report 2015

Lottery, West Virginia; Annual Report FY June 30, 2015 and  
2014

Martin Luther King Jr., State Holiday Commission; Annual  
Report 2015

Massage Therapy Licensure Board, West Virginia; Annual  
Report 2015 Fiscal Year

Medical Imaging & Radiation Therapy Technology BOE, West  
Virginia; Annual Report FY 2014-2015

Medical Malpractice Report, Insurance Commissioner, State of  
West Virginia; Annual Report 2015

Medicine, West Virginia Board of; Biennium Report July 1,  
2013-June 30, 2015

Miners’ Health, Safety and Training, West Virginia  
Department of Commerce, West Virginia Office of; Annual Report  
FY 2014

Municipal Home Rule Board; Annual Report January 1, 2015-  
December 31, 2015

National Guard Youth Foundation; Mid-Year-Report 2015

National Shooting Sports Foundation, Inc.; Impact Report on  
Firearms & Ammunition Industry 2014

National Shooting Sports Foundation, Inc.; Annual Report 2015

Natural Resources, West Virginia Division of; Annual Report 2014-2015

Nurses Board, West Virginia Registered; Biennium Report July 1, 2013-June 30, 2015

Nursing Home & Assisted Living Facilities in West Virginia; Annual Report October 1, 2013-September 30, 2014

Nursing Home Administrators Licensing Board, West Virginia; Annual Report FY 2015

Ohio River Valley Water Sanitation Commission; Annual Report FY 2015

Potomac River Basin, Interstate Commission on the; Financial Statement October 1, 2013-September 30, 2014

Privacy Office, West Virginia State; Annual Report 2015

Public Defender Services, West Virginia Department of Administration; Annual Report FY-2015

Public Utility Assessments, State of West Virginia; Tax Year 2016

Racing Commission, Department of Revenue, West Virginia; Annual Report 2014

Real Estate Appraiser Licensing and Certification Board, West Virginia; Annual Report FY 2014-2015

Real Estate Commission, Annual Report 2015

Region 4 Planning and Development Council; Comprehensive Economic Development Strategy (CEDS) Five Year Plan 2014-2018

Rehabilitation Facilities, West Virginia Association of; Annual Report FY 2015

Rehabilitation Services, WV Statewide Independent Living Council, West Virginia Department of; Annual Report 2015

Rehabilitation Services, West Virginia Division of; Annual Report 2015

Retirement Board, WV State Police Disability Experience, West Virginia Consolidated Public; Annual Report FY 2015

Sanitarians, West Virginia Board of; Annual Report 2015

Statewide Independent Living Council; Annual Report Fiscal Year 2014, October 1, 2013-September 30, 2014

Tax Department, West Virginia State Tax; Expenditure Study 2016

Tax Department, West Virginia; 51st Biennial Report

Tax Increment Financing: Development Office: Department of Commerce; Annual Report 2014 year ended June 30, 2014

Treasury Investments, West Virginia Board of; Annual Report year ended June 30, 2015

Veterinary Medicine, West Virginia Board of; Biennium Report July 1, 2013-June 30, 2015

Water & Waste Management's Groundwater Program, West Virginia Department of Environmental Protection, Division of; Biennial Report, July 2, 2013- June 30, 2015

Water Development Authority, West Virginia; Annual Report FY 2015

Water Development Authority, West Virginia, West Virginia; Annual Report year ended June 30, 2015

West Virginia Association of Counties; Annual Report FY 2014-2015

Women's Commission, West Virginia; Annual Report 2015

Youth Services, Department of Health and Human Resources, Bureau of Children and Families, West Virginia; Annual Report FY 2014

Very truly yours,

Earl Ray Tomblin  
Governor

cc: Clark Barnes, Clerk, Senate of West Virginia  
Division of Culture and History

Senator Cole (Mr. President) then laid before the Senate the following communication from His Excellency, the Governor, submitting the annual probation and parole report, which was received:

STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
CHARLESTON

March 8, 2016

**EXECUTIVE MESSAGE NO. 4  
2016 REGULAR SESSION**

The Honorable William P. Cole, III  
President, Senate of West Virginia  
State Capitol, Rm 228M  
Charleston, West Virginia 25305

Dear Mr. President:

In accordance with the provisions of section 11, article 7 of the Constitution of the State of West Virginia, and section 16, article 1, chapter 5 of the Code of West Virginia, I hereby report that I

granted no pardons or reprieves, nor commuted punishment to any person, nor remitted any fines or penalties, during the period of March 14, 2015 through March 8, 2016.

Very truly yours,

Earl Ray Tomblin  
Governor

cc: Clark Barnes, Senate of West Virginia  
Division of Archives and History

Senator Cole (Mr. President) next laid before the Senate the following communication from His Excellency, the Governor:

STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
CHARLESTON

March 9, 2016

**EXECUTIVE MESSAGE NO. 5  
2016 REGULAR SESSION**

TO: The Honorable Members of the  
West Virginia Senate

Ladies and Gentlemen:

I respectfully withdraw the following nomination for your advice and consent from Executive Message No. 2 dated March 2, 2016; the nominee has declined her appointment:

405. For Member, State Personnel Board, Anna Dailey, Charleston, Kanawha County, for the term ending June 30, 2017.

Thank you for correcting your records.

Sincerely,

Earl Ray Tomblin  
Governor

Which communication was received and referred to the Committee on Confirmations.

The Clerk then presented communications from His Excellency, the Governor, advising that on March 8, 2016, he had approved **Enr. Committee Substitute for Senate Bill 421**, **Enr. Committee Substitute for Senate Bill 594** and **Enr. Committee Substitute for House Bill 4163**.

The Senate proceeded to the fourth order of business.

Senator Maynard, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 8th day of March, 2016, 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. 4235)**, Relating to the publication requirements of the administration of estates.

And,

**(H. B. 4362)**, Establishing a felony offense of strangulation.

Respectfully submitted,

Mark R. Maynard,  
*Chair, Senate Committee.*  
John B. McCuskey,  
*Chair, House Committee.*

Senator Maynard, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 9th day of March, 2016, 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 Com. Sub. for S. B. 27**), Permitting county commissions hire outside attorneys for collection of taxes through courts.

(**Com. Sub. for S. B. 254**), Not allowing county park commissions to prohibit firearms in facilities.

(**Com. Sub. for S. B. 379**), Relating to candidate filing fees.

(**S. B. 509**), Removing 10-day requirement Division of Labor has to inspect amusement rides and attractions.

And,

(**Com. Sub. for H. B. 4228**), Relating to transportation network companies.

Respectfully submitted,

Mark R. Maynard,  
*Chair, Senate Committee.*  
John B. McCuskey,  
*Chair, House Committee.*

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2205**, Creating the crime of prohibited sexual contact by a psychotherapist.

And has amended same.

**Eng. Com. Sub. for House Bill 4174**, Exempting activity at indoor shooting ranges from the prohibition of shooting or discharging a firearm within five hundred feet of any church or dwelling house.

And has amended same.

And,

**Eng. Com. Sub. for House Bill 4575**, Creating criminal offenses relating to money laundering.

And has amended same.

And reports the same back with the recommendation that they each do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 2205, 4174 and 4575) contained in the preceding report from the Committee on the Judiciary were each taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4013**, Requiring a person desiring to vote to present documentation identifying the voter.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4013) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Ferns, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

**Eng. Com. Sub. for House Bill 4035**, Permitting pharmacists to furnish naloxone hydrochloride.

And has amended same.

And,

**Eng. Com. Sub. for House Bill 4537**, Relating to the regulation of chronic pain clinics.

And has amended same.

And reports the same back with the recommendation that they each do pass, as amended; but under the original double committee references first be referred to the Committee on the Judiciary.

Respectfully submitted,

Ryan J. Ferns,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 4035 and 4537) were each taken up for immediate consideration, second committee references dispensed with, read a first time and ordered to second reading.

Senator Ferns, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

**Eng. Com. Sub. for House Bill 4038**, Relating to insurance requirements for the refilling of topical eye medication.

And has amended same.

And,

**Eng. Com. Sub. for House Bill 4040**, Regulating step therapy protocols in health benefit plans.

And has amended same.

And reports the same back with the recommendation that they each do pass, as amended.

Respectfully submitted,

Ryan J. Ferns,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 4038 and 4040) contained in the preceding report from the Committee on Health and Human Resources were each taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4314**, Prohibiting the sale of powdered or crystalline alcohol.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4314) contained in the

preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

**Eng. House Bill 4316**, Relating to reimbursement of certification fee for National Board for Professional Teaching Standards certification.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Dave Sypolt,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. 4316) contained in the preceding report from the Committee on Education was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4323**, Relating to the reporting of emergency incidents by well operators and pipeline operators.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4323) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Ferns, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

**Eng. Com. Sub. for House Bill 4352**, Relating to the selling of certain state owned health care facilities by the Secretary of the Department of Health and Human Resources.

And reports the same back with the recommendation that it do pass; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Ryan J. Ferns,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4352) was taken up for immediate consideration, second committee reference dispensed with, read a first time and ordered to second reading.

Senator Ferns, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

**Eng. Com. Sub. for House Bill 4176**, Permitting the Regional Jail and Correctional Facility Authority to participate in the addiction treatment pilot program.

And,

**Eng. Com. Sub for House Bill 4463**, Permitting the practice of telemedicine.

And reports the same back with the recommendation that they each do pass; but under the original double committee references first be referred to the Committee on the Judiciary.

Respectfully submitted,

Ryan J. Ferns,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, Engrossed Committee Substitute for House Bill 4176 contained in the preceding report from the Committee on Health and Human Resources was taken up for immediate consideration, read a first time, ordered to second reading and, under the original double committee reference, was then referred to the Committee on the Judiciary.

At the request of Senator Carmichael, unanimous consent being granted, Engrossed Committee Substitute for House Bill 4463 contained in the preceding report from the Committee on Health and Human Resources was taken up for immediate consideration, read a first time and ordered to second reading.

Thereafter, at the request of Senator Carmichael, unanimous consent was granted to dispense with the second committee reference of Engrossed Committee Substitute for House Bill 4463.

Senator Ferns, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

**Eng. House Bill 4594**, Relating to predoctoral psychology internship qualifications.

And reports the same back with the recommendation that it do pass; but under the original double committee reference first be referred to the Committee on Government Organization.

Respectfully submitted,

Ryan J. Ferns,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. 4594) contained in the preceding report from the Committee on Health and Human Resources was taken up for immediate consideration, second committee reference dispensed with, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 4618**, Relating to limitations on use of a public official's name or likeness.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. 4618) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 4655**, Prohibiting insurers, vision care plan or vision care discount plans from requiring vision care providers to provide discounts on noncovered services or materials.

With amendments from the Committee on Banking and Insurance pending;

And has also amended same.

Now on second reading, having been read a first time and referred to the Committee on the Judiciary on March 8, 2016;

And reports the same back with the recommendation that it do pass as last amended by the Committee on the Judiciary.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Walters, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**Eng. House Bill 4662**, Permitting the Superintendent of the State Police to collect \$3 dollars from the sale of motor vehicle inspection stickers.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Chris Walters,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. 4662) contained in the preceding report from the Committee on Transportation and Infrastructure was taken up for immediate consideration, read a first time, ordered to second reading and, under the original double committee reference, was then referred to the Committee on Finance, with amendments from the Committee on Transportation and Infrastructure pending.

Senator Ferns, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

**Eng. House Bill 4728**, Relating to schedule three controlled substances.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Ryan J. Ferns,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. 4728) contained in the preceding report from the Committee on Health and Human Resources was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Walters, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**Eng. House Bill 4733**, Relating to requiring the Commissioner of Highways to develop a statewide communications plan known as the Comprehensive Public Involvement Plan.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Government Organization.

Respectfully submitted,

Chris Walters,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. 4733) contained in the preceding report from the Committee on Transportation and Infrastructure was taken up for immediate consideration, read a first time, ordered to second reading and, under the original double committee reference, was then referred to the Committee on Government Organization, with amendments from the Committee on Transportation and Infrastructure pending.

The Senate proceeded to the sixth order of business.

Senators Williams and Stollings offered the following resolution:

**Senate Concurrent Resolution 65**—Requesting Division of Highways name bridge number 16-48-28.54 EB & WB (16A132, 16A133) (39.06601, -78.66368), locally known as Sauerkraut Run EB & WB, carrying US 48 (Cor. H) over County Route 23/9 and Sauerkraut Run in Hardy County, the “John and Wilbur Hahn Dutch Hollow Pioneers Bridge”.

Whereas, John and Wilbur Hahn, the youngest sons of Lorenza and Amanda Rebecca Michael Hahn, family of five girls and three boys, went to school at Maple Grove, where they only had school for about four months. The Hahns trace their ancestry back to the Rhine Valley of Germany and immigrants from there who arrived in the United States sometime in the mid-to late 1800s. The Hahns came over on a boat with members of the Michael family and branches of both families settled in Dutch Hollow. They farmed and, when the demand arose, cut timber in the woods around their homesteads. John, who is deceased, and Wilbur, who is age ninety,

carried on that pioneering tradition of farming and pulpwood sawmill from 1939. They owned and operated a small gasoline-powered sawmill on their farm, with some help from John's son Mickey in Dutch Hollow, Hardy County, despite the changes brought to the industry by modern technology. The brothers have remained part of a close-knit family, still enjoying Sunday dinners with relatives at the Hahn farmhouse, located near the site of the sawmill; and

Whereas, Naming bridge 16-48-28.54 EB & WB (16A132, 16A133) (39.06601, -78.66368), locally known as Sauerkraut Run EB & WB, carrying US 48 (Cor. H) over County Route 23/9 and Sauerkraut Run in Hardy County, the "John and Wilbur Hahn Dutch Hollow Pioneers Bridge" is an appropriate recognition of their family's pioneering contributions to their state, community and Hardy County; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name the bridge 16-48-28.54 EB & WB (16A132, 16A133) (39.06601, -78.66368), locally known as Sauerkraut Run EB & WB, carrying US 48 (Cor. H) over County Route 23/9 and Sauerkraut Run in Hardy County, the "John and Wilbur Hahn Dutch Hollow Pioneers Bridge"; and, be it

*Further Resolved,* That the Commissioner of the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the "John and Wilbur Hahn Dutch Hollow Pioneers Bridge"; and, be it

*Further Resolved,* That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways and Wilbur Hahn and his family and the families of John Hahn.

Which, under the rules, lies over one day.

Senators Snyder, Stollings, Romano and Unger offered the following resolution:

**Senate Concurrent Resolution 66**—Requesting the Joint Committee on Government and Finance to establish a select committee to study all aspects of the lottery, gaming and live racing industry in West Virginia.

Whereas, West Virginia's lottery, gaming and live racing industries have become significant revenue sources for the State of West Virginia, as well as providing thousands of jobs to West Virginians; and

Whereas, The live racing industry has a long and storied history, beginning in 1787 when George Washington's youngest brother Charles raced horses through the streets of what would become Charles Town, West Virginia; and

Whereas, Formal horse racing tracks were established in West Virginia some years later, with the racetrack at Charles Town opening in 1933 and the precursor to Mountaineer Racetrack being founded in 1937. West Virginia greyhound racing followed with the opening of Wheeling Downs, a facility which found its racing origin in 1937 and in 1985, Tri-State Greyhound Park, now Mardi Gras Casino and Racetrack, opened; and

Whereas, In an effort to protect and preserve West Virginia's celebrated racing industry and the thousands of jobs associated therewith, the West Virginia Legislature voted to allow slot-machine style video lottery in 1994, and casino-style table games in 2007, at our state's four racetracks, with approval by the local electorate, in accord with the provisions of article twenty-two-c, chapter twenty-nine of the West Virginia Code; and

Whereas, Each of the four counties in West Virginia where a racetrack is located ultimately exercised their referendum rights under section seven, article twenty-two-c, chapter twenty-nine of the code, and voted to approve racetrack video lottery and table games at their respective racetrack facilities based on the promise that a portion of the revenues generated would be used to preserve and protect live racing, as well as promote the industry of breeding thoroughbred horses and greyhounds while creating greenspace; and

Whereas, Invariably, after five years, section seven, article twenty-two-c, chapter twenty-nine of the code also provides for a subsequent local county recall referendum to revisit the decision by local voters to approve casino style gaming at the racetrack venues; and

Whereas, The “racinos” in West Virginia not only employ thousands of West Virginians and generate hundreds of millions of dollars of revenue for state government, the statutory structure by which they are licensed and operate, has fostered the development of live racing and breeding of thoroughbreds and greyhounds as an industry as provided for in statute; and

Whereas, Many individuals, companies, partnerships and entities have made and continue to make substantial investments in West Virginia based on the statutory framework designed to preserve and protect live racing and promote the industry of breeding of thoroughbred horses and greyhound racing stock; and

Whereas, In addition to supplementing racing and local governments, moneys generated by gaming at our state’s racetracks have been used to bolster our state’s general revenue fund as well as the state’s Development Office Promotion Fund, debt reduction funds, State Capitol improvements, the Division of Tourism, and to finance public school construction through the West Virginia School Building Authority, fund the Promise Scholarship Program, contribute to racetrack employee pensions and capital improvements for racetrack facilities; and

Whereas, West Virginia’s “racino” model proved most successful, becoming a reliable source of income for the state, but now the model is confronted with declining levels of performance for West Virginia; and

Whereas, Until recent years, West Virginia’s four “racinos” benefitted from modest market competition in neighboring states, thereby claiming a large portion of the gaming market east of the Mississippi River; and

Whereas, Our surrounding states have learned from our successful gaming regulations and have implemented similar models, allowing for new casino properties to open near to West Virginia's borders in Ohio, Pennsylvania and Maryland; and

Whereas, Though West Virginia's four "racinos" once enjoyed little competition for regional gaming dollars, there are now approximately twenty new casinos in neighboring states with which West Virginia's "racinos" must compete for revenues and others under yet to become active which increases the competition for regional gaming dollars; and

Whereas, Due to this competition, racing and gaming revenues upon which our state has become so dependent are decreasing at a rapid pace, which creates a diminishing amount of money for all of the distributees of money generated by "racinos" and allocated in accordance with current law; and

Whereas, In addition to the loss of revenues for the state, the jobs of thousands of West Virginia families who rely on the live racing and gaming industries for their livelihood are also at risk; and

Whereas, There may be opportunities to capture additional revenues from the live racing, gaming and lottery enterprises in West Virginia, including models from other jurisdictions involving off-track betting; Automated Deposit Wagering or ADW to allow for convenient pari-mutuel wagering; equi-lottery; marketing West Virginia's casino and live racing enterprises to regional and national markets; evaluating and improving marketing strategies of the West Virginia Lottery; evaluating the operational efficiencies and effectiveness of the West Virginia Lottery, including a comparative analysis with similar sized lottery operations of the various states as to cost and number of employees; to evaluate privatization opportunities within the gambit of West Virginia Lottery operations from the perspective of overall effectiveness, cost savings and productivity; review and analyze the findings of the 2015 Report of the Select Committee of the West Virginia Racing Commission containing recommendations for enhancement of live racing in West Virginia; and in general review in the entirety

role of, efficiency, cost and effectiveness of state government in overseeing gaming, lottery and live racing activities in West Virginia to provide greater understanding by legislative policymakers of such activities in order to better serve all of West Virginia citizens; and

Whereas, In recognition of the vitally important component they represent of the West Virginia economic and revenue base, the time has come to revisit the state's gaming, lottery and live racing industry structures to determine a course of action that is in the best interest of West Virginia and its people; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance establish a select committee to study all aspects of the lottery, gaming and live racing industry in West Virginia; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance establish a select committee consisting of ten members, being five from the House of Delegates and five from the Senate with no more than three members from each house from a single political party, to be responsible for a comprehensive study of West Virginia's racing and gaming industries as provided herein below, including recommending to and coordinating professional services procured in furtherance of the objectives herein described, conducting live hearings at sites determined by the committee to be optimum for gaining knowledge essential to making informed decisions regarding the areas of inquiry referenced herein, and receiving the testimony of persons directly involved in all aspects of the lottery, gaming and live racing industry in West Virginia; and, be it

*Further Resolved,* That the select committee is hereby requested to perform a comprehensive study of West Virginia's gaming, lottery and live racing industries, which said study shall include, but not be limited to, the following objectives: (1) A review of all related laws, rules, regulations and operations associated with all facets of the West Virginia Lottery, including the advisability of privatization of operational aspects of lottery

operations; (2) a review of the 2015 Report of the Select Committee of the West Virginia Racing Commission and the recommendations therein contained, along with all laws, rules and regulations of live racing of greyhounds and thoroughbred horses, with recommendations for the modernization and streamlining of the same and maximization of revenues for West Virginia and for live racing interests, including recommendations which enhance the convenience of the consuming public to engage in pari-mutuel wagering on races conducted at West Virginia's racetracks consistent with the convenience they enjoy to place bets on races in foreign jurisdictions; (3) a review of all laws, rules and regulations associated with the business of both greyhound breeding and thoroughbred breeding, with recommendations for modernization and streamlining of the same consistent with providing continuing viable opportunities for these activities as a component of West Virginia's live racing industry and the jobs it represents; (4) a comprehensive review of the flow of revenues generated from racetrack video lottery, table games and any other sources contributing to money administered by the West Virginia Lottery in the form of excess lottery proceeds as a means of information for state policymakers; (5) a comprehensive investigation of appropriate governing structures for live racing and gaming activities from neighboring jurisdictions and beyond, with a recommendation of revisions and/or statutory overhaul of the governance of all forms of gaming in West Virginia, including general lottery, adult video lottery, racetrack video lottery and table games; (6) a comparative analysis of the job functions of the West Virginia Racing Commissions with comparable agencies in jurisdictions with a similar racing presence to determine the appropriateness of staff and funding levels with recommendations as to appropriate levels of each; (7) an analysis of the staff and funding levels associated with administration of all facets of the West Virginia Lottery, recognizing its unique configuration of administering conventional lottery operations, adult video lottery, racetrack video lottery and table games, and recommendations for economizing the operations of the West Virginia Lottery consistent with best industry practices; (8) an analysis of innovative and creative additions to West Virginia's gaming mix, including innovative and creative ways of more efficiently and profitably

administering West Virginia's gaming activities, of providing for convenient consumer access to products offered within the array of gaming products offered by West Virginia, to provide policymakers on the status of Internet gaming as a potential offering in West Virginia, and to identify any and all prospects which may enhance revenue generation by the entirety of West Virginia's gaming activities of all descriptions through new and additional games or manner of delivery of products to the lottery and gaming consuming public; (9) the continuing legal effects, if any, of referendums on gaming heretofore undertaken to approve such in Jefferson, Hancock, Ohio and Kanawha counties, as well as the legal effects, if any, to reexercise those rights as provided in statute; and to provide all and any suggestions for the improvement, modernization, efficiency and economization of West Virginia's entire complement of gaming activities, including live racing; and, be it

*Further Resolved*, That stakeholder representatives in all facets of West Virginia's gaming industry of lottery, "racinos", live racing, greyhound breeding and thoroughbred breeding, along with the solicitation of input from citizens living in communities which host live racing activities, be actively engaged as part of any study process through formal information gathering such as open meetings, public hearings, and surveys constructed to gather such citizen input; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2017, on its findings, conclusions and recommendations, together with drafts of any legislation necessary 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.

Which, under the rules, lies over one day.

Senators Palumbo, Stollings and Unger offered the following resolution:

**Senate Resolution 62**—Congratulating the Charleston Catholic golf team for winning the 2015 Class A State Championship.

Whereas, The Charleston Catholic golf team had a spectacular year on their way to winning the school’s fifth consecutive state championship; and

Whereas, By capturing the state golf championship, Charleston Catholic became the first school in state history to win five consecutive state titles in any division; and

Whereas, The Charleston Catholic golf team is led by coach William “Bill” Gillispie and includes team members: Nick Casingal, Alexander Giatras, Cameron Blakely and Nate DeTemple; and

Whereas, The Charleston Catholic golf team overcame adversity and a two-stroke deficit after the first day of the state tournament, in route to winning the title by seven shots; and

Whereas, The 2015 Charleston Catholic golf team will go down in state history as one of the best high school golf teams ever assembled in the state of West Virginia; and

Whereas, The 2015 Charleston Catholic golf team is a shining example to all West Virginians of what can be accomplished with dedication, commitment and teamwork; therefore, be it

*Resolved by the Senate:*

That the Senate hereby congratulates the Charleston Catholic golf team for winning the 2015 Class A State Championship; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to the Charleston Catholic High School golf team.

At the request of Senator Palumbo, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with, and adopted.

On motion of Senator Carmichael, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and proceeded to the seventh order of business.

**Com. Sub. for House Concurrent Resolution 5, U.S. Army PV2 Eskridge A. Waggoner Memorial Bridge.**

On unfinished business, coming up in regular order, was reported by the Clerk.

The following amendment to the resolution, from the Committee on Transportation and Infrastructure, was reported by the Clerk and adopted:

On page two, in the first Further Resolved clause, by striking out "PV2" and inserting in lieu thereof "PVT".

The question being on the adoption of the resolution (Com. Sub. for H. C. R. 5), as amended, the same was put and prevailed.

*Ordered,* That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Com. Sub. for House Concurrent Resolution 17, SGT Larry Joseph Whitt Bridge.**

On unfinished business, coming up in regular order, was reported by the Clerk.

The following amendments to the resolution, from the Committee on Transportation and Infrastructure, were reported by the Clerk, considered simultaneously, and adopted:

On page two, in the Resolved clause, before "SGT" by inserting the words "U. S. Army";

On page two, in the first Further Resolved clause, before “SGT” by inserting the words “U. S. Army”;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Com. Sub. for House Concurrent Resolution 17**—Requesting the Division of Highways name Greenville Road Bridge, located in Logan County near the town of Man which traverses Rock House Creek, the “U. S. Army SGT Larry Joseph Whitt Memorial Bridge”.

The question being on the adoption of the resolution (Com. Sub. for H. C. R. 17), as amended, the same was put and prevailed.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for House Bill 2904**, Requiring the clerk of a county commission to maintain a county ordinance book.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2904) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 4171**, Relating to the public school calendar.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: Facemire and Palumbo—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4171) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: Facemire and Palumbo—2.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4171) takes effect from passage.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence in the changed effective date.

**Eng. Com. Sub. for House Bill 4188**, Relating to the development and implementation of a program to facilitate commercial sponsorship of rest areas.

Having been read a third time on yesterday, Tuesday, March 8, 2016, and now coming up in regular order, was reported by the Clerk.

On motion of Senator Carmichael, the bill was committed to the Committee on Rules.

**Eng. House Bill 4246**, Changing the Martinsburg Public Library to the Martinsburg-Berkeley County Public Library.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Laird, Leonhardt, Maynard, Miller, Mullins, Prezioso, Romano, Stollings, Sypolt, Takubo, Trump, Walters, Woelfel, Yost and Cole (Mr. President)—26.

The nays were: Beach, Kessler, Kirkendoll, Palumbo, Plymale, Snyder, Unger and Williams—8.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4246) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Laird, Leonhardt, Maynard, Miller, Mullins, Prezioso, Romano, Stollings,

Sypolt, Takubo, Trump, Walters, Woelfel, Yost and Cole (Mr. President)—26.

The nays were: Beach, Kessler, Kirkendoll, Palumbo, Plymale, Snyder, Unger and Williams—8.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4246) takes effect from passage.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 4309**, Increasing criminal penalties for conviction of certain offenses of financial exploitation of an elderly person.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4309) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. House Bill 4309**—A Bill to amend the Code of West Virginia, 1931, by adding thereto a new article, designated §55-7I-1, §55-7I-2, §55-7I-3, §55-7I-4, §55-7I-5 and §55-7I-6; and to amend and reenact §61-2-29b of said code, all relating generally to protections against financial exploitation of elderly persons, protected persons and incapacitated adults; establishing cause of action against a person who commits an act of financial exploitation against an elderly person, protected person or incapacitated adult; defining terms; restricting certain defenses which, standing alone, are based on legal relationship to an elderly person, protected person or incapacitated adult; providing for court-authorized remedies; authorizing award of punitive damages; providing for award of costs and attorneys' fees; establishing standard of proof; establishing statute of limitations for actions brought under article; authorizing court to freeze assets and order injunctive relief; providing options court may exercise if a person violates an injunction; providing penalty for violating an injunction; clarifying criminal penalties for conviction of certain offenses of financial exploitation of an elderly person, protected person or incapacitated adult; and increasing criminal penalty for the offense of financial exploitation of \$1,000 or more.

*Ordered,* That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 4340**, Amending licensing requirements for an act which may be called Lynette's Law.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4340) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4340) takes effect from passage.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 4345**, Repealing the West Virginia Permitting and Licensing Information Act.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4345) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 4378**, Relating to access to and receipt of certain information regarding a protected person by certain relatives of the protected person.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4378) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. House Bill 4378**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §44A-3-17 and §44A-3-18, all relating to access to and receipt of certain information regarding a protected person by certain relatives of the protected person; authorizing relatives of a protected person to petition the circuit court for access and

information about a protected person; defining “relative”; providing a relative may petition the court for an order granting access to a protected person; setting forth time standards in which to conduct a hearing after a petition is filed; providing for an emergency hearing under particular circumstances; providing for service of a petition upon a guardian and setting time standards for service thereof; providing for the entry of an order by the court following notice and hearing conducted thereon; providing standards for a court to observe and implement in issuing a ruling on a petition; providing the court may award attorney’s fees and costs be paid to a prevailing party; setting forth particular duties for a guardian to provide relatives notice about a protected person’s condition and circumstances; authorizing court to retain jurisdiction; regarding dissemination of information about a protected person to relatives; and providing a guardian method whereby may be relieved of responsibility for providing information regarding a protected person to a relative.

*Ordered,* That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 4383,** Making individuals responsible for the costs relating to the filing of excessive false complaints.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4383) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 4383**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5-30-1, relating to excessive filing of false complaints; defining terms; providing for the discretionary suspension of investigatory obligations by agencies or departments under certain circumstances; setting forth time frames for determination of excessive false complaints; requiring false complaints, as defined, be shown by clear and convincing evidence; limiting the time frame investigatory obligations may be suspended; requiring the agency or department of the state to keep written records related to false complaints; providing for exceptions in the agency's or department's sole discretion; providing for written notice of determinations that a complaint was a false complaint; providing that a copy of this article accompany notices; providing that written notice also be provided to the Governor, Speaker of the House and President of the Senate; providing for exceptions to this article for emergency investigations and the West Virginia State Police; providing for civil actions; establishing burden of proof and remedies for civil actions; and preserving other available remedies of an agency or department.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 4417**, Increasing wages protected from garnishment.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4417) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 4448**, Clarifying that communication by a lender or debt collector which is allowed under the West Virginia Consumer Credit and Protection Act, likewise does not violate the provisions of the West Virginia Computer Crime and Abuse Act.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: Facemire and Romano—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4448) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 4612**, Relating generally to tax increment financing and economic opportunity development districts.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: Facemire and Romano—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4612) passed.

The following amendment to the title of the bill, from the Committee on Finance, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 4612**—A Bill to amend and reenact §7-11B-3, §7-11B-4, §7-11B-14, §7-11B-21 and §7-11B-22 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto two new sections, designated §7-11B-29 and §7-11B-30; to amend and reenact §7-22-5, §7-22-7, §7-22-8, §7-22-12 and §7-22-14 of said code; to amend said code by adding thereto two new sections, designated §7-22-23 and §7-22-24; to amend and reenact §8-38-5, §8-38-7, §8-38-8, §8-38-12 and §8-38-14 of said code; to amend said code by adding thereto two new sections, designated §8-38-23 and §8-38-24; and to amend and reenact §11-10-11a of said code, all relating generally to tax increment financing; authorizing tax increment financing for the funding road projects in West Virginia; permitting certain

agreements between the Division of Highways and counties or municipalities regarding development districts; permitting financing of certain projects by proceeds of tax increment financing obligations; permitting road construction projects be done jointly by counties and municipalities under certain circumstances; establishing procedures and requirements for applications and the management of projects and districts; providing that projects are public improvements and subject to certain requirements; permitting the Division of Highways to propose certain projects; establishing procedures for the West Virginia Development Office and the Tax Commissioner regarding applications and their review; permitting audits in certain circumstances; establishing a procedure for adding or removing property from an economic opportunity development district; requiring procedures relating to taxpayers; providing for confidentiality; providing that roads to be part of the state road system; requiring legislative rulemaking; permitting a fee to be assessed; making findings; and defining terms.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 4651**, Relating to professional examination requirements for hearing-aid dealers and fitters.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4651) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4651) takes effect from passage.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 4739**, Unclaimed Life Insurance Benefits Act.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel and Cole (Mr. President)—32.

The nays were: Laird and Yost—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4739) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. House Bill 4739**—A Bill to amend the Code of West Virginia, 1931, as amended by adding thereto a new article, designated §33-13D-1 and §33-13D-2, relating to the creation of the Unclaimed Life Insurance Benefits Act; defining terms; regulating insurer conduct generally; requiring insurers to perform an annual comparison of its insureds' Policies, Retained Asset Accounts and Account Owners against a Death Master File; requiring insurers to conduct a comparison against a Death Master File on policies issued as of 1986 and all policies issued thereafter; establishing a two year requirement from the effective date of this article; requiring the Insurance Commissioner promulgate rules related to Death Master File comparisons for policies issued prior to 1986 if the commissioner determines that reliable technology and data exist to make such comparison accurate and cost-effective; providing that the annual comparison of insureds' Policies, Retained Asset Accounts and Account Owners against a Death Master File shall not apply to those accounts for which the insurer is receiving premiums from outside the policy value, by check, bank draft, payroll deduction or any other similar method of payment within eighteen months immediately preceding the Death Master File comparison; requiring insurers to implement procedures to account for incomplete identifying information such as nicknames, maiden names or other identifying information; requiring reasonable steps to be taken to locate and contact beneficiaries or other authorized representatives regarding the insurer's claims process; clarifying that benefits shall first be paid to beneficiaries and, if beneficiaries cannot be found, paid to the state as unclaimed property; permitting insurers to release such identifying information as may be necessary to help identify or locate beneficiaries; authorizing the Insurance Commissioner to issue orders related to requirements imposed on insurers and imposing a hardship burden on insurers seeking orders adjusting their obligations; and authorizing the Insurance Commissioner to promulgate rules that may be reasonably necessary to implement the Unclaimed Life Insurance Benefits Act.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 4740**, Permitting that current members of the National Guard or Reserves may be excused from jury duty.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4740) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. House Bill 4740**—A Bill to amend and reenact §52-1-11 of the Code of West Virginia, 1931, as amended, relating to excuses from jury service; and permitting that current members of the National Guard or reserves may be excused from jury duty.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

At the request of Senator Romano, and by unanimous consent, the Senate returned to the second order of business and the introduction of guests.

Pending announcement of a meeting of a standing committee of the Senate, including a minority party caucus,

On motion of Senator Carmichael, the Senate recessed until 1:30 p.m. today.

Upon expiration of the recess, the Senate reconvened and proceeded to the ninth order of business.

**Com. Sub. for Senate Bill 269**, Budget Bill.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Eng. House Bill 2494**, Creating a provisional plea process in criminal cases.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That the Code of West Virginia, 1931, as amended, be amended, by adding thereto a new section, designated §61-11-22a to read as follows:

**CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

**ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.**

**§61-11-22a. Deferred adjudication.**

(a) Upon the entry of a guilty plea to a felony or misdemeanor before a circuit or magistrate court of this state entered in compliance with the provisions of West Virginia Rule of Criminal Procedure 11 or Rule 10 of the West Virginia Rules of Criminal Procedure for Magistrate Courts and applicable judicial decisions, the court may, upon motion, defer acceptance of the guilty plea and defer further adjudication thereon and release the defendant upon such terms and conditions as the court deems just and necessary.

Terms and conditions may include, but are not limited to, periods of incarceration, drug and alcohol treatment, counseling and participation in programs offered under articles eleven-a, eleven-b and eleven-c, chapter sixty-two of this code.

(b) If the offense to which the plea of guilty is entered is a felony, the circuit court may defer adjudication for a period not to exceed five years. If the offense to which the plea of guilty is entered is a misdemeanor, the court may defer adjudication for a period not to exceed two years.

(c) If the defendant complies with the court-imposed terms and conditions he or she shall be permitted to withdraw his or her plea of guilty and the matter dismissed or, as may be agreed upon by the court and the parties, enter a plea of guilty or no contest to a lesser offense.

(d) In the event the defendant is alleged to have violated the terms and conditions imposed upon him or her by the court during the period of deferral the prosecuting attorney may file a motion to accept the defendant's plea of guilty and, following notice, a hearing shall be held on the matter.

(e) In the event the court determines that there is reasonable cause to believe that the defendant violated the terms and conditions imposed at the time the plea was entered, the court may accept the defendant's plea to the original offense and impose a sentence in the court's discretion in accordance with the statutory penalty of the offense to which the plea of guilty was entered or impose such other terms and conditions as the court deems appropriate.

(f) The procedures set forth in this section are separate and distinct from that set forth in West Virginia Rule of Criminal Procedure 11(a)(2).

The bill (Eng. H. B. 2494), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2826**, Requiring the Commissioner of the Division of Highways to approve points of

access to and from state highways to real property used or to be used for commercial, industrial or mercantile purposes; “Sarah Nott’s Law”.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Transportation and Infrastructure, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

#### **ARTICLE 4. STATE ROAD SYSTEM.**

**§17-4-49. Same — Points of commercial, etc.; access to comply; plans, objections and procedures for new points; review of and changes in existing points; commissioner’s preliminary determination; requiring notice.**

(a) No new points of access to and from state highways from and to real property used or to be used for commercial, industrial or mercantile purposes may be opened, constructed or maintained without first complying with this section and sections forty-seven and forty-eight of this article. Access points opened, constructed or maintained without compliance are unauthorized.

(b) Plans for any new point of access shall be submitted to the Commissioner of Highways directly and the following rules shall apply:

(1) Notice of the proposed new point of access shall be filed with the commissioner, along with a plan of the proposed new point of access.

(2) The commissioner shall review the plan to ensure compliance with the policies stated in section forty-seven of this article and with any regulations issued by the commissioner under section forty-eight of this article.

(3) If the commissioner objects to a plan, he or she shall reduce his or her objections to the proposed new point of access to writing and promptly furnish notice of the objection to the owner or owners of the real property affected and advise the owner or owners of the right to demand a hearing on the proposed plan and the objections. If a plan is not objected to within six weeks from the time it is filed with the commissioner, it is considered approved by the commissioner.

(4) In any case where the commissioner objects to the proposed new point of access, the owner or owners of the real property affected shall have reasonable opportunity for a hearing on such objections.

(c) (1) Existing points of access to and from state highways from and to real property used for commercial, industrial or mercantile purposes may be reviewed by the commissioner to determine whether such points of access comply with the policies stated in section forty-seven of this article and with any regulations issued by the commissioner under section forty-eight of this article. The commissioner may direct reasonable changes in existing points of access to and from state highways from and to property used for commercial, industrial or mercantile purposes if he or she determines from accident reports or traffic surveys that the public safety is seriously affected by such points of access and that such reasonable changes would substantially reduce the hazard to public safety. When such changes require construction, reconstruction or repair, such work shall be done at state expense as any other construction, reconstruction or repair.

(2) If the commissioner makes a preliminary determination that any changes should be made, the following rules apply:

(A) The commissioner shall reduce his or her preliminary determination to writing and promptly furnish notice of such preliminary determination to the owner or owners of the real property affected and of their right to demand a hearing on the preliminary determination. The commissioner's notice shall include a description of suggested changes suitable for reducing the hazard to the public safety.

(B) In any case where the commissioner makes a preliminary determination that any changes should be made, the owner or owners of the real property affected shall have reasonable opportunity for a hearing on the preliminary determination.

(d) For points of access existing on or before July 1, 2016, to and from state highways from and to real property used for commercial, industrial or mercantile purposes if the access is more than fifty feet wide, the access is along a state highway with a speed limit of more than forty-five miles per hour and the commissioner deems it appropriate due to heavy traffic or other circumstances, the commissioner shall either place “no parking” signs at each side of the driveway entrance fronting the state highway or clearly mark that right-of-way with yellow paint with the words “no parking” or both to provide notice that parking is prohibited.

(e) For points of access approved by the commissioner after July 1, 2016, to and from state highways from and to real property used for commercial, industrial or mercantile purposes if the access is more than fifty feet wide, the access is along a state highway with a speed limit of more than forty-five miles per hour and the commissioner deems it appropriate due to heavy traffic or other circumstances, the owner or owners of the real property shall be required to place “no parking” signs at each side of the driveway entrance fronting the state highway or clearly mark that right-of-way with yellow paint with the words “no parking” or both to provide notice that parking is prohibited. This subsection and subsection (d) of this section shall be known as “Sarah Nott’s Law”.

The bill (Eng. Com. Sub. for H. B. 2826), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4014**, Preventing the State Board of Education from implementing common core academic standards and assessments.

On second reading, coming up in regular order, was read a second time.

The following amendments to the bill, from the Committee on Education, were reported by the Clerk and considered simultaneously:

On pages five through eleven, section five, lines eighty-four through two hundred thirty, by striking out all of subsections (d) and (e) and inserting in lieu thereof two new subsections, designated subsections (d) and (e), to read as follows:

(d) West Virginia Academic Standards. —

(1) Legislative authority – Sections one, two and twelve, article XII of the Constitution of the State of West Virginia impose a duty upon the Legislature, as a separate but equal branch of government:

(A) To “provide, by general law, for a thorough and efficient system of free schools”;

(B) To prescribe by law the duties of the state board in the general supervision of free public schools;

(C) To prescribe by law the powers and duties of the state superintendent; and

(D) To foster and encourage moral, intellectual, scientific and agricultural improvement in schools.

(2) For purposes of this subsection, “academic standards” are concise, written descriptions of what students are expected to know and be able to do at a specific stage of their education. Academic standards describe what students should have learned by the end of a course, grade level or grade span.

(3) The Legislature recognizes that on December 15, 2015, the state board adopted what it represented were academic standards no longer aligned with Common Core State Standards and renamed them “West Virginia College–and–Career–Readiness Standards for English Language Arts (Policy 2520.1A)” and “West Virginia College–and–Career–Readiness Standards for Mathematics (Policy 2520.1B)”.

(4) The Legislature hereby establishes an Academic Standards Evaluation Panel. The panel shall consist of six appointed members and one ex officio member. The deans responsible for the math programs, the deans responsible for the English programs and the deans responsible for the engineering programs at West Virginia University and Marshall University shall each appoint one member. The Chancellor of the Higher Education Policy Commission, or his or her designee, shall serve as an ex officio member and be responsible for facilitating the work of the panel. The Academic Standards Evaluation Panel shall:

(A) Using the West Virginia College–and–Career–Readiness Standards for English Language Arts and Mathematics as a framework, evaluate and recommend revisions to the standards based on empirical research and data to ensure grade-level alignment to the standards of states with a proven track record of consistent high-performing student achievement in English Language Arts on the National Assessment of Educational Progress; and in Mathematics, on both the National Assessment of Educational Progress and Trends in Math and Science Study International Assessment;

(B) Review the Next Generation Content Standards and Objectives for Science in West Virginia Schools and recommend revisions that it considers appropriate;

(C) Remove common core strategies that require instructional methods;

(D) Use facilities, staff and supplies provided by the Higher Education Policy Commission;

(E) Submit its evaluation and recommended revisions to the state board and the Legislative Oversight Commission on Education Accountability by October 1, 2016.

(5) The state board shall withdraw from the Memorandum of Agreement entered into with the Council of Chief State School Officers and the National Governors Association for Best Practices, which required the state board to agree that common core

represents eighty-five percent of West Virginia's standards in English Language Arts and Mathematics and withdraw as a governing state in the Smarter Balanced Assessment Consortium.

(6) Any academic standard adopted by the state board shall meet the following criteria:

(A) Be age level and developmentally appropriate, particularly as it relates to sequencing of content standards and the measurement of student academic performance;

(B) Be free of instructional strategies;

(C) Meet national and international benchmarks empirically proven to increase and sustain student achievement; and

(D) Be based solely on academic content.

(7) The Legislative Oversight Commission on Education and Accountability shall review any proposed rules relating to academic standards to determine whether the board has exceeded the scope of its statutory authority in approving the proposed legislative rule and whether the proposed legislative rule is in conformity with the legislative intent of the provisions of this subsection. The Legislative Oversight Commission on Education and Accountability may, at its discretion, hold public hearings, recommend to the board any changes needed to comply with the legislative intent of this subsection and make recommendations to the Legislature for any statutory changes needed to clarify the legislative intent of this statute.

~~(d)~~(e) Comprehensive statewide student assessment program.

~~— The state board shall establish a comprehensive statewide student assessment program to assess student performance and progress in grades three through through twelve. The assessment program is subject to the following:~~

~~(1) The state board shall promulgate a rule in accordance with the provisions of article three b, chapter twenty nine a of this code establishing the comprehensive statewide student assessment program;~~

~~(2) Prior to the 2014-2015 school year, the state board shall align the comprehensive statewide student assessment for all grade levels in which the test is given with the college readiness standards adopted pursuant to section thirty nine, article two of this chapter or develop other aligned tests to be required at each grade level so that progress toward college readiness in English/language arts and math can be measured.~~

~~(3) The state board may require that student proficiencies be measured through the ACT EXPLORE and the ACT PLAN assessments or other comparable assessments, which are approved by the state board and provided by future vendors;~~

(1) For federal and state accountability purposes, the state board shall review and approve a summative assessment system for administration to all public school students, beginning in school year 2016-2017, in grades three through eight and once in early high school that assesses students in English, reading, writing, science and mathematics: *Provided*, That the assessment in science may only be administered once during the grade span of three through five and once during the grade span of six through eight. The assessment shall include those students as required by the federal Individuals with Disabilities Education Act and by Title I of the Elementary and Secondary Education Act. The summative assessment system must meet the following requirements:

(A) Be a vertically-scaled, benchmarked, standards-based system of summative assessments;

(B) Document student progress toward national college and career readiness benchmarks derived from empirical research and state standards;

(C) Be capable of measuring individual student performance in English, reading, writing, science and mathematics: *Provided*, That the assessment in science may only be administered once during the grade span of three through five and once during the grade span of six through eight;

(D) Be available in paper-and-pencil and computer-based formats;

(E) Be a predictive measure of student progress toward a national college readiness assessment used by higher education institutions for admissions purposes; and

(F) Be aligned or augmented to align with the standards in effect at the time the test is administered.

(2) The state board shall review and approve a college readiness assessment to be administered to all students in the eleventh grade for the first time in school year 2016-2017 and subsequent years. The eleventh grade college readiness assessment shall be administered at least once to each eleventh grade student and shall meet the following requirements:

(A) Be a standardized, curriculum-based, achievement college entrance examination;

(B) Assess student readiness for first-year, credit-bearing coursework in postsecondary education;

(C) Test in the areas of English, reading, writing, science and mathematics;

(D) Have content area benchmarks for measuring student achievement;

(E) Be administered throughout the United States;

(F) Be relied upon by institutions of higher education for admissions; and

(G) Be aligned or augmented to align with the standards in effect at the time the test is administered.

(3) The state board shall review and approve career readiness assessments and assessment-based credentials that measure and document foundational workplace skills. The assessments shall be

administered to public secondary school students in grades eleven or twelve for the first time in school year 2016-2017 and subsequent years: *Provided*, That the career readiness assessment is voluntary and may only be administered to students who elect to take the assessment. The assessment-based credential shall be available to any student who achieves at the required level on the assessments. The assessments shall meet the following requirements:

(A) Be a standardized, criterion-referenced, measure of broadly relevant foundational workplace skills;

(B) Assess and document student readiness for a wide range of jobs;

(C) Measure skills in all or any of the following areas:

(i) Applied mathematics;

(ii) Locating information; or

(iii) Reading for information;

(D) Align with research-based skill requirement profiles for specific industries and occupations;

(E) Lead to a work readiness certificate for students who meet the minimum proficiency requirements on the component assessments; and

(F) Be available in paper-and-pencil and computer-based formats.

(4) The state board shall not acquire or implement any assessment instrument or instruments developed to specifically align with the Common Core State Standards including Smarter Balanced Assessment or Partnership for Assessment of Readiness for College and Careers (PARCC).

(5) For any online assessment, the state board shall provide online assessment preparation to ensure that students have the

requisite digital literacy skills necessary to be successful on the assessment.

(6) The state board shall develop a plan and make recommendations regarding end-of-course assessments and student accountability measures and submit its findings to the Legislative Oversight Commission on Education and Accountability by December 31, 2016.

(7) The state board shall develop a policy which sets forth accountability measures for students taking the comprehensive statewide assessment.

(8) Any summative assessment approved by the state board shall take no more than two percent of a student's instructional time.

(4) (9) The state board may require that student proficiencies be measured through the West Virginia writing assessment at any grade levels determined by the state board to be appropriate.

(6) (10) The state board may provide through ~~the statewide assessment program~~ policy other optional testing or assessment instruments applicable to grade levels kindergarten through eight and grade eleven which may be used by each school to promote student achievement. The state board annually shall publish and make available, electronically or otherwise, to school curriculum teams and teacher collaborative processes the optional testing and assessment instruments.;

And,

On page eighteen, section five, line four hundred eighteen, after the word "appeals." by striking out the remainder of the subdivision.

At the request of Senator Plymale, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4014) was advanced to third reading with the Education committee amendments pending and the right reserved to consider other amendments to the bill on that reading.

**Eng. Com. Sub. for House Bill 4080**, Department of Veterans' Assistance, rule relating to VA headstones or markers.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 4168**, Creating a special motor vehicle collector license plate.

On second reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Carmichael, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

**Eng. Com. Sub. for House Bill 4265**, Relating to payment by the West Virginia Municipal Bond Commission or state sinking fund commission or the governing body issuing the bonds.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Banking and Insurance, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

## **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

### **ARTICLE 3. COUNTY PROPERTY.**

#### **§7-3-9. Form and payment of bonds; use of proceeds of bonds.**

Any county commission issuing revenue bonds under the provisions of this article shall thereafter, so long as any such bonds remain outstanding, operate and maintain said courthouse, hospital, other public buildings, jail or regional correctional center, to provide revenues sufficient to pay all operating costs, provide a sinking fund for, and to retire such bonds and pay the interest thereon as the same may become due. The amounts, as and when

so set apart by said county commission, shall be remitted to the West Virginia Municipal Bond Commission at least thirty days previous to the time interest or principal payments become due, to be retained and paid out by said commission consistent with the provisions of this article and with the order pursuant to which the bonds have been issued. The West Virginia Municipal Bond Commission is hereby authorized to act as fiscal agent for the administration of such sinking fund under any order passed pursuant to the provisions of this article, and shall invest all sinking funds, as provided by general law. Notwithstanding the foregoing, payments of principal and interest on any bonds owned by the United States or any governmental agency or department thereof may be made by the county commission directly thereto. Revenue bonds issued under the provisions of this article are hereby declared to be and to have all the qualities of negotiable instruments. Such bonds shall bear interest at the rate or rates set by the county commission, not to exceed twelve percent per annum, payable semiannually, and shall mature at any time fixed by the county commission, in not more than thirty years from their date. Such bonds shall be sold at a price not lower than a price which, when computed upon standard tables of bond values, will show a net return of not more than thirteen percent per annum to the purchaser upon the amount paid therefor. Such bonds may be made redeemable at the option of the county commission at such price and under terms and conditions as said county commission may fix, by its order, prior to the issuance of such bonds. Revenue bonds issued hereunder shall be payable at the office of the State Treasurer, or a designated bank or trust company within or without the State of West Virginia.

In case any of the officers whose signatures appear on such bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes the same as if they had remained in office until such delivery. The county commission shall by order entered prior to the issuance of said bonds, fix the denominations, times and places of payment of such bonds, the principal and interest of which shall be payable in lawful money of the United States of America. The proceeds of such bonds shall be used solely for the

payment of the cost of land, buildings, furniture and equipment thereon, and shall be checked out by the county commission under such restrictions as are contained in the order providing for the issuance of said bonds. If the proceeds of such bonds issued for any courthouse, hospital, other public buildings, jail or regional correctional center, shall exceed the cost thereof, the surplus shall be paid into the fund herein provided for the payment of principal and interest upon such bonds. Such fund may be used for the purchase or redemption of any of the outstanding bonds payable from such fund at the market price, but at not exceeding the price at which any of such bonds shall in the same year be redeemable, as fixed by the commission in its said order, and all bonds redeemed or purchased shall forthwith be canceled, and shall not again be issued.

Prior to the preparation of definitive bonds, the county commission may, under like restrictions, issue temporary bonds, or interim certificates, with or without coupons, exchangeable for definitive bonds upon the issuance of the latter. Such bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions and things which are specified and required by this article.

## **CHAPTER 8. MUNICIPAL CORPORATIONS.**

### **ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.**

#### **§8-16-17. Sinking fund; ~~sinking fund commission~~ West Virginia Municipal Bond Commission; transfer of funds; purchase of outstanding bonds.**

Before the issuance of any such bonds, the governing body or bodies shall, by ordinance or ordinances, provide for a sinking fund for the payment of the bonds and the interest thereon, and the payment of the charges of banking institutions or trust companies for making payment of such bonds and interest, out of the net revenues of said works, and shall set aside and pledge a sufficient amount of the net revenues of the works hereby defined to mean the revenues of the works remaining after the payment of the

reasonable expenses of repair (including replacements), maintenance and operation, such amount to be paid by the board into the sinking fund at intervals, to be determined by ordinance or ordinances adopted prior to the issuance of the bonds, for: (a) The interest upon such bonds as such interest shall fall due; (b) the necessary fiscal agency charges for paying bonds and interest; (c) the payment of the bonds as they fall due, or if all bonds mature at one time, the proper maintenance of a sinking fund sufficient for the payment thereof at such time; and (d) a margin for safety and for the payment of premium upon bonds retired by call or purchase as herein provided, which margin, together with unused surplus of such margin carried forward from the preceding year and the amounts set aside as reserves out of the proceeds from the sale of the bonds, or from the revenues of said works, or from both, shall equal ten percent of all other amounts so required to be paid into the sinking fund. Such required payments shall constitute a first charge upon all the net revenues of the works. Prior to the issuance of the bonds, the board may, by ordinance or ordinances, be given the right to use or direct the trustee or the ~~state sinking fund commission~~ West Virginia Municipal Bond Commission to use such sinking fund, or any part thereof, in the purchase of any of the outstanding bonds payable therefrom, at the market prices thereof, but not exceeding the price, if any, at which the same shall in the same year be payable or redeemable, and all bonds redeemed or purchased shall forthwith be cancelled, and shall not again be issued. After the payments into the sinking fund as herein required and after reserving an amount deemed by the board sufficient for repair (including replacements), maintenance and operation for an ensuing period of not less than twelve months and for depreciation, the board may at any time in its discretion transfer all or any part of the balance of the net revenues into the sinking fund or into a fund for improvement, renovation, extension, enlargement, increase or equipment for or to the works, or the governing body or bodies may, notwithstanding the provisions of section twenty, article thirteen of this chapter, transfer all or any part of the balance of the net revenues to the general or any special fund of the municipality or municipalities and use such revenues for any purpose for which such general or special fund may be expended.

All amounts for the sinking fund and interest, as and when set apart for the payment of same, shall be remitted to the ~~state sinking fund commission~~ West Virginia Municipal Bond Commission at such periods as shall be designated in the ordinance or ordinances, but in any event at least thirty days previous to the time interest or principal payments become due, to be retained and paid out by said commission consistent with the provisions of this article and the ordinance or ordinances pursuant to which such bonds have been issued. The ~~state sinking fund commission~~ West Virginia Municipal Bond Commission is hereby authorized to act as fiscal agent for the administration of such sinking fund under any ordinance or ordinances passed or adopted pursuant to the provisions of this article and shall invest all sinking funds as provided by general law. Notwithstanding the foregoing, payments of principal and interest on any bonds owned by the United States or any governmental agency or department thereof may be made by the governing body directly thereto.

**ARTICLE 27. INTERGOVERNMENTAL RELATIONS –  
URBAN MASS TRANSPORTATION  
SYSTEMS.**

**§8-27-16. Sinking fund; ~~sinking fund commission~~ West Virginia Municipal Bond Commission; purchase of outstanding bonds.**

Before the issuance of any bonds under the provisions of this article, the authority shall, by resolution, provide for a sinking fund for the payment of the bonds and the interest thereon, and the payment of the charges of banking institutions or trust companies for making payment of such bonds and interest, out of the net revenues of said system, and, in this connection, shall set aside and pledge a sufficient amount of the net revenues of the system for such purpose, such net revenues being hereby defined to mean the revenues of the system remaining after the payment of the reasonable expense of administration, maintenance, repair and operation, such amount to be paid by such authority into the sinking fund at intervals, to be determined by resolution adopted prior to the issuance of the bonds, for: (a) The interest upon such bonds as such interest shall fall due; (b) the necessary fiscal agency charges

for paying bonds and interest; (c) the payment of the bonds as they fall due, or, if all the bonds mature at one time, the proper maintenance of a sinking fund sufficient for the payment thereof at such time; and (d) a margin for safety and for the payment of premium upon bonds retired by call or purchase as provided in this article. Such required payments shall constitute a first charge upon all the net revenues of such authority. Prior to the issuance of any bonds, the authority may, by resolution, be given the right to use or direct the ~~state sinking fund commission~~ West Virginia Municipal Bond Commission to use such sinking fund, or any part thereof, in the purchase of any of the outstanding bonds payable therefrom, at the market prices thereof, but not exceeding the price, if any, at which the same shall in the same year be payable or redeemable, and all bonds redeemed or purchased shall forthwith be cancelled, and shall not again be issued. In addition to the payments into the sinking fund provided for above, the authority may at any time in its discretion transfer all or any part of the balance of the net revenues, after reserving an amount deemed by such authority sufficient for maintenance, repair and operation for an ensuing period of not less than twelve months and for depreciation, into the sinking fund.

The amounts of the balance of the net revenues as and when so set apart shall be remitted to the ~~state sinking fund commission~~ West Virginia Municipal Bond Commission at such periods as shall be designated in the resolution, but in any event at least thirty days previous to the time interest or principal payments become due, to be retained and paid out by said commission consistent with the provisions of this article and the resolution pursuant to which such bonds have been issued. The ~~state sinking fund commission~~ West Virginia Municipal Bond Commission is hereby authorized to act as fiscal agent for the administration of such sinking fund under any resolution adopted pursuant to the provisions of this article and shall invest all sinking funds as provided by general law. Notwithstanding the foregoing, payments of principal and interest on any bonds owned by the United States or any governmental agency or department thereof may be made by the authority directly thereto.

**CHAPTER 10. PUBLIC LIBRARIES; PUBLIC  
RECREATION; ATHLETIC ESTABLISHMENTS;  
MONUMENTS AND MEMORIALS; ROSTER OF  
SERVICEMEN; EDUCATIONAL BROADCASTING  
AUTHORITY.**

**ARTICLE 2A. ATHLETIC ESTABLISHMENTS.**

**§10-2A-16. Sinking fund.**

At or before the issuance of any such bonds, the board shall, by resolution, provide for a sinking fund for the payment of the bonds and the interest thereon, and the payment of the charges of banks or trust companies for making payment of such bonds, and interest, out of the net revenues of said athletic establishment, and shall set aside and pledge a sufficient amount of the net revenues of the athletic establishment to be paid by the board into such sinking fund at intervals to be determined by resolution adopted prior to the issuance of the bonds, for: (a) The interest upon such bonds as the same becomes due; (b) the necessary fiscal agency charges for paying bonds and interest; (c) the payment of the bonds as they fall due, or if all bonds mature at one time, the maintenance of a proper sinking fund for the payment thereof at such time; and (d) a margin for safety and for the payment of premium upon bonds retired by call or purchase as herein provided for, which margin, together with unused surplus of such margin carried forward from the preceding year, shall equal ten per cent of all other amounts so required to be paid into the sinking fund. Such required payments shall constitute a first charge upon all the net revenues of the athletic establishment. Net revenues as used herein shall mean the revenues of the athletic establishment remaining after the payment of reasonable expense of operation, repairs, maintenance, insurance and all other reasonable costs of maintaining and operating the same required to be paid from the revenues thereof. After the payment into the sinking fund as herein required, the board may at any time in its discretion transfer all or any part of the balance of the net revenues, after reserving an amount deemed by the board sufficient for operation, repairs, maintenance and depreciation for an ensuing period of not less than twelve months, into the sinking fund or into a fund for extensions, improvements and additions to such athletic

establishment. All amounts for sinking fund and interest, as and when set apart for the payment of same, shall be remitted to the ~~state sinking fund commission~~ West Virginia Municipal Bond Commission at such periods as shall be designated in the resolution, but in any event at least thirty days previous to the time interest or principal payments become due, to be retained and paid out by said commission, consistent with provisions of this article and the order pursuant to which such bonds have been issued. The ~~state sinking fund commission~~ West Virginia Municipal Bond Commission is hereby authorized to act as fiscal agent for the administration of such sinking fund under any resolution adopted pursuant to the provisions of this article and shall invest all sinking funds as provided by general law. Notwithstanding the foregoing, payments of principal and interest on any bonds owned by the United States or any governmental agency or department thereof may be made by the board directly thereto.

## CHAPTER 17. ROADS AND HIGHWAYS.

### ARTICLE 17. TOLL BRIDGES.

#### **§17-17-22. Tolls to be charged for bond payment; intrastate and interstate bridges included in one issue; purchase of existing bridges; disposition of tolls.**

Tolls shall be fixed, charged and collected for transit over such bridges and shall be so fixed and adjusted, in respect of the aggregate of tolls from the bridge or bridges for which a single issue of bonds is issued, as to provide a fund sufficient to pay the principal and interest of such issue of bonds and to provide an additional fund to pay the cost of maintaining, repairing and operating such bridge or bridges, subject, however, to any applicable law or regulation of the United States of America now in force or hereafter to be enacted or made. Two or more bridges may be included in one issue of bonds, and intrastate and interstate bridges may be grouped in the same issue: *Provided*, That no existing bridge or bridges shall be acquired by purchase, eminent domain, or otherwise, unless the state road commissioner shall have determined that the income therefrom, based upon the toll receipts for the next preceding fiscal or calendar year, will be

sufficient to pay all expenses of operating and maintaining such bridge, in addition to the interest and sinking fund requirements of any bonds to be issued to pay the purchase price thereof, or, if such existing bridge or bridges are to be combined with any other bridge or bridges, either then existing or thereafter to be constructed or acquired by purchase, eminent domain, or otherwise, as provided in section twenty-three-b following, unless the state road commissioner shall have determined that the income from such combined bridges, based upon the toll receipts for the next preceding fiscal or calendar year in the case of any existing bridge or bridges and upon estimates of future toll receipts in the case of any bridge or bridges to be constructed, will be sufficient to pay all expenses of operating and maintaining such combined bridges, in addition to the interest and sinking fund requirements of any bonds issued to pay the purchase price of such existing bridge or bridges and the interest and sinking fund requirements of any bonds issued to pay the cost of construction, acquiring, modernizing, repairing, reconstructing or improving any bridge or bridges and approaches thereto, with which such existing bridge or bridges are to be so combined. The tolls from the bridge or bridges for which a single issue of bonds is issued, except such part thereof, as may be necessary to pay such cost of maintaining, repairing and operating during any period in which such cost is not otherwise provided for (during which period the tolls may be reduced accordingly), shall be transmitted each month to the ~~state sinking fund commission~~ West Virginia Municipal Bond Commission and by it placed in a special fund ~~is which~~ which is hereby pledged to and charged with the payment of the principal of such bonds and the interest thereon, and to the redemption or repurchase of such bonds, such special fund to be a fund for all such bonds without distinction or priority of one over another. The moneys in such special fund, less a reserve for payment of interest, if not used by the ~~sinking fund commission~~ West Virginia Municipal Bond Commission within a reasonable time for the purchase of bonds for cancellation at a price not exceeding the market price and not exceeding the redemption price, shall be applied to the redemption of bonds by lot at the redemption price then applicable. Notwithstanding the foregoing, payments of principal and interest on any bonds owned by the United States or

any governmental agency or department thereof may be made by the governing body directly thereto.

Any bridge or bridges constructed or acquired by purchase, eminent domain, or otherwise, or reconstructed, repaired or improved, under the provisions of this article and forming a connecting link between two or more state highways, or providing a river crossing for a state highway, are hereby adopted as a part of the state road system, but no such bridge or bridges shall be constructed or acquired by purchase, eminent domain, or otherwise, or reconstructed, repaired or improved, under the provisions of this article without the approval in writing of the state road commissioner and the Governor. If there be in the funds of the ~~state sinking fund commission~~ West Virginia Municipal Bond Commission an amount insufficient to pay the interest and sinking fund on any bonds issued for the purpose of constructing or acquiring by purchase, eminent domain, or otherwise, or reconstructing, repairing or improving, such bridge or bridges, the state road commissioner is authorized and directed to allocate to said commission, from the state road fund, an amount sufficient to pay the interest on said bonds and/or the principal thereof, as either may become due and payable.

**§17-17-34. Same — Retiring bonds; remittance to sinking fund.**

Every municipality or county court issuing bonds, or other evidences of indebtedness, under the provisions of this act, shall thereafter, so long as any such bonds or other evidences of indebtedness remain outstanding, operate and maintain its bridge so as to provide, charge, collect and account for revenues therefrom as will be sufficient to pay all operating costs, provide a depreciation fund, retire the bonds or other evidences of indebtedness, and pay the interest requirements as the same may become due. The ordinance or order pursuant to which any such bonds or other evidences of indebtedness are issued shall pledge the revenues derived from the bridge to the purposes aforesaid, and shall definitely fix and determine the amount of revenues which shall be necessary and set apart in a special fund for the bond requirements. The amounts, as and when so set apart into said special fund for the bond requirements, shall be remitted to the ~~state~~

~~sinking fund commission~~ West Virginia Municipal Bond Commission at least thirty days previous to the time interest or principal payments become due, to be retained and paid out by said commission consistent with the provisions of this act and the ordinance or order pursuant to which such bonds or other evidences of indebtedness have been issued. Notwithstanding the foregoing, payments of principal and interest on any bonds owned by the United States or any governmental agency or department thereof may be made by the governing body directly thereto.

The bill (Eng. Com. Sub. for H. B. 4265), as amended, was then ordered to third reading.

**Eng. House Bill 4315**, Relating to air-ambulance fees for emergency treatment or air transportation.

On second reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Carmichael, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

**Eng. House Bill 4334**, Clarifying the requirements for a license to practice as an advanced practice registered nurse and expanding prescriptive authority.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Carmichael, and by unanimous consent, the bill was advanced to third reading with the unreported Health and Human Resources committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. House Bill 4351**, Transferring the Cedar Lakes Camp and Conference Center from the West Virginia Board of Education to the Department of Agriculture.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 4360**, Increasing the criminal penalty for the unlawful practice of law.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

## **ARTICLE 2. ATTORNEYS-AT-LAW.**

### **§30-2-4. Practice without license or oath; penalty; qualification after institution of suits.**

(a) It ~~shall be~~ is unlawful for any ~~natural~~ person to practice or appear as an attorney-at-law for another in a court ~~of record~~ in this state or to make it a business to solicit employment for ~~an~~ any attorney, ~~or to furnish an attorney or counsel to render legal services,~~ or to hold himself or herself out to the public or any member thereof as being entitled to practice law, or in any other manner to assume, use or advertise the title of lawyer, ~~or~~ attorney and counselor-at-law, ~~or counselor,~~ ~~or~~ attorney and counselor, or equivalent terms in any language, in such manner as to convey the impression that he or she is a legal practitioner of law, or in any manner to advertise that he or she, either alone or together with other persons, has, owns, conducts or maintains a law office, without first having been duly and regularly licensed and admitted to practice law in ~~a court of record~~ the courts of this State, and without having subscribed and taken the oath required by the ~~next preceding section~~ provisions of section three of this article.

(b) Any person violating the provisions of ~~this section~~ subsection (a) of this section ~~shall be~~ is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 \$5,000, or confined in jail not more than ninety days, or both fined and confined, and on any subsequent offense, is guilty of a misdemeanor and shall be fined not more than \$10,000, or confined in jail not more than one year, or both fined and confined: ~~but this~~

~~penalty shall not be incurred by any attorney who institutes suits in the circuit courts after obtaining a license, if he shall qualify at the first term thereafter of a circuit court of any county of the circuit in which he resides:~~ Provided, That nothing herein prohibits a lawyer from advertising services or hiring a person to assist in advertising services as permitted by the Rules of Professional Conduct.

The bill (Eng. Com. Sub. for H. B. 4360), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4365**, Relating to the certificate of need process.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Ferns, as chair of the Committee on Health and Human Resources, and by unanimous consent, the unreported Health and Human Resources committee amendments to the bill were withdrawn.

On motion of Senator Carmichael, the following amendment to the bill was reported by the Clerk:

By striking out everything after the enacting section and inserting in lieu thereof the following:

## **ARTICLE 2D. CERTIFICATE OF NEED.**

### **§16-2D-1. Legislative findings.**

It is declared to be the public policy of this state:

(1) That the offering or development of all health services shall be accomplished in a manner which is orderly, economical and consistent with the effective development of necessary and adequate means of providing for the health services of the people of this state and to avoid unnecessary duplication of health services, and to contain or reduce increases in the cost of delivering health services.

(2) That the general welfare and protection of the lives, health and property of the people of this state require that the type, level and quality of care, the feasibility of providing such care and other criteria as provided for in this article, including certificate of need standards and criteria developed by the authority pursuant to provisions of this article, pertaining to health services within this state, be subject to review and evaluation before any health services are offered or developed in order that appropriate and needed health services are made available for persons in the area to be served.

**§16-2D-2. Definitions.**

As used in this article:

(1) “Affected person” means:

(A) The applicant;

(B) An agency or organization representing consumers;

(C) An individual residing within the geographic area but within this state served or to be served by the applicant;

(D) An individual who regularly uses the health care facilities within that geographic area;

(E) A health care facility located within this state which provide services similar to the services of the facility under review and which will be significantly affected by the proposed project;

(F) A health care facility located within this state which, before receipt by the authority of the proposal being reviewed, have formally indicated an intention to provide similar services within this state in the future;

(G) Third-party payors who reimburse health care facilities within this state similar to those proposed for services;

(H) An agency that establishes rates for health care facilities within this state similar to those proposed; or

(I) An organization representing health care providers.

(2) “Ambulatory health care facility” means a facility that provides health services to noninstitutionalized and nonhomebound persons on an outpatient basis.

(3) “Ambulatory surgical facility” means a facility not physically attached to a health care facility that provides surgical treatment to patients not requiring hospitalization.

(4) “Applicant” means a person proposing a proposed health service;

(5) “Authority” means the West Virginia Health Care Authority as provided in article twenty-nine-b of this chapter.

(6) “Bed capacity” means the number of beds licensed to a health care facility or the number of adult and pediatric beds permanently staffed and maintained for immediate use by inpatients in patient rooms or wards in an unlicensed facility.

(7) “Behavioral health services” means services provided for the care and treatment of persons with mental illness in an inpatient or outpatient setting.

(8) “Birthing center” means a short-stay ambulatory health care facility designed for low-risk births following normal uncomplicated pregnancy.

(9) “Campus” means the adjacent grounds and buildings, or grounds and buildings not separated by more than a public right-of-way, of a health care facility.

(10) “Capital expenditure” means:

(A) An expenditure made by or on behalf of a health care facility, which:

(i) Under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance; or (ii) is made to obtain either by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part; and

(B)(i) Exceeds the expenditure minimum; (ii) is a substantial change to the bed capacity of the facility with respect to which the expenditure is made; or (iii) is a substantial change to the services of such facility;

(C) The transfer of equipment or facilities for less than fair market value if the transfer of the equipment or facilities at fair market value would be subject to review; or

(D) A series of expenditures, if the sum total exceeds the expenditure minimum and if determined by the state agency to be a single capital expenditure subject to review. In making this determination, the state agency shall consider: Whether the expenditures are for components of a system which is required to accomplish a single purpose; or whether the expenditures are to be made within a two-year period within a single department such that they will constitute a significant modernization of the department.

(11) “Charges” means the economic value established for accounting purposes of the goods and services a hospital provides for all classes of purchasers;

(12) “Community mental health and intellectual disability facility” means a facility which provides comprehensive services and continuity of care as emergency, outpatient, partial hospitalization, inpatient or consultation and education for individuals with mental illness, intellectual disability.

(13) “Diagnostic imaging” means the use of radiology, ultrasound, mammography, fluoroscopy, nuclear imaging, densitometry to create a graphic depiction of the body parts;

(14) “Drug and Alcohol Rehabilitation Services” means a medically or psychotherapeutically supervised process for assisting individuals on an inpatient or outpatient basis through the processes of withdrawal from dependency on psychoactive substances.

(15) “Expenditure minimum” means the cost of acquisition, improvement, expansion of any facility, equipment, or services including the cost of any studies, surveys, designs, plans, working

drawings, specifications and other activities, including staff effort and consulting at and above \$5 million.

(16) “Health care facility” means a publicly or privately owned facility, agency or entity that offers or provides health services, whether a for-profit or nonprofit entity and whether or not licensed, or required to be licensed, in whole or in part.

(17) “Health care provider” means a person authorized by law to provide professional health service in this state to an individual.

(18) “Health services” means clinically related preventive, diagnostic, treatment or rehabilitative services.

(19) “Home health agency” means an organization primarily engaged in providing professional nursing services either directly or through contract arrangements and at least one of the following services:

(A) Home health aide services;

(B) Physical therapy;

(C) Speech therapy;

(D) Occupational therapy;

(E) Nutritional services; or

(F) Medical social services to persons in their place of residence on a part-time or intermittent basis.

(20) “Hospice” means a coordinated program of home and inpatient care provided directly or through an agreement under the direction of a licensed hospice program which provides palliative and supportive medical and other health services to terminally ill individuals and their families.

(21) “Hospital” means a facility licensed pursuant to the provisions of article five-b of this chapter and any acute care facility operated by the state government, that primarily provides

inpatient diagnostic, treatment or rehabilitative services to injured, disabled or sick persons under the supervision of physicians.

(22) “Intermediate care facility” means an institution that provides health-related services to individuals with conditions that require services above the level of room and board, but do not require the degree of services provided in a hospital or skilled-nursing facility.

(23) “Like equipment” means medical equipment in which functional and technological capabilities are similar to the equipment being replaced; and the replacement equipment is to be used for the same or similar diagnostic, therapeutic, or treatment purposes as currently in use; and it does not constitute a substantial change in health service or a proposed health service.

(24) “Major medical equipment” means a single unit of medical equipment or a single system of components with related functions which is used for the provision of medical and other health services and costs in excess of the expenditure minimum. This term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician’s office and a hospital and it has been determined under Title XVIII of the Social Security Act to meet the requirements of paragraphs ten and eleven, Section 1861(s) of such act, Title 42 U.S.C. §1395x. In determining whether medical equipment is major medical equipment, the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to the acquisition of such equipment shall be included. If the equipment is acquired for less than fair market value, the term “cost” includes the fair market value.

(25) “Medically underserved population” means the population of an area designated by the authority as having a shortage of a specific health service.

(26) “Nonhealth-related project” means a capital expenditure for the benefit of patients, visitors, staff or employees of a health

care facility and not directly related to health services offered by the health care facility.

(27) "Offer" means the health care facility holds itself out as capable of providing, or as having the means to provide, specified health services.

(28) "Person" means an individual, trust, estate, partnership, limited liability corporation, committee, corporation, governing body, association and other organizations such as joint-stock companies and insurance companies, a state or a political subdivision or instrumentality thereof or any legal entity recognized by the state.

(29) "Personal care agency" means entity that provides personal care services approved by the Bureau of Medical Services.

(30) "Personal care services" means personal hygiene; dressing; feeding; nutrition; environmental support and health-related tasks provided by a home health agency.

(31) "Physician" means an individual who is licensed by the Board of Medicine or the Board of Osteopathy to practice in West Virginia.

(32) "Proposed health service" means any service as described in section eight of this article.

(33) "Purchaser" means an individual who is directly or indirectly responsible for payment of patient care services rendered by a health care provider, but does not include third-party payers.

(34) "Rates" means charges imposed by a health care facility for health services.

(35) "Records" means accounts, books and other data related to health service costs at health care facilities subject to the provisions of this article which do not include privileged medical information, individual personal data, confidential information, the disclosure of which is prohibited by other provisions of this code

and the laws enacted by the federal government, and information, the disclosure of which would be an invasion of privacy.

(36) “Rehabilitation facility” means an inpatient facility licensed in West Virginia operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services.

(37) “Related organization” means an organization, whether publicly owned, nonprofit, tax-exempt or for profit, related to a health care facility through common membership, governing bodies, trustees, officers, stock ownership, family members, partners or limited partners, including, but not limited to, subsidiaries, foundations, related corporations and joint ventures. For the purposes of this subdivision “family members” means parents, children, brothers and sisters whether by the whole or half blood, spouse, ancestors and lineal descendants.

(38) “Skilled nursing facility” means an institution, or a distinct part of an institution, that primarily provides inpatient skilled nursing care and related services, or rehabilitation services, to injured, disabled or sick persons.

(39) “Standard” means a health service guideline developed by the authority and instituted under section six.

(40) “State health plan” means a document prepared by the authority that sets forth a strategy for future health service needs in the state.

(41) “Substantial change to the bed capacity” of a health care facility means any change, associated with a capital expenditure, that increases or decreases the bed capacity or relocates beds from one physical facility or site to another, but does not include a change by which a health care facility reassigns existing beds as swing beds between acute care and long-term care categories or a decrease in bed capacity in response to federal rural health initiatives.

(43) “Substantial change to the health services” means:

(A) The addition of a health service offered by or on behalf of the health care facility which was not offered by or on behalf of the facility within the twelve-month period before the month in which the service is first offered; or

(B) The termination of a health service offered by or on behalf of the facility but does not include the termination of ambulance service, wellness centers or programs, adult day care or respite care by acute care facilities.

(44) “Third-party payor” means an individual, person, corporation or government entity responsible for payment for patient care services rendered by health care providers.

(45) “To develop” means to undertake those activities which upon their completion will result in the offer of a proposed health service or the incurring of a financial obligation in relation to the offering of such a service.

**§16-2D-3. Powers and duties of the authority.**

(a) The authority shall:

(1) Administer the certificate of need program;

(2) Review the state health plan, the certificate of need standards, and the cost effectiveness of the certificate of need program and make any amendments and modifications to each that it may deem necessary, no later than September 1, 2017, and biennially thereafter.

(3) Shall adjust the expenditure minimum annually and publish to its website the updated amount on or before December 31, of each year. The expenditure minimum adjustment shall be based on the DRI inflation index published in the Global Insight DRI/WEFA Health Care Cost Review.

(4) Create a standing advisory committee to advise and assist in amending the state health plan, the certificate of need standards, and performing the state agencies’ responsibilities.

(b) The authority may:

(1) (A) Order a moratorium upon the offering or development of a health service when criteria and guidelines for evaluating the need for the health service have not yet been adopted or are obsolete or when it determines that the proliferation of the health service may cause an adverse impact on the cost of health services or the health status of the public.

(B) A moratorium shall be declared by a written order which shall detail the circumstances requiring the moratorium. Upon the adoption of criteria for evaluating the need for the health service affected by the moratorium, or one hundred eighty days from the declaration of a moratorium, whichever is less, the moratorium shall be declared to be over and applications for certificates of need are processed pursuant to section eight.

(2) Issue grants and loans to financially vulnerable health care facilities located in underserved areas that the authority and the Office of Community and Rural Health Services determine are collaborating with other providers in the service area to provide cost effective health services.

(3) Approve an emerging health service or technology for one year.

(4) Exempt from certificate of need or annual assessment requirements to financially vulnerable health care facilities located in underserved areas that the state agency and the Office of Community and Rural Health Services determine are collaborating with other providers in the service area to provide cost effective health services.

**§16-2D-4. Rule-making Authority.**

(a) The authority shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the following:

(1) Information a person shall provide when applying for a certificate of need;

(2) Information a person shall provide when applying for an exemption;

(3) Process for the issuance of grants and loans to financially vulnerable health care facilities located in underserved areas;

(4) The required information in a letter of intent;

(5) Process for an expedited certificate of need;

(6) Determine medically underserved population. The authority may consider unusual local conditions that are a barrier to accessibility or availability of health services. The authority may consider when making its determination of a medically underserved population designated by the federal Secretary of Health and Human Services under Section 330(b)(3) of the Public Health Service Act, as amended, Title 42 U.S.C. §254;

(7) Process to review an approved certificate of need; and

(8) Process to review approved proposed health services for which the expenditure maximum is exceeded or is expected to be exceeded.

(b) The authority shall propose emergency rules by December 31, 2016, to effectuate the changes to this article.

(c) All of the authority's rules in effect and not in conflict with the provisions of this article, shall remain in effect until they are amended or rescinded.

**§16-2D-5. Fee; special revenue account; administrative fines.**

(a) All fees and other moneys, except administrative fines, received by the board shall be deposited in a separate special revenue fund in the State Treasury which is continued and shall be known as the "Certificate of Need Program Fund". Expenditures from this fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and

upon fulfillment of the provisions of article two, chapter eleven-b of this code: *Provided*, That for the fiscal year ending June 30, 2017, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature.

(b) Any amounts received as administrative fines imposed pursuant to this article shall be deposited into the General Revenue Fund of the State Treasury.

**§16-2D-6. Changes to certificate of need standards.**

(a) When the authority proposes a change to the certificate of need standards, it shall file with the Secretary of State, for publication in the State Register, a notice of proposed action, including the text of all proposed changes, and a date, time and place for receipt of general public comment. To comply with the public comment requirement of this section, the authority may hold a public hearing or schedule a public comment period for the receipt of written statements or documents.

(b) When changing the certificate of need standards, the authority shall identify relevant criteria contained in section twelve and apply those relevant criteria to the proposed health service in a manner that promotes the public policy goals and legislative findings contained in section one.

(c) The authority shall form task forces to assist it in satisfying its review and reporting requirements. The task forces shall be comprised of representatives of consumers, business, providers, payers and state agencies.

(d) The authority shall coordinate the collection of information needed to allow the authority to develop recommended modifications to certificate of need standards.

(e) The authority may consult with or rely upon learned treatises in health planning, recommendations and practices of other health planning agencies and organizations, recommendations from consumers, recommendations from health care providers, recommendations from third-party payors, materials reflecting the standard of care, the authority's own

developed expertise in health planning, data accumulated by the authority or other local, state or federal agency or organization and any other source deemed relevant to the certificate of need standards proposed for change.

(f) All proposed changes to the certificate of need standards, with a record of the public hearing or written statements and documents received pursuant to a public comment period, shall be presented to the Governor. Within thirty days of receiving the proposed amendments or modifications, the Governor shall either approve or disapprove all or part of the amendments and modifications and, for any portion of amendments or modifications not approved, shall specify the reason or reasons for disapproval. Any portions of the amendments or modifications not approved by the Governor may be revised and resubmitted.

(g) The certificate of need standards adopted pursuant to this section which are applicable to the provisions of this article are not subject to article three, chapter twenty-nine-a of this code. The authority shall follow the provisions set forth in this section for giving notice to the public of its actions, holding hearings or receiving comments on the certificate of need standards. The certificate of need standards in effect on July 1, 2016, and all prior versions promulgated and adopted in accordance with the provisions of this section are and have been in full force and effect from each of their respective dates of approval by the Governor.

(h) After approval from the Governor, the authority shall prepare a report detailing its review findings and submit the report to the Legislative Oversight Commission on Health and Human Resources Accountability with its annual report before January 1, each year.

#### **§16-2D-7. Determination of reviewability.**

A person may make a written request to the authority for it to determine whether a proposed health service is subject to the certificate of need or exemption process. The authority may require that a person submit certain information in order to make this determination. A person shall pay a \$100 fee to the authority to

obtain this determination. A person is not required to obtain this determination before filing an application for a certificate of need or an exemption.

**§16-2D-8. Proposed health services that require a certificate of need.**

(a) Except as provided in sections nine, ten and eleven of this article, the following proposed health services may not be acquired, offered or developed within this state except upon approval of and receipt of a certificate of need as provided by this article:

(1) The construction, development, acquisition or other establishment of a health care facility;

(2) The partial or total closure of a health care facility with which a capital expenditure is associated;

(3) (A) An obligation for a capital expenditure incurred by or on behalf of a health care facility, in excess of the expenditure minimum; or

(B) An obligation for a capital expenditure incurred by a person to acquire a health care facility.

(4) An obligation for a capital expenditure is considered to be incurred by or on behalf of a health care facility:

(i) When a valid contract is entered into by or on behalf of the health care facility for the construction, acquisition, lease or financing of a capital asset;

(ii) When the health care facility takes formal action to commit its own funds for a construction project undertaken by the health care facility as its own contractor; or

(iii) In the case of donated property, on the date on which the gift is completed under state law.

(5) A substantial change to the bed capacity of a health care facility with which a capital expenditure is associated;

(6) The addition of ventilator services by a hospital;

(7) The elimination of health services previously offered on a regular basis by or on behalf of a health care facility which is associated with a capital expenditure;

(8) (A) A substantial change to the bed capacity or health services offered by or on behalf of a health care facility, whether or not the change is associated with a proposed capital expenditure;

(B) If the change is associated with a previous capital expenditure for which a certificate of need was issued; and

(C) If the change will occur within two years after the date the activity which was associated with the previously approved capital expenditure was undertaken.

(9) The acquisition of major medical equipment;

(10) A substantial change in an approved health service for which a certificate of need is in effect;

(11) An expansion of the service area for hospice or home health agency regardless of the time period in which the expansion is contemplated or made; and

(12) The addition of health services offered by or on behalf of a health care facility which were not offered on a regular basis by or on behalf of the health care facility within the twelve-month period prior to the time the services would be offered.

(b) The following health services are required to obtain a certificate of need regardless of the minimum expenditure:

(1) Constructing, developing, acquiring or establishing of a birthing center;

(2) Providing radiation therapy;

(3) Providing computed tomography;

(4) Providing positron emission tomography;

(5) Providing cardiac surgery;

(6) Providing fixed magnetic resonance imaging;

(7) Providing comprehensive medical rehabilitation;

(8) Establishing an ambulatory care center;

(9) Establishing an ambulatory surgical center;

(10) Providing diagnostic imaging;

(11) Providing cardiac catheterization services;

(12) Constructing, developing, acquiring or establishing of kidney disease treatment centers, including freestanding hemodialysis units;

(13) Providing megavoltage radiation therapy;

(14) Providing surgical services;

(15) Establishing operating rooms;

(16) Adding acute care beds;

(17) Providing intellectual developmental disabilities services;

(18) Providing organ and tissue transplants;

(19) Establishing an intermediate care facility for individuals with intellectual disabilities;

(20) Providing inpatient services;

(21) Providing hospice services;

(22) Establishing a home health agency; and

(23) Providing personal care services.

(c) A certificate of need previously approved under this article remains in effect unless revoked by the authority.

**§16-2D-9. Health services that cannot be developed.**

Notwithstanding section eight and eleven, these health services require a certificate of need but the authority may not issue a certificate of need to:

(1) A health care facility adding intermediate care or skilled nursing beds to its current licensed bed complement, except as provided in subdivision twenty-three, subsection (c), section eleven;

(2) A person developing, constructing or replacing a skilled nursing facility except in the case of facilities designed to replace existing beds in existing facilities that may soon be deemed unsafe or facilities utilizing existing licensed beds from existing facilities which are designed to meet the changing health care delivery system;

(3) Beds in an intermediate care facility for individuals with an intellectual disability, except that prohibition does not apply to an intermediate care facility for individuals with intellectual disabilities beds approved under the Kanawha County circuit court order of August 3, 1989, civil action number MISC-81-585 issued in the case of E.H. v. Matin, 168 W.V. 248, 284 S.E. 2d 232 (1981); and

(4) An opioid treatment facility or program.

**§16-2D-10. Exemptions from certificate of need.**

Notwithstanding section eight, a person may provide the following health services without obtaining a certificate of need or applying to the authority for approval:

(1) The creation of a private office of one or more licensed health professionals to practice in this state pursuant to chapter thirty of this code.

(2) Dispensaries and first-aid stations located within business or industrial establishments maintained solely for the use of employees that does not contain inpatient or resident beds for

patients or employees who generally remain in the facility for more than twenty-four hours;

(3) A place that provides remedial care or treatment of residents or patients conducted only for those who rely solely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination.

**§16-2D-11. Exemptions from certificate of need which require approval from the authority.**

(a) To obtain an exemption under this section a person shall:

(1) File an exemption application;

(2) Pay the \$1,000 application fee; and

(3) Provide a statement detailing which exemption applies and the circumstances justifying the approval of the exemption.

(b) The authority has forty-five days to review the exemption request. The authority may not hold an administrative hearing to review the application. An affected party may not file an objection to the request for an exemption. The applicant may request or agree with the authority to a fifteen day extension of the timeframe. If the authority does not approve or deny the application within forty-five days, then the exemption is immediately approved. If the authority denies the approval of the exemption, the applicant may appeal the authority's decision to the Office of Judges or refile the application with the authority. The Office of Judges shall follow the procedure provided in section sixteen to perform the review.

(c) Notwithstanding section eight and ten and except as provided in section nine, these health services are exempt from the certificate of need process:

(1) A computed tomography scanner that is installed in a private office practice where at minimum seventy five percent of the scans are for the patients of the practice and the fair market value of the installation and purchase is less than \$250,000 for calendar year 2016. The authority shall adjust the dollar amount

specified in this subdivision annually and publish an update of the amount on or before December 31, of each year. The adjustment of the dollar amount shall be based on the DRI inflation index published in the Global Insight DRI/WEFA Health Care Cost Review. The authority may at any time request from the private office practice information concerning the number of patients who have been provided scans;

(2) (A) A birthing center established by nonprofit primary care center that has a community board and provides primary care services to people in their community without regard to ability to pay; or

(B) A birthing center established by a nonprofit hospital with less than one hundred licensed acute care beds.

(i) To qualify for this exemption, an applicant shall be located in an area that is underserved with respect to low-risk obstetrical services; and

(ii) Provide a proposed health service area.

(3) (A) A health care facility acquiring major medical equipment, adding health services or obligating a capital expenditure to be used solely for research;

(B) To qualify for this exemption, the health care facility shall show that the acquisition, offering or obligation will not:

(i) Affect the charges of the facility for the provision of medical or other patient care services other than the services which are included in the research;

(ii) Result in a substantial change to the bed capacity of the facility; or

(iii) Result in a substantial change to the health services of the facility.

(C) For purposes of this subdivision, the term “solely for research” includes patient care provided on an occasional and irregular basis and not as part of a research program;

(4) The obligation of a capital expenditure to acquire, either by purchase, lease or comparable arrangement, the real property, equipment or operations of a skilled nursing facility.

(5) Shared health services between two or more hospitals licensed in West Virginia providing health services made available through existing technology that can reasonably be mobile. This exemption does not include providing mobile cardiac catheterization;

(6) The acquisition, development or establishment of a certified interoperable electronic health record or electronic medical record system;

(7) The addition of forensic beds in a health care facility;

(8) A behavioral health service selected by the Department of Health and Human Resources in response to its request for application for services intended to return children currently placed in out-of-state facilities to the state or to prevent placement of children in out-of-state facilities is not subject to a certificate of need;

(9) The replacement of major medical equipment with like equipment;

(10) Renovations within a hospital. The renovations may not expand the health care facility's current square footage, incur a substantial change to the health services, or a substantial change to the bed capacity;

(11) Renovations to a skilled nursing facility;

(12) The construction, development, acquisition or other establishment by a licensed West Virginia hospital of an ambulatory health care facility in the county in which it is located and in a contiguous county within or outside this state;

(13) The donation of major medical equipment to replace like equipment for which a certificate of need has been issued and the replacement does not result in a substantial change to health

services. This exemption does not include the donation of major medical equipment made to a health care facility by a related organization;

(14) A person providing specialized foster care personal care services to one individual and those services are delivered in the provider's home;

(15) A hospital converting the use of beds except a hospital may not convert a bed to a skilled nursing home bed and conversion of beds may not result in a substantial change to health services provided by the hospital;

(16) The construction, renovation, maintenance or operation of a state owned veterans skilled nursing facilities established pursuant to the provisions of article one-b of this chapter;

(17) A nonprofit community group designated by a county to develop and operate a nursing home bed facility with no more than thirty-six beds in any county in West Virginia that currently is without a skilled nursing facility;

(18) A critical access hospital, designated by the state as a critical access hospital, after meeting all federal eligibility criteria, previously licensed as a hospital and subsequently closed, if it reopens within ten years of its closure;

(19) The establishing of a health care facility or offering of health services for children under one year of age suffering from Neonatal Abstinence Syndrome;

(20) The construction, development, acquisition or other establishment of community mental health and intellectual disability facility;

(21) Providing behavioral health services;

(22) The construction, development, acquisition or other establishment of kidney disease treatment centers, including freestanding hemodialysis units but only to a medically underserved population;

(23) The transfer or acquisition of intermediate care or skilled nursing beds from an existing health care facility to a nursing home providing intermediate care and skilled nursing services.

(24) The construction, development, acquisition or other establishment by a health care facility of a nonhealth related project;

(25) A facility owned and operated by one or more health professionals authorized or organized pursuant to chapter thirty or ambulatory health care facility which offers laboratory or imaging services to patients regardless of the cost associated with the proposal. To qualify for this exemption seventy five percent of the laboratory services are for the patients of the practice or ambulatory health care facility of the total laboratory services performed and seventy-five percent of imagining services are for the patients of the practice or ambulatory health care facility of the total imaging services performed;

(26) The construction, development, acquisition or other establishment of an alcohol or drug treatment facility and drug and alcohol treatment services unless the construction, development, acquisition or other establishment is an opioid treatment facility or programs as set forth in subdivision (4) of section nine of this article;

(27) Assisted living facilities and services; and

(28) The creation, construction, acquisition or expansion of a community-based nonprofit organization with a community board that provides or will provide primary care services to people without regard to ability to pay and receives approval from the Health Resources and Services Administration.

**§16-2D-12. Minimum criteria for certificate of need reviews.**

(a) A certificate of need may only be issued if the proposed health service is:

(1) Found to be needed; and

(2) Consistent with the state health plan, unless there are emergency circumstances that pose a threat to public health.

(b) The authority may not grant a certificate of need unless, after consideration of the appropriateness of the use of existing facilities within this state providing services similar to those being proposed, the authority makes each of the following findings in writing:

(1) That superior alternatives to the services in terms of cost, efficiency and appropriateness do not exist within this state and the development of alternatives is not practicable;

(2) That existing facilities providing services within this state similar to those proposed are being used in an appropriate and efficient manner;

(3) That in the case of new construction, alternatives to new construction, such as modernization or sharing arrangements, have been considered and have been implemented to the maximum extent practicable; and

(4) That patients will experience serious problems in obtaining care within this state of the type proposed in the absence of the proposed health service.

(c) In addition to the written findings required in this section, the authority shall make a written finding regarding the extent to which the proposed health service meets the needs of the medically underserved population, except in the following cases:

(1) Where the proposed health service is one described in subsection (d) of this section to eliminate or prevent certain imminent safety hazards or to comply with certain licensure or accreditation standards; or

(2) Where the proposed health service is a proposed capital expenditure not directly related to the provision of health services or to beds or to major medical equipment.

(d) Notwithstanding the review criteria in subsection (b), an application for a certificate of need shall be approved, if the authority finds that the facility or service with respect to which such

capital expenditure is proposed to be made is needed and that the obligation of such capital expenditure is consistent with the state health plan, for a capital expenditure which is required:

(1) To eliminate or prevent imminent safety hazards as defined by federal, state or local fire building or life safety codes, statutes or rules.

(2) To comply with state licensure standards; or

(3) To comply with accreditation or certification standards. Compliance with which is required to receive reimbursement under Title XVIII of the Social Security Act or payments under the state plan for medical assistance approved under Title XIX of such act.

(e) In the case where an application is made by a health care facility to provide ventilator services which have not previously been provided for a nursing facility bed, the authority shall consider the application in terms of the need for the service and whether the cost exceeds the level of current Medicaid services. A facility providing ventilator services, may not provide a higher level of services for a nursing facility bed without demonstrating that the change in level of service by provision of the additional ventilator services will result in no additional fiscal burden to the state.

(f) The authority shall consider the total fiscal liability to the state for a submitted application.

(g) Criteria for reviews may vary according to the purpose for which a particular review is being conducted or the types of health services being reviewed.

(h) An application for a certificate of need may not be made subject to any criterion not contained in this article or in the certificate of need standards.

### **§16-2D-13. Procedures for certificate of need reviews.**

(a) An application for a certificate of need shall be submitted to the authority prior to the offering or development of a proposed health service.

(b) A person proposing a proposed health service shall:

(1) Submit a letter of intent ten days prior to submitting the certificate of need application. The information required within the letter of intent shall be detailed by the authority in legislative rule;

(2) Submit the appropriate application fee;

(A) Up to \$1,500,000 a fee of \$1,500.00;

(B) From \$1,500,001 to \$ 5,000,000 a fee of \$5,000.00;

(C) From \$5,000,001 to 25,000,000 a fee of \$25,000.00; and

(D) From \$25,000,001 and above a fee of \$35,000.00.

(3) Submit to the Director of the Office of Insurance Consumer Advocacy a copy of the application;

(c) The authority shall determine if the submitted application is complete within ten days of receipt of the application. The authority shall provide written notification to the applicant of this determination. If the authority determines an application to be incomplete, the authority may request additional information from the applicant.

(d) Within five days of receipt of a letter of intent, the authority shall provide notification to the public through a newspaper of general circulation in the area where the health service is being proposed and by placing of copy of the letter of intent on its website. The newspaper notice shall contain a statement that, further information regarding the application is on the authority's web site.

(e) The authority may batch completed applications for review on the fifteenth day of the month or the last day of month in which the application is deemed complete.

(f) When the application is submitted, ten days after filing the letter of intent, the application shall be placed on the authority's website.

(g) An affected party has thirty days starting from the date the application is batched to request the authority hold an administrative hearing.

(1) A hearing order shall be approved by the authority within fifteen days from the last day an affected person may requests an administrative hearing on a certificate of need application.

(2) A hearing shall take place no later than three months from that date the hearing order was approved by the authority.

(3) The authority shall conduct the administrative hearing in accordance with administrative hearing requirements in article five, chapter twenty-nine-a of this code.

(4) In the administrative hearing an affected person has the right to be represented by counsel and to present oral or written arguments and evidence relevant to the matter which is the subject of the public hearing. An affected person may conduct reasonable questioning of persons who make factual allegations relevant to its certificate of need application.

(5) The authority shall maintain a verbatim record of the administrative hearing.

(6) After the commencement of the administrative hearing on the application and before a decision is made with respect to it, there may be no ex parte contacts between:

(A) The applicant for the certificate of need, any person acting on behalf of the applicant or holder of a certificate of need or any person opposed to the issuance of a certificate for the applicant; and

(B) Any person in the authority who exercises any responsibility respecting the application.

(7) The authority may not impose fees to hold the administrative hearing.

(8) The authority shall render a decision within forty-five days of the conclusion of the administrative hearing.

(h) If an administrative hearing is not conducted during the review of an application, the authority shall provide a file closing date five days after an affected party may no longer request an administrative hearing, after which date no other factual information or evidence may be considered in the determination of the application for the certificate of need. A detailed itemization of documents in the authority's file on a proposed health service shall, on request, be made available by the authority at any time before the file closing date.

(i) The extent of additional information received by the authority from the applicant for a certificate of need after a review has begun on the applicant's proposed health service, with respect to the impact on the proposed health service and additional information which is received by the authority from the applicant, may be cause for the authority to determine the application to be a new proposal, subject to a new review cycle.

(j) The authority shall have five days to provide the written status update upon written request by the applicant or an affected person. The status update shall include the findings made in the course of the review and any other appropriate information relating to the review.

(k) (1) The authority shall annually prepare and publish to its website, a status report of each ongoing and completed certificate of need application reviews.

(2) For a status report of an ongoing review, the authority shall include in its report all findings made during the course of the review and any other appropriate information relating to the review.

(3) For a status report of a completed review, the authority shall include in its report all the findings made during the course of the review and its detailed reasoning for its final decision.

(l) The authority shall provide for access by the public to all applications reviewed by the authority and to all other pertinent written materials essential to agency review.

**§16-2D-14. Procedure for an uncontested application for a certificate of need.**

The authority shall review an uncontested certificate of need application within sixty days from the date the application is batched. An uncontested application is deemed approved if the review is not completed within sixty days from the date the application is batched, unless an extension, up to fifteen days is requested by the applicant.

**§16-2D-15. Agency to render final decision; issue certificate of need; write findings; specify capital expenditure maximum.**

(a) The authority shall render a final decision on an application for a certificate of need in the form of an approval, a denial or an approval with conditions. The final decision with respect to a certificate of need shall be based solely on:

(1) The authority's review conducted in accordance with procedures and criteria in this article and the certificate of need standards; and

(2) The record established in the administrative hearing held with respect to the certificate of need.

(b) Approval with conditions does not give the authority the ability to mandate a health service not proposed by the health care facility. Issuance of a certificate of need or exemption may not be made subject to any condition unless the condition directly relates to criteria in this article, or in the certificate of need standards. Conditions may be imposed upon the operations of the health care facility for not longer than a three-year period.

(c) The authority shall send its decision along with written findings to the person proposing the proposed health service or exemption and shall make it available to others upon request.

(d) In the case of a final decision to approve or approve with conditions a proposal for a proposed health service, the authority

shall issue a certificate of need to the person proposing the proposed health service.

(e) The authority shall specify in the certificate of need the maximum amount of capital expenditures which may be obligated. The authority shall adopt legislative rules pursuant to section four to prescribe the method used to determine capital expenditure maximums and a process to review the implementation of an approved certificate of need for a proposed health service for which the capital expenditure maximum is exceeded or is expected to be exceeded.

**§16-2D-16. Appeal of certificate of need a decision.**

(a) The authority's final decision shall upon request of an affected person be reviewed by the Office of Judges. The request shall be received within thirty days after the date of the authority's decision. The appeal hearing shall commence within thirty days of receipt of the request.

(b) The office of judges shall conduct its proceedings in conformance with the West Virginia Rules of Civil Procedure for trial courts of record and the local rules for use in the civil courts of Kanawha County and shall review appeals in accordance with the provisions governing the judicial review of contested administrative cases in article five, chapter twenty-nine-a of this code.

(c) The decision of the office of judges shall be made in writing within forty-five days after the conclusion of the hearing.

(d) The written findings of the office of judges shall be sent to the person who requested the review, to the person proposing the proposed health service and to the authority, and shall be made available by the authority to others upon request.

(e) The decision of the office of judges shall be considered the final decision of the authority; however, the office of judges may remand the matter to the authority for further action or consideration.

(f) Upon the entry of a final decision by the office of judges, a person adversely affected by the review may within thirty days after the date of the decision of the review agency make an appeal in the circuit court of Kanawha County. The decision of the office of judges shall be reviewed by the circuit court in accordance with the provisions for the judicial review of administrative decisions contained in article five, chapter twenty-nine-a of this code.

**§16-2D-17. Nontransference, time period compliance and withdrawal of certificate of need.**

(a) A certificate of need is nontransferable and is valid for a maximum of one year from the date of issuance. Upon the expiration of the certificate or during the certification period, the person proposing the proposed health service shall provide the authority information on the development of the project as the authority may request. The authority shall periodically monitor capital expenditures obligated under certificates, determine whether sufficient progress is being made in meeting the timetable specified in the approved application for the certificate and whether there has been compliance with the application and any conditions of certification. The certificate of need may be extended by the authority for additional periods of time as are reasonably necessary to expeditiously complete the project.

(b) A certificate of need may no longer be in effect, and may no longer be required, after written notice of substantial compliance with the approved application and any conditions of certification is issued to the applicant, after the activity is undertaken for which the certificate of need was issued, and after the authority is provided written notice of such undertaking.

(c) A person proposing a proposed health service may not be issued a license, if applicable, until the authority has issued a written notice of substantial compliance with the approved application and any conditions of certification, nor may a proposed health service be used until the person has received such notice. A proposed health service may not be found to be in substantial compliance with the approved application and any conditions of certification if there is a substantial change in the approved

proposed health service for which change a certificate of need has not been issued.

(d) (1) A certificate of need may be withdrawn by the authority for:

(A) Noncompliance with any conditions of certification;

(B) A substantial change in an approved proposed health service for which change a certificate of need has not been issued;

(C) Material misrepresentation by an applicant upon which the authority relied in making its decision; or

(D) Other reasons that may be established by the authority in legislative rules adopted pursuant to section four of this article.

(2) Any decision of the authority to withdraw a certificate of need shall be based solely on:

(A) The provisions of this article and on legislative rules adopted in accordance with section four of this article; and

(B) The record established in administrative hearing held with respect to the authority's proposal to withdraw the certificate.

(3) In the case of a proposed withdrawal of a certificate of need:

(A) After commencement of an administrative hearing on the authority's proposal to withdraw a certificate of need and before a decision is made on withdrawal, there may be no ex parte contacts between:

(i) The holder of the certificate of need, any person acting on behalf of the holder, or any person in favor of the withdrawal; and

(ii) Any person in the authority who exercises responsibility respecting withdrawal of the certificate;

(B) The authority shall follow the review procedure established in section thirteen; and

(C) Appeals of withdrawals of certificates of need shall be made pursuant to section sixteen of this article.

(4) A proposed health service may not be acquired, offered, or developed within this state if a certificate of need authorizing that proposed health service has been withdrawn by the authority and the acquisition, offering, or developing of the proposed health service is subject to review under this article.

**§16-2D-18. Denial or revocation of license for operating without certificate.**

A person who violates the provisions of this article is subject to denial or revocation of a license, in whole or in part, to operate a proposed health service or health care facility. Upon a showing to the authority that a person is offering or developing a proposed health service without having first obtained a certificate of need or that a person is otherwise in violation of the provisions of this article, the authority shall provide a person with written notice which shall state the nature of the violation and the time and place at which the person shall appear to show good cause why its license should not be revoked or denied, at which time and place the person shall be afforded a reasonable opportunity to present testimony and other evidence in support of the person's position. If, thereafter, the authority determines that the person's license to operate the health service or health care facility should be revoked or denied, the authority shall issue a written order to the appropriate licensing agency of the state, requiring that the person's license to operate the proposed health service or health care facility be revoked or denied. The order is binding upon the licensing agency.

**§16-2D-19. Injunctive relief; civil penalty.**

(a) A person who acquires, offers or develops a proposed health service for which a certificate of need is required without first having a certificate of need therefore or violates any other provision of this article, or any legislative rule promulgated thereunder, the authority may maintain a civil action in the circuit court of the county where the violation has occurred, or where the person may

be found, to enjoin, restrain or prevent the violation. An injunction bond is not required to be filed.

(b) The authority may assess a civil penalty for violation of this article.

(c) Upon the authority determining that there is probable cause to believe that a person is in violation of the provisions of this article, or any lawful rule promulgated thereunder, the authority shall provide the person with written notice which states the nature of the alleged violation and the time and place at which an administrative hearing shall take place. The hearing shall be conducted in accordance with the administrative hearing provisions of article five, chapter twenty-nine-a of this code.

(d) If the authority determines that the person is in violation of the provisions of this article or legislative rule, the authority shall assess a civil penalty of not less than \$500 nor more than \$25,000.

(e) In determining the amount of the penalty, the authority shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage.

(f) A person assessed shall be notified of the assessment in writing, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the authority within thirty days, the authority may institute a civil action in the circuit court of the county where the violation has occurred, or where the person may be found to recover the amount of the assessment. In the civil action, the scope of the court's review of the authority's action, which shall include a review of the amount of the assessment, shall be as provided in article five, chapter twenty-nine-a of this code for the judicial review of contested administrative cases.

#### **§16-2D-20. Statute of limitations.**

The authority has a period of three years to correct violations of the provisions of this article. The three-year period begins from the date the authority knows or should have known of the violation.

Each new act of a continuing violation shall provide a basis for restarting the calculation of the limitations period.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4365) was advanced to third reading with Senator Carmichael's amendment pending and the right reserved to consider other amendments to the bill on that reading.

**Eng. House Bill 4411**, Relating to penalty for illegally taking native brook trout.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

On page one, section five-a, line seven, by striking out the words "taken illegally, \$100 for each native brook trout" and inserting in lieu thereof the words "that exceeds the creel limit, \$100 for the first five illegally taken and \$20 for each thereafter;"

The bill (Eng. H. B. 4411), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4487**, Relating to state retirement systems.

On second reading, coming up in regular order, was read a second time.

On motions of Senators Kessler and Kirkendoll, the following amendments to the bill were reported by the Clerk and considered simultaneously:

On page twenty-one, after section seventeen-a, by adding a new section, designated section six, to read as follows:

**ARTICLE 7D. VOLUNTARY TRANSFER FROM TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM TO STATE TEACHERS RETIREMENT SYSTEM.**

**§18-7D-6. Service credit in state Teachers Retirement System following transfer; conversion of assets; adjustments.**

(a) Any member who has affirmatively elected to transfer to the state Teachers Retirement System within the period provided in section seven of this article whose assets have been transferred from the Teachers' Defined Contribution Retirement System to the state Teachers Retirement System pursuant to the provisions of this article and who has not made any withdrawals or cash-outs from his or her assets is, depending upon the percentage of actively contributing members affirmatively electing to transfer, entitled to service credit in the state Teachers Retirement System in accordance with the provisions of subsection (c) of this section.

(b) Any member who has made withdrawals or cash-outs will receive service credit based upon the amounts transferred. The board shall make the appropriate adjustment to the service credit the member will receive.

(c) More than seventy-five percent of actively contributing members of the Teachers' Defined Contribution Retirement System affirmatively elected to transfer to the state Teachers Retirement System within the period provided in section seven of this article. Therefore, any member of the Defined Contribution Retirement System who decides to transfer to the state Teachers Retirement System, calculates his or her service credit in the state Teachers Retirement System as follows:

(1) For any member affirmatively electing to transfer, the member's state Teachers Retirement System credit shall be seventy-five percent of the member's Teachers' Defined Contribution Retirement System service credit, less any service previously withdrawn by the member or due to a qualified domestic relations order and not repaid;

(2) To receive full credit in the state Teachers Retirement System for service in the Teachers' Defined Contribution Retirement System for which assets are transferred, members who affirmatively elected to transfer and who provided to the board a signed verification of cost for service credit purchase form by the effective date of the amendments to this section enacted in the 2009 regular legislative session shall pay into the state Teachers Retirement System a one and one-half percent contribution by no later than July 1, 2015, or no later than ninety days after the postmarked date on a final and definitive contribution calculation from the board, whichever is later. This contribution shall be calculated as one and one-half percent of the member's estimated total earnings for which assets are transferred, plus interest of four percent per annum accumulated from the date of the member's initial participation in the Defined Contribution Retirement System through June 30, 2009: *Provided*, That any member who transferred and provided to the board a signed verification of cost for service credit purchase form by June 30, 2009, but was unable to complete the purchase of the one and one-half percent contribution, or any member who did not request a verification of cost letter but attempted to purchase the one and one-half percent contribution and was denied in writing by the board on or before December 31, 2009, may request the board on or before ~~April 15, 2015~~ April 15, 2016, to recalculate the contribution for ~~2015~~ 2016. To receive full credit, the member shall pay into the state Teachers Retirement System the recalculated purchase amount by ~~July 1, 2015~~ July 1, 2016, or no later than sixty days after the postmarked date on a contribution recalculation from the board, whichever is later. The recalculated contribution shall include the interest loss at the actuarial rate of seven and one-half percent. The board's executive director may correct clerical errors.

(A) For a member contributing to the Defined Contribution Retirement System at any time during the 2008 fiscal year and commencing membership in the state Teachers Retirement System on July 1, 2008, or August 1, 2008, as the case may be:

(i) The estimated total earnings shall be calculated based on the member's salary and the member's age nearest birthday on June 30, 2008;

(ii) This calculation shall apply both an annual backward salary scale from that date for prior years' salaries and a forward salary scale for the salary for the 2008 fiscal year.

(B) The calculations in paragraph (A) of this subdivision are based upon the salary scale assumption applied in the West Virginia Teachers Retirement System actuarial valuation as of July 1, 2007, prepared for the Consolidated Public Retirement Board. This salary scale shall be applied regardless of breaks in service.

(d) All service previously transferred from the state Teachers Retirement System to the Teachers' Defined Contribution Retirement System is considered Teachers' Defined Contribution Retirement System service for the purposes of this article.

(e) Notwithstanding any provision of this code to the contrary, the retirement of a member who becomes eligible to retire after the member's assets are transferred to the state Teachers Retirement System pursuant to the provisions of this article may not commence before September 1, 2008: *Provided*, That the Consolidated Public Retirement Board may not retire any member who is eligible to retire during the calendar year 2008 unless the member has provided a written notice to his or her county board of education by July 1, 2008, of his or her intent to retire.

(f) The provisions of section twenty-eight-e, article seven-a of this chapter do not apply to the amendments to this section enacted during the 2009 regular legislative session, ~~or~~ the 2015 regular legislative session or the 2016 regular legislative session;

And,

By striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

That §5-10-2 and §5-10-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18-7A-17a of said

code be amended and reenacted; and that §18-7D-6 of said code be amended and reenacted, all to read as follows:

Following discussion,

Senator Palumbo requested a ruling from the Chair as to whether he should be excused from voting under Senate Rule 43.

The Chair replied that any impact on Senator Palumbo would be as a member of a class of persons and that he would be required to vote.

The question being on the adoption of the amendment offered by Senators Kessler and Kirkendoll to the bill, the same was put and did not prevail.

The bill (Eng. Com. Sub. for H. B. 4487) was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4502**, Allowing reciprocity agreements with contiguous states to establish regulations, licensing requirements and taxes for small businesses.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 4507**, Providing an employer may grant preference in hiring to a veteran or disabled veteran.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 4517**, Limiting the ability of an agent under a power of attorney to take self-benefiting actions.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 4519**, Allowing certain municipalities to elect to participate in the West Virginia Municipal Police Officers and Firefighters Retirement System.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Pensions, was reported by the Clerk and adopted:

On page thirteen, section thirty-three, line eighteen, after the word “of” by inserting the word “election”.

The bill (Eng. Com. Sub. for H. B. 4519), as amended, was then ordered to third reading.

**Eng. House Bill 4578**, Creating a criminal offense of conspiracy to violate the drug laws.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk:

By striking out everything after the enacting section and inserting in lieu thereof the following:

#### **ARTICLE 4. OFFENSES AND PENALTIES.**

##### **§60A-4-414. Conspiracy.**

(a) Any person who conspires with one or more other persons to commit a violation of subdivision (i), subsection (a), section four hundred one, subdivision (1), subsection (b), section four hundred nine or section four hundred eleven of this article shall, if one or more of such persons commit any act in furtherance of the conspiracy, be guilty of a felony and, upon conviction, be fined not less than \$10,000 nor more than \$50,000, or imprisoned in a state correctional facility for a determinate period not to exceed five years, or both fined and imprisoned.

(b) Notwithstanding the provisions of subsection (a) of this section, any person who acts as a co-conspirator in violation of the provisions of subsection (a) of this section and who acts as an organizer, leader, financier or manager of a conspiracy involving

three or more co-conspirators shall be guilty of a felony and, upon conviction, be fined not less than \$50,000 nor more than \$100,000 or imprisoned in a state correctional facility for a determinate period not to exceed fifteen years, or both fined and imprisoned.

(c) For purposes of subsection (a) of this section, acts done in furtherance of a conspiracy by a co-conspirator are attributable to co-conspirators, whether or not said co-conspirators had actual knowledge of the act.

(d) Prosecution under the provisions of this section precludes a prosecution for a violation of the provisions of section thirty-one, article ten, chapter sixty-one of this code, based upon the same underlying conduct.

Following discussion,

At the request of Senator Kessler, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar, with the Judiciary committee amendment pending.

**Eng. Com. Sub. for House Bill 4636**, Increasing the penalties for violating the Whistle-blower Law.

On second reading, coming up in regular order, was read a second time.

On motion of Senator Kessler, the following amendment to the bill was reported by the Clerk and adopted:

On page one, section six, line eleven, after the word "information," by striking out the remainder of the subsection and inserting in lieu thereof the following: the court may order the person's suspension from public service for not more than six months. The public body may also issue appropriate discipline against the person, up to and including termination.

The bill (Eng. Com. Sub. for H. B. 4636), as amended, was then ordered to third reading.

**Eng. House Bill 4734**, Relating to mine subsidence insurance.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Banking and Insurance, was reported by the Clerk and adopted:

By striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

That §33-30-6 and §33-30-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:.

The bill (Eng. H. B. 4734), as amended, was then ordered to third reading.

**Eng. House Bill 4738**, Relating to the offense of driving in an impaired state.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

The Senate proceeded to the tenth order of business.

The following bills on first reading, coming up in regular order, were each read a first time and ordered to second reading:

**Eng. Com. Sub. for House Bill 4053**, Department of Environmental Protection, Air Quality, rule relating to the control of annual nitrogen oxide emissions.

**Eng. Com. Sub. for House Bill 4060**, Relating generally to the promulgation of administrative rules by the Department of Military Affairs and Public Safety.

**Eng. Com. Sub. for House Bill 4237**, Supporting and Strengthening Families Act.

**Eng. Com. Sub. for House Bill 4301**, Relating to a framework for initiating comprehensive transformation of school leadership.

**Eng. Com. Sub. for House Bill 4307**, Clarifying that a firearm may be carried for self defense in state parks, state forests and state recreational areas.

**Eng. Com. Sub. for House Bill 4317**, Limiting factors in parenting plans.

**Eng. Com. Sub. for House Bill 4435**, Authorizing the Public Service Commission to approve expedited cost recovery of electric utility coal-fired boiler modernization and improvement projects.

**Eng. House Bill 4461**, Relating to School Building Authority School Major Improvement Fund eligibility.

**Eng. Com. Sub. for House Bill 4554**, Allowing an increase of gross weight limitations on certain roads in Greenbrier County.

**Eng. Com. Sub. for House Bill 4586**, Ensuring that the interest of protected persons, incarcerated persons and unknown owners are protected in condemnation actions filed by the Division of Highways.

And,

**Eng. Com. Sub. for House Bill 4606**, Relating to the recusal of certain public officials from voting for appropriation of moneys to nonprofit entities.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senator Woelfel.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Thursday, March 10, 2016, at 11 a.m.

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## THURSDAY, MARCH 10, 2016

The Senate met at 11 a.m.

(Senator Cole, Mr. President, in the Chair.)

Prayer was offered by Pastor Matt Friend, Senior Pastor, Bible Center Church, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Mitch Carmichael, a senator from the fourth district.

Pastor Debbie Thomas, Nondenominational Fellowship Pentecostal Ministries, Charleston, West Virginia, proceeded in the singing of “The Battle Hymn of the Republic”.

Pending the reading of the Journal of Wednesday, March 9, 2016,

At the request of Senator Leonhardt, unanimous consent being granted, the Journal was approved and the further reading thereof dispensed with.

The Senate proceeded to the second order of business and the introduction of guests.

Senator Carmichael moved that the special order of business set for this position on the calendar (*consideration of executive nominations*) be postponed and made a special order of business for Saturday, March 12, 2016, following the tenth order of business.

Following discussion,

The question being on the adoption of Senator Carmichael’s aforestated motion, the same was put and prevailed.

Thereafter, at the request of Senator Carmichael, and by unanimous consent, the remarks by Senator Kessler regarding the adoption of Senator Carmichael’s motion to postpone

consideration of executive nominations were ordered printed in the Appendix to the Journal.

At the request of Senator Kessler, and by unanimous consent, the remarks by Senator Carmichael regarding the adoption of Senator Carmichael's motion to postpone consideration of executive nominations were ordered printed in the Appendix to the Journal.

The Senate proceeded to the third order of business.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Com. Sub. for Senate Bill 6**, Requiring drug screening and testing of applicants for TANF program.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §9-3-6, to read as follows:

### **ARTICLE 3. APPLICATION FOR AND GRANTING OF ASSISTANCE.**

#### **§9-3-6. Pilot program for drug screening of applicants for cash assistance.**

(a) As used in this section:

(1) "Applicant" means a person who is applying for benefits from the Temporary Assistance for Needy Families Program.

(2) “Board of Review” means the board established in subdivision (2), section six, article two, chapter nine of this code.

(3) “Caseworker” means a person employed by the department with responsibility for making a reasonable suspicion determination during the application process for Temporary Assistance for Needy Families.

(4) “Child Protective Services” means the agency within the department responsible for investigating reports of child abuse and neglect as required in section eight hundred two, article two, chapter forty-nine of this code.

(5) “Department” means the Department of Health and Human Resources.

(6) “Drug screen” or “drug screening” means any analysis regarding substance abuse conducted by the Department of Health and Human Resources on applicants for assistance from the Temporary Assistance for Needy Families program.

(7) “Drug test” or “drug testing” means a drug test which tests urine for Amphetamines (amphetamine and methamphetamine) Cocaine, Marijuana, Opiates (codeine and morphine), Phencyclidine, Barbiturates, Benzodiazepines, Methadone, Propoxyphene and Expanded Opiates (oxycodone, hydromorphone, hydrocodone, oxymorphone).

(8) “Secretary” means the secretary of the department or his or her designee.

(9) “Temporary Assistance for Needy Families Program” means assistance provided through ongoing cash benefits pursuant to 42 U. S. C. §601, *et seq.*, operated in West Virginia as the West Virginia Works Program pursuant to article nine of this chapter.

(b) Subject to federal approval, the secretary shall implement and administer a three year pilot program to drug screen any adult applying for assistance from the Temporary Assistance for Needy Families Program. The secretary shall seek the necessary federal approval immediately following the enactment of this section and

the program shall begin within sixty days of receiving federal approval.

(c) Reasonable suspicion exists if:

(1) A case worker determines, based upon the result of the drug screen, that the applicant demonstrates qualities indicative of substance abuse based upon the indicators of the drug screen; or

(2) An applicant has been convicted of a drug-related offense within the three years immediately prior to an application for Temporary Assistance for Needy Families Program and whose conviction becomes known as a result of a drug screen as set forth in this section.

(d) Presentation of a valid prescription for a detected substance that is prescribed by a health care provider authorized to prescribe a controlled substance is an absolute defense for failure of any drug test administered under the provisions of this section.

(e) Upon a determination by the case worker of reasonable suspicion as set forth in this section an applicant shall be required to complete a drug test. The cost of administering the drug test and initial substance abuse testing program is the responsibility of the Department of Health and Human Resources. Any applicant whose drug test results are positive may request that the drug test specimen be sent to an alternative drug-testing facility for additional drug testing. Any applicant who requests an additional drug test at an alternative drug-testing facility shall be required to pay the cost of the alternative drug test.

(f) Any applicant who has a positive drug test shall complete a substance abuse treatment and counseling program and a job skills program approved by the secretary. An applicant may continue to receive benefits from the Temporary Assistance for Needy Families program while participating in the substance abuse treatment and counseling program or job skills program. Upon completion of both a substance abuse treatment and counseling program and a job skills program, the applicant is subject to periodic drug screening and testing as determined by the secretary

in rule. Subject to applicable federal laws, any applicant for Temporary Assistance for Needy Families program who fails to complete, or refuses to participate in, the substance abuse treatment and counseling program or job skills program as required under this subsection is ineligible to receive Temporary Assistance for Needy Families until he or she is successfully enrolled in substance abuse treatment and counseling and job skills programs. Upon a second positive drug test, an applicant shall be ordered to complete a second substance abuse treatment and counseling program and job skills program. He or she shall be suspended from the Temporary Assistance for Needy Families program for a period of twelve months, or until he or she completes both a substance abuse treatment and counseling program and a job skills program. Upon a third positive drug test an applicant shall be permanently terminated from the Temporary Assistance for Needy Families Program subject to applicable federal law.

(g) Any applicant who refuses a drug screen or a drug test is ineligible for assistance.

(h) The secretary shall order an investigation and home visit from Child Protective Services on any applicant whose benefits are suspended and who has not designated a protective payee or whose benefits are terminated due to failure to pass a drug test. This investigation and home visit may include a face-to-face interview with the child, if appropriate; the development of a protection plan; and, if necessary for the health and well-being of the child, may also involve law enforcement. This investigation and home visit shall be followed by a report detailing recommended action which Child Protective Services shall undertake. Child Protective Services is responsible for providing, directing or coordinating the appropriate and timely delivery of services to any child who is the subject of any investigation and home visit conducted pursuant to this section. In cases where Child Protective Services determines that the best interests of the child requires court action, they shall initiate the appropriate legal proceeding.

(i) Any other adult members of a household that includes a person declared ineligible for the Temporary Assistance for Needy Families program pursuant to this section shall, if otherwise

eligible, continue to receive Temporary Assistance for Needy Families benefits.

(j)(1) No dependent child's eligibility for benefits under the Temporary Assistance for Needy Families program may be affected by a parent's failure to pass a drug test.

(2) If pursuant to this section a parent is deemed ineligible for the Temporary Assistance for Needy Families program, the dependent child's eligibility is not affected and an appropriate protective payee shall be designated to receive benefits on behalf of the child.

(3) The parent may choose to designate another person as a protective payee to receive benefits for the minor child. The designated person shall be an immediate family member, or if an immediate family member is not available or declines the option, another person may be designated.

(4) The secretary shall screen and approve the designated person.

(k)(1) An applicant who is determined by the secretary to be ineligible to receive benefits pursuant to subsection (f) of this section due to a failure to participate in a substance abuse treatment and counseling program or a job skills program who can later document successful completion of a drug treatment program approved by the secretary may reapply for benefits six months after the completion of the substance abuse treatment and counseling program or job skills program. An applicant who has met the requirements of this subdivision and reapplies is also required to submit to a drug test and is subject to the provisions of subsection (f) of this section.

(2) An applicant may reapply only once pursuant to the exceptions contained in this subsection.

(3) The cost of any drug screen or test and drug treatment provided under subsection (k) is the responsibility of the individual being screened and receiving treatment.

(l) An applicant who is denied assistance under this section may request a review of the denial by the Board of Review. The results of a drug screen or test are admissible without further authentication or qualification in the review of denial by the Board of Review and in any appeal. The Board of Review shall provide a fair, impartial and expeditious grievance and appeal process to applicants who have been denied Temporary Assistance for Needy Families pursuant to the provisions of this section. The Board of Review shall make findings regarding the denial of benefits and issue a decision which either verifies the denial or reverses the decision to deny benefits. Any applicant adversely affected or aggrieved by a final decision or order of the Board of Review may seek judicial review of that decision.

(m) The secretary shall ensure the confidentiality of all drug screen and drug test results administered as part of this program. Drug screen and test results shall be used only for the purpose of determining eligibility for the Temporary Assistance for Needy Families program. At no time may drug screen or test results be released to any public or private person or entity or any law-enforcement agency, except as otherwise authorized by this section.

(n) The secretary shall promulgate emergency rules pursuant to the provisions of article three, chapter twenty-nine-a to prescribe the design, operation and standards for the implementation of this section.

(o) A person who intentionally misrepresents any material fact in an application filed under the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$100 nor more than \$1,000 or by confinement in jail not to exceed six months, or by both fine and confinement.

(p) The secretary shall report to the Joint Committee on Government and Finance by December 31, 2016, and annually after that until the conclusion of the pilot program on the status of the federal approval and pilot program described in this section. The report shall include, but is not limited to:

(1) The total number of applicants who were deemed ineligible to receive benefits under the program due to a positive drug test for controlled substances;

(2) The number of applicants for whom there was a reasonable suspicion due to a conviction of a drug-related offense within the five years prior to an application for assistance;

(3) The number of those applicants that receive benefits after successful completion of a drug treatment program as specified in this section; and

(4) The total cost to operate the program.

(q) Should federal approval not be given for any portion of the program as set forth in this section, the secretary shall implement the program to meet the federal objections and continue to operate a three year pilot program consistent with the purpose of this section.

(r) For the purposes of the pilot program contained in this section, pursuant to the authority and option granted by 21 U. S. C. §862a(d)(1)(A) to the states, West Virginia hereby exempts all persons domiciled within the state from the application of 21 U. S. C. §862a(a).

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Committee Substitute for Senate Bill 6, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kirkendoll, Leonhardt, Maynard, Mullins, Palumbo, Plymale, Prezioso, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel and Cole (Mr. President)—27.

The nays were: Facemire, Kessler, Laird, Miller, Romano, Snyder and Yost—7.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 6) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Com. Sub. for Senate Bill 43**, Clarifying means of posting to prohibit hunting or trespassing.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §20-2-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §61-3B-1 of said code be amended and reenacted, all to read as follows:

## **CHAPTER 20. NATURAL RESOURCES.**

### **ARTICLE 2. WILDLIFE RESOURCES.**

#### **§20-2-8. Posting unenclosed lands; hunting, etc., on posted land.**

The owner, lessee or other person entitled to possession of unenclosed lands may have erected and maintained signs or placards legibly printed, easily discernible, conspicuously posted and reasonably spaced or, alternatively, may mark the posted land as set forth in section one, article three-b, chapter sixty-one of this

code, so as to indicate the territory in which hunting, trapping or fishing is prohibited.

Any person who enters upon the unenclosed lands of another which have been lawfully posted, for the purpose of hunting, trapping or fishing, shall be guilty of a misdemeanor. The officers charged with the enforcement of the provisions of this chapter shall have the duty to enforce the provisions of this section if requested to do so by such owner, lessee, person or agent, but not otherwise.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENTS.**

### **ARTICLE 3B. TRESPASS.**

#### **§61-3B-1. Definitions.**

As used in this article:

(1) “Structure” means any building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof.

(2) “Conveyance” means any motor vehicle, vessel, railroad car, railroad engine, trailer, aircraft or sleeping car, and “to enter a conveyance” includes taking apart any portion of the conveyance.

(3) An act is committed “in the course of committing” if it occurs in an attempt to commit the offense or in flight after the attempt or commission.

(4) “Posted land” is land that has:

~~(A) Land upon which reasonably maintained signs are~~ Signs placed not more than five hundred feet apart, along and at each corner of the boundaries of the land. ~~upon which signs there appears, prominently in~~ The signs shall be reasonably maintained, with letters of not less than two inches in height and the words “no trespassing”. ~~and in addition thereto the name of the owner, lessee or occupant of the land.~~ The signs shall be placed along the boundary line and at all roads, driveways and gates of entry onto

~~the~~ of posted land ~~in a manner and in a position~~ so as to be clearly noticeable from outside of the boundary line; ~~or~~

(B) Boundaries marked with a clearly visible purple painted marking, consisting of one vertical line no less than eight inches in length and two inches in width, and the bottom of the mark not less than three nor more than six feet from the ground or normal water surface. Such marks shall be affixed to immovable, permanent objects that are no more than one hundred feet apart and readily visible to any person approaching the property. Signs shall also be posted at all roads, driveways or gates of entry onto the posted land so as to be clearly noticeable from outside the boundary line.

~~(C) It shall not be~~ It is not necessary to give notice by posting on any enclosed land or place not exceeding five acres in area on which there is a dwelling house or property that by its nature and use is obviously private in order to obtain the benefits of this article pertaining to trespass on enclosed lands.

(5) “Cultivated land” is that land which has been cleared of its natural vegetation and is presently planted with a crop, orchard, grove, pasture or trees or is fallow land as part of a crop rotation.

(6) “Fenced land” is that land which has been enclosed by a fence of substantial construction, whether with rails, logs, post and railing, iron, steel, barbed wire, other wire or other material, which stands at least three feet in height. For the purpose of this article, it shall not be necessary to fence any boundary or part of a boundary of any land which is formed by water and is posted with signs pursuant to the provisions of this article.

(7) Where lands are posted, cultivated or fenced as described herein, then such lands, for the purpose of this article, shall be considered as enclosed and posted.

(8) “Trespass” under this article is the willful unauthorized entry upon, in or under the property of another, but shall not include the following:

(a) (A) Entry by the state, its political subdivisions or by the officers, agencies or instrumentalities thereof as authorized and provided by law.

(b) (B) The exercise of rights in, under or upon property by virtue of rights-of-way or easements by a public utility or other person owning such right-of-way or easement whether by written or prescriptive right.

(c) (C) Permissive entry, whether written or oral, and entry from a public road by the established private ways to reach a residence for the purpose of seeking permission shall not be trespass unless signs are posted prohibiting such entry.

(d) (D) Entry performed in the exercise of a property right under ownership of an interest in, under or upon such property.

(e) (E) Entry where no physical damage is done to property in the performance of surveying to ascertain property boundaries, and in the performance of necessary work of construction, maintenance and repair of a common property line fence, or buildings or appurtenances which are immediately adjacent to the property line and maintenance of which necessitates entry upon the adjoining owner's property.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Committee Substitute for Senate Bill 43, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 43) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Com. Sub. for Com. Sub. for Senate Bill 47**, Rewriting licensing requirements for practice of medicine and surgery and podiatry.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page four, section thirteen, line sixty-eight, after the word “members,” by inserting the words “band member, cheerleader, mascot,”;

And,

On page five, section thirteen, line ninety-four, after the word “facility” by striking out the comma and inserting in lieu thereof the words “for not less than one year nor more than five years”.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Committee Substitute for Senate Bill 47, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller,

Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 47) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Com. Sub. for Senate Bill 265**, Allowing library volunteers necessary access to user records.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page one, section twenty-two, lines five and six, by striking out the words “outlining the terms of this subsection” and inserting in lieu thereof the words “which shall prevent disclosure of circulation records, personal information, and similar records of any public library except to the extent allowed under this subsection”;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 265**—A Bill to amend and reenact §10-1-22 of the Code of West Virginia, 1931, as amended, relating to confidentiality of certain library records; clarifying that library staff, including employees and unpaid library volunteers, may have necessary access to user records; requiring outlining the terms of confidentiality in a written agreement; and requiring obtaining written permission from the library director of the library system wherein he or she will be working.

On motion of Senator Carmichael, the following amendment to the House of Delegates amendments to the bill was reported by the Clerk and adopted:

**Eng. Com. Sub. for Senate Bill 265**—A Bill to amend and reenact §10-1-22 of the Code of West Virginia, 1931, as amended, relating to confidentiality of certain library records; and providing that certain library records may be disclosed to members of library staff, including paid employees and unpaid volunteers upon completion of a written confidentiality agreement and the obtaining of written permission from the library director.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments, as amended.

Engrossed Committee Substitute for Senate Bill 265, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 265) passed with its Senate amended title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, to take effect from passage, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Com. Sub. for Senate Bill 195**, Authorizing DHHR to promulgate legislative rules.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

**ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.**

**§64-5-1. Department of Health and Human Resources.**

(a) The legislative rule effective on December 29, 1967, authorized under the authority of section seven, article one, chapter sixteen of this code, relating to the Department of Health and Human Resources (preliminary requirement for approval by the West Virginia Department of Health of a laboratory for a specified technique, 64 CSR 26), is repealed.

(b) The legislative rule effective on December 29, 1967, authorized under the authority of section seven, article one, chapter sixteen of this code, relating to the Department of Health and Human Resources (ice cream and frozen milk, 64 CSR 28), is repealed.

(c) The legislative rule effective on May 16, 1983, authorized under the authority of section seven, article five-a, chapter sixteen of this code, relating to the Department of Health and Human Resources (establishment of a Controlled Substances Therapeutic Research Program and the certification of patients, practitioners and hospital pharmacies, 64 CSR 33), is repealed.

(d) The legislative rule effective on May 30, 1983, authorized under the authority of section twelve, article three, chapter sixteen of this code, relating to the Department of Health and Human Resources (instillation of medication in the eyes of the newborn and the dissemination of advice and information concerning the dangers of inflammation of the eyes of the newborn, 64 CSR 35), is repealed.

(e) The interpretive rule effective on April 6, 1984, authorized under the authority of section fifteen-a, article one, chapter sixteen of this code, relating to the Department of Health and Human Resources (health facilities plan for the fiscal years 1985-89, 64 CSR 37), is repealed.

(f) The interpretive rule effective on October 1, 1971, authorized under the authority of section seven, article one, chapter sixteen of this code, relating to the Department of Health and Human Resources (design, information and procedural manual for mobile home parks, 64 CSR 41), is repealed.

(g) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 8, 2015, relating to the Department of Health and Human Resources (emergency medical services, 64 CSR 48), is authorized with the following amendments:

On page thirty-one, paragraph 6.5.d.2, by striking out the phrase “one (1) year” and inserting in lieu thereof, the phrase “one hundred twenty (120) days”;

On page thirty-one, paragraph 6.5.d.3, by striking out the phrase “one (1) year” and inserting in lieu thereof, the phrase “one hundred twenty (120) days”;

On page thirty-one, paragraph 6.6., by striking out the phrase “two (2)” and inserting “four (4)”

On page thirty-five, paragraph 6.14b, after the word “establish” by removing the words “by a procedural rule” and inserting the word “a”;

And,

On page fifty-seven, by inserting a new section twelve to read as follows:

**“§64-48-12. Community Paramedicine Demonstration Projects.**

12.1 Establishment of community paramedicine demonstration projects. The Director may establish up to 6 demonstration projects for the purpose of developing and evaluating a community paramedicine program. A demonstration project established pursuant to this section may not exceed 2 years in duration.

12.2 As used in this section, “community paramedicine” means the practice by an emergency medical services provider primarily in an out-of-hospital setting of providing episodic patient evaluation, advice, and care directed at preventing or improving a particular medical condition which may require emergency medical services providers to function outside their customary emergency response and transport roles, as specifically requested or directed by a physician, in ways that facilitate more appropriate use of emergency care resources and enhance access to primary care for medically vulnerable populations.

12.3 The Director shall establish the requirements and application and approval process of demonstration projects established pursuant to this section. At a minimum, an emergency medical services provider that conducts a demonstration project shall:

12.3.a. Demonstrate the financial sustainability of its project through reliable funding sources;

12.3.b. Work with an identified primary care medical director and have an emergency medical services medical director;

12.3.c. Submit protocols for approval by the MPCC and the Commissioner; and

12.3.d. Collect and submit data and written reports to the Director, in accordance with requirements established by the Director.”

12.4. At the end of two years any demonstration project authorized by the Director will terminate and the Director shall submit a written report to the Commissioner, including specific data on utilization of the program, the improvement in quality of care and care coordination in the community, and the reduction of health care costs with respect to ambulance transportation, hospital emergency department visits, and hospital readmissions. Upon receipt of the annual report, OEMS and the Commissioner shall evaluate the demonstration project and determine how to further develop community paramedicine and whether to expand its scope.”

(h) The legislative rule filed in the State Register on July 27, 2015, authorized under the authority of section four, article one, chapter sixteen of this code, relating to the Department of Health and Human Resources (fees for service, 64 CSR 51), is authorized with the following amendments:

To Appendix A of 64 CSR 51 at Section1. (Fees for Environmental Chemistry Laboratory Services), B. Organic Compounds, by including a new paragraph 8 to read as follows:

Harmful Algae Bloom (HAB)

a. Screening analyses for each individual toxin:

Analyses may include, but are not limited to, Microcystin, Cylindrospermopsin, Anatoxin-a, Saxitoxin and B-Methylamino-L-alanine. §65

b. Confirmation of each individual toxin:

Analyses may include, but are not limited to, Microcystin, Cylindrospermopsin, Anatoxin-a, Saxitoxin and B-Methylamino-L-alanine. §65

(i) The interpretive rule effective on August 1, 1987, authorized under the authority of article three-b, chapter sixteen of this code, relating to the Department of Health and Human Resources (pertussis guidelines, 64 CSR 52), is repealed.

(j) The legislative rule effective on June 1, 1987, authorized under the authority of section two, article three-a, chapter sixteen of this code, relating to the Department of Health and Human Resources (hazardous materials treatment information repository, 64 CSR 53), is repealed.

(k) The legislative rule filed in the State Register on July 27, 2015, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 23, 2015, relating to the Department of Health and Human Resources (infectious medical waste, 64 CSR 56), is authorized.

(l) The legislative rule effective on April 18, 1988, authorized under the authority of section four, article three, chapter sixteen of this code, relating to the Department of Health and Human Resources (immunization criteria for transfer students, 64 CSR 58), is repealed.

(m) The legislative rule filed in the State Register on July 27, 2015, authorized under the authority of section four, article one, chapter sixteen of this code, relating to the Department of Health

and Human Resources (AIDS-related medical testing and confidentiality, 64 CSR 64), is authorized.

(n) The legislative rule effective on April 22, 1992, authorized under the authority of section twenty-two, article five, chapter eighteen of this code, relating to the Department of Health and Human Resources (specialized health procedures in public schools, 64 CSR 66), is repealed.

(o) The legislative rule filed in the State Register on July 27, 2015, authorized under the authority of section two, article three-d, chapter sixteen of this code, relating to the Department of Health and Human Resources (tuberculosis testing, control, treatment and commitment, 64 CSR 76), is authorized.

(p) The legislative rule filed in the State Register on July 27, 2015, authorized under the authority of section four, article thirty-five, chapter nineteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 23, 2015, relating to the Department of Health and Human Resources (farmers market vendors, 64 CSR 102), is authorized with the following amendments:

On page 5, section 4, subsection 9, subdivision b, by striking out the words “30<sup>th</sup> day of June” and inserting in lieu thereof the words “31<sup>st</sup> day of December”.

(q) The legislative rule filed in the State Register on July 27, 2015, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 23, 2015, relating to the Department of Health and Human Resources (the certification of opioid overdose prevention and treatment training programs, 64 CSR 104), is authorized.

(r) The procedural rule effective on December 28, 1989, authorized under the authority of section three, article nine-a, chapter six of this code, relating to the Department of Health and

Human Resources (procedural rules for the advisory Committee for the Omnibus Health Care Act, 69 CSR 4), is repealed.

(s) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 8, 2015, relating to the Department of Health and Human Resources (chronic pain management licensure, 69 CSR 8), is authorized with the following amendments:

“On page 3, after subsection 2.24, by inserting new language as follows:

‘2.25. Terminal Condition – an illness or disease that cannot be cured and the medical prognosis is that the individual’s life expectancy is six months or less if the illness runs its normal course.’

And, renumbering the remaining subsections.

And,

On page 3, subdivision 3.1.b, by striking the word ‘prescribers’ and inserting ‘clinic’ and inserting after the word ‘conditions’ the phrase ‘that are not terminal’. On page three, subdivision 3.1.b, by reinserting the stricken language ‘in any one month’;

And,

On page 3, subdivision 3.1.c, after the word, ‘office’ by reinserting the stricken language ‘in any one month’ and after the word, ‘office’ by reinserting the stricken language ‘in any one month’;

And,

On page 4, subdivision 3.1.c, by inserting after the word ‘pain’ the phrase ‘for conditions that are not terminal’;

And,

On page 4, subdivision 3.1.d, by inserting after the period the following language:

‘Clinics below the fifty percent patient calculation threshold will be subject to continued monitoring by the Office of Health Facility Licensure and Certification for changes in the patient ratio. Failure to cooperate with requests for information to verify patient calculations may subject the clinic to penalties and equitable relief pursuant to Section 18 of this rule.’;

And,

On page 4, after subdivision 3.1.d, inserting new language as follows:

‘3.1.e. A pain clinic shall not offer a bounty, monetary or equipment or merchandise reward, or free services for individuals in exchange for recruitment of new patients into the clinic. A pain clinic shall not recruit new patients for the purpose of attempting to circumvent the licensure requirements of this rule.’;

And,

On page 5, by striking subparagraph 3.2.i.2. in its entirety;

And,

On page 5, subdivision 4.1.d., by inserting the word ‘designated’ before the term ‘physician owner’;

And,

On page 9, subsection 5.4, by inserting after the period the following:

‘If access is denied, a judge of any court of record in this state having criminal jurisdiction, and upon proper oath or affirmation showing probable cause, may issue administrative warrants for the purpose of conducting inspections and seizures of property appropriate to the inspections.’;

And,

On page 16, subparagraph 10.2.c.6, after the word, every by removing, '90' and inserting '60';

And,

On page 20, by inserting new subdivision 11.7.n to read as follows: '11.7.n A record of all cash transactions.';

And,

On page 26, section 19, by inserting before the word suspended the word 'denied,'."

(t) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 8, 2015, relating to the Department of Health and Human Resources (neonatal abstinence centers, 69 CSR 9), is authorized with the following amendments:

On page 14, paragraph 5.5.a.1, after the word, 'field' by inserting the words, 'at the discretion of the governing body'; and On page 14, paragraph 5.5.a.2, after the word, 'field' by inserting the words, 'at the discretion of the governing body';

And,

On page 21, subdivision 6.8.a, by striking it in its entirety and inserting in lieu thereof, '6.8.a The center shall be located within fifteen minutes of a hospital.';

And,

On page 22, subdivision 6.9.b, by striking 'sources such as railroads, freight yards, traffic arteries and airports';

And,

On page 30, subdivision 7.9.f by striking the word, 'Mothers' and inserting the word, 'Parents';

And,

On page 36 subdivision 9.5.a by striking the word, ‘shall’ and inserting the word, ‘may’;

And,

On page 37, subdivision 9.8.a, after the word, ‘all’ by inserting, ‘patient care’; On page 37, subdivision 9.8.b, after the word, ‘all’ by inserting, ‘patient care’; On page 37, subdivision 9.8.c, after the word, ‘all’ by inserting, ‘patient care’; and On page 38, subdivision 9.8.d, after the word, ‘new’ by inserting, ‘patient care’

And,

On page 52, subsection 14.1 by striking the word, ‘Mothers’ and inserting the word, ‘Parents’; On page 53, subdivision 14.2.a. by striking the word, ‘Mothers’ and inserting the word, ‘Parents’; and On page 53, subdivision 14.2.b. by striking the word, ‘Mothers’ and inserting the word, ‘Parents’.”

(u) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section nine, article forty-nine, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 23, 2015, relating to the Department of Health and Human Resources (West Virginia clearance for access; registry and employment screening, 69 CSR 10), is authorized, with the following amendments:

On page two, subsection 2.5, by deleting the period at the end of the subsection, and by inserting a comma and new language as follows: “and any provider authorized by the Secretary.”

And,

On page three, subdivisions 2.11.i. and 2.11.j. by renumbering them 2.10.i and 2.10.j. and by inserting the word “Felony” before the word “crimes”;

And,

On page four, after subsection 5.2, insert new language as follows:

“5.3 If the Secretary’s review of an applicant’s criminal history record information reveals a pending charge that has not received a final disposition, the following shall apply:

5.3.a. If the pending charge is a disqualifying misdemeanor offense, and the applicant has not had a conviction for a disqualifying offense in the last seven years, the Secretary shall provide written notice to the covered provider or covered contractor advising that the applicant is eligible for work.

5.3.b. If the pending charge is a disqualifying felony offense, the Secretary shall provide written notice to the covered provider or covered contractor advising that the applicant is ineligible for work, unless a variance has been requested or granted.

5.3.c. Once a final disposition has been made on the pending charge, the Secretary shall review the criminal history record information de novo in accordance§ with the provisions of this rule and W.Va. Code §16-49-1 et seq.”

And renumber the remaining subsections.

(v) The legislative rule filed in the State on July 31, 2015, authorized under the authority of section one hundred twenty-one, article two, chapter forty-nine of this code, relating to the Department of Health and Human Resources (child care licensing requirements, 78 CSR 1), is authorized.

(w) The legislative rule effective on November 1, 1985, authorized under the authority of article four, chapter forty-nine of this code, relating to the Department of Health and Human Resources (incorporation of the handicapped children services manual, 78 CSR 9), is repealed.

(x) The legislative rule effective on June 15, 1989, authorized under the authority of section three, article five, chapter forty-eight-

a of this code, relating to the Department of Health and Human Resources (termination of income withholding, 78 CSR 11), is repealed.

(y) The legislative rule effective on June 15, 1989, authorized under the authority of section fifteen, article two, chapter forty-eight-a of this code, relating to the Department of Health and Human Resources (obtaining support from federal and state income tax refunds, 78 CSR 12), is repealed.

(z) The legislative rule effective on June 15, 1989, authorized under the authority of section eleven, article two, chapter forty-eight-a of this code, relating to the Department of Health and Human Resources (interstate income withholding, 78 CSR 13), is repealed.

(aa) The legislative rule effective on June 15, 1989, authorized under the authority of section nineteen, article two, chapter forty-eight-a of this code, relating to the Department of Health and Human Resources (providing information to credit reporting agencies, 78 CSR 14), is repealed.

(bb) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section one hundred twenty-one, article two, chapter forty-nine of this code, relating to the Department of Health and Human Resources (family child care facility licensing requirements, 78 CSR 18), is authorized.

(cc) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section one hundred twenty-one, article two, chapter forty-nine of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on October 28, 2015, relating to the Department of Health and Human Resources (family child care home registration requirements, 78 CSR 19), is authorized.

(dd) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section eleven, article nine, chapter nine of this code, modified by the Department of Health

and Human Resources to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on November 13, 2015, relating to the Department of Health and Human Resources (W.Va. Works Program sanctions, 78 CSR 23), is authorized with the following amendments:

On page 3, by striking section 4 in its entirety and inserting in lieu thereof a new section four to read as follows:

“The sanctions are applied in the form of termination of benefits for a specific length of time. The length of termination of benefits is determined as follows:

First sanction – entire assistance group ineligible for one month;

Second sanction – entire assistance group ineligible for six months;

Third sanction – entire assistance group ineligible for one year; but may reapply within one year.”

(ee) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section sixteen, article thirty, chapter thirty of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 8, 2015, relating to the Department of Health and Human Resources (qualifications for a restricted provisional license to practice as a social worker within the department, 78 CSR 24), is authorized.

(ff) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section one hundred twenty-six, article two, chapter forty-nine of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 22, 2015, relating to the Department of Health and Human Resources (goals for foster children, 78 CSR 25), is authorized.

**§64-5-2. Health Care Authority.**

(a) The legislative rule effective on May 5, 1984, authorized under the authority of section one, article twenty-nine-b, chapter sixteen of this code, relating to the Health Care Authority (freeze on hospital rates and granting of temporary rate increases, 65 CSR 2), is repealed.

(b) The legislative rule effective on May 20, 1985, authorized under the authority of section eight, article twenty-nine-b, chapter sixteen of this code, relating to the Health Care Authority (Utilization Review and Quality Assurance Program – Phase 1, 65 CSR 4), is repealed.

(c) The legislative rule effective on April 10, 1984, authorized under the authority of section one, article twenty-nine-b, chapter sixteen of this code, relating to the Health Care Authority (limitation on hospital gross patient revenue, 65 CSR 8), is repealed.

(d) The legislative rule effective on June 24, 1993, authorized under the authority of section four, article two-d, chapter sixteen of this code, relating to the Health Care Authority (exemption for rural primary care hospitals, 65 CSR 25), is repealed.

**§64-5-3. Human Rights Commission.**

The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section four, article eleven-b, chapter five of this code, modified by the Human Rights Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 8, 2015, relating to the Human Rights Commission (Pregnant Workers' Fairness Act, 77 CSR 10), is authorized with the amendments set forth below:

On pages 1 through 3, sections 1 through 5, by striking out all of sections 1 through 5 and inserting in lieu thereof the following:

**§77-10-1. General.**

1.1. Scope. The following legislative rule series, filed pursuant to the West Virginia Pregnant Workers' Fairness Act (PWFA), W. Va. Code §5-11B-1 et seq., sets forth definitions and identifies some reasonable accommodations addressing known limitations related to pregnancy, childbirth, or related medical conditions.

1.2. Authority. – W. Va. Code §5-11B-4.

1.3. Filing date. – July 31, 2015.

1.4. Effective Date. –

**§77-10-2. Definitions.**

2.1. “Affected by pregnancy” means a woman who is pregnant or is experiencing medical conditions related to her pregnancy which has ended.

2.2. “Undue hardship” – In general, the term “undue hardship” means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subdivision 2.2.1.

2.2.1. Factors to be considered. In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include:

2.2.1.a. The nature and cost of the accommodation needed under this article;

2.2.1.b. The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

2.2.1.c. The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

2.2.1.d. The type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

2.3. “Reasonable accommodation” – The term “reasonable accommodation” may include:

2.3.1. Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

2.3.2. Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

2.4. “Related medical conditions” means physical and mental symptoms or limitations relating to or caused by a pregnancy, including but not limited to, miscarriage, complications of pregnancy or childbirth, gestational diabetes, pregnancy-induced hypertension, after-effects of delivery, post-partum depression, and lactation: *Provided*, That an elective abortion shall not be considered a related medical condition.

2.5. “Covered Entity” means the state, or any political subdivision thereof, and any person employing twelve or more persons within the state for twenty or more calendar weeks in the calendar year in which the act of discrimination allegedly took place or the preceding calendar year: *Provided*, That such terms shall not be taken, understood or construed to include a private club.

2.6. “Person” means one or more individuals, partnerships, associations, organizations, corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers and other organized groups of persons.

**§77-10-3. Examples of Reasonable Accommodations.**

3.1. Reasonable accommodations that may be made by a covered entity include, but are not limited to:

3.1.1. Bathroom breaks;

3.1.2. Breaks for increased water intake;

3.1.3. Periodic rest;

3.1.4. Assistance with manual labor;

3.1.5. Providing time off for prenatal medical appointments;

3.1.6. Modified work policies or procedures;

3.1.7. Temporary transfers to less strenuous or less hazardous work;

3.1.8. Allowing for more time or more frequent eating;

3.1.9. Allowing time for taking prescribed medications; and

3.1.10. Providing access to existing facilities that are more convenient and usable by a woman affected by pregnancy.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 195**—A Bill to amend and reenact article 5, chapter 64 of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the Department of Health and Human Resources, the Human Rights Commission and the Health Care Authority; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee;

authorizing certain of the agencies to promulgate certain legislative rules with various amendments recommended by the Legislature; authorizing certain agencies and commissions under the Department of Health and Human Resources to repeal certain legislative, procedural or interpretive rules that are no longer authorized or are obsolete; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the preliminary requirement for approval by the West Virginia Department of Health of a laboratory for a specified technique; repealing the Department of Health and Human Resources legislative rule relating to ice cream and frozen milk; repealing the Department of Health and Human Resources legislative rule relating to establishment of a Controlled Substances Therapeutic Research Program and the certification of patients, practitioners and hospital pharmacies; repealing the Department of Health and Human Resources legislative rule relating to the installation of medication in the eyes of newborns and disseminating advice and information concerning the dangers of inflammation of the eyes of the newborn; repealing the Department of Health and Human Resources legislative rule relating to health facilities plan for the fiscal years 1985-1989; repealing the Department of Health and Human Resources legislative rule relating to design, information and procedural manual for mobile home parks; authorizing the Department of Health and Human Resources to promulgate a legislative rule regarding West Virginia clearance for emergency medical services; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to fees for services; repealing the Department of Health and Human Resources legislative rule relating to pertussis guidelines; repealing the Department of Health and Human Resources legislative rule relating to hazardous materials treatment information repository; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to infectious medical waste; repealing the Department of Health and Human Resources legislative rule relating to immunization criteria for transfer students; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to AIDS-related medical testing and confidentiality; repealing the Department of Health and Human Resources legislative rule specialized health

procedures in public schools; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to tuberculosis testing, control, treatment and commitment; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to farmers market vendors; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the certification of opioid overdose prevention and treatment training programs; repealing the Department of Health and Human Resources legislative rule relating to procedural rules for the advisory Committee for the Omnibus Health Care Act; authorizing the Department of Health and Human Resources to promulgate a legislative rule regarding chronic pain management licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule regarding neonatal abstinence centers; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to West Virginia clearance for access; registry and employment screening; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to child care licensing requirement; repealing the Department of Health and Human Resources legislative rule relating to incorporation of the handicapped children services manual; repealing the Department of Health and Human Resources legislative rule relating to termination of income withholding; repealing the Department of Health and Human Resources obtaining support from federal and state income tax refunds; repealing the Department of Health and Human Resources legislative rule relating to interstate income withholding; repealing the Department of Health and Human Resources legislative rule relating to providing information to credit reporting agencies; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the family child care facility licensing requirements; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the family child care home registration requirements; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to West Virginia Works program sanctions; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to qualifications for a restricted provisional license to practice as a

social worker within the department; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to goals for foster children; repealing the Health Care Authority's legislative rule relating to freeze on hospital rates and granting temporary rate increases; repealing the Health Care Authority's legislative rule relating to the Utilization Review and Quality Assurance Program; repealing the Health Care Authority's legislative rule relating to limitation on hospital gross patient revenue; repealing the Health Care Authority's legislative rule relating to exemption for rural primary care hospitals; and authorizing the Human Rights Commission to promulgate a legislative rule relating to the Pregnant Workers' Fairness Act.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Senate Bill 195, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 195) passed with its House of Delegates amended title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins,

Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 195) takes effect from passage.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Com. Sub. for Senate Bill 330**, Requiring automobile liability insurers provide 10 days' notice of intent to cancel due to nonpayment of premium.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §33-6A-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 6A. CANCELLATION OR NONRENEWAL OF  
AUTOMOBILE LIABILITY POLICIES.**

**§33-6A-1. Cancellation prohibited except for specified reasons;  
notice.**

(a) No insurer once having issued or delivered a policy providing automobile liability insurance for a private passenger automobile may, after the policy has been in effect for sixty days, or in case of renewal effective immediately, issue or cause to issue a notice of cancellation during the term of the policy except for one or more of the reasons specified in this section:

~~(a)~~ (1) The named insured fails to make payments of premium for the policy or any installment of the premium when due;

~~(b)~~ (2) The policy is obtained through material misrepresentation;

~~(c)~~ (3) The insured violates any of the material terms and conditions of the policy;

~~(d)~~ (4) The named insured or any other operator, either residing in the same household or who customarily operates an automobile insured under the policy:

~~(1)~~ (A) Has had his or her operator's license suspended or revoked during the policy period including suspension or revocation for failure to comply with the provisions of article five-a, chapter seventeen-c of this code regarding consent for a chemical test for intoxication: *Provided*, That when a license is suspended for sixty days by the Commissioner of the Division of Motor Vehicles because a person drove a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, pursuant to subsection (1), section two of said article, the suspension may not be grounds for cancellation; or

~~(2)~~ (B) Is or becomes subject to epilepsy or heart attacks and the individual cannot produce a certificate from a physician testifying to his or her ability to operate a motor vehicle; or

~~(e)~~ (5) The named insured or any other operator, either residing in the same household or who customarily operates an automobile insured under such policy, is convicted of or forfeits bail during the policy period for any of the following reasons:

(1) (A) Any felony or assault involving the use of a motor vehicle;

(2) (B) Negligent homicide arising out of the operation of a motor vehicle;

(3) (C) Operating a motor vehicle while under the influence of alcohol or of any controlled substance or while having an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight;

(4) (D) Leaving the scene of a motor vehicle accident in which the insured is involved without reporting it as required by law;

(5) (E) Theft of a motor vehicle or the unlawful taking of a motor vehicle;

(6) (F) Making false statements in an application for a motor vehicle operator's license; or

(7) (G) Three or more moving traffic violations committed within a period of twelve months, each of which results in three or more points being assessed on the driver's record by the Division of Motor Vehicles, whether or not the insurer renewed the policy without knowledge of all such violations. Notice of any cancellation made pursuant to this subsection shall be mailed to the named insured either during the current policy period or during the first full policy period following the date that the third moving traffic violation is recorded by the Division of Motor Vehicles.

~~(b) Notwithstanding any of the provisions of this section to the contrary, no insurer may cancel a policy of automobile liability insurance without first giving the insured thirty days' notice of its intention to cancel: *Provided*, That the insurance policy is voidable from the effective date and time of the policy issued by the insurer if the insurer cancels the policy for failure of consideration to be paid by the insured upon initial issuance of the insurance policy and provides written notice to the insured of the cancellation within fifteen days of receipt of notice of the failure of consideration and consideration has not otherwise been provided within ten days of the notice of cancellation. Notice of cancellation for nonpayment~~

~~of consideration shall be delivered to the named insured or sent by first class mail to the named insured at the address supplied on the application for insurance and shall state the effective date of the cancellation and shall be accompanied by a written explanation of the specific reason for the cancellation. If the insurer fails to provide such written notice to the insured, then the cancellation of the policy for failure of consideration is effective upon the expiration of ten days' notice of cancellation to the insured. Except as provided in subsections (c) and (d), no insurer may cancel a policy of automobile liability insurance without first giving the insured thirty days' notice of its intention to cancel. Notice of cancellation shall either be sent by first class mail to the named insured at the address supplied on the application for insurance, or by email or other electronic means if at the request of the policyholder in accordance with the Uniform Electronic Transactions Act as codified in chapter thirty-nine-a of this code, and shall state the effective date of the cancellation and provide a written explanation of the specific reason for the cancellation.~~

(c) If, pursuant to subsection (a) of this section, an insurer cancels a policy of automobile liability insurance for the failure of the named insured to make payments of premium for the policy or any installment of the premium when due, then the insurer shall first give the insured at least fourteen days' notice of its intention to cancel. Notice of cancellation shall be sent by first class mail to the named insured at the address supplied on the application for insurance, or by email or other electronic means if at the request of the policyholder in accordance with the Uniform Electronic Transactions Act as codified in chapter thirty-nine-a of this code, and shall state the effective date of the cancellation and provide a written explanation of the specific reason for the cancellation. The notice period provided herein shall begin to run on the date mailed and payment shall be deemed accomplished by depositing in first class mail valid payment on or before the expiration date of the fourteen day notice period.

(d) If a named insured fails to make the initial payment of premium or any initial installment of the premium after the initial issuance of an automobile liability insurance policy, the insurance

policy is voidable from the effective date and time the policy was issued: *Provided*, That the insurer shall send the insured written notice that the policy will be voided absent payment within ten days of any amounts due under the terms of the policy. Such notice shall either be sent by first class mail to the named insured at the address supplied on the application for insurance, or by email or other electronic means if at the request of the policyholder in accordance with the Uniform Electronic Transactions Act as codified in chapter thirty-nine-a of this code, and shall explain the specific reason for the voidance.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 330**—A Bill to amend and reenact §33-6A-1 of the Code of West Virginia, 1931, as amended, relating to cancellation or nonrenewal of automobile liability policies; providing restrictions on cancellation of automobile liability insurance policy that has been in effect for sixty days; excepting cancellations in the case of renewals; specifying when an insurer may cancel an automobile liability policy that has been in effect for sixty days; providing for notice to insureds for certain cancellations or voiding of automobile insurance policies; specifying allowable methods of sending notices and content thereof; providing for thirty days' notice to cancel automobile liability policy for certain reasons; providing exception to requirement of thirty days' notice for nonpayment of premiums or installments of premiums; requiring fourteen days' notice for cancellations due to nonpayment of premiums or installments of premiums; specifying when notice period begins to run and when payment deemed accomplished for purposes of making payment during fourteen day notice period for cancellation due to nonpayment of premiums or installments of premiums; providing for voidability of automobile liability insurance policy if initial payments of premiums or initial installments of premiums not made; and providing for ten-day notice that policy will be voided absent payment of amounts due under terms of policy when initial payment of premiums or initial installments of premiums not made.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Senate Bill 330, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—31.

The nays were: Kessler, Romano and Snyder—3.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 330) passed with its House of Delegates amended title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Senate Bill 333**, Taking and registering of wildlife.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §20-2-4, §20-2-21 and §20-2-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

## **ARTICLE 2. WILDLIFE RESOURCES.**

### **§20-2-4. Possession of wildlife.**

(a) Except for wildlife lawfully taken, killed or obtained, no person may have in his or her possession any wildlife, or parts thereof, during closed seasons. It is unlawful to possess any wildlife, or parts thereof, which have been illegally taken, killed or obtained. Any wildlife illegally taken, killed or possessed shall be forfeited to the state and shall be counted toward the daily, seasonal, bag, creel and possession limit of the person in possession of, or responsible for, the illegal taking or killing of any wildlife. It is unlawful to take, obtain, purchase, possess or maintain in captivity, any live wildlife, wild animals, wild birds, game or fur-bearing animals except as provided by this chapter or any rule promulgated thereunder.

(b) Wildlife lawfully taken outside of this state is subject to the same laws and rules as wildlife taken within this state.

(c) Migratory wild birds may be possessed only in accordance with the Migratory Bird Treaty Act, 16 U. S. C. §703, *et seq.*, and its regulations.

(d) The restrictions in this section do not apply to the director or duly authorized agents, who may take or maintain in captivity any wildlife for the purpose of carrying out the provisions of this chapter.

(e) Wildlife, except protected birds, elk, spotted fawn and bear cubs, killed or mortally wounded as a result of being accidentally or inadvertently struck by a motor vehicle may be lawfully possessed if the possessor of the wildlife provides notice of the claim within twelve hours to a relevant law-enforcement agency and obtains a nonhunting game tag within twenty-four hours of possession. The director shall propose administrative policy which

addresses the means, methods and administrative procedures for implementing the provisions of this section.

(f) ~~Persons required to deliver wildlife to an official checking station shall, are required to electronically register deer, bear, turkey, wild boar, bobcat, beaver, otter and fisher in accordance with rules promulgated by the director. electronically register the wildlife in lieu of the delivery to an official checking station.~~ “Electronically register” means submission of all necessary and relevant information to the division, in the manner designated by rule ~~in lieu of delivery of the wildlife to an official checking station governing the electronic registration of wildlife.~~ The director may promulgate rules, pursuant to article three, chapter twenty-nine-a of this code, governing the electronic registration of wildlife: Provided, That the rules shall include a procedure for persons who are not required to obtain licenses or permits under section twenty-eight of this article to register wildlife using identification other than a social security number. The rules may use a system of a combination of the last four digits of the social security number, date of birth and last name of the person.

#### **§20-2-21. Reporting beaver and otter pelts taken and tagged.**

Each trapper shall ~~present~~ electronically register each beaver and otter, or each pelt, to a game checking station or representative of the division within thirty days after the close of a legal season. ~~A tag game tag number provided by the division shall be issued to the person and recorded in writing with the person’s name and address, or on a field tag, and shall be affixed to each beaver and otter or each pelt and remain attached to the animal or pelt until it is processed into commercial fur. A game tag number for each beaver shall be issued to the person and recorded in writing with the person’s name and address and either attached to each beaver or pelt, or the tag number shall be retained by the person in possession of the beavers. The game tag numbers shall remain attached to the animal or pelt or retained by the owner until it is processed into commercial fur.~~

#### **§20-2-22. Tagging, removing, transporting and reporting bear, deer, wild boar and wild turkey.**

(a) Each person killing a bear, deer, wild boar or wild turkey found in a wild state shall either attach a completed field tag to the animal or remain with the animal and have upon his or her person a completed field tag before removing the carcass in any manner from where it was killed.

(b) While transporting the carcass of a bear, deer, wild boar or wild turkey from where it was killed, each person shall either attach a completed field tag to the animal or have upon his or her person a completed field tag.

(c) Upon arriving at a residence, camp, hunting lodge, vehicle or vessel each person shall attach a field tag to the killed bear, deer, wild boar or wild turkey. ~~The field tag shall remain on the carcass until it is retagged with a game tag by a natural resources police officer or an official checking station~~ the animal is electronically registered. The game tag shall remain on the carcass until it is dressed for consumption. A game tag number shall be issued to the person and recorded in writing with the person's name and address, or on a field tag, and shall remain on the carcass until it is dressed for consumption. The game tag number shall remain on the skin or hide until it is tanned or mounted.

(d) If a person who does not possess a field tag kills a bear, deer, wild boar or wild turkey, he or she shall make a tag. The field tag shall bear the name, address and, if applicable, the license number of the hunter and the time, date and county of killing.

~~(e) The carcass of a wild turkey shall be delivered to a natural resources police officer or an official checking station for checking and retagging before it is either skinned or transported beyond the boundaries of the county adjacent to that in which the kill was made.~~

~~(f) The fresh skin and head or carcass of the deer shall be delivered to a natural resources police officer or an official checking station for checking and retagging before it is transported beyond the boundaries of the county adjacent to that in which the kill was made.~~

~~(g)~~(e) A person who kills a bear shall treat the carcass and remains in accordance with the provisions of section twenty-two-a of this article.

~~(h)~~(f) For each violation of this section a person is subject to the penalties provided in this article.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Senate Bill 333**—A Bill to amend and reenact §20-2-4, §20-2-21 and §20-2-22 of the Code of West Virginia, 1931, as amended, all relating to the possession of wildlife; declaring unlawful the taking, purchasing, possession or maintenance in captivity of certain wildlife except as allowed by statute or rules promulgated; requiring electronic registration of deer, bear, turkey, wild boar, bobcat, beaver, otter and fish in accordance with promulgated rules; requiring that promulgated rules provide a procedure for persons who are not required to obtain licenses or permits to register wildlife using identification other than a social security number; providing for electronic registration of beaver and otter pelts taken and tagged; providing requirements for field tags and electronic registration; and eliminating requirements regarding crossing boundaries of counties adjacent to that in which a kill was made.

On motion of Senator Carmichael, the following amendment to the House of Delegates amendments to the bill was reported by the Clerk and adopted:

**Eng. Senate Bill No. 333**—A Bill to amend and reenact §20-2-4, §20-2-21 and §20-2-22 of the Code of West Virginia, 1931, as amended, all relating to wildlife; clarifying that it is unlawful to possess live wildlife unless authorized; clarifying electronic registration and tagging of certain wildlife; and providing procedure for persons not required to obtain licenses or permits to register certain wildlife.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments, as amended.

Engrossed Senate Bill 333, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 333) passed with its Senate amended title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Com. Sub. for Senate Bill 338**, Compiling and maintaining Central State Mental Health Registry.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

On page three, section three, after line thirty-six, by adding a new subsection, designated subsection (g), to read as follows:

(g) To the extent the central state mental health registry contains the names of any children under fourteen years of age on the effective date of this article, the Administrator of the West Virginia Supreme Court of Appeals shall take whatever steps are necessary to remove those individuals from the central state mental health registry.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Committee Substitute for Senate Bill 338, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 338) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Senate Bill 416**, Allowing terminally ill patients access to investigational products.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-51-1, §16-51-2, §16-51-3, §16-51-4, §16-51-5, §16-51-6, §16-51-7 and §16-51-8, all to read as follows:

## **ARTICLE 51. RIGHT TO TRY ACT.**

### **§16-51-1. Short title.**

This article shall be known and may be cited as the Ben Price Right to Try Act.

### **§16-51-2. Legislative findings.**

(a) The Legislature finds and declares that:

(1) The process of approval for investigational drugs, biological products and devices in the United States protects future patients from premature, ineffective and unsafe medications and treatments over the long run, but the process often takes many years;

(2) Patients who have a terminal illness do not have the luxury of waiting until an investigational drug, biological product or device receives final approval from the United States Food and Drug Administration;

(3) Patients who have a terminal illness have a fundamental right to attempt to pursue the preservation of their own lives by accessing available investigational drugs, biological products and devices;

(4) The use of available investigational drugs, biological products and devices is a decision that should be made by the patient with a terminal illness in consultation with the patient's

health care provider and the patient's health care team, if applicable; and

(5) The decision to use an investigational drug, biological product or device should be made with full awareness of the potential risks, benefits and consequences to the patient and the patient's family.

(b) It is the intent of the Legislature to allow for terminally ill patients to use potentially life-saving or pain-relieving investigational drugs, biological products and devices.

**§16-51-3. Definitions.**

For the purposes of this article:

(1) "Eligible patient" means a person who has:

(A) A terminal illness attested to by the patient's treating physician;

(B) Considered all other treatment options currently approved by the United States Food and Drug Administration;

(C) Been unable to participate in a clinical trial for the terminal illness within one hundred miles of the patient's home address for the terminal illness, or not been accepted to the clinical trial within one week of completion of the clinical trial application process;

(D) Received a recommendation from his or her physician for an investigational drug, biological product or device;

(E) Given written, informed consent for the use of the investigational drug, biological product or device or, if the patient is a minor or lacks the mental capacity to provide informed consent, a parent or legal guardian has given written, informed consent on the patient's behalf; and

(F) Documentation from his or her physician that he or she meets the requirements of this subdivision.

(2) “Eligible patient” does not include a person being treated as an inpatient in a hospital licensed or certified pursuant to article five-b, chapter sixteen of this code.

(3) “Investigational drug, biological product or device” means a drug, biological product or device that has successfully completed phase one of a clinical trial but has not yet been approved for general use by the United States Food and Drug Administration.

(4) “Terminal illness” means a disease that, without life-sustaining procedures, will soon result in death or a state of permanent unconsciousness from which recovery is unlikely.

(5) “Written, informed consent” means a written document signed by the patient and attested to by the patient’s physician and a witness that, at a minimum:

(A) Explains the currently approved products and treatments for the disease or condition from which the patient suffers;

(B) Attests to the fact that the patient concurs with his or her physician in believing that all currently approved and conventionally recognized treatments are unlikely to prolong the patient’s life;

(C) Clearly identifies the specific proposed investigational drug, biological product or device that the patient is seeking to use;

(D) Describes the potentially best and worst outcomes of using the investigational drug, biological product or device with a realistic description of the most likely outcome, including the possibility that new, unanticipated, different or worse symptoms might result and that death could be hastened by the proposed treatment based on the physician’s knowledge of the proposed treatment in conjunction with an awareness of the patient’s condition;

(E) Makes clear that the patient’s health insurer and provider may not be obligated to pay for any care or treatments consequent to the use of the investigational drug, biological product or device;

(F) Makes clear that the patient's eligibility for hospice care may be withdrawn if the patient begins curative treatment and care may be reinstated if the curative treatment ends and the patient meets hospice eligibility requirements;

(G) Makes clear that in-home health care may be denied if treatment begins; and

(H) States that the patient understands that he or she may be liable for all expenses consequent to the use of the investigational drug, biological product or device, and that this liability extends to the patient's estate, unless a contract between the patient and the manufacturer of the drug, biological product or device states otherwise.

**§16-51-4. Drug manufacturers; availability of investigational drugs, biological products or devices; costs; insurance coverage.**

(a) A manufacturer of an investigational drug, biological product or device may make available the manufacturer's investigational drug, biological product or device to eligible patients pursuant to this article. This article does not require that a manufacturer make available an investigational drug, biological product or device to an eligible patient.

(b) A manufacturer may:

(1) Provide an investigational drug, biological product or device to an eligible patient without receiving compensation; or

(2) Require an eligible patient to pay the costs of, or the costs associated with, the manufacture of the investigational drug, biological product or device.

(c) Nothing in this article expands the coverage required by article fifteen, chapter thirty-three of this code.

(d) A health insurance carrier may, but is not required by this article to, provide coverage for the cost of an investigational drug, biological product or device.

(e) An insurer may deny coverage to an eligible patient from the time the eligible patient begins use of the investigational drug, biologic product or device through a period not to exceed six months from the time the investigational drug, biologic product or device is no longer used by the eligible patient; except that coverage may not be denied for a preexisting condition and for coverage for benefits which commenced prior to the time the eligible patient begins use of such drug, biologic product or device.

(f) If a patient dies while being treated by an investigational drug, biological product or device, the patient's heirs and estate are not liable for any outstanding debt related to the treatment or lack of insurance due to the treatment.

**§16-51-5. Action against health care provider's license or Medicare certification prohibited.**

Notwithstanding any other law, a licensing board may not revoke, fail to renew, suspend or take any action against a health care provider's license issued pursuant to chapter thirty of this code based solely on the health care provider's recommendations to an eligible patient regarding access to or treatment with an investigational drug, biological product or device as long as the recommendations are consistent with medical standards of care. Action against a health care provider's Medicare certification based solely on the health care provider's recommendation that a patient have access to an investigational drug, biological product or device is prohibited.

**§16-51-6. Access to investigational drugs, biological products and devices.**

An official, employee or agent of this state shall not block or attempt to block an eligible patient's access to an investigational drug, biological product or device. Counseling, advice or a recommendation consistent with medical standards of care from a licensed health care provider is not a violation of this section.

**§16-51-7. No cause of action created.**

This article does not create a private cause of action against a manufacturer of an investigational drug, biological product or

device, against a health care provider as defined in section two, article seven-b, chapter fifty-five of this Code, or against any other person or entity involved in the care of an eligible patient using the investigational drug, biological product or device, for any harm done to the eligible patient resulting from the investigational drug, biological product or device, so long as the manufacturer, health care provider, or other person or entity is complying in good faith with the terms of this article.

**§16-51-8. Effect on health care coverage.**

Nothing in this article affects the mandatory health care coverage for participation in clinical trials pursuant to section two, article twenty-five-f, chapter thirty-three of this code.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Senate Bill 416, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 416) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Com. Sub. for Senate Bill 429**, Adopting two National Association of Insurance Commissioners' models to protect enrollees and general public and permit greater oversight.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Com. Sub. for Com. Sub. for Senate Bill 484**, Relating to reemployment rights of military personnel.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Senate Bill 494**, Creating Legislative Oversight Commission on Department of Transportation Accountability.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That the Code of West Virginia, 1931, as amended, be amended, by adding thereto a new article, designated §4-14-1, §4-14-2, §4-14-3, §4-14-4 and §4-14-5, all to read as follows:

**ARTICLE 14. LEGISLATIVE OVERSIGHT COMMISSION  
ON DEPARTMENT OF TRANSPORTATION  
ACCOUNTABILITY.**

**§4-14-1. Findings, purpose and intent.**

(a) The Legislature hereby finds and declares that:

(1) Investment in infrastructure is crucial to the well-being of West Virginians and West Virginia businesses;

(2) The state must spend funds wisely on infrastructure in order to get the best return on investment and must make long-term plans for investment;

(3) The federal government is an unpredictable and unreliable partner in providing consistent funding for infrastructure investment;

(4) The Legislature directed a Division of Highways performance and efficiency audit in 2015; and

(5) In order to maintain proper oversight to ensure that sufficient transportation planning is made, funds are spent wisely and efficiently, and the Department of Transportation is functioning appropriately, the Legislative Oversight Commission on Department of Transportation Accountability is hereby created.

(b) It is the intent of the Legislature that all actions taken pursuant to the provisions of this article by the Legislature and the Department of Transportation serve the following core set of principles:

(1) That all Department of Transportation infrastructure investments be coordinated to maximize efficiencies and minimize cost thereby addressing the needs of the citizens more effectively;

(2) That communication be facilitated among the various agencies within the Department of Transportation and between the department and the Legislature;

(3) That policy changes, not made by legislative rule, be discussed with the commission for purposes of coordinating those policies with stated goals;

(4) That programs or policies implemented in accordance with federal mandates be communicated to the commission;

(5) That in developing and implementing programs with private or federal grant moneys, the various agencies communicate their efforts to the commission to ensure and facilitate future state funding; and

(6) That any Department of Transportation agencies exempted from rule-making review by federal or state statutes advise the commission of program changes which may affect infrastructure investment in West Virginia.

#### **§4-14-2. Definitions.**

As used in this article:

(1) “Agency” means each agency, authority, board, committee, commission or division of the Department of Transportation;

(2) “Commission” means the Legislative Oversight Commission on Transportation Accountability, as created in section three of this article; and

(3) “Department” means the Department of Transportation.

#### **§4-14-3. Creation of a Legislative Oversight Commission on Department of Transportation Accountability.**

(a) There is hereby created a joint commission of the Legislature known as the Legislative Oversight Commission on Department of Transportation Accountability. The commission shall be composed of seven members of the Senate appointed by the President of the Senate and seven members of the House of Delegates appointed by the Speaker of the House of Delegates. No more than four of the seven members appointed by the President of the Senate and the Speaker of the House of Delegates, respectively, may be members of the same political party. In addition, the President of the Senate and Speaker of the House of Delegates shall be *ex officio* nonvoting members of the commission. The co-chairs of the commission shall be the chair of the Senate Transportation and Infrastructure Committee and the chair of the House Roads and Transportation Committee. At least one of the Senate appointees and at least one of the House of Delegates appointees shall be a member of the committee on finance of the Senate and House of Delegates, respectively. The members shall serve until their successors shall have been appointed as heretofore provided.

(b) Members of the commission shall receive such compensation and expenses as provided in article two-a, chapter four of this code. Such expenses and all other expenses including those incurred in the employment of legal, technical, investigative, clerical, stenographic, advisory and other personnel shall be paid from an appropriation to be made expressly for the Legislative Oversight Commission on Department of Transportation Accountability: *Provided*, That if no such appropriation be made, such expenses shall be paid from the appropriation under Fund No. 0175 for Joint Expenses created pursuant to the provisions of said chapter: *Provided, however*, That no expense of any kind payable under the account for joint expenses shall be incurred unless first approved by the Joint Committee on Government and Finance.

(c) The commission shall meet at any time both during sessions of the Legislature and in the interim or as often as may be necessary.

(d) The President of the Senate and Speaker of the House of Delegates shall assign such staff as may be deemed necessary to aid the commission in carrying out the provisions of this article.

#### **§4-14-4. Powers and duties of commission.**

(a) The powers, duties and responsibilities of the commission include the following:

(1) Make a continuing investigation, study and review of the practices, policies and procedures of the department;

(2) Make a continuing investigation, study and review of all matters related to transportation policy in the state;

(3) Review long-term plans by the various agencies of the Department of Transportation and how they impact the citizens of West Virginia;

(4) Conduct studies on:

(A) The amount of state, federal and other funds expended in infrastructure investment in the state and the plan for future funds;

(B) The costs associated with failure to invest in the infrastructure of this state to citizens and businesses;

(C) The extent to which the state is maximizing available federal programs and other moneys in providing transportation investment to the citizens of this state;

(D) The operation of the Department of Transportation as a whole or its individual agencies; and

(E) The roles of the public, private and private nonprofit sectors in collaborating for improved infrastructure investment;

(5) Review and study the funding mechanisms for the State Road Fund and review any plans to adjust funding to ensure the necessary investment is made;

(6) Review and study the feasibility and financial impact upon the state of the long-term transportation plans in place in the department and its agencies; and

(7) Review and study the feasibility and financial impact upon the state of the establishment of alternative long-term transportation plans and alternative funding sources.

(b) The commission shall make annual reports to the Legislature regarding the results of all investigations, studies and reviews pursuant to the provisions of section five of this article.

(c) Limited subpoena power: —

(1) For purposes of carrying out its duties, the commission is hereby empowered and authorized to examine witnesses and to subpoena such persons and books, records, documents, papers or any other tangible things as it believes should be examined to make a complete investigation.

(2) All witnesses appearing before the commission under subpoena shall testify under oath or affirmation. Any member of the commission may administer oaths or affirmations to such witnesses.

(3) To compel the attendance of witnesses at such hearings or the production of any books, records, documents, papers or any other tangible thing, the commission is hereby empowered and authorized to issue subpoenas, signed by one of the co-chairs, in accordance with section five, article one, chapter four of this code. Such subpoenas shall be served by any person authorized by law to serve and execute legal process and service shall be made without charge. Witnesses subpoenaed to attend hearings shall be allowed the same mileage and per diem as is allowed witnesses before any petit jury in this state.

(4) If any person subpoenaed to appear at any hearing refuses to appear or to answer inquiries there propounded, or fails or refuses to produce books, records, documents, papers or any other tangible thing within his or her control when the same are demanded, the commission shall report the facts to the circuit court of Kanawha County or any other court of competent jurisdiction and such court may compel obedience to the subpoena as though such subpoena had been issued by such court in the first instance.

#### **§4-14-5. Legislative reports.**

(a) The department shall report to the commission annually on or before December 31 of each year and provide detailed reports as directed by the commission. The commission shall describe to the department, in writing, the criteria to be addressed in each report. Reports required by this subsection may be provided in a format as directed by the commission.

(b) The commission shall submit annual reports to the Legislature, as required by the provisions of section four of this article, which such reports shall describe and evaluate in a concise manner:

(1) The major activities of the Department of Transportation and its agencies for the fiscal year immediately past, including important policy decisions reached on initiatives undertaken during that year, especially as such activities, decisions and initiatives relate to infrastructure investment, long-term planning for

infrastructure investment, use of federal funds and any public-private partnerships for infrastructure investment.

(2) Other information considered by the commission to be important, including recommendations for statutory, fiscal or policy reforms and reasons for such recommendations.

(c) The reports may specify in what manner any practice, policy or procedure may or should be modified to satisfy the goal of efficient and effective delivery of infrastructure investment and to improve the quality of roads, bridges and other transportation infrastructure in the state.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Senate Bill 494**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §4-14-1, §4-14-2, §4-14-3, §4-14-4 and §4-14-5, all relating to creating the Legislative Oversight Commission on Department of Transportation Accountability; setting forth findings, purpose and intent; defining terms; designating makeup and compensation of commission; authorizing meetings of the commission; stating powers and duties of commission; providing a limited subpoena power to the commission; and requiring certain reports.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Senate Bill 494, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 494) passed with its House of Delegates amended title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Com. Sub. for Senate Bill 520**, Allowing PEIA ability to recover benefits or claims obtained through fraud.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page three, section twelve, line forty-five, by striking out the words “longer than one year” and inserting in lieu thereof the words “less than one nor more than five years”;

On page three, section twelve, line fifty-six, by striking out “\$25,000” and inserting in lieu thereof “\$5,000”;

And,

On page three, section twelve, line fifty-six, by striking out the words “fifteen days but not more than one year” and inserting in lieu thereof the words “one nor more than five years”.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Senate Bill 520, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 520) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Senate Bill 573**, Prohibiting municipal annexation which would result in unincorporated territory within municipality.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page one, section one, line four, following the word “of” by inserting the words “present or new”;

On page one, section one, line five by striking out the word “use” and inserting in lieu thereof the word “uses”;

And,

On page one, section one, after line ten, by adding thereto a new subsection, designated subsection (e), to read as follows:

(e) If a municipality fails in its attempt to annex an unincorporated territory, that municipality shall not be permitted to attempt an additional annexation of that same unincorporated territory, or any part thereof, for a period of three years.

On motion of Senator Carmichael, the Senate refused to concur in the foregoing House amendments to the bill (Eng. S. B. 573) and requested the House of Delegates to recede therefrom.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Com. Sub. for Senate Bill 575**, Requiring leases for state office space provide landlord or owner be responsible for cleaning or janitorial services.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Senate Bill 627**, Permitting physician to decline prescribing controlled substance.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §30-3A-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §55-7-23 of said code be amended and reenacted, all to read as follows:

## **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

### **ARTICLE 3A. MANAGEMENT OF INTRACTABLE PAIN ACT.**

#### **§30-3A-2. Limitation on disciplinary sanctions or criminal punishment related to management of pain.**

(a) A physician is not subject to disciplinary sanctions by a licensing board or criminal punishment by the state for prescribing, administering or dispensing pain-relieving controlled substances for the purpose of alleviating or controlling pain if:

(1) In the case of a dying patient experiencing pain, the physician practices in accordance with an accepted guideline as defined in section one of this article and discharges his or her professional obligation to relieve the dying patient's pain and promote the dignity and autonomy of the dying patient; or

(2) In the case of a patient who is not dying and is experiencing pain, the physician discharges his or her professional obligation to relieve the patient's pain, if the physician can demonstrate by reference to an accepted guideline that his or her practice substantially complied with that accepted guideline. Evidence of substantial compliance with an accepted guideline may be rebutted only by the testimony of a clinical expert. Evidence of noncompliance with an accepted guideline is not sufficient alone to support disciplinary or criminal action.

(b) A health care provider, as defined in section two, article seven-b, chapter fifty-five of this code, with prescriptive authority is not subject to disciplinary sanctions by a licensing board or criminal punishment by the state for declining to prescribe, or declining to continue to prescribe, any controlled substance to a patient which the health care provider with prescriptive authority is treating if the health care provider with prescriptive authority in the exercise of reasonable prudent judgment believes the patient is

misusing the controlled substance in an abusive manner or unlawfully diverting a controlled substance legally prescribed for their use.

(b) (c) A licensed registered professional nurse is not subject to disciplinary sanctions by a licensing board or criminal punishment by the state for administering pain-relieving controlled substances to alleviate or control pain, if administered in accordance with the orders of a licensed physician.

(e) (d) A ~~registered~~ licensed pharmacist is not subject to disciplinary sanctions by a licensing board or criminal punishment by the state for dispensing a prescription for a pain-relieving controlled substance to alleviate or control pain, if dispensed in accordance with the orders of a licensed physician.

(d) (e) For purposes of this section, the term “disciplinary sanctions” includes both remedial and punitive sanctions imposed on a licensee by a licensing board, arising from either formal or informal proceedings.

(e) (f) The provisions of this section apply to the treatment of all patients for pain, regardless of the patient’s prior or current chemical dependency or addiction. The board may develop and issue policies or guidelines establishing standards and procedures for the application of this article to the care and treatment of persons who are chemically dependent or addicted.

## **CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.**

### **ARTICLE 7. ACTIONS FOR INJURIES.**

#### **§55-7-23. Prescription drugs and medical devices; limiting health care providers' liability exposure.**

(a) No health care provider, as defined in section two, article seven-b of this chapter, is liable to a patient or third party for injuries sustained as a result of the ingestion of a prescription drug or use of a medical device that was prescribed or used by the health care provider in accordance with instructions approved by the U.

S. Food and Drug Administration regarding the dosage and administration of the drug, the indications for which the drug should be taken or device should be used, and the contraindications against taking the drug or using the device: *Provided*, That the provisions of this section ~~shall do~~ not apply if: (1) The health care provider had actual knowledge that the drug or device was inherently unsafe for the purpose for which it was prescribed or used; or (2) a manufacturer of ~~such the~~ drug or device publicly announces changes in the dosage or administration of ~~such the~~ drug or changes in contraindications against taking the drug or using the device and the health care provider fails to follow ~~such the~~ publicly announced changes and ~~such the~~ failure proximately caused or contributed to the plaintiff's injuries or damages.

(b) A health care provider with prescriptive authority is not liable to a patient or third party for declining to prescribe, or declining to continue to prescribe, any controlled substance to a patient which the health care provider with prescriptive authority is treating if the health care provider with prescriptive authority in the exercise of reasonable prudent judgment believes the patient is misusing the controlled substance in an abusive manner or unlawfully diverting a controlled substance legally prescribed for their use.

~~(b)~~ (c) The provisions of this section are not intended to create a new cause of action.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Senate Bill 627**—A Bill to amend and reenact §30-3A-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §55-7-23 of said code, all relating to permitting physicians to decline prescribing controlled substance in certain circumstances; limiting disciplinary action by a licensing board on a health care provider with prescriptive authority for declining to prescribe, or declining to continue to prescribe, any controlled substance in certain circumstances; and providing that a health care

provider with prescriptive authority is not liable to a patient or third party for declining to prescribe, or declining to continue to prescribe, any controlled substance in certain circumstances.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Senate Bill 627, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 627) passed with its House of Delegates amended title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Com. Sub. for Senate Bill 326**, Repeal and recodify law relating to contributing to delinquency of minor child.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §49-4-901 and §49-4-902 of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new section, designated §61-8D-10, all to read as follows:

#### **ARTICLE 8D. CHILD ABUSE.**

##### **§61-8D-10. Contributing to delinquency of a child; penalties; payment of medical costs; proof; court discretion; other payments; suspended sentence; maintenance and care; temporary custody.**

(a) Any person eighteen years of age or older who knowingly contributes to or encourages the delinquency of a child is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined for a period not exceeding one year or both.

(b) As used in this section, "delinquency" means the violation or attempted violation of any federal or state statute, county or municipal ordinance, or a court order, or the habitual or continual refusal to comply, without just cause, with the lawful supervision or direction of a parent, guardian or custodian.

(c) In addition to any penalty provided under this section and any restitution which may be ordered by the court pursuant to section five, article eleven-a of this chapter the court may order any person convicted of a violation of subsection (a) of this section to pay all or any portion of the cost of medical, psychological or psychiatric treatment provided the child resulting from the acts for which the person is convicted.

(d) This section does not apply to any parent, guardian or custodian who fails or refuses, or allows another person to fail or refuse, to supply a child under the care, custody, or control of the parent, guardian, or custodian with necessary medical care, when medical care conflicts with the tenets and practices of a recognized

religious denomination or order of which parent, guardian or custodian is an adherent or member.

(e) It is not an essential element of the offense created by this section that the minor actually be delinquent.

(f) Upon conviction, the court may suspend the sentence of a person found guilty under this section. A suspended sentence may be subjected to the following terms and conditions:

(1) That offender pay for any and all treatment, support, and maintenance while the child is in the custody of the state or person that the court determines reasonable and necessary for the welfare of the child;

(2) That the offender post a sufficient bond to secure the payment for all sums ordered to be paid under this section, as long as the bond does not exceed \$5,000; and

(3) That the offender participate in any program or training that will assist the child in correcting the delinquent behavior or, in the case of neglect, that will assist the offender in correcting his or her behavior that led to violation of this section.

(g)(1) The penalty of a bond given upon suspension of a sentence which becomes forfeited is recoverable without a separate suit. The court may cause a citation or a summons to issue to the principal and surety, requiring that they appear at a time named by the court, not less than ten days, from the issuance of the summons, and show cause why a judgment should not be entered for the penalty of the bond and execution issued against the property of the principal and the surety.

(2) Any money collected or paid upon an execution, or upon the bond, shall be deposited with the clerk of the court in which the bond was given. The money shall be applied first to the payment of all court costs and then to the treatment, care, or maintenance of the child who was at issue when the offender was convicted of this section.

(h) If the guilty person had custody of the child prior to conviction, the court or judge may, on suspending sentence, permit the child to remain in the custody of the person, and make it a condition of suspending sentence that the person provides whatever treatment and care may be required for the welfare of the child, and shall do whatever may be calculated to secure obedience to the law or to remove the cause of the delinquency.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 326**—A Bill to repeal §49-4-901 and §49-4-902 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §61-8D-10, all relating to repealing the criminal offense of contributing to the delinquency or neglect of a child; relating to repealing providing the court or the judge discretion to suspend the sentence and allow a child to remain in the custody of the convicted person with certain conditions; creating the criminal offense of contributing to the delinquency of a child; defining delinquency; providing for penalties; authorizing restitution; allowing for additional terms and conditions to be imposed upon conviction; providing that delinquency of a child does not apply to a parent, guardian or custodian who fails or refuses, or allows another person to fail or refuse, to supply a child under the care, custody, or control of the parent, guardian, or custodian with necessary medical care, when medical care conflicts with the tenets and practices of a recognized religious denomination or order which parent, guardian or custodian is an adherent or member; establishing that it is not an essential element of the offense that the minor actually be delinquent; providing for certain conditions of bond upon conviction and suspension of the sentence by the court; providing that a bond given upon suspension of a sentence which becomes forfeited is recoverable without separate suit; providing procedure for recovery of bond by principal or surety; providing that any money collected or paid upon execution, or upon the bond, shall be deposited with the clerk and applied to court costs then to treatment, care, or maintenance of the child; and permitting the child to remain in the custody of the convicted person with certain conditions.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Senate Bill 326, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: Facemire—1.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 326) passed with its House of Delegates amended title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the adoption of

**Com. Sub. for Senate Concurrent Resolution 18**, Wilbur Lee Clayton Memorial Bridge.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the adoption of

**Com. Sub. for Senate Concurrent Resolution 33**, Requesting WV Infrastructure and Jobs Development Council study and report on consolidation regarding public water and sewer utilities.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the adoption of

**Senate Concurrent Resolution 44**, US Marine Corps SGT Mike Plasha Memorial Bridge.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the adoption of

**Senate Concurrent Resolution 47**, WV State Police SGT Harold E. Dailey Bridge.

A message from The Clerk of the House of Delegates announced the concurrence of the House of Delegates in the changed effective date, to take effect from passage, of

**Eng. Com. Sub. for House Bill 4171**, Relating to the public school calendar.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**House Concurrent Resolution 29**—Requesting the Division of Highways to name bridge number 25-218-4.69 (25A219), carrying West Virginia Route 218 over Buffalo Creek, and connecting the town of Farmington to United States Route 250, the “Harry C. “Buck” Markley Jr. Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**Com. Sub. for House Concurrent Resolution 74**—Requesting the Division of Highways to name bridge number 20-77-83.84 (20A615), located at latitude 38.19560, longitude -81.47926, which carries Interstate 64 and Interstate 77 over Route 79/3, also known as Cabin Creek Road, in Kanawha County, the “Arnold Miller Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**House Concurrent Resolution 79**—Requesting the Joint Committee on Government and Finance study state agency websites, the processes, policies, and contracts for entities which provide technical and logistical support for agency website development and maintenance, and the laws and policies governing the electronic accessibility of public information.

Referred to the Committee on Rules.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**Com. Sub. for House Concurrent Resolution 90**—Requesting the Division of Highways name Bridge Number 24-52/1-9.91 (24xxx) (37.44743, -81.70214) locally known as Roderfield Bridge carrying County Route 52/1 over Tug Fork in Roderfield, McDowell County, the “U. S. Army CPL Fon Mitchell Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**House Concurrent Resolution 96**—Requesting the Federal Energy Regulatory Commission (FERC) expedite the approval of six interstate natural gas pipeline projects in West Virginia.

Referred to the Committee on Rules.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**House Concurrent Resolution 101**—Requesting the Joint Committee on Government and Finance to conduct an interim study on the areas remaining from the January 3, 2012, Efficiency Audit of West Virginia’s Primary and Secondary Education System

conducted by Public Works, LLC, that require legislative action to accomplish.

Referred to the Committee on Rules.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**House Concurrent Resolution 102**—Requesting the Joint Committee on Government and Finance to conduct an interim study on the enrollment of students solely for participation in extracurricular activities.

Referred to the Committee on Rules.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**House Concurrent Resolution 103**—Requesting the Joint Committee on Government and Finance to conduct an interim study on the educational impact and budgetary and funding formula consequences of Education Savings Accounts.

Referred to the Committee on Rules.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**House Concurrent Resolution 104**—Requesting that the Joint Committee on Government and Finance study the composition, qualifications, terms and duties of the State Board of Education, including the need for any constitutional amendments to clarify the scope of its authority.

Referred to the Committee on Rules.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**House Concurrent Resolution 105**—Requesting the Joint Committee on Government and Finance study the composition and terms of the School Building Authority.

Referred to the Committee on Rules.

### **Executive Communications**

Senator Cole (Mr. President) laid before the Senate the following proclamation from His Excellency, the Governor, extending this current legislative session until and including the fifteenth day of March, two thousand sixteen, which was received 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 sixteen; and

**WHEREAS**, pursuant to Article VI, Section 22 of the Constitution of West Virginia, the two thousand sixteen regular session of the Legislature is scheduled to conclude on the twelfth day of March, two thousand sixteen; 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 ninth day of March, two thousand sixteen.

**NOW, THEREFORE, I, EARL RAY TOMBLIN**, 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 sixteen regular session of the Legislature for an additional period not to exceed three days, through and including the fifteenth day of March, two thousand sixteen; 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, on this the ninth day of March, in the year of our Lord, Two Thousand Sixteen, and in the One Hundred Fifty-Third year of the State.

**EARL RAY TOMBLIN**  
**GOVERNOR**

**By the Governor**

**NATALIE E. TENNANT**  
**SECRETARY OF STATE**

Senator Cole (Mr. President) then laid before the Senate the following communication from His Excellency, the Governor, which was received:

STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
CHARLESTON

March 9, 2016

**VIA HAND DELIVERY**

The Honorable William P. Cole III  
President, West Virginia Senate  
Room 229M, Building 1  
State Capitol  
Charleston, West Virginia 25305

The Honorable Tim Armstead  
Speaker, West Virginia House of Delegates  
Room 228M, Building 1  
State Capitol Complex  
1900 Kanawha Blvd., East  
Charleston, West Virginia 25305

RE: Revenue Shortfall Reserve Fund Borrowing for  
Unemployment Compensation Fund

President Cole and Speaker Armstead:

Please be advised that I intend to exercise the authority granted to me under Senate Bill 558, passed March 1, 2016, to borrow funds from the Revenue Shortfall Reserve Fund for deposit into the Unemployment Compensation Fund to be expended solely on payment of unemployment benefits to eligible beneficiaries.

The amount to be borrowed pursuant to this authority is the amount necessary to adequately sustain the balance in the Unemployment Compensation Fund at a minimum of \$50 million. This amount shall be reviewed and determined on a weekly basis to ensure the continued solvency of the Unemployment

Compensation Fund at a minimum of \$50 million. The weekly review and determination shall continue until deemed no longer necessary and terminated by subsequent Executive Order.

All funds withdrawn pursuant to the aforementioned authority shall be repaid into the Revenue Shortfall Reserve Fund from funds on deposit in the Unemployment Compensation Fund or from other funds legally available for such purpose, without interest, within 180 days of their withdrawal.

If you have any questions or would like any additional information, please contact Mark Imbrogno of my office at (304) 558-2000.

Sincerely,

Earl Ray Tomblin  
Governor

cc: Keith Burdette, Department of Commerce  
Russell Fry, Workforce West Virginia  
Robert Kiss, Department of Revenue  
Mike McKown, State Budget Office

Senator Cole (Mr. President) next laid before the Senate the following communication from His Excellency, the Governor, which was read by the Clerk:

STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
CHARLESTON

March 9, 2016

**VIA HAND DELIVERY**

The Honorable William P. Cole III  
President, West Virginia Senate  
Room 229M, Building 1  
State Capitol  
Charleston, West Virginia 25305

RE: Enrolled Committee Substitute for Senate Bill 10

Dear President Cole:

Pursuant to the provisions of section fourteen, article VII of the Constitution of West Virginia, I hereby disapprove and return the Enrolled Committee Substitute for Senate Bill 10.

I am advised this bill is overbroad and unduly burdens a woman's fundamental constitutional right to privacy. *See Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 879 (1992) (holding a state "may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability"). Among the bill's prohibitions is a leading pre-viability medical procedure (the "dilation & evacuation" method) that, for reasons of patient safety, is preferred by physicians. The Supreme Court of the United States and the United States District Court for the Southern District of West Virginia previously struck down similarly overbroad laws that unduly burdened a woman's right to choose this procedure. *See Stenberg v. Carhart*, 530 U.S. 914 (2000); *Daniel v. Underwood*, 102 F.Supp.2d 680 (S. D. W. Va. 2000) (declaring sections of WV's Women's Access to Health Care Act to be unconstitutional; ban at issue encompassed the common "dilation & evacuation" method and thus unduly burdened a woman's constitutional right of privacy). In these circumstances, a veto is appropriate.

Sincerely,

Earl Ray Tomblin  
Governor

cc: The Hon. Tim Armstead  
Speaker of the House of Delegates  
The Hon. Natalie E. Tennant  
Secretary of State

Senator Carmichael moved that in accordance with Section 14, Article VII of the Constitution of the State of West Virginia, the Senate proceed to reconsider

**Enr. Com. Sub. for Senate Bill 10**, Creating Unborn Child Protection from Dismemberment Abortion Act.

Heretofore disapproved and returned by His Excellency, the Governor, with his objections.

The question being on the adoption of Senator Carmichael's motion that the Senate reconsider Enrolled Committee Substitute for Senate Bill 10, the same was put and prevailed.

Pending discussion,

The question now being on the passage of the bill, disapproved by the Governor.

On the passage of the bill, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kirkendoll, Leonhardt, Maynard, Mullins, Plymale, Prezioso, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—25.

The nays were: Beach, Facemire, Kessler, Laird, Miller, Palumbo, Romano, Snyder and Stollings—9.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Enr. Com. Sub. for S. B. 10) passed with its title, as a result of the objections of the Governor.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

The Clerk then presented communications from His Excellency, the Governor, advising that on March 9, 2016, he had approved **Enr. Committee Substitute for Committee Substitute for Senate Bill 27**, **Enr. Committee Substitute for House Bill 2800**, **Second Enr. Committee Substitute for House Bill 4007**, **Enr. House Bill 4235** and **Enr. House Bill 4362**.

The Senate proceeded to the fourth order of business.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. Com. Sub. for House Bill 2110**, Relating generally to the tax treatment of manufacturing entities.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Mike Hall,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2110) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2366**, Relating generally to the solicitation of minors.

And has amended same.

**Eng. House Bill 2605**, Removing the limitation on actions against the perpetrator of sexual assault or sexual abuse upon a minor.

And has amended same.

**Eng. Com. Sub. for House Bill 4201**, Increasing the criminal penalties for participating in an animal fighting venture.

And has amended same.

And,

**Eng. House Bill 4724**, Relating to adding a requirement for the likelihood of imminent lawless action to the prerequisites for the crime of intimidation and retaliation.

And has amended same.

And reports the same back with the recommendation that they each do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 2366 and 4201 and Eng. H. B. 2605 and 4724) contained in the preceding report from the Committee on the Judiciary were each taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2849**, Creating the West Virginia Sentencing Commission.

And reports the same back with the recommendation that it do pass; but with the further recommendation that it first be referred to the Committee on Finance.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2849) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

On motion of Senator Carmichael, the bill was referred to the Committee on Finance.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. Com. Sub. for House Bill 4009**, Letting Our Counties Act Locally Act.

With amendments from the Committee on the Judiciary pending;

And has also amended same.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 8, 2016;

And reports the same back with the recommendation that it do pass as last amended by the Committee on Finance.

Respectfully submitted,

Mike Hall,  
*Chair.*

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 4033**, Adding criminal penalties for the unauthorized practice of pharmacists care.

With amendments from the Committee on Health and Human Resources pending;

And has also amended same.

And reports the same back with the recommendation that it do pass as last amended by the Committee on the Judiciary.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. 4033) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4046**, Relating to the promulgation of rules by the Department of Administration.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4046) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. Com. Sub. for House Bill 4150**, Making a supplementary appropriation to the Department of Health and Human Resources.

**Eng. House Bill 4151**, Making a supplementary appropriation to the Department of Education.

**Eng. House Bill 4152**, Making a supplementary appropriation to the Division of Environmental Protection – Protect Our Water Fund.

And,

**Eng. House Bill 4155**, Making a supplementary appropriation to the Department of Health and Human Resources, Division of Health – West Virginia Birth-to-Three Fund, and the Department of Health and Human Resources, Division of Human Services - Medical Services Trust Fund.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Mike Hall,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bills (Com. Sub. for H. B. 4150 and Eng. H. B. 4151, 4152 and 4155) contained in the preceding report from the Committee on Finance were each taken up for immediate consideration, read a first time and ordered to second reading.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Eng. Com. Sub. for House Bill 4186**, Relating to additional duties of the Public Service Commission.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Craig Blair,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4186) contained in the preceding report from the Committee on Government Organization was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4218**, Expanding the definition of “underground facility” in the One-Call System Act.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4218) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

**Eng. Com. Sub. for House Bill 4261**, Prohibiting the sale or transfer of student data to vendors and other profit making entities.

And has amended same.

**Eng. Com. Sub. for House Bill 4566**, Relating to school personnel.

And has amended same.

And,

**Eng. House Bill 4730**, Relating to computer science courses of instruction.

And has amended same.

And reports the same back with the recommendation that they each do pass, as amended.

Respectfully submitted,

Dave Sypolt,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 4261 and 4566 and Eng. H. B. 4730) contained in the preceding report from the Committee on Education were each taken up for immediate consideration, read a first time and ordered to second reading.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Eng. House Bill 4299**, Increasing the amount volunteer fire companies or paid fire departments may charge for reimbursement.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Craig Blair,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. 4299) contained in the preceding report from the Committee on Government Organization was taken up for immediate consideration, read a first time, ordered to second reading and, under the original double committee reference, was then referred to the Committee on Finance, with an amendment from the Committee on Government Organization pending.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 4364**, Internet Privacy Protection Act.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. 4364) contained in the preceding report

from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Eng. Com. Sub. for House Bill 4542**, Allowing persons with property within rural fire protection districts to opt out of fire protection coverage.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Craig Blair,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4542) contained in the preceding report from the Committee on Government Organization was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4605**, Prohibiting contracting with a state agency unless business entity submits disclosure of interested parties.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4605) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4633**, Requiring the Division of Juvenile Services to transfer to a correctional facility or regional jail any juvenile in its custody that has been transferred to adult jurisdiction of the circuit court and who reaches his or her eighteenth birthday.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4633) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Eng. Com. Sub. for House Bill 4660**, Relating to the information required to be included in support of an application to the Public Service Commission for a certificate of convenience and necessity for a water, sewer and/or stormwater service project.

And reports the same back with the recommendation that it do pass; but under the original double committee reference first be referred to the Committee on the Judiciary.

Respectfully submitted,

Craig Blair,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4660) was taken up for immediate consideration, second committee reference dispensed with, read a first time and ordered to second reading.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. Com. Sub. for House Bill 4662**, Permitting the Superintendent of the State Police to collect \$3 dollars from the sale of motor vehicle inspection stickers.

With amendments from the Committee on Transportation and Infrastructure pending;

And has also amended same.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 9, 2016;

And reports the same back with the recommendation that it do pass, as amended by the Committee on Transportation and

Infrastructure to which the bill was first referred; and as last amended by the Committee on Finance.

Respectfully submitted,

Mike Hall,  
*Chair.*

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. Com. Sub. for House Bill 4668**, Raising the allowable threshold of the coal severance tax revenue fund budgeted for personal services.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Mike Hall,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4668) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**House Concurrent Resolution 60**, Requesting Joint Committee on Government and Finance study the state-level background check process for new employees and volunteers of caregiving businesses and facilities.

**House Concurrent Resolution 68**, Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium and Heavy Duty Engines and Vehicles Phase 2.

**House Concurrent Resolution 78**, Requesting the Joint Committee on Government and Finance study professional and occupational licensing boards.

And,

**House Concurrent Resolution 93**, Requesting the Joint Committee on Government and Finance study the motor vehicle code.

And reports the same back with the recommendation that they each be adopted; but under the original double committee references first be referred to the Committee on Rules.

Respectfully submitted,

Craig Blair,  
*Chair.*

The resolutions, under the original double committee references, were then referred to the Committee on Rules.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**House Concurrent Resolution 94**, Requesting the Joint Committee on Government and Finance study the holdings of public property by departments, agencies, commissions, bureaus and boards of the state.

And has amended same.

And reports the same back with the recommendation that it be adopted, as amended; but under the original double committee reference first be referred to the Committee on Rules.

Respectfully submitted,

Craig Blair,  
*Chair.*

The resolution, under the original double committee reference, was then referred to the Committee on Rules, with an amendment from the Committee on Government Organization pending.

The Senate proceeded to the sixth order of business.

Senators Boley, Plymale and Stollings offered the following resolution:

**Senate Concurrent Resolution 67**—Requesting the Joint Committee on Government and Finance study the effectiveness of civics education in West Virginia’s schools, including a review of recorded state or national assessments measuring academic proficiency and related data evaluating the preparation of West Virginia public school, private school and home schooled students to be engaged citizens with sufficient academic background by which to appreciate the significance of the American democratic form of government; study provisions for the instruction of teaching civics education in West Virginia public and private schools; and, to study the availability of contemporary initiatives to enhance the teaching of civics education thereby elevating the competency of West Virginians to fulfill the role of enlightened responsible citizenship.

Whereas, In 2014 a test of 29,000 eighth grade students in America conducted by the National Assessment of Educational Progress (NAEP) found that a mere 24% were proficient in civics; and

Whereas, A 2014 University of Pennsylvania survey of 1,600 adults found that only 36% of respondents could name all three branches of the United States government; and

Whereas, The lack of an educational foundation regarding the fundamentals of the democracy established by our country’s founders and defended by generations of American soldiers

increases the potential for incivility, irresponsibility, and lack of appreciation for sustainability of the American Democracy; and

Whereas, Other states are taking measures to elevate the quality of teaching and learning of civics education designed to provide an enlightened citizenry through increased knowledge of our nation's form and execution of government along with its historical significance as a protector of civility and freedom; and

Whereas, Various government and nonprofit organizations have recognized programs established for the improvement of civics education, including the U.S. Department of Education, referencing "Advancing Civic Learning and Engagement in Democracy: A Road Map and Call to Action," the Civics Education Initiative being advanced by the Joe Foss Institute, and various projects of the Center for Civics Education, among others; and

Whereas, We are at a critical juncture in our nation's history in terms of understanding the significance of our form of government and how it relates to our quality of life in America, and the time for establishing greater understanding and appreciation for the richness and value of our government is overdue; and

Whereas, Affording West Virginia students a proper and thorough civics education utilizing contemporary teaching and learning methods is vital to ensuring the success of our great nation; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the effectiveness of civics education in West Virginia's schools through the adaptation of contemporary programs of civics education and learning, including the utilization of the United States Citizenship Test as one means to ensure that we are successfully preparing our youth to be engaged citizens who take pride in their country and the freedoms that it represents; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2017,

on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved*, That the West Virginia Department of Education and the State Board of Education shall cooperate with the Legislature and provide information, access to personnel and access to all records necessary to effectuate the provisions of this study; and, be it

*Further Resolved*, That the expenses necessary to conduct this study and to prepare and draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

Which, under the rules, lies over one day.

Senators Trump, Kessler, Ashley, Maynard, Palumbo, Gaunch, Unger, Laird, Romano, Miller, Boso, Kirkendoll, Cline, Walters, Plymale, Stollings, Yost and Williams offered the following resolution:

**Senate Resolution 63**—Recognizing the considerable contributions of drug courts to the state of West Virginia.

Whereas, The first adult drug court was established in the Northern Panhandle in 2005 and the first juvenile drug court was established in 1999 in Cabell County, ran for six years and was re-established in 2007; and

Whereas, Rigorous evaluation and research has demonstrated that, where adult drug courts are implemented consistent with models and procedures developed based on objective studies, they significantly reduce recidivism and substance abuse among offenders who are high risk of reoffending due to substance abuse and dependency; and

Whereas, Adult drug courts that are properly implemented increase the likelihood of successful rehabilitation while simultaneously reducing the cost to the public below the historic

costs of addressing these problems in the criminal justice system; and

Whereas, The goal of juvenile drug courts is to intervene early in the life of a young person to prevent future involvement of that young person in the court system; and

Whereas Justices, circuit judges, family court judges, magistrates, and mental hygiene commissioners throughout West Virginia devote their time at no additional pay to establishing and operating drug and treatment courts, with the help of full-time, dedicated drug court probation officers; and

Whereas, Governor Earl Ray Tomblin's consistent, influential support of the expansion of drug courts throughout the state, first as Senate President and, subsequently, as Governor, has been a strategic part of the program's success; and

Whereas, In 2009, the West Virginia Legislature passed the West Virginia Drug Offender Accountability and Treatment Act (W.Va. Code §62-15-1, et. seq.), which codified adult drug courts in West Virginia, and which left the administration, control and responsibility for drug courts, mental health courts and other problem-solving courts within the purview of the Supreme Court of Appeals; and

Whereas, In 2011, the West Virginia Legislature passed the West Virginia Juvenile Drug Court Statute (W.Va. Code §49-5-2b), which codified juvenile drug courts in West Virginia and which left the establishment of procedures and forms and the appointment of juvenile drug court judges within the purview of the Supreme Court of Appeals; and

Whereas, In 2013, the West Virginia Legislature passed the Justice Reinvestment Act (W.Va. Code §62-15-4(a)) which requires all judicial circuits to participate in an adult drug court or regional adult drug court program by July 1, 2016; and

Whereas, There currently are twenty-seven adult drug courts serving forty-five counties and seventeen juvenile drug courts serving twenty counties; and

Whereas, There are have been more than thirteen hundred drug court graduates and another six hundred eighty West Virginia adults and youths are currently participating in the programs; therefore, be it

*Resolved by the Senate:*

That the Senate hereby recognizes the considerable contributions of drug courts to the state of West Virginia; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to the appropriate officials with the West Virginia Supreme Court of Appeals.

At the request of Senator Trump, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with, and adopted.

On motion of Senator Carmichael, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and resumed business under the sixth order.

Senators Leonhardt, Kessler, Beach, Prezioso, Williams, Sypolt, Plymale, Stollings, Ashley and Yost offered the following resolution:

**Senate Resolution 64**—Supporting the Morgantown High School Red and Blue Marching Band's efforts to represent the USS West Virginia at the 75th Anniversary Pearl Harbor Memorial Parade.

Whereas, On December 7, 1941, the USS West Virginia, a Colorado-class battleship, was sunk by Japanese torpedoes during the attack on Pearl Harbor, killing 106 crew members; and

Whereas, The Morgantown High School Red and Blue Marching Band has been given the great honor of representing the

State of West Virginia, the battleship and her crew at a parade marking the passing of 75 years since the attack; and

Whereas, The Pearl Harbor Memorial Parade has been proclaimed as the Official Public Event Marking the Anniversary of the Attack on Pearl Harbor; and

Whereas, The Morgantown High School Red and Blue Marching Band has proudly represented the State of West Virginia across the nation; and

Whereas, It is the mission of the Morgantown High School Red and Blue Marching Band to instill in young people the values of hard work, dedication, individual sacrifice and commitment to the goals of the band as a whole; therefore be it

*Resolved by the Senate:*

That the Senate supports the Morgantown High School Red and Blue Marching Band's efforts to represent the USS West Virginia at the 75th Anniversary Pearl Harbor Memorial Parade; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to the Morgantown High School Red and Blue Marching Band.

At the request of Senator Leonhardt, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with, and adopted.

On motion of Senator Carmichael, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and, at the request of Senator Carmichael, and by unanimous consent, returned to the second order of business and the introduction of guests.

The Senate again proceeded to the sixth order of business.

Senators Walters, Plymale, Stollings, Gaunch, Yost, Williams and Prezioso offered the following resolution:

**Senate Resolution 65**—Recognizing the YMCA West Virginia Alliance on YMCA Day at the Capitol.

Whereas, The YMCA West Virginia Alliance is comprised of eight YMCAs in over nine locations throughout West Virginia, including Wheeling, Elkins, Clarksburg, Parkersburg, Huntington, Scott Depot, Cross Lanes, Charleston and Beckley; and

Whereas, The YMCA West Virginia Alliance’s mission is to collaborate and work together on areas of mutual benefit in order to strengthen and enhance our individual YMCAs and the collective strength of West Virginia YMCAs to better serve the people of West Virginia; and

Whereas, The YMCA West Virginia Alliance works to identify collaborations, promote YMCA programs, prepare a policy plan each year that outlines the goals and objectives of the Alliance and serves as a way to measure Alliance progress; and

Whereas, YMCAs are for youth development, healthy living and social responsibility, and provide programs such as Pre-K development, youth and adult sports, fitness facilities, aquatics, senior fitness, afterschool and summer day camp for school age youth, and character building; and

Whereas, YMCAs serve over 50,000 individuals and families annually through our programs and facilities throughout West Virginia; and

Whereas, YMCAs distribute over \$500,000 in financial assistance across West Virginia which has a significant impact on individuals and families, regardless of their ability to pay; therefore, be it

*Resolved by the Senate:*

That the Senate hereby recognizes the YMCA West Virginia Alliance on YMCA Day at the Capitol; and, be it

*Further Resolved,* That the Senate expresses its sincere gratitude to YMCA West Virginia Alliance for its contributions to the citizens of the state of West Virginia; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to the YMCA West Virginia Alliance.

At the request of Senator Walters, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with, and adopted.

The Senate proceeded to the seventh order of business.

**Senate Concurrent Resolution 65,** John and Wilbur Hahn Dutch Hollow Pioneers Bridge.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Transportation and Infrastructure.

**Senate Concurrent Resolution 66,** Requesting study of lottery, gaming and live racing industries in WV.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Rules.

On motion of Senator Carmichael, the Senate recessed until 1:50 p.m. today.

Upon expiration of the recess, the Senate reconvened and, without objection, returned to the third order of business.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, to take effect from passage, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Com. Sub. for Senate Bill 597,** Relating generally to Health Care Authority.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §16-29B-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a two new sections, designated §16-29B-28 and §16-29B-29, all to read as follows:

## **ARTICLE 29B. HEALTH CARE AUTHORITY.**

### **§16-29B-26. Exemptions from antitrust laws.**

Actions of the board shall be exempt from antitrust action ~~as provided in section five, article eighteen, chapter forty seven of this code~~ under state and federal antitrust laws. Any actions of hospitals and health care providers under the board's jurisdiction, when made in compliance with orders, directives, rules, approvals or regulations issued or promulgated by the board, shall likewise be exempt. ~~Health care providers shall be subject to the antitrust guidelines of the federal trade commission and the department of justice.~~

It is the intention of the Legislature that this chapter shall also immunize cooperative agreements approved and subject to supervision by the authority and activities conducted pursuant thereto from challenge or scrutiny under both state and federal antitrust law: *Provided*, That a cooperative agreement that is not approved and subject to supervision by the authority shall not have such immunity.

### **§16-29B-28. Review of Cooperative agreements.**

(a) *Definitions.* — As used in this section the following terms have the following meanings:

(1) “Academic medical center” means an accredited medical school, one or more faculty practice plans affiliated with the medical school or one or more affiliated hospitals which meet the requirements set forth in 42 C. F. R. 411.355(e).

(2) “Cooperative agreement” means an agreement between a qualified hospital which is a member of an academic medical center and one or more other hospitals or other health care providers. The agreement shall provide for the sharing, allocation, consolidation by merger or other combination of assets, or referral of patients, personnel, instructional programs, support services and facilities or medical, diagnostic, or laboratory facilities or procedures or other services traditionally offered by hospitals or other health care providers.

(3) “Commercial health plan” means a plan offered by any third party payor that negotiates with a party to a cooperative agreement with respect to patient care services rendered by health care providers.

(4) “Health care provider” means the same as that term is defined in section three of this article.

(5) “Teaching hospital” means a hospital or medical center that provides clinical education and training to future and current health professionals whose main building or campus is located in the same county as the main campus of a medical school operated by a state university.

(6) “Qualified hospital” means a teaching hospital, which meets the requirements of 42 C. F. R. 411.355(e) and which has entered into a cooperative agreement with one or more hospitals or other health care providers but is not a critical access hospital for purposes of this section.

(b) Findings. —

(1) The Legislature finds that the state’s schools of medicine, affiliated universities and teaching hospitals are critically important in the training of physicians and other healthcare providers who

practice health care in this state. They provide access to healthcare and enhance quality healthcare for the citizens of this state.

(2) A medical education is enhanced when medical students, residents and fellows have access to modern facilities, state of the art equipment and a full range of clinical services and that, in many instances, the accessibility to facilities, equipment and clinical services can be achieved more economically and efficiently through a cooperative agreement among a teaching hospital and one or more hospitals or other health care providers.

(c) *Legislative purpose.* — The Legislature encourages cooperative agreements if the likely benefits of such agreements outweigh any disadvantages attributable to a reduction in competition. When a cooperative agreement, and the planning and negotiations of cooperative agreements, might be anticompetitive within the meaning and intent of state and federal antitrust laws the Legislature believes it is in the state's best interest to supplant such laws with regulatory approval and oversight by the Health Care Authority as set out in this article. The authority has the power to review, approve or deny cooperative agreements, ascertain that they are beneficial to citizens of the state and to medical education, to ensure compliance with the provisions of the cooperative agreements relative to the commitments made by the qualified hospital and conditions imposed by the Health Care Authority.

(d) *Cooperative Agreements.* —

(1) A hospital which is a member of an academic medical center may negotiate and enter into a cooperative agreement with other hospitals or health care providers in the state:

(A) In order to enhance or preserve medical education opportunities through collaborative efforts and to ensure and maintain the economic viability of medical education in this state and to achieve the goals hereinafter set forth; and

(B) When the likely benefits outweigh any disadvantages attributable to a reduction in competition that may result from the proposed cooperative agreement.

(2) The goal of any cooperative agreement would be to:

(A) Improve access to care;

(B) Advance health status;

(C) Target regional health issues;

(D) Promote technological advancement;

(E) Ensure accountability of the cost of care;

(F) Enhance academic engagement in regional health;

(G) Preserve and improve medical education opportunities;

(H) Strengthen the workforce for health-related careers; and

(I) Improve health entity collaboration and regional integration, where appropriate.

(3) A qualified hospital located in this state may submit an application for approval of a proposed cooperative agreement to the authority. The application shall state in detail the nature of the proposed arrangement including the goals and methods for achieving:

(A) Population health improvement;

(B) Improved access to health care services;

(C) Improved quality;

(D) Cost efficiencies;

(E) Ensuring affordability of care;

(F) Enhancing and preserving medical education programs; and

(G) Supporting the authority's goals and strategic mission, as applicable.

(4) (A) If the cooperative agreement involves a combination of hospitals through merger, consolidation or acquisition, the qualified hospital must have been awarded a certificate of need for the project by the authority, as set forth in article two-d of this chapter prior to submitting an application for review of a cooperative agreement.

(B) In addition to a certificate of need, the authority may also require that an application for review of a cooperative agreement as provided in this section be submitted and approved prior to the finalization of the cooperative agreement, if the cooperative agreement involves the merger, consolidation or acquisition of a hospital located within a distance of twenty highway miles of the main campus of the qualified hospital, and the authority shall have determined that combination is likely to produce anti-competitive effects due to a reduction of competition. Any such determination shall be communicated to the parties to the cooperative agreement within seven days from approval of a certificate of need for the project.

(C) In reviewing an application for cooperative agreement, the authority shall give deference to the policy statements of the Federal Trade Commission.

(D) If an application for a review of a cooperative agreement is not required by the authority, the parties to the agreement may then complete the transaction following a final order by the authority on the certificate of need as set forth in article two-d of this code. The qualified hospital may apply to the authority for approval of the cooperative agreement either before or after the finalization of the cooperative agreement.

(E) A party who has received a certificate of need prior to the enactment of this provision during the 2016 regular session of the Legislature may apply for approval of a cooperative agreement whether or not the transaction contemplated thereby has been completed.

(F) The complete record in the certificate of need proceeding shall be part of the record in the proceedings under this section and

information submitted by an applicant in the certificate of need proceeding need not be duplicated in proceedings under this section.

(e) Procedure for review of cooperative agreements. —

(1) Upon receipt of an application, the authority shall determine whether the application is complete. If the authority determines the application is incomplete, it shall notify the applicant in writing of additional items required to complete the application. A copy of the complete application shall be provided by the parties to the Office of the Attorney General simultaneous with the submission to the authority. If an applicant believes the materials submitted contain proprietary information that is required to remain confidential, such information must be clearly identified and the applicant shall submit duplicate applications, one with full information for the authority's use and one redacted application available for release to the public.

(2) The authority shall upon receipt of a completed application, publish notification of the application on its website as well as provide notice of such application placed in the State Register. The public may submit written comments regarding the application within ten days following publication. Following the close of the written comment period, the authority shall review the application as set forth in this section. Within thirty days of the receipt of a complete application the authority may:

(i) Issue a certificate of approval which shall contain any conditions the authority finds necessary for the approval;

(ii) Deny the application; or

(iii) Order a public hearing if the authority finds it necessary to make an informed decision on the application.

(3) The authority shall issue a written decision within seventy-five days from receipt of the completed application. The authority may request additional information in which case they shall have an additional fifteen days following receipt of the supplemental

information to approve or deny the proposed cooperative agreement.

(4) Notice of any hearing shall be sent by certified mail to the applicants and all persons, groups or organizations who have submitted written comments on the proposed cooperative agreement as well as to all persons, groups or organizations designated as affected parties in the certificate of need proceeding. Any individual, group or organization who submitted written comments regarding the application and wishes to present evidence at the public hearing shall request to be recognized as an affected party as set forth in article two-d of this chapter. The hearing shall be held no later than forty-five days after receipt of the application. The authority shall publish notice of the hearing on the authority's website fifteen days prior to the hearing. The authority shall additionally provide timely notice of such hearing in the State Register.

(5) Parties may file a motion for an expedited decision.

(f) *Standards for review of cooperative agreements.* —

(1) In its review of an application for approval of a cooperative agreement submitted pursuant to this section, the authority may consider the proposed cooperative agreement and any supporting documents submitted by the applicant, any written comments submitted by any person and any written or oral comments submitted, or evidence presented, at any public hearing.

(2) The authority shall consult with the Attorney General of this state regarding his or her assessment of whether or not to approve the proposed cooperative agreement.

(3) The authority shall approve a proposed cooperative agreement and issue a certificate of approval if it determines, with the written concurrence of the Attorney General, that the benefits likely to result from the proposed cooperative agreement outweigh the disadvantages likely to result from a reduction in competition from the proposed cooperative agreement.

(4) In evaluating the potential benefits of a proposed cooperative agreement, the authority shall consider whether one or more of the following benefits may result from the proposed cooperative agreement:

(A) Enhancement and preservation of existing academic and clinical educational programs;

(B) Enhancement of the quality of hospital and hospital-related care, including mental health services and treatment of substance abuse provided to citizens served by the authority;

(C) Enhancement of population health status consistent with the health goals established by the authority;

(D) Preservation of hospital facilities in geographical proximity to the communities traditionally served by those facilities to ensure access to care;

(E) Gains in the cost-efficiency of services provided by the hospitals involved;

(F) Improvements in the utilization of hospital resources and equipment;

(G) Avoidance of duplication of hospital resources;

(H) Participation in the state Medicaid program; and

(I) Constraints on increases in the total cost of care.

(5) The authority's evaluation of any disadvantages attributable to any reduction in competition likely to result from the proposed cooperative agreement shall include, but need not be limited to, the following factors:

(A) The extent of any likely adverse impact of the proposed cooperative agreement on the ability of health maintenance organizations, preferred provider organizations, managed health care organizations or other health care payors to negotiate reasonable payment and service arrangements with hospitals,

physicians, allied health care professionals or other health care providers;

(B) The extent of any reduction in competition among physicians, allied health professionals, other health care providers or other persons furnishing goods or services to, or in competition with, hospitals that is likely to result directly or indirectly from the proposed cooperative agreement;

(C) The extent of any likely adverse impact on patients in the quality, availability and price of health care services; and

(D) The availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits over disadvantages attributable to any reduction in competition likely to result from the proposed cooperative agreement.

(6) (A) After a complete review of the record, including, but not limited to, the factors set out in subsection (e) of this section, any commitments made by the applicant or applicants and any conditions imposed by the authority, if the authority determines that the benefits likely to result from the proposed cooperative agreement outweigh the disadvantages likely to result from a reduction in competition from the proposed cooperative agreement, the authority shall approve the proposed cooperative agreement.

(B) The authority may reasonably condition approval upon the parties' commitments to:

(i) Achieving improvements in population health;

(ii) Access to health care services;

(iii) Quality and cost efficiencies identified by the parties in support of their application for approval of the proposed cooperative agreement; and

(iv) Any additional commitments made by the parties to the cooperative agreement.

Any conditions set by the authority shall be fully enforceable by the authority. No condition imposed by the authority, however, shall limit or interfere with the right of a hospital to adhere to religious or ethical directives established by its governing board.

(7) The authority's decision to approve or deny an application shall constitute a final order or decision pursuant to the West Virginia Administrative Procedure Act (§29A-1-1, et seq.). The authority may enforce commitments and conditions imposed by the authority in the circuit court of Kanawha County or the circuit court where the principal place of business of a party to the cooperative agreement is located.

(g) *Enforcement and supervision of cooperative agreements.* — The authority shall enforce and supervise any approved cooperative agreement for compliance.

(1) The authority is authorized to promulgate legislative rules in furtherance of this section. Additionally, the authority shall promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code to accomplish the goals of this section. These rules shall include, at a minimum:

(A) An annual report by the parties to a cooperative agreement. This report is required to include:

(i) Information about the extent of the benefits realized and compliance with other terms and conditions of the approval;

(ii) A description of the activities conducted pursuant to the cooperative agreement, including any actions taken in furtherance of commitments made by the parties or terms imposed by the authority as a condition for approval of the cooperative agreement;

(iii) Information relating to price, cost, quality, access to care and population health improvement;

(iv) Disclosure of any reimbursement contract between a party to a cooperative agreement approved pursuant to this section and a commercial health plan or insurer entered into subsequent to the

finalization of the cooperative agreement. This shall include the amount, if any, by which an increase in the average rate of reimbursement exceeds, with respect to inpatient services for such year, the increase in the Consumer Price Index for all Urban Consumers for hospital inpatient services as published by the Bureau of Labor Statistics for such year and, with respect to outpatient services, the increase in the Consumer Price Index for all Urban Consumers for hospital outpatient services for such year; and

(v) Any additional information required by the authority to ensure compliance with the cooperative agreement.

(B) If an approved application involves the combination of hospitals, disclosure of the performance of each hospital with respect to a representative sample of quality metrics selected annually by the authority from the most recent quality metrics published by the Centers for Medicare and Medicaid Services. The representative sample shall be published by the authority on its website.

(C) A procedure for a corrective action plan where the average performance score of the parties to the cooperative agreement in any calendar year is below the fiftieth percentile for all United States hospitals with respect to the quality metrics as set forth in (B) of this subsection. The corrective action plan is required to:

(i) Be submitted one hundred twenty days from the commencement of the next calendar year; and

(ii) Provide for a rebate to each commercial health plan or insurer with which they have contracted an amount not in excess of one percent of the amount paid to them by such commercial health plan or insurer for hospital services during such two-year period if in any two consecutive-year period the average performance score is below the fiftieth percentile for all United States hospitals. The amount to be rebated shall be reduced by the amount of any reduction in reimbursement which may be imposed by a commercial health plan or insurer under a quality incentive or awards program in which the hospital is a participant.

(D) A procedure where if the excess above the increase in the Consumer Price Index for all Urban Consumers for hospital inpatient services or hospital outpatient services is two percent or greater the authority may order the rebate of the amount which exceeds the respective indices by two percent or more to all health plans or insurers which paid such excess unless the party provides written justification of such increase satisfactory to the authority taking into account case mix index, outliers and extraordinarily high cost outpatient procedure utilizations.

(E) The ability of the authority to investigate, as needed, to ensure compliance with the cooperative agreement.

(F) The ability of the authority to take appropriate action, including revocation of a certificate of approval, if it determines that:

(i) The parties to the agreement are not complying with the terms of the agreement or the terms and conditions of approval;

(ii) The authority's approval was obtained as a result of an intentional material misrepresentation;

(iii) The parties to the agreement have failed to pay any required fee; or

(iv) The benefits resulting from the approved agreement no longer outweigh the disadvantages attributable to the reduction in competition resulting from the agreement.

(G) If the authority determines the parties to an approved cooperative agreement have engaged in conduct that is contrary to state policy or the public interest, including the failure to take action required by state policy or the public interest, the authority may initiate a proceeding to determine whether to require the parties to refrain from taking such action or requiring the parties to take such action, regardless of whether or not the benefits of the cooperative agreement continue to outweigh its disadvantages. Any determination by the authority shall be final. The authority is specifically authorized to enforce its determination in the circuit

court of Kanawha County or the circuit court where the principal place of business of a party to the cooperative agreement is located.

(H) Fees as set forth in subsection (h).

(2) Until the promulgation of the emergency rules, the authority shall monitor and regulate cooperative agreements to ensure that their conduct is in the public interest and shall have the powers set forth in subdivision (1) of this subsection, including the power of enforcement set forth in paragraph (G), subdivision (1) of this subsection.

(h) Fees. — The authority may set fees for the approval of a cooperative agreement. These fees shall be for all reasonable and actual costs incurred by the authority in its review and approval of any cooperative agreement pursuant to this section. These fees shall not exceed \$75,000. Additionally, the authority may assess an annual fee not to exceed \$75,000 for the supervision of any cooperative agreement approved pursuant to this section and to support the implementation and administration of the provisions of this section.

(i) Miscellaneous provisions. —

(1) (A) An agreement entered into by a hospital party to a cooperative agreement and any state official or state agency imposing certain restrictions on rate increases shall be enforceable in accordance with its terms and may be considered by the authority in determining whether to approve or deny the application. Nothing in this chapter shall undermine the validity of any such agreement between a hospital party and the Attorney General entered before the effective date of this legislation.

(B) At least ninety days prior to the implementation of any increase in rates for inpatient and outpatient hospital services and at least sixty days prior to the execution of any reimbursement agreement with a third party payor, a hospital party to a cooperative agreement involving the combination of two or more hospitals through merger, consolidation or acquisition which has been approved by the authority shall submit any proposed increase in

rates for inpatient and outpatient hospital services and any such reimbursement agreement to the Office of the West Virginia Attorney General together with such information concerning costs, patient volume, acuity, payor mix and other data as the Attorney General may request. Should the Attorney General determine that the proposed rates may inappropriately exceed competitive rates for comparable services in the hospital's market area which would result in unwarranted consumer harm or impair consumer access to health care, the Attorney General may request the authority to evaluate the proposed rate increase and to provide its recommendations to the Office of the Attorney General. The Attorney General may approve, reject or modify the proposed rate increase and shall communicate his or her decision to the hospital no later than 30 days prior to the proposed implementation date. The hospital may then only implement the increase approved by the Attorney General. Should the Attorney General determine that a reimbursement agreement with a third party payor includes pricing terms at anti-competitive levels, the Attorney General may reject the reimbursement agreement and communicate such rejection to the parties thereto together with the rationale therefor in a timely manner.

(2) The authority shall maintain on file all cooperative agreements the authority has approved, including any conditions imposed by the authority.

(3) Any party to a cooperative agreement that terminates its participation in such cooperative agreement shall file a notice of termination with the authority thirty days after termination.

(4) No hospital which is a party to a cooperative agreement for which approval is required pursuant to this section may knowingly bill or charge for health services resulting from, or associated with, such cooperative agreement until approved by the authority. Additionally, no hospital which is a party to a cooperative agreement may knowingly bill or charge for health services resulting from, or associated with, such cooperative agreement for which approval has been revoked or terminated.

(5) By submitting an application for review of a cooperative agreement pursuant to this section, the hospitals or health care providers shall be deemed to have agreed to submit to the regulation and supervision of the authority as provided in this section.

**§16-29B-29. Severability.**

If any provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect, impair or invalidate other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.;

And,

**Eng. Com. Sub. for Senate Bill 597**—A Bill to amend and reenact §16-29B-26 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §16-29B-28 and §16-29B-29, all relating generally to the Health Care Authority; exempting certain actions of the Health Care Authority from state and federal antitrust laws; setting forth intent to immunize cooperative agreements approved and subject to supervision by the Health Care Authority; establishing that a cooperative agreement that is not approved and subject to supervision by the Health Care Authority shall not have immunity; defining terms; setting out legislative findings and purpose; allowing cooperative agreements between certain hospitals and other hospitals or health care providers in the state; setting forth goals of a cooperative agreement; granting authority to the Health Care Authority to review proposed cooperative agreements; establishing a review process for cooperative agreements; requiring notification of application and public hearing to be published on Health Care Authority's website and the State Register; providing for public comment period; requiring notice of public hearing to be provided to all persons, groups or organizations who have submitted written comments to proposed cooperative agreements and to individuals, groups or organizations designated as affected parties in certificate of need proceeding; requiring copy of application to be provided to the Attorney

General; setting forth standards for review of cooperative agreements; requiring the Health Care Authority to consult with the Attorney General regarding assessment of approval of proposed cooperative agreement; requiring approval of Health Care Authority to have written concurrence of the Attorney General; providing that the Health Care Authority evaluate the benefits and disadvantages of the proposed cooperative agreement; providing that the Health Care Authority make a determination whether the benefits likely to result from the proposed cooperative agreement outweigh the disadvantages likely to result from a reduction in competition from the proposed cooperative agreement; providing for approval with conditions; providing that the Health Care Authority's decision to approve or deny an application is a final order; granting enforcement powers over cooperative agreements to the Health Care Authority; providing for rulemaking; requiring reporting to the Health Care Authority; setting forth reporting requirements; providing for establishment and assessment of fees; providing that these new provisions shall not undermine the validity of an agreement between a hospital and the Attorney General entered into before the effective date of this legislation; requiring submission of certain proposed rate increases to be provided to the Attorney General for review; authorizing the Attorney General to approve, reject or modify certain proposed rate increases; providing that certain proposed rate increases may only be implemented with the approval of the Attorney General; providing the Health Care Authority maintain on file all approved cooperative agreements, including conditions imposed; requiring notification of termination of cooperative agreement be filed with the Health Care Authority; prohibiting billing or charging for health services resulting from or related to a cooperative agreement until approved by the Health Care Authority; providing that submission of application constitutes agreement to certain regulation and supervision of the Health Care Authority; and providing for severability.

On motion of Senator Carmichael, the Senate refused to concur in the foregoing House amendments to the bill (Eng. Com. Sub. for S. B. 597) and requested the House of Delegates to recede therefrom.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for Senate Bill 269**, Budget Bill.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending extended discussion,

Senator Plymale moved the previous question.

The question being on the adoption of the aforesated motion by Senator Plymale, the same was put.

The result of the voice vote being inconclusive, Senator Plymale demanded a division of the vote.

A standing vote being taken, there were sixteen “yeas” and eighteen “nays”.

Whereupon, the President declared the motion for the previous question had not prevailed.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 269 pass?”

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—29.

The nays were: Facemire, Laird, Romano, Snyder and Unger—5.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 269) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—29.

The nays were: Facemire, Laird, Romano, Snyder and Unger—5.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 269) takes effect from passage.

*Ordered,* That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Pending announcement of a meeting of a standing committee of the Senate,

On motion of Senator Carmichael, the Senate recessed until 4 p.m. today.

Upon expiration of the recess, the Senate reconvened and, at the request of Senator Carmichael, and by unanimous consent, returned to the fifth order of business.

### **Filed Conference Committee Reports**

The Clerk announced the following conference committee report had been filed at 4:09 p.m. today:

**Eng. Com. Sub. for Senate Bill 283,** Creating crime when fire is caused by operation of a clandestine drug laboratory.

At the request of Senator Plymale, unanimous consent being granted, Senator Plymale addressed the Senate regarding the Finance committee proceedings for Engrossed Committee Substitute for Senate Bill 269 (*Budget Bill*).

The Senate again proceeded to the eighth order of business, the next bill coming up in numerical sequence being

**Eng. House Bill 2494**, Creating a provisional plea process in criminal cases.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2494) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. House Bill 2494**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-11-22a, relating to codifying deferred adjudication process for persons charged with felony and misdemeanor offenses in circuit and magistrate court; authorizing courts, upon motion, to defer acceptance and adjudication of entered guilty pleas for certain periods based upon severity of offense; authorizing court to impose such conditions and terms as it deems just and necessary as a

condition of participation; authorizing periods of incarceration and participation in referenced programs as conditions of participation in the deferred adjudication process; authorizing acceptance of previously entered guilty plea upon violation of the terms and conditions of deferral; authorizing court to impose additional terms and conditions upon defendant if violation occurs; and clarifying that procedure hereby authorized is distinct from conditional plea under Rule 11(a)(2) of the West Virginia Rules of Criminal Procedure.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 2826**, Requiring the Commissioner of the Division of Highways to approve points of access to and from state highways to real property used or to be used for commercial, industrial or mercantile purposes; “Sarah Nott’s Law”.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2826) passed.

The following amendment to the title of the bill, from the Committee on Transportation and Infrastructure, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 2826**—A Bill to amend and reenact §17-4-49 of the Code of West Virginia, 1931, as amended, relating to access from and to commercial, industrial or mercantile establishments; requiring the Commissioner of the Division of Highways and owners of real property under certain circumstances to place “no parking” signs or otherwise notify public that parking is prohibited; and designating law as “Sarah Nott’s Law”.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 4014**, Preventing the State Board of Education from implementing common core academic standards and assessments.

On third reading, coming up in regular order, with the Education committee amendments pending, and with the right having been granted on yesterday, Wednesday, March 9, 2016, for other amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Sypolt, as chair of the Committee on Education, and by unanimous consent, the pending Education committee amendments to the bill (*shown in the Senate Journal of yesterday, Wednesday, March 9, 2016, pages 2103 to 2109, inclusive*) were withdrawn.

On motion of Senator Sypolt, the following amendments to the bill were reported by the Clerk, considered simultaneously, and adopted:

On pages five through eleven, section five, lines eighty-four through two hundred thirty, by striking out all of subsections (d) and (e) and inserting in lieu thereof the following:

(d) West Virginia Academic Standards. —

(1) Legislative authority. — Sections one, two and twelve, article XII of the Constitution of the State of West Virginia impose a duty upon the Legislature, as a separate but equal branch of government:

(A) To “provide, by general law, for a thorough and efficient system of free schools”;

(B) To prescribe by law the duties of the state board in the general supervision of free public schools;

(C) To prescribe by law the powers and duties of the state superintendent; and

(D) To foster and encourage moral, intellectual, scientific and agricultural improvement in schools.

(2) For purposes of this subsection, “academic standards” are concise, written descriptions of what students are expected to know and be able to do at a specific stage of their education. Academic standards describe what students should have learned by the end of a course, grade level or grade span.

(3) The Legislature recognizes that on December 15, 2015, the state board adopted what it represented were academic standards no longer aligned with Common Core State Standards and renamed them “West Virginia College–and–Career–Readiness Standards for English Language Arts (Policy 2520.1A)” and “West Virginia College–and–Career–Readiness Standards for Mathematics (Policy 2520.1B)”.

(4) The Legislature hereby establishes an Academic Standards Evaluation Panel. The panel shall consist of six appointed members and one ex officio member. The deans responsible for the math programs, the deans responsible for the English programs and the deans responsible for the science programs at West Virginia University and Marshall University shall each appoint one member: *Provided*, That any dean that is responsible for more than one of the three programs shall appoint one member for each program he or she is responsible for. The Chancellor of the Higher Education Policy Commission, or his or her designee, shall serve as an ex officio member and be responsible for facilitating the work of the panel. The Academic Standards Evaluation Panel shall:

(A) Using the West Virginia College–and–Career–Readiness Standards for English Language Arts and Mathematics as a

framework, evaluate and recommend revisions to the standards based on empirical research and data to ensure grade-level alignment to the standards of states with a proven track record of consistent high-performing student achievement in English Language Arts on the National Assessment of Educational Progress; and in Mathematics, on both the National Assessment of Educational Progress and Trends in Math and Science Study International Assessment;

(B) Review the Next Generation Content Standards and Objectives for Science in West Virginia Schools and recommend revisions that it considers appropriate;

(C) Remove common core strategies that require instructional methods;

(D) Use facilities, staff and supplies provided by the Higher Education Policy Commission;

(E) Submit its evaluation and recommended revisions to the state board and the Legislative Oversight Commission on Education Accountability by October 1, 2016.

(5) The state board shall withdraw from the Memorandum of Agreement entered into with the Council of Chief State School Officers and the National Governors Association for Best Practices, which required the state board to agree that common core represents eighty-five percent of West Virginia's standards in English Language Arts and Mathematics and withdraw as a governing state in the Smarter Balanced Assessment Consortium.

(6) Any academic standard adopted by the state board shall meet the following criteria:

(A) Be age level and developmentally appropriate, particularly as it relates to sequencing of content standards and the measurement of student academic performance;

(B) Be free of instructional strategies;

(C) Meet national and international benchmarks empirically proven to increase and sustain student achievement; and

(D) Be based solely on academic content.

(7) The Legislative Oversight Commission on Education and Accountability shall review any proposed rules relating to academic standards to determine whether the board has exceeded the scope of its statutory authority in approving the proposed legislative rule and whether the proposed legislative rule is in conformity with the legislative intent of the provisions of this subsection. The Legislative Oversight Commission on Education and Accountability may, at its discretion, hold public hearings, recommend to the board any changes needed to comply with the legislative intent of this subsection and make recommendations to the Legislature for any statutory changes needed to clarify the legislative intent of this statute.

~~(d)~~(e) *Comprehensive statewide student assessment program.*

~~— The state board shall establish a comprehensive statewide student assessment program to assess student performance and progress in grades three through through twelve. The assessment program is subject to the following:~~

~~(1) The state board shall promulgate a rule in accordance with the provisions of article three b, chapter twenty nine a of this code establishing the comprehensive statewide student assessment program;~~

~~(2) Prior to the 2014 2015 school year, the state board shall align the comprehensive statewide student assessment for all grade levels in which the test is given with the college readiness standards adopted pursuant to section thirty nine, article two of this chapter or develop other aligned tests to be required at each grade level so that progress toward college readiness in English/language arts and math can be measured.~~

~~(3) The state board may require that student proficiencies be measured through the ACT EXPLORE and the ACT PLAN~~

~~assessments or other comparable assessments, which are approved by the state board and provided by future vendors;~~

(1) For federal and state accountability purposes, the state board shall review and approve a summative assessment system for administration to all public school students, beginning in school year 2016-2017, in grades three through eight and once in early high school that assesses students in English, reading, writing, science and mathematics: *Provided*, That the assessment in science may only be administered once during the grade span of three through five and once during the grade span of six through eight. The assessment shall include those students as required by the federal Individuals with Disabilities Education Act and by Title I of the Elementary and Secondary Education Act. The summative assessment system must meet the following requirements:

(A) Be a vertically-scaled, benchmarked, standards-based system of summative assessments;

(B) Document student progress toward national college and career readiness benchmarks derived from empirical research and state standards;

(C) Be capable of measuring individual student performance in English, reading, writing, science and mathematics: *Provided*, That the assessment in science may only be administered once during the grade span of three through five and once during the grade span of six through eight;

(D) Be available in paper-and-pencil and computer-based formats;

(E) Be a predictive measure of student progress toward a national college readiness assessment used by higher education institutions for admissions purposes; and

(F) Be aligned or augmented to align with the standards in effect at the time the test is administered.

(2) The state board shall review and approve a college readiness assessment to be administered to all students in the eleventh grade

for the first time in school year 2016-2017 and subsequent years. The eleventh grade college readiness assessment shall be administered at least once to each eleventh grade student and shall meet the following requirements:

(A) Be a standardized, curriculum-based, achievement college entrance examination;

(B) Assess student readiness for first-year, credit-bearing coursework in postsecondary education;

(C) Test in the areas of English, reading, writing, science and mathematics;

(D) Have content area benchmarks for measuring student achievement;

(E) Be administered throughout the United States;

(F) Be relied upon by institutions of higher education for admissions; and

(G) Be aligned or augmented to align with the standards in effect at the time the test is administered.

(3) The state board shall review and approve career readiness assessments and assessment-based credentials that measure and document foundational workplace skills. The assessments shall be administered to public secondary school students in grades eleven or twelve for the first time in school year 2016-2017 and subsequent years: *Provided*, That the career readiness assessment is voluntary and may only be administered to students who elect to take the assessment. The assessment-based credential shall be available to any student who achieves at the required level on the assessments. The assessments shall meet the following requirements:

(A) Be a standardized, criterion-referenced, measure of broadly relevant foundational workplace skills;

(B) Assess and document student readiness for a wide range of jobs;

(C) Measure skills in all or any of the following areas:

(i) Applied mathematics;

(ii) Locating information; or

(iii) Reading for information;

(D) Align with research-based skill requirement profiles for specific industries and occupations;

(E) Lead to a work readiness certificate for students who meet the minimum proficiency requirements on the component assessments; and

(F) Be available in paper-and-pencil and computer-based formats.

(4) The state board shall not acquire or implement any assessment instrument or instruments developed to specifically align with the Common Core State Standards including Smarter Balanced Assessment or Partnership for Assessment of Readiness for College and Careers (PARCC).

(5) For any online assessment, the state board shall provide online assessment preparation to ensure that students have the requisite digital literacy skills necessary to be successful on the assessment.

(6) The state board shall develop a plan and make recommendations regarding end-of-course assessments and student accountability measures and submit its findings to the Legislative Oversight Commission on Education and Accountability by December 31, 2016.

(7) The state board shall develop a policy which sets forth accountability measures for students taking the comprehensive statewide assessment.

(8) Any summative assessment approved by the state board shall take no more than two percent of a student's instructional time.

(4) (9) The state board may require that student proficiencies be measured through the West Virginia writing assessment at any grade levels determined by the state board to be appropriate.

(6) (10) The state board may provide through ~~the statewide assessment program~~ policy other optional testing or assessment instruments applicable to grade levels kindergarten through eight and grade eleven which may be used by each school to promote student achievement. The state board annually shall publish and make available, electronically or otherwise, to school curriculum teams and teacher collaborative processes the optional testing and assessment instruments.;

And,

On page eighteen, section five, line four hundred eighteen, after the word "appeals." by striking out the remainder of the subdivision.

There being no further amendments offered,

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 4014), as just amended, was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kessler, Leonhardt, Maynard, Miller, Mullins, Palumbo, Sypolt, Takubo, Trump, Walters, Woelfel and Cole (Mr. President)—22.

The nays were: Beach, Facemire, Kirkendoll, Laird, Plymale, Prezioso, Romano, Snyder, Stollings, Unger, Williams and Yost—12.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4014) passed.

The following amendment to the title of the bill, from the Committee on Education, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 4014**—A Bill to amend and reenact §18-2E-5 of the Code of West Virginia, 1931, as amended, all relating generally to process for improving education; removing reference to No Child Left Behind Act; adding digital literacy to list of areas that State Board of Education is required to adopt high-quality education standards in; making findings with respect to Legislature’s constitutional authority; defining “academic standards”; recognizing state board’s adoption and renaming of certain standards; establishing Academic Standards Evaluation Panel; establishing membership of panel; establishing duties of panel; requiring withdrawal from Memorandum of Agreement relating to adoption of Common Core State Standards; requiring withdrawal as governing state in Smarter Balanced Assessment Consortium; establishing criteria for any academic standards adopted by state board; requiring Legislative Oversight Commission on Education and Accountability to review any proposed rules relating to academic standards; removing requirement for state board rule establishing comprehensive statewide student assessment program; removing requirement that assessment be aligned with certain standards and associated alterative; removing state board authority to require ACT EXPLORE and ACT PLAN or other comparable assessments; requiring state board to review and approve summative assessment for certain grade levels to assess in certain subject areas; requiring summative assessment include students as required by certain federal laws; requiring that summative assessment meet certain requirements; requiring state board to review and approve college readiness assessment for students in eleventh grade; requiring college readiness assessment to be administered at least once to each eleventh-grade student; requiring college readiness assessment meet certain requirements; requiring state board to review and approve career readiness assessments and assessment

based credentials; providing that career readiness assessment is voluntary for students; requiring that assessment-based credential be available to any student that achieves at required level on the required assessments; requiring career readiness assessments meet certain requirements; prohibiting implementation of any assessment developed specifically to align with Common Core State Standards; requiring online assessment preparation for any online assessment; requiring state board to develop plan and make recommendations regarding end-of-course assessments and student accountability measures; establishing reporting requirements; requiring the state board to develop policy that sets forth accountability measures for students taking comprehensive statewide assessment; establishing maximum percentage of instructional time for summative assessment; and removing required report to Legislative Oversight Commission on Education Accountability pertaining to on-site review finding appeals.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

At the request of Senator Plymale, and by unanimous consent, Senator Plymale addressed the Senate regarding Engrossed Committee Substitute for House Bill 2826 (*Requiring the Commissioner of the Division of Highways to approve points of access to and from state highways to real property used or to be used for commercial, industrial or mercantile purposes; "Sarah Nott's Law"*).

Thereafter, Senator Sypolt requested unanimous consent that the remarks by Senator Plymale be ordered printed in the Appendix to the Journal.

Which consent was not granted, Senator Plymale objecting.

**Eng. Com. Sub. for House Bill 4080**, Department of Veterans' Assistance, rule relating to VA headstones or markers.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4080) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4080) takes effect from passage.

*Ordered,* That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 4265**, Relating to payment by the West Virginia Municipal Bond Commission or state sinking fund commission or the governing body issuing the bonds.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4265) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 4334**, Clarifying the requirements for a license to practice as an advanced practice registered nurse and expanding prescriptive authority.

On third reading, coming up in regular order, with the unreported Health and Human Resources committee amendment pending, and with the right having been granted on yesterday, Wednesday, March 9, 2016, for further amendments to be received on third reading, was reported by the Clerk.

The following amendment to the bill, from the Committee on Health and Human Resources, was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §30-15-1, §30-15-2, §30-15-3, §30-15-4, §30-15-5, §30-15-6, §30-15-7, §30-15-7a, §30-15-7b, §30-15-7c and §30-15-8, of the Code of West Virginia, 1931, as amended, be repealed; that §16-5-19 of said code be amended and reenacted; that §30-7-1, §30-7-2, §30-7-6, §30-7-7 and §30-7-15a of said code be amended and reenacted; that said code be amended adding thereto two new sections, designated, §30-7-15d and §30-7-15e; and that said code

be amended by adding thereto two new sections, designated, §30-7-21 and §30-7-22, all to read as follows:

## **ARTICLE FIVE. VITAL STATISTICS.**

### **§16-5-19. Death registration.**

(a) A certificate of death for each death which occurs in this state shall be filed with the section of vital statistics, or as otherwise directed by the state Registrar, within five days after death, and prior to final disposition, and shall be registered if it has been completed and filed in accordance with this section.

(1) If the place of death is unknown, but the dead body is found in this state, the place where the body was found shall be shown as the place of death.

(2) If the date of death is unknown, it shall be approximated. If the date cannot be approximated, the date found shall be shown as the date of death.

(3) If death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in this state, the death shall be registered in this state and the place where it is first removed shall be considered the place of death. (4) If death occurs in a moving conveyance while in international waters or air space or in a foreign country or its air space and the body is first removed from the conveyance in this state, the death shall be registered in this state but the certificate shall show the actual place of death insofar as can be determined.

(5) In all other cases, the place where death is pronounced shall be considered the place where death occurred.

(b) The funeral director or other person who assumes custody of the dead body shall: (1) Obtain the personal data from the next of kin or the best qualified person or source available including the deceased person's social security number or numbers, which shall be placed in the records relating to the death and recorded on the certificate of death;

(2) Within forty-eight hours after death, provide the certificate of death containing sufficient information to identify the decedent to the physician nurse responsible for completing the medical certification as provided in subsection (c) of this section; and

(3) Upon receipt of the medical certification, file the certificate of death: *Provided*, That for implementation of electronic filing of death certificates, the person who certifies to cause of death will be responsible for filing the electronic certification of cause of death as directed by the state Registrar and in accordance with legislative rule.

(c) The medical certification shall be completed and signed within twenty-four hours after receipt of the certificate of death by the physician or advance practice registered nurse in charge of the patient's care for the illness or condition which resulted in death except when inquiry is required pursuant to chapter sixty-one, article twelve or other applicable provisions of this code.

(1) In the absence of the physician or advance practice registered nurse or with his or her approval, the certificate may be completed by his or her associate physician, any physician who has been placed in a position of responsibility for any medical coverage of the decedent, the chief medical officer of the institution in which death occurred, or the physician who performed an autopsy upon the decedent, provided inquiry is not required pursuant to chapter sixty-one, article twelve of this code.

(2) The person completing the cause of death shall attest to its accuracy either by signature or by an approved electronic process.

(d) When inquiry is required pursuant to article twelve, chapter sixty one, or other applicable provisions of this code, the state Medical Examiner or designee or county medical examiner or county coroner in the jurisdiction where the death occurred or where the body was found shall determine the cause of death and shall complete the medical certification within forty-eight hours after taking charge of the case.

(1) If the cause of death cannot be determined within forty-eight hours after taking charge of the case, the medical examiner shall complete the medical certification with a “Pending” cause of death to be amended upon completion of medical investigation.

(2) After investigation of a report of death for which inquiry is required, if the state Medical Examiner or designee or county medical examiner or county coroner decline jurisdiction, the state Medical Examiner or designee or county medical examiner or county coroner may direct the decedent’s family physician or the physician who pronounces death to complete the certification of death: *Provided*, That the physician is not civilly liable for inaccuracy or other incorrect statement of death unless the physician willfully and knowingly provides information he or she knows to be false.

(e) When death occurs in an institution and the person responsible for the completion of the medical certification is not available to pronounce death, another physician may pronounce death. If there is no physician available to pronounce death, then a designated licensed health professional who views the body may pronounce death, attest to the pronouncement by signature or an approved electronic process, and, with the permission of the person responsible for the medical certification, release the body to the funeral director or other person for final disposition: *Provided*, That if the death occurs in an institution during court-ordered hospitalization, in a correctional facility or under custody of law-enforcement authorities, the death shall be reported directly to a medical examiner or coroner for investigation, pronouncement and certification.

(f) If the cause of death cannot be determined within the time prescribed, the medical certification shall be completed as provided by legislative rule. The attending physician or medical examiner, upon request, shall give the funeral director or other person assuming custody of the body notice of the reason for the delay, and final disposition of the body may not be made until authorized by the attending physician, medical examiner or other persons authorized by this article to certify the cause of death.

(g) Upon receipt of autopsy results, additional scientific study, or where further inquiry or investigation provides additional information that would change the information on the certificate of death from that originally reported, the certifier, or any State Medical Examiner who provides such inquiry under authority of article twelve, chapter sixty-one of this code shall immediately file a supplemental report of cause of death or other information with the section of vital statistics to amend the record, but only for purposes of accuracy.

(h) When death is presumed to have occurred within this state but the body cannot be located, a certificate of death may be prepared by the state Registrar only upon receipt of an order of a court of competent jurisdiction which shall include the finding of facts required to complete the certificate of death. The certificate of death will be marked "Presumptive" and will show on its face the date of death as determined by the court and the date of registration, and shall identify the court and the date of the order.

(i) The local registrar shall transmit each month to the county clerk of his or her county a copy of the certificates of all deaths occurring in the county, and if any person dies in a county other than the county within the state in which the person last resided prior to death, then the state Registrar shall furnish a copy of the death certificate to the clerk of the county commission of the county where the person last resided, from which copies the clerk shall compile a register of deaths, in a form prescribed by the state Registrar. The register shall be a public record.

## **ARTICLE 7. REGISTERED PROFESSIONAL NURSES.**

### **§30-7-1. Definitions.**

As used in this article ~~the term~~:

~~(a) The practice of "advanced practice registered nurse" is a registered nurse who has acquired advanced clinical knowledge and skills preparing him or her to provide direct and indirect care to patients, who has completed a board approved graduate level education program and who has passed a board approved national~~

~~certification examination. An advanced practice registered nurse shall meet all the requirements set forth by the board by rule for an advance practice registered nurse which shall include, at a minimum, a valid license to practice as a certified registered nurse anesthetist, a certified nurse midwife, a clinical nurse specialist or a certified nurse practitioner.~~

~~(b) “Board” means the West Virginia Board of Examiners for Registered Professional Nurses;~~

~~(c) The practice of “registered professional nursing” means the performance for compensation of any service requiring substantial specialized judgment and skill based on knowledge and application of principles of nursing derived from the biological, physical and social sciences, such as responsible supervision of a patient requiring skill in observation of symptoms and reactions and the accurate recording of the facts, or the supervision and teaching of other persons with respect to such principles of nursing, or in the administration of medications and treatments as prescribed by a licensed physician or a licensed dentist, or the application of such nursing procedures as involve understanding of cause and effect in order to safeguard life and health of a patient and others;~~

~~(d) “Temporary permit” means a permit authorizing the holder to practice registered professional nursing in this state until such permit is no longer effective or the holder is granted a license by the West Virginia State Board of Examiners for Registered Professional Nurses.~~

(a) “Advanced practice registered nurse” means a registered nurse who has acquired advanced clinical knowledge and skills preparing him or her to provide direct and indirect care to patients as a certified nurse practitioner, certified nurse-midwife, certified registered nurse anesthetist, or certified nurse specialist, who has completed a board-approved graduate-level education program and who has passed a board-approved national certification examination.

(b) “Applicant” means an advanced practice registered nurse who has submitted an application for prescriptive authority or who

is in the process of completing the prerequisites to apply for prescriptive authority;

(c) “Board” means the West Virginia Board of Examiners for Registered Professional Nurses;

(d) “Collaborative agreement” means:

(1) Mutually agreed upon written guidelines or protocols for prescriptive authority as it applies to the advanced practice registered nurse's clinical practice;

(2) Statements describing the individual and shared responsibilities of the advanced practice registered nurse and the qualified collaborating health care professional;

(3) Periodic and joint evaluation of prescriptive practice; and

(4) Periodic and joint review and updating of the written guidelines or protocols.

(e) “Collaborative relationship” means a working relationship, structured through a written agreement, in which an applicant may prescribe drugs in collaboration with a qualified collaborating health care professional;

(f) “Practice of registered professional nursing” or “registered professional nursing” means the performance for compensation of any service requiring substantial specialized judgment and skill based on knowledge and application of principles of nursing derived from the biological, physical and social sciences, such as responsible supervision of a patient requiring skill in observation of symptoms and reactions and the accurate recording of the facts, or the supervision and teaching of other persons with respect to such principles of nursing, or in the administration of medications and treatments as prescribed by a licensed physician, a licensed dentist or advanced practice registered nurse, or the application of such nursing procedures as involve understanding of cause and effect in order to safeguard life and health of a patient and others; and

(g) “Temporary permit” means a permit authorizing the holder to practice registered professional nursing in this state until such permit is no longer effective or the holder is granted a license by the West Virginia State Board of Examiners for Registered Professional Nurses.

### **§30-7-2. License required to practice.**

~~(a) In order to safeguard life and health, any person practicing or offering to practice registered professional nursing in this state for compensation shall hereafter be required to submit evidence that he or she is qualified so to practice, and shall be licensed as hereinafter provided. After June 30, 1965, It shall be is unlawful for any person not licensed under the provisions of this article to practice or to offer to practice registered professional nursing in this state, or to use any title, sign, card or device to indicate that such person is a registered professional nurse: *Provided*, That any professional nurse holding an active, unencumbered license to practice in another state, who accompanies a patient to whom he or she administers nursing care while such patient is in transit or being transported into, out of, or through this state, may practice without a license issued under this article with the following limitations: (a) Such nurse may only administer nursing care to the patient whom they are accompanying in this state; and (b) under no circumstances is any such nurse authorized to practice nursing in this state for longer than forty-eight hours within any three-month period; and (c) under no circumstances shall any such nurse hold him or herself out as a registered professional nurse licensed in this state. Such forty-eight hour period shall commence and run from the time such nurse first enters the borders of this state in the company of his or her patient and therefrom run continuously, whether or not such nurse dispenses nursing care, until such forty-eight hour period has elapsed.~~

(b) To practice as an advanced practice registered nurse in this state, a person must have a valid advanced practice registered nurse license issued by the board. It is unlawful for any person to practice or offer to practice as an advanced practice registered nurse, to use any title, sign, card or device to indicate or give the impression that such person is an advanced practice registered nurse or to practice

as, perform the role of, or use any title, sign, card or device to indicate that the person is a certified registered nurse anesthetist, certified nurse-midwife, clinical nurse specialist or certified nurse practitioner, unless that person is currently licensed by the board as an advanced practice registered nurse.

**§30-7-6. Qualifications; licensure; fees; temporary permits.**

(a) To obtain a license to practice registered professional nursing, an applicant for such license shall submit to the board written evidence, verified by oath, that he or she: ~~(a)~~ (1) Is of good moral character; ~~(b)~~ (2) has completed an approved four-year high school course of study or the equivalent thereof, as determined by the appropriate educational agency; and ~~(c)~~ (3) has completed an accredited program of registered professional nursing education and holds a diploma of a school accredited by the board.

(b) The applicant shall also be required to pass a written examination in such subjects as the board may determine. Each written examination may be supplemented by an oral examination. Upon successfully passing such examination or examinations, the board shall issue to the applicant a license to practice registered professional nursing. The board shall determine the times and places for examinations. In the event an applicant shall have failed to pass examinations on two occasions, the applicant shall, in addition to the other requirements of this section, present to the board such other evidence of his or her qualifications as the board may prescribe.

(c) The board may, upon application, issue a license to practice registered professional nursing by endorsement to an applicant who has been duly licensed as a registered professional nurse under the laws of another state, territory or foreign country if in the opinion of the board the applicant meets the qualifications required of registered professional nurses at the time of graduation.

(d) The board may, upon application and proper identification determined by the board, issue a temporary permit to practice registered professional nursing by endorsement to an applicant who has been duly licensed as a registered professional nurse under the

laws of another state, territory or foreign country. Such temporary permit authorizes the holder to practice registered professional nursing in this state while the temporary permit is effective. A temporary permit shall be effective for ninety days, unless the board revokes such permit prior to its expiration, and such permit may not be renewed. Any person applying for a temporary license under the provisions of this paragraph shall, with his or her application, pay to the board a nonrefundable fee of \$10.

(e) Any person holding a valid license designated as a “waiver license” may submit an application to the board for a license containing no reference to the fact that such person has theretofore been issued such “waiver license.” The provisions of this section relating to examination and fees and the provisions of all other sections of this article shall apply to any application submitted to the board pursuant to the provisions of this paragraph.

(f) Any person applying for a license to practice registered professional nursing under the provisions of this article shall, with his or her application, pay to the board a fee of \$40: *Provided*, That the fee to be paid for the year commencing July 1, 1982, shall be \$70: *Provided, however*, That the board in its discretion may, by rule or regulation, decrease either or both said license fees. In the event it shall be necessary for the board to reexamine any applicant for a license, an additional fee shall be paid to the board by the applicant for reexamination: *Provided further*, That the total of such additional fees shall in no case exceed \$100 for any one examination.

(g) Any person holding a license heretofore issued by the West Virginia state Board of Examiners for Registered Nurses and which license is valid on the date this article becomes effective shall be deemed to be duly licensed under the provisions of this article for the remainder of the period of any such license heretofore issued. Any such license heretofore issued shall also, for all purposes, be deemed to be a license issued under this article and to be subject to the provisions hereof.

(h) The board shall, upon receipt of a duly executed application for licensure and of the accompanying fee of \$70, issue a temporary

permit to practice registered professional nursing to any applicant who has received a diploma from a school of nursing approved by the board pursuant to this article after the date the board last scheduled a written examination for persons eligible for licensure: *Provided*, That no such temporary permit shall be renewable nor shall any such permit be valid for any purpose subsequent to the date the board has announced the results of the first written examination given by the board following the issuance of such permit.

(i) To obtain a license to practice as an advanced practice registered nurse, an applicant must submit a written application, verified by oath, to the board together with an application fee established by the board through an authorized legislative rule. The requirements for a license to practice as an advanced practice registered nurse in this state are listed below and must be demonstrated to the board through satisfactory evidence submitted with the application for a license:

(1) The applicant must be licensed in good standing with the board as a registered professional nurse;

(2) The applicant must have satisfactorily completed a graduate-level program accredited by a national accreditation body that is acceptable to the board; and

(3) The applicant must be currently certified by a national certification organization, approved by the board, in one or more of the following nationally recognized advance practice registered nursing roles: certified registered nurse anesthetist, certified nurse-midwife, clinical nurse specialist or certified nurse practitioner.

### **§30-7-7. Qualifications and licensure of persons not citizens of United States.**

(a) The board may, upon application, issue a license to practice registered professional nursing by endorsement to any person who is not a citizen of the United States of America if such person: (a) Has been duly licensed as a registered professional nurse under the laws of another state, territory or foreign country, and (b) shall, in

any such state, territory or foreign country, have passed a written examination in the English language which, in the opinion of the board, is comparable in content and scope to the type of written examination ~~which is authorized in the second paragraph~~ that is required in subsection (b) of section six of this article.

(b) All other provisions of this article shall be applicable to any application for or license issued pursuant to this section.

**§30-7-15a. Prescriptive authority for prescription drugs; coordination with Board of Pharmacy.**

(a) The board may, in its discretion, authorize an advanced practice registered nurse to prescribe prescription drugs in a collaborative relationship with a physician licensed to practice in West Virginia and in accordance with applicable state and federal laws. An authorized advanced practice registered nurse may write or sign prescriptions or transmit prescriptions verbally or by other means of communication.

(b) For purposes of this section an agreement to a collaborative relationship for prescriptive practice between a physician and an advanced practice registered nurse shall be set forth in writing. Verification of the agreement shall be filed with the board by the advanced practice registered nurse. The board shall forward a copy of the verification to the Board of Medicine and the Board of Osteopathic Medicine. Collaborative agreements shall include, but are not limited to, the following:

(1) Mutually agreed upon written guidelines or protocols for prescriptive authority as it applies to the advanced practice registered nurse's clinical practice;

(2) Statements describing the individual and shared responsibilities of the advanced practice registered nurse and the physician pursuant to the collaborative agreement between them;

(3) Periodic and joint evaluation of prescriptive practice; and

(4) Periodic and joint review and updating of the written guidelines or protocols.

(c) The board shall promulgate joint legislative rules with the West Virginia Board of Medicine, the West Virginia Board of Osteopathic Medicine and the West Virginia Board of Pharmacy in accordance with the provisions of chapter twenty-nine-a of this code governing the eligibility and extent to which an advanced practice registered nurse may prescribe drugs. Such rules shall provide, at a minimum:

(1) A state formulary classifying those categories of drugs which shall not be prescribed by advanced practice registered nurse including, but not limited to, Schedules I and II of the Uniform Controlled Substances Act, antineoplastics, radiopharmaceuticals and general anesthetics. ~~Drugs~~

(2) Prescriptive authority for drugs listed under Schedule III which shall be limited to a seventy-two hour supply without refill. ~~In addition to the above referenced provisions and restrictions and pursuant to a collaborative agreement as set forth in subsections (a) and (b) of this section, the rules shall permit the~~

(3) Prescribing of an annual supply of any drug, with the exception of controlled substances, which is prescribed for the treatment of a chronic condition, other than chronic pain management. For the purposes of this section, a “chronic condition” is a condition which lasts three months or more, generally cannot be prevented by vaccines, can be controlled but not cured by medication and does not generally disappear. These conditions, with the exception of chronic pain, include, but are not limited to, arthritis, asthma, cardiovascular disease, cancer, diabetes, epilepsy and seizures, and obesity. The prescriber authorized in this section shall note on the prescription the chronic disease being treated.

(4) A standardized written agreement for a collaborative agreement between a physician and an advance practice registered nurse.

(5) A standard application process and criteria for prescriptive authority for an advance practice registered nurse who meets all of the requirements of this article.

(6) Any other rules necessary to effectuate the provisions of this article.

~~(d) The board shall consult with other appropriate boards for the development of the formulary.~~

~~(e)~~ (d) The board shall transmit to the West Virginia Board of Medicine, the West Virginia Board of Osteopathic Medicine and the West Virginia Board of Pharmacy a list of all advanced practice registered nurse with prescriptive authority. The list shall include:

(1) The name of the authorized advanced practice registered nurse;

(2) The prescriber's identification number assigned by the board; and

(3) The effective date of prescriptive authority.

**§30-7-15d. Allowance for signatures on death certificates by advance practice registered nurses.**

An advanced practice registered nurse who has five or more years of experience may determine the cause of death of a patient and execute the death certification in accordance with section nineteen, article five, chapter sixteen of this code: *Provided*, That the advance practice registered nurse is the patient's primary care practitioner and the patient's death occurred at a nursing home facility or other long-term health care facility licensed and located within this state.

**§30-7-15e. Allowance for signatures on certain healthcare-related documents by advance practice registered nurses.**

An advanced practice registered nurse with at least five years professional experience may provide authorized signatures on the following documents:

(1) Certification of disability for patients to receive disabled parking placards;

(2) Sports physicals for student athletes;

(3) Advance health care directives;

(4) Forms excusing a potential jury member due to illness;

(5) Worker's compensation forms for employees injured on the job; and

(6) Providing proof that a patient has a health need that requires their utilities remain on regardless of ability to pay.

**§30-7-21. Joint advisory council.**

(a) There is hereby created the Advanced Practice Registered Nursing Advisory Council. The purpose of the advisory council is to review emerging practices and advise the Board of Examiners or Registered Professional Nurses on advance practice registered nurses licensure and practice standards, including prescribing trends and provide recommendations to the board regarding the practice of advance practice registered nurses. The advisory council shall advise and make recommendations on:

(1) The nature and extent collaborative agreements and collaborative relationships between advance practice registered nurses and physicians;

(2) An effective means of transitioning to an independent practice for advance practice registered nurses;

(3) A means to work with advance practice registered nurses to better serve areas that have been designated by the United States Department of Health and Human Services, Health Resources and Services Administration as a Health Professional Shortage Area;

(4) An effective complaint procedure for reviewing complaints filed against advance practice registered nurses;

(5) Competencies, benchmarks, and metrics within each of the four roles for review by the board; and

(6) Any rules promulgated pursuant to section fifteen-a of this article.

(b) The advisory council shall be composed of nine members with representation as follows:

(1) Four advanced practice registered nurses appointed by the Board of Examiners for Registered Professional Nurses. These members shall have at least three years full-time practice experience, consisting of one nurse practitioner, one nurse-midwife, one clinical nurse specialist, and one nurse anesthetist;

(2) Two licensed allopathic physicians, at least of one of whom works with advanced practice registered nurses appointed by the Board of Medicine;

(3) Two licensed osteopathic physicians, at least of one of whom works with advanced practice registered nurses appointed by the Board of Osteopathic Medicine; and

(4) One licensed pharmacist pharmacists appointed by the Board of Pharmacy.

(c) All members of the Advanced Practice Registered Nursing Advisory Council shall have at least three years full-time practice experience and hold active state licenses.

(d) Each member shall serve for a term of three years. The terms of newly appointed members shall be staggered so that no more than 5 appointments shall expire annually. Two newly appointed members appointed pursuant to subdivision (1) of this section shall be appointed to a two year term. On newly appointed member appointed pursuant to subdivision (2) of this section shall be appointed to a two year term. One newly appointed member appointed pursuant to subdivision (3) of this section shall be appointed to a two year term. The member appointed pursuant to subdivision (4) of this section shall be appointed to a three year term. No member shall serve more than two consecutive terms.

(e) A majority of members appointed to the advisory council shall constitute a quorum to conduct official business.

(f) The advisory council shall choose its own chairman and shall meet at the call of the chairman at least quarterly.

(g) Each member of the advisory shall receive reimbursement for reasonable and necessary travel expenses for each day actually served in attendance at meetings of the council in accordance with the state's travel regulations. Requisitions for the expenses shall be accompanied by an itemized statement, which shall be filed with Auditor and preserved as a public record.

### **§30-7-22. Reporting.**

(a) The advisory council set forth in section twenty-one of this article shall submit a report to the Legislative Oversight Commission on Health and Human Resources Accountability concerning its activities relative to the practice of advance practice registered nursing. The report shall be filed no later than December 31, 2017.

(b) The report set forth in subsection (a) shall provide an analysis of the potential impact of allowing advance practice registered nurses to prescribe without a collaborative relationship.

(c) An annual report shall also be submitted jointly by the advisory council to include statistical information concerning:

(1) The number of licenses issued to advance practice registered nurses in the preceding year;

(2) The number of advance practice registered nurses who have been approved for prescriptive authority pursuant to a collaborative agreement with a physician;

(3) The number of complaints filed against an advance practice registered nurse in the preceding year;

(4) The geographic locations of advance practice registered nurses.

(d) The board shall cooperate with the advisory council in providing necessary data and administrative support in the preparation of this report.

(e) This report is due on the first day of December, 2017 and annually thereafter.

On motions of Senators Leonhardt and Williams, the following amendments to the Health and Human Resources committee amendment to the bill (Eng. H. B. 4334) were next reported by the Clerk and considered simultaneously:

On pages five through seven by striking out all of section one and inserting in lieu thereof the following:

### **§30-7-1. Definitions.**

As used in this article ~~the term~~:

~~(a) The practice of “advanced practice registered nurse” is a registered nurse who has acquired advanced clinical knowledge and skills preparing him or her to provide direct and indirect care to patients, who has completed a board-approved graduate-level education program and who has passed a board-approved national certification examination. An advanced practice registered nurse shall meet all the requirements set forth by the board by rule for an advance practice registered nurse which shall include, at a minimum, a valid license to practice as a certified registered nurse anesthetist, a certified nurse midwife, a clinical nurse specialist or a certified nurse practitioner.~~

(a) “Advanced practice registered nurse” means a registered nurse who has acquired advanced clinical knowledge and skills preparing him or her to provide direct and indirect care to patients as a certified nurse practitioner, certified nurse-midwife, certified registered nurse anesthetist, or clinical nurse specialist, who has completed a board-approved graduate-level education program and who has passed a board-approved national certification examination.

(b) “Board” means the West Virginia Board of Examiners for Registered Professional Nurses;

(c) “Collaborative relationship” means a working relationship, structured through a written agreement, in which an advanced practice registered nurse may prescribe drugs in collaboration with a qualified physician;

~~(e) (d) The practice of~~ “Practice of registered professional nursing” or “registered professional nursing” means the performance for compensation of any service requiring substantial specialized judgment and skill based on knowledge and application of principles of nursing derived from the biological, physical and social sciences, such as responsible supervision of a patient requiring skill in observation of symptoms and reactions and the accurate recording of the facts, or the supervision and teaching of other persons with respect to such principles of nursing, or in the administration of medications and treatments as prescribed by a licensed physician, ~~or~~ a licensed dentist or a licensed advanced practice registered nurse, or the application of such nursing procedures as involve understanding of cause and effect in order to safeguard life and health of a patient and others; and

(d) “Temporary permit” means a permit authorizing the holder to practice registered professional nursing in this state until such permit is no longer effective or the holder is granted a license by the West Virginia State Board of Examiners for Registered Professional Nurses.;

On page eight, after section two, by inserting a new section, designated section four, to read as follows:

**§30-7-4. Organization and meetings of board; quorum; powers and duties generally; executive secretary; funds.**

The board shall meet at least once each year and shall elect from its members a president and a secretary. The secretary shall also act as treasurer of the board. The board may hold such other meetings during the year as it may deem necessary to transact its business. A majority, including one officer, of the board shall

constitute a quorum at any meeting. The board is hereby authorized and empowered to:

(a) Adopt and, from time to time, amend such rules and regulations, not inconsistent with this article, as may be necessary to enable it to carry into effect the provisions of this article;

(b) Prescribe standards for educational programs preparing persons for licensure to practice registered professional nursing under this article;

(c) Provide for surveys of such educational programs at such time as it may deem necessary;

(d) Accredite such educational programs for the preparation of practitioners of registered professional nursing as shall meet the requirements of this article and of the board;

(e) Deny or withdraw accreditation of educational programs for failure to meet or maintain prescribed standards required by this article and by the board;

(f) Examine, license and renew the licenses of duly qualified applicants;

(g) Conduct hearings upon charges calling for discipline of a licensee or revocation or suspension of a license;

(h) Keep a record of all proceedings of the board;

(i) Make a biennial report to the Governor and the Legislative Oversight Commission for Health and Human Resources Accountability;

(j) Appoint and employ a qualified person, who shall not be a member of the board, to serve as executive secretary to the board;

(k) Define the duties and fix the compensation for the executive secretary; and

(l) Employ such other persons as may be necessary to carry on the work of the board.

~~The executive secretary shall possess all of the qualifications prescribed in section three for members of the board, except that he or she shall (a) have had at least eight years of experience in the practice of registered professional nursing since graduation from a college or university, at least five of which shall have been devoted to the teaching in or to the administration of an educational program for the preparation of practitioners of registered nursing, or to a combination of such teaching and administration, and (b) shall have been actively engaged in the practice of registered professional nursing for at least five years preceding his or her appointment by the board.~~

All fees and other moneys collected by the board pursuant to the provisions of this article shall be kept in a separate fund and expended solely for the purpose of this article. No part of this special fund shall revert to the General Funds of this state. The compensation provided by this article and all expenses incurred under this article shall be paid from this special fund. No compensation or expense incurred under this article shall be a charge against the General Funds of this state.;

On page eleven, after section seven, by striking out the remainder of the amendment and inserting in lieu thereof the following:

**§30-7-15a. Prescriptive authority for prescription drugs; coordination with Board of Pharmacy; rule-making authority.**

(a) The board may, in its discretion, authorize an advanced practice registered nurse to prescribe prescription drugs ~~in a collaborative relationship with a physician licensed to practice in West Virginia and~~ in accordance with this article and all other applicable state and federal laws. An authorized advanced practice registered nurse may write or sign prescriptions or transmit prescriptions verbally or by other means of communication.

~~(b) For purposes of this section an agreement to a collaborative relationship for prescriptive practice between a physician and an advanced practice registered nurse shall be set forth in writing.~~

~~Verification of the agreement shall be filed with the board by the advanced practice registered nurse. The board shall forward a copy of the verification to the Board of Medicine and the Board of Osteopathic Medicine. Collaborative agreements shall include, but are not limited to, the following:~~

~~(1) Mutually agreed upon written guidelines or protocols for prescriptive authority as it applies to the advanced practice registered nurse's clinical practice;~~

~~(2) Statements describing the individual and shared responsibilities of the advanced practice registered nurse and the physician pursuant to the collaborative agreement between them;~~

~~(3) Periodic and joint evaluation of prescriptive practice; and~~

~~(4) Periodic and joint review and updating of the written guidelines or protocols.~~

(e) (b) The board shall promulgate legislative rules in accordance with ~~the provisions of~~ chapter twenty-nine-a of this code governing the eligibility and extent to which an advanced practice registered nurse may prescribe drugs. Such rules shall provide, at a minimum, a state formulary classifying those categories of drugs which shall not be prescribed by advanced practice registered nurse including, but not limited to, Schedules I and II of the Uniform Controlled Substances Act, antineoplastics, radiopharmaceuticals and general anesthetics. Drugs listed under Schedule III shall be limited to a ~~seventy-two hour~~ thirty day supply without refill. In addition to the above referenced provisions and restrictions and pursuant to a collaborative agreement as set forth in ~~subsections (a) and (b) of this section~~ fifteen-b of this article, the rules shall permit the prescribing of an annual supply of any drug, with the exception of controlled substances, which is prescribed for the treatment of a chronic condition, other than chronic pain management. For the purposes of this section, a "chronic condition" is a condition which lasts three months or more, generally cannot be prevented by vaccines, can be controlled but not cured by medication and does not generally disappear. These conditions, with the exception of chronic pain, include, but

are not limited to, arthritis, asthma, cardiovascular disease, cancer, diabetes, epilepsy and seizures, and obesity. The prescriber authorized in this section shall note on the prescription the chronic disease being treated.

(c) The board may promulgate emergency rules to implement the provisions of this article pursuant to section fifteen, article three, chapter twenty-nine-a of this code.

~~(d) The board shall consult with other appropriate boards for the development of the formulary.~~

~~(e)~~ (d) The board shall transmit to the Board of Pharmacy a list of all advanced practice registered ~~nurse~~ nurses with prescriptive authority. The list shall include:

(1) The name of the authorized advanced practice registered nurse;

(2) The prescriber's identification number assigned by the board; and

(3) The effective date of prescriptive authority.

**§30-7-15b. Eligibility for prescriptive authority; application; fee; collaborative relationships and agreements.**

(a) An advanced practice registered nurse who applies for authorization to prescribe drugs shall be eligible to apply for authorization to prescribe drugs pursuant to section fifteen-a of this article after satisfying the following requirements:

~~(a)~~ (1) Be licensed and certified in West Virginia as an advanced practice registered nurse;

~~(b)~~ (2) ~~Not be less than~~ Be at least eighteen years of age;

~~(c)~~ (3) ~~Provide the board with evidence of successful completion of~~ Have completed forty-five contact hours of education in pharmacology and clinical management of drug therapy under a program approved by the board, fifteen hours of which shall ~~be~~ have been completed within the two-year period

immediately before the date of application prior to entering into a prerequisite collaborative relationship;

~~(d)~~ (4) Provide the board with evidence that he or she is a person of good moral character and not addicted to alcohol or the use of controlled substances; and

(5) Does not have his or her advanced practice registered nursing license, certification or registration in any jurisdiction suspended, limited or revoked; and

~~(e)~~ (6) Submit a completed, notarized application to the board, accompanied by a fee as established by the board by rule.

(b) The board shall authorize an applicant to prescribe prescription drugs under the terms of a collaborative agreement and in accordance with section fifteen-a of this article and applicable legislative rules if the applicant has met the prerequisites of subsection (a) of this section and the following additional prerequisites are satisfied:

(1) The board is satisfied that the collaborating physician is licensed in good standing;

(2) The collaborative agreement is sufficient in form;

(3) The applicant has completed the education requirements; and

(4) The applicant has submitted a completed application on forms developed by the board and paid an application fee established by the board in legislative rule.

(c) A collaborative agreement for a collaborative relationship for prescriptive practice between a physician and an advanced practice registered nurse shall be set forth in writing and include, but not be limited to, the following:

(1) Mutually agreed upon written guidelines or protocols for prescriptive authority as it applies to the advanced practice registered nurse's clinical practice;

(2) Statements describing the individual and shared responsibilities of the advanced practice registered nurse and the collaborating physician;

(3) Periodic and joint evaluation of prescriptive practice; and

(4) Periodic joint review and updating of the written guidelines or protocols.

(d) Verification of a collaborative agreement shall be filed with the board by the advanced practice registered nurse with documentation of completion of the education requirements described in subsection (a) of this section. The board shall forward a copy of the verified agreement to the board through which the collaborative physician is licensed.

(e) The board shall, upon application, authorize an advanced practice registered nurse to prescribe prescription drugs in accordance with section fifteen-a of this article without the further requirement of a collaborative agreement if the applicant has satisfied the following prerequisites:

(1) Has practiced at least three years in a duly-documented collaborative relationship with granted prescriptive authority;

(2) Licensed in good standing with the board; and

(3) Has submitted a completed application on forms developed by the board and paid an application fee established by the board in legislative rule.

(f) Notwithstanding the provisions of subsection (e) of this section, the board may require an advanced practice registered nurse to practice in a collaborative agreement if the board determines, by order arising out of the board's complaint process, that a collaborative relationship is necessary for the rehabilitation of a licensee or for protection of the public.

**§30-7-15c. Form of prescriptions; termination of authority; renewal; notification of termination of authority.**

(a) Prescriptions authorized by an advanced practice registered nurse must comply with all applicable state and federal laws; must

be signed by the prescriber with the initials “A.P.R.N.” or the designated certification title of the prescriber; and must include the prescriber’s identification number assigned by the board or the prescriber’s national provider identifier assigned by the National Provider System pursuant to 45 C. F. R. §162.408.

(b) Prescriptive authorization shall be terminated if the advanced practice registered nurse has:

(1) Not maintained current authorization as an advanced practice registered nurse; or

(2) Prescribed outside the advanced practice registered nurse’s scope of practice or has prescribed drugs for other than therapeutic purposes; or

(3) Has not filed verification of a collaborative agreement with the board if such an agreement is required.

(c) Prescriptive authority for an advanced practice registered nurse must be renewed biennially. Documentation of eight contact hours of pharmacology during the previous two years must be submitted at the time of renewal.

(d) The board shall notify the Board of Pharmacy, ~~the Board of Medicine and the Board of Osteopathic Medicine~~ within twenty-four hours after termination of, or change in, an advanced practice registered nurse’s prescriptive authority.

**§30-7-15d. Advanced practice registered nurse signatory authority.**

(a) An advanced practice registered nurse may provide an authorized signature, certification, stamp, verification, affidavit or endorsement on documents within the scope of their practice, including but not limited to, the following documents:

(1) Death certificates: *Provided*, That the advanced practice registered nurse has received training from the board on the completion of death certificates;

(2) “Physician orders for life sustaining treatment,” “physician orders for scope of treatment” and “do not resuscitate” forms;

(3) Handicap hunting certificates; and

(4) Utility company forms requiring maintenance of utilities regardless of ability to pay.

(b) An advanced practice registered nurse may not sign a certificate of merit for a medical malpractice claim against a physician.

**§30-7-15e. Joint Advisory Council on Limited Prescriptive Authority.**

(a) There is hereby created the Joint Advisory Council on Limited Prescriptive Authority. The purpose of the Council is to advise the board regarding collaborative agreements and prescriptive authority for advanced practice registered nurses.

(b) The Council shall be composed of thirteen members with representation as follows:

(1) Two allopathic physicians appointed by the Board of Medicine who are in a collaborative relationship with advanced practice registered nurses;

(2) Two osteopathic physicians who are in active collaborative relationships appointed by the Board of Osteopathic Medicine who are in a collaborative relationship with advanced practice registered nurses;

(3) Six advanced practice registered nurses appointed by the Board of Examiners for Registered Professional Nurses whom have at least three years full-time practice experience, and shall include at least one certified nurse practitioner, one certified nurse-midwife, and one certified registered nurse anesthetist, all of whom actively prescribe prescription drugs;

(4) One licensed pharmacist appointed by the Board of Pharmacy;

(5) One consumer representative; and

(6) One representative from a school of public health.

(c) All members of the Council who are healthcare providers shall have at least three years full-time practice experience and hold active state licenses.

(d) Each member shall serve for a term of three years. The terms of newly appointed members shall be staggered so that no more than five appointments shall expire annually. Two newly appointed members appointed pursuant to subdivision (1) of this section shall be appointed to a two year term. One newly appointed member appointed pursuant to subdivision (2) of this section shall be appointed to a two year term. One newly appointed member appointed pursuant to subdivision (3) of this section shall be appointed to a two year term. The member appointed pursuant to subdivision (4) of this section shall be appointed to a three year term. No member shall serve more than two consecutive terms.

(e) A majority of members appointed to the Council shall constitute a quorum to conduct official business.

(f) The Council shall choose its own chairman and shall meet at the call of the chairman at least biannually.

(g) The Council may perform the following duties:

(1) Review and evaluate applications for advanced practice registered nurses to prescribe without a collaborative agreement;

(2) Assist advanced practice registered nurses with entering into collaborative agreements in non-emergency situations, including providing the name/contact information for physicians with whom the advanced practice registered nurses may collaborate;

(3) Advise the board in emergency situations of a rescinded collaborative agreement, giving a sixty day grace period;

(4) Assist the board in developing and proposing emergency rules;

(5) Review and advise on complaints against advanced practice registered nurses;

(6) Develop pilot project allowing independent prescribing of controlled substances by advanced practice registered nurses and study results to assure patient/public safety;

(7) Develop other studies and/or pilot projects, including but not limited to:

(A) Issues of access, outcomes and cost effectiveness of services;

(B) The development of recommendations for reciprocity;

(C) The optimal length of time for transition into independent prescribing; and

(D) Methods to foster effective interprofessional communication.;

And,

On page one, by striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

That §30-15-1, §30-15-2, §30-15-3, §30-15-4, §30-15-5, §30-15-6, §30-15-7, §30-15-7a, §30-15-7b, §30-15-7c and §30-15-8, of the Code of West Virginia, 1931, as amended, be repealed; that §16-5-19 of said code be amended and reenacted; that §30-7-1, §30-7-2, §30-7-4, §30-7-6, §30-7-7, §30-7-15a, §30-7-15b and §30-7-15c of said code be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §30-7-15d and §30-7-15e, all to read as follows.:

Following discussion,

The question being on the adoption of the amendments offered by Senators Leonhardt and Williams to the Health and Human

Resources committee amendment to the bill (Eng. H. B. 4334), the same was put and prevailed.

The question now being on the adoption of the Health and Human Resources committee amendment to the bill, as amended, the same was put and prevailed.

There being no further amendments offered,

The bill, as just amended, was ordered to engrossment.

Engrossed House Bill 4334 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4334) passed.

At the request of Senator Ferns, as chair of the Committee on Health and Human Resources, and by unanimous consent, the unreported committee amendment to the title of the bill was withdrawn.

On motion of Senator Leonhardt, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. House Bill 4334**—A Bill to repeal §30-15-1, §30-15-2, §30-15-3, §30-15-4, §30-15-5, §30-15-6, §30-15-7, §30-15-7a, §30-15-7b, §30-15-7c and §30-15-8, of the Code of West Virginia, 1931, as amended; to amend and reenact §16-5-19 of said code; to amend and reenact §30-7-1, §30-7-2, §30-7-4, §30-7-6, §30-7-7,

§30-7-15a, §30-7-15b and §30-7-15c of said code; and to amend said code by adding thereto two new sections, designated §30-7-15d and §30-7-15e, all relating to the licensure and authority of advanced practice registered nurses; providing advanced practice registered nurses authority relating to death certificates; updating and adding definitions; requiring a license to practice as an advanced practice registered nurse; modifying license requirements for an advanced practice registered nurse; modifying prerequisites and application requirements for prescriptive authority; providing for emergency rule-making authority; modifying prescriptive authority of certain controlled substances; providing for collaborative relationship and agreement requirements; modifying the requirements for application for prescription authority; authorizing advanced practice registered nurses be granted prescriptive authority without the requirement of a collaborative agreement upon application and satisfying of certain prerequisites; requiring Board of Examiners for Registered Professional Nurses make a biennial report to the Governor and the Legislative Oversight Commission for Health and Human Resources; eliminating required qualifications of the executive secretary to the Board of Examiners for Registered Professional Nurses; creating the Joint Advisory Council on Limited Prescriptive Authority and providing for composition and duties; and providing advance practice registered nurses with certain signatory authority on health care related documents.

*Ordered,* That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 4351**, Transferring the Cedar Lakes Camp and Conference Center from the West Virginia Board of Education to the Department of Agriculture.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings,

Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4351) passed with its title.

Senator Carmichael moved that the bill take effect July 1, 2016.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4351) takes effect July 1, 2016.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 4360**, Increasing the criminal penalty for the unlawful practice of law.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings,

Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4360) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 4360**—A Bill to amend and reenact §30-2-4 the Code of West Virginia, 1931, as amended, relating to unauthorized practice of law; increasing criminal penalties for unlawful practice of law; setting penalties for second or subsequent offense; removing antiquated language; and providing that a lawyer may advertise services or hire a person to assist in advertising services as permitted by the Rules of Professional Conduct.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 4365**, Relating to the certificate of need process.

On third reading, coming up in regular order, with Senator Carmichael's amendment pending, and with the right having been granted on yesterday, Wednesday, March 9, 2016, for other amendments to be received on third reading, was reported by the Clerk.

The question being on the adoption of Senator Carmichael's pending amendment to the bill (*shown in the Senate Journal of yesterday, Wednesday, March 9, 2016, pages 2122 to 2155, inclusive*).

On motion of Senator Kessler, the following amendments to Senator Carmichael's amendment to the bill were reported by the Clerk and considered simultaneously:

On page fifteen, section eight, subsection (b), subdivision (22), after the word "agency;" by striking out the word "and";

On page fifteen, section eight, subsection (b), subdivision (23), after the word "services" by changing the period to a semicolon and inserting the following:

(24) Construction, development, acquisition or other establishment of community mental health and intellectual disability facilities; and

(25) Providing behavioral health services.;

On page nineteen, section eleven, subsection (c), by striking out all of subdivisions (20) and (21);

And,

By renumbering the remaining subdivisions.

Following discussion,

The question being on the adoption of Senator Kessler's amendments to Senator Carmichael's amendment to the bill (Eng. Com. Sub. for H. B. 4365), the same was put.

The result of the voice vote being inconclusive, Senator Kessler demanded a division of the vote.

A standing vote being taken, there were seventeen "yeas" and seventeen "nays".

Whereupon, Senator Cole (Mr. President) declared Senator Kessler's amendments to Senator Carmichael's amendment to the bill rejected on a tie vote.

On motion of Senator Takubo, the following amendment to Senator Carmichael's amendment to the bill (Eng. Com. Sub. for H. B. 4365) was next reported by the Clerk:

On page fifteen, section ten, by striking out all of subdivision (1) and inserting in lieu thereof a new subdivision, designated subdivision (1), to read as follows:

(1) The creation of a private office of one or more licensed health professionals to practice in this state pursuant to chapter thirty of this code. This shall include the purchase of diagnostic imaging equipment for use solely in the licensed health professionals practice and surgical procedures that do not require an overnight hospital stay and is relative to the patients of the health professional: *Provided*, That the health professional would be required to see eighty five percent of their patients in their private office to be eligible to purchase diagnostic imaging equipment and perform surgical procedures in their private office pursuant to this exemption.

Following discussion,

The question being on the adoption of Senator Takubo's amendment to Senator Carmichael's amendment to the bill, the same was put and did not prevail.

The question now being on the adoption of Senator Carmichael's amendment to the bill, the same was put and prevailed.

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 4365), as just amended by Senator Carmichael, was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kessler, Leonhardt, Maynard, Mullins, Palumbo, Plymale, Prezioso, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—28.

The nays were: Facemire, Kirkendoll, Laird, Miller, Romano and Snyder—6.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4365) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 4411**, Relating to penalty for illegally taking native brook trout.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4411) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. House Bill 4411**—A Bill to amend and reenact §20-2-5a of the Code of West Virginia, 1931, as amended, relating to replacement costs for native brook trout taken illegally.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4411) takes effect from passage.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 4487**, Relating to state retirement systems.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4487) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 4502**, Allowing reciprocity agreements with contiguous states to establish regulations, licensing requirements and taxes for small businesses.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4502) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 4507**, Providing an employer may grant preference in hiring to a veteran or disabled veteran.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4507) passed.

The following amendment to the title of the bill, from the Committee on Military, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 4507**—A Bill to amend and reenact §5-11-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5-11-9a, all relating to granting preference in hiring to veteran or disabled veteran; defining “veteran”; providing that veteran or disabled veteran meet knowledge, skill and eligibility requirements of job; and clarifying that preference does not violate state equal employment opportunity law.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 4517**, Limiting the ability of an agent under a power of attorney to take self-benefiting actions.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4517) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 4519**, Allowing certain municipalities to elect to participate in the West Virginia Municipal Police Officers and Firefighters Retirement System.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4519) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 4636**, Increasing the penalties for violating the Whistle-blower Law.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4636) passed.

On motion of Senator Kessler, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 4636**—A Bill to amend and reenact §6C-1-6 of the Code of West Virginia, 1931, as amended, relating to increasing the penalties for violating the whistle-blower law; increasing the civil fine; authorizing the court to suspend a person from public service in certain circumstances; and authorizing appropriate discipline by the person's employer up to and including termination from employment.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 4734**, Relating to mine subsidence insurance.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4734) passed.

The following amendment to the title of the bill, from the Committee on Banking and Insurance, was reported by the Clerk and adopted:

**Eng. House Bill 4734**—A Bill to amend and reenact §33-30-6 and §33-30-8 of the Code of West Virginia, 1931, as amended, all relating to mine subsidence insurance; increasing the maximum amount of total insured value reinsured by Board of Risk and Insurance Management; and deleting threshold provision for loss coverage.

Senator Carmichael moved that the bill take effect October 1, 2016.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4734) takes effect October 1, 2016.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 4738**, Relating to the offense of driving in an impaired state.

On third reading, coming up in regular order, was read a third time.

Pending discussion,

At the request of Senator Kessler, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Carmichael, the Senate recessed until 7:30 p.m. tonight.

### **Night Session**

Upon expiration of the recess, the Senate reconvened and proceeded to the ninth order of business.

**Eng. Com. Sub. for House Bill 2205**, Creating the crime of prohibited sexual contact by a psychotherapist.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-8-30, to read as follows:

### **ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.**

#### **§61-8-30. Therapeutic deception; penalties.**

(a) In this section, unless a different meaning plainly is required:

(1) “Client” or “patient” means a person who is being treated clinically or medically by a psychotherapist for more than one session or initial visit.

(2) “Psychotherapist” means any of the following:

(A) A psychiatrist licensed pursuant to article three, chapter thirty of this code;

(B) A psychologist licensed pursuant to article twenty-one, chapter thirty of this code or a medical psychologist licensed pursuant to article three, chapter thirty of this code;

(C) A licensed clinical social worker licensed pursuant to article thirty, chapter thirty of this code; or

(D) A mental health counselor licensed pursuant to article thirty-one, chapter thirty of this code.

(3) “Sexual contact” has the same meaning as provided in article eight-b, chapter sixty-one of this code.

(4) “Sexual intercourse” has the same meaning as provided in article eight-b, chapter sixty-one of this code.

(5) “Therapeutic deception” means a representation by the psychotherapist to the patient or client that sexual contact or sexual intercourse with the psychotherapist is consistent with or part of the treatment of the patient or client.

(b) It is unlawful for any psychotherapist, or any person who fraudulently represents himself or herself as a psychotherapist, to engage in sexual contact or sexual intercourse with a client or patient by means of therapeutic deception.

(c) For purposes of this section, consent of the patient or client is not a defense, regardless of the age of the patient or client.

(d) Any person who violates subsection (b) of this section is guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000.00 or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

The bill (Eng. Com. Sub. for H. B. 2205), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4013**, Requiring a person desiring to vote to present documentation identifying the voter.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §3-1-34 and §3-1-41 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §3-1-51; that §3-2-11 and §3-2-12 of said code be amended and reenacted; and that §17B-2-1 of said code be amended and reenacted, all to read as follows:

### **CHAPTER 3. ELECTIONS.**

#### **ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

##### **§3-1-34. Voting procedures generally; identification; assistance to voters; voting records; penalties.**

(a) ~~Any~~ A person desiring to vote in an election shall, upon entering the election room, clearly state his or her name and residence to one of the poll clerks who shall thereupon announce the same in a clear and distinct tone of voice. For elections occurring on or after January 1, 2018, the person desiring to vote shall present to one of the poll clerks a valid identifying document meeting the requirements of subdivision (1) of this subsection, and the poll clerk shall inspect and confirm that the name on the identifying document conforms to the name in the individual's voter registration record and that the image displayed is truly an image of the person presenting the document. If that person is found to be duly registered as a voter at that precinct, he or she shall sign his or her name in the designated location provided at the precinct. If that person is physically or otherwise unable to sign his or her name, his or her mark shall be affixed by one of the poll clerks in the presence of the other and the name of the poll clerk

affixing the voter's mark shall be indicated immediately under the affixation. No ballot may be given to the person until he or she signs his or her name on the designated location or his or her signature is affixed thereon.

(1) A document shall be deemed to be a valid identifying document if it:

(A) Has been issued either by the State of West Virginia, or one of its subsidiaries, or by the United States Government; and

(B) Contains the name and a photograph of the person desiring to vote.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, the following documents, if they contain the voter's name, shall be considered valid identifying documents, and a person desiring to vote may produce any of the following:

(A) A valid West Virginia driver's license or valid West Virginia identification card issued by the West Virginia Division of Motor Vehicles;

(B) A valid driver's license issued by a state other than the State of West Virginia;

(C) A valid United States passport or passport card;

(D) A valid employee identification card with a photograph of the eligible voter issued by any branch, department, agency, or entity of the United States Government or of the State of West Virginia, or by any county, municipality, board, authority, or other political subdivision of West Virginia;

(E) A valid student identification card with a photograph of the eligible voter issued by an institution of higher education in West Virginia, or a valid high school identification card issued by a West Virginia high school;

(F) A valid military identification card issued by the United States with a photograph of the person desiring to vote;

(G) A valid concealed carry (pistol/revolver) permit issued by the sheriff of the county with a photograph of the person desiring to vote;

(H) A valid Medicare card or Social Security card;

(I) A valid birth certificate;

(J) A valid voter registration card issued by a county clerk in the State of West Virginia;

(K) A valid hunting or fishing license issued by the State of West Virginia;

(L) A valid identification card issued to the voter by the West Virginia Supplemental Nutrition Assistance (SNAP) program;

(M) A valid identification card issued to the voter by the West Virginia Temporary Assistance for Needy Families (TANF) program;

(N) A valid identification card issued to the voter by West Virginia Medicaid;

(O) A valid credit card;

(P) A valid bank card or valid debit card;

(Q) A valid utility bill issued within six months of the date of the election;

(R) A valid paycheck issued within six months of the date of the election;

(S) A valid bank statement issued within six months of the date of the election; or

(T) A valid health insurance card issued to the voter.

(3) In lieu of providing identifying documents, as required by this section, a registered voter may be accompanied at the polling place by an adult known to the registered voter for at least six

months. That adult may sign an affidavit on a form provided to clerks and poll workers by the Secretary of State, which states under oath or affirmation that the adult has known the registered voter for at least six months, and that in fact the registered voter is the same person who is present for the purpose of voting. For the affidavit to be considered valid, the adult shall present a valid identifying document with his or her name, address, and photograph.

(4) A poll worker may allow a voter known to the poll worker at least six months to vote without presenting a valid identifying document.

(5) If the person desiring to vote is unable to furnish a valid identifying document which contains his or her name and a photograph or, if the poll clerk determines that the proof of identification presented by the voter does not qualify as a valid identifying document based on the above listed criteria, the person desiring to vote shall be permitted to cast a provisional ballot after executing an affidavit affirming his or her identity pursuant to paragraph (B) of this subdivision.

(A) The provisional ballot is entitled to be counted once the election authority verifies the identity of the individual by comparing that individual's signature to the current signature on file with the election authority and determines that the individual was otherwise eligible to cast a ballot at the polling place where the ballot was cast.

(B) The affidavit to be used for voting shall be substantially in the following form:

“State of West Virginia

County of .....

I do solemnly swear (or affirm) that my name is .....; that I reside at .....; and that I am the person listed in the precinct register under this name and at this address.

I understand that knowingly providing false information is a violation of law and subjects me to possible criminal prosecution.

.....

Signature of voter

Subscribed and affirmed before me this ..... day of ....., 20....

.....

Name of Election Official

.....

Signature of Election Official”.

(6) A voter who votes in person at a precinct polling place that is located in a building which is part of a state licensed care facility where the voter is a resident is not required to provide proof of identification as a condition before voting in an election.

(7) If the voter objects to the photograph requirement because of religious beliefs, the voter may cast a ballot if he or she executes an affidavit of religious exemption, which shall be in the following form:

“State of West Virginia

County of .....

I, ....., residing at ....., do hereby swear or affirm that because of my religious beliefs, I object to having my photograph taken and that I do not possess a form of identification that meets the requirements of the election laws of this state showing my photograph.

I understand that knowingly providing false information is a violation of law and subjects me to a fine of up to \$1,000 and/or confinement in jail for up to one year.

I hereby swear or affirm, under the penalties for providing false information, that I am the identical person whom I represent myself to be and that to the best of my knowledge and belief the information above is true and correct.

.....

Signature of voter

Subscribed and affirmed before me this ..... day of ..... , 20....

.....

Name of Election Official

.....

Signature of Election Official”.

(8) The person entering voter information into the centralized voter registration database shall cause the records to indicate when a voter has not presented a valid identifying document and has executed a voter identity affidavit.

(9) If a voter participating in the Address Confidentiality Program established by section one hundred three, article twenty-eight-a, chapter forty-eight of this code, executes a voter identity affidavit, the program participant’s residential or mailing address is subject to the confidentiality provisions of section one hundred eight, article twenty-eight-a, chapter forty-eight of this code and shall be used only for those statutory and administrative purposes authorized by this section.

(10) Prior to the primary and general elections to be held in calendar year 2018, the Secretary of State shall educate voters about the requirement to present a valid identifying document and develop a program to help ensure that all eligible voters are able to obtain an identifying document.

(b) The clerk of the county commission is authorized, upon verification that the precinct at which a handicapped person is

registered to vote is not handicap accessible, to transfer that person's registration to the nearest polling place in the county which is handicap accessible. A request by a handicapped person for a transfer of registration must be received by the county clerk no later than thirty days prior to the date of the election. ~~Any~~ A handicapped person who has not made a request for a transfer of registration at least thirty days prior to the date of the election may vote a provisional ballot at a handicap accessible polling place in the county of his or her registration. If during the canvass the county commission determines that the person had been registered in a precinct that is not handicap accessible, the voted ballot, if otherwise valid, shall be counted. The handicapped person may vote in the precinct to which the registration was transferred only as long as the disability exists or the precinct from which the handicapped person was transferred remains inaccessible to the handicapped. To ensure confidentiality of the transferred ballot, the county clerk processing the ballot shall provide the voter with an unmarked envelope and an outer envelope designated "provisional ballot/handicapped voter". After validation of the ballot at the canvass, the outer envelope shall be destroyed and the handicapped voter's ballot shall be placed with other approved provisional ballots prior to removal of the ballot from the unmarked envelope.

(c) When the voter's signature is properly marked and the voter has presented a valid identifying document, the two poll clerks shall sign their names in the places indicated on the back of the official ballot and deliver the ballot to the voter to be voted by him or her without leaving the election room. If he or she returns the ballot spoiled to the clerks, they shall immediately mark the ballot "spoiled" and it shall be preserved and placed in a spoiled ballot envelope together with other spoiled ballots to be delivered to the board of canvassers and deliver to the voter another official ballot, signed by the clerks on the reverse side. The voter shall thereupon retire alone to the booth or compartment prepared within the election room for voting purposes and there prepare his or her ballot. In voting for candidates in general and special elections, the voter shall comply with the rules and procedures prescribed in section five, article six of this chapter.

(d) It is the duty of a poll clerk, in the presence of the other poll clerk, to indicate by a check mark, or by other means, inserted in the appropriate place on the registration record of each voter the fact that the voter voted in the election. In primary elections the clerk shall also insert ~~thereon~~ on the registration record of each voter a distinguishing initial or initials of the political party for whose candidates the voter voted. If a person is challenged at the polls, the challenge shall be indicated by the poll clerks on the registration record, together with the name of the challenger. The subsequent removal of the challenge shall be recorded on the registration record by the clerk of the county commission.

(e) (1) No voter may receive any assistance in voting unless, by reason of blindness, disability, advanced age or inability to read and write, that voter is unable to vote without assistance. Any voter so qualified to receive assistance in voting ~~under the provisions of this section~~ may:

(A) Declare his or her choice of candidates to an Election Commissioner of each political party who, in the presence of the voter and in the presence of each other, shall prepare the ballot for voting in the manner ~~hereinbefore~~ provided in this section and, on request, shall read to the voter the names of the candidates selected on the ballot;

(B) Require the Election Commissioners to indicate to him or her the relative position of the names of the candidates on the ballot, ~~whereupon~~ the voter shall then retire to one of the booths or compartments to prepare his or her ballot in the manner ~~hereinbefore~~ provided in this section;

(C) Be assisted by any person of the voter's choice, other than the voter's present or former employer or agent of that employer, the officer or agent of a labor union of which the voter is a past or present member or a candidate on the ballot or an official write-in candidate; or

(D) If he or she is handicapped, vote from an automobile outside the polling place or precinct by the absentee balloting method provided in subsection (e), section five, article three of this

chapter in the presence of an Election Commissioner of each political party if all of the following conditions are met:

(i) The polling place is not handicap accessible; and

(ii) No voters are voting or waiting to vote inside the polling place.

(2) The voted ballot shall then be returned to the precinct officials and secured in a sealed envelope to be returned to the clerk of the county commission with all other election materials. The ballot shall then be tabulated using the appropriate method provided in section eight of this chapter as it relates to the specific voting system in use.

(3) ~~Any~~ A voter who requests assistance in voting but who is believed not to be qualified for assistance under the provisions of this section shall nevertheless be permitted to vote a provisional ballot with the assistance of any person herein authorized to render assistance.

(4) ~~Any~~ One or more of the Election Commissioners or poll clerks in the precinct may challenge the ballot on the ground that the voter ~~thereof~~ received assistance in voting it when in his, her or their opinion the person who received assistance in voting is not so illiterate, blind, disabled or of such advanced age as to have been unable to vote without assistance. The Election Commissioner or poll clerk or commissioners or poll clerks making the challenge shall enter the challenge and ~~reason therefor~~ the reason for such challenge on the form and in the manner prescribed or authorized by article three of this chapter.

(5) An Election Commissioner or other person who assists a voter in voting:

(A) May not in any manner request or seek to persuade or induce the voter to vote ~~any~~ a particular ticket or for ~~any~~ a particular candidate or for or against any public question and must not keep or make any memorandum or entry of anything occurring within the voting booth or compartment and must not, directly or indirectly, reveal to any person the name of ~~any~~ a candidate voted

for by the voter, ~~or~~ which ticket he or she had voted or how he or she had voted on any public question or anything occurring within the voting booth, ~~or~~ compartment, or voting machine booth except when required ~~pursuant to~~ by law to give testimony as to the matter in a judicial proceeding; and

(B) Shall sign a written oath or affirmation before assisting the voter on a form prescribed by the Secretary of State stating that he or she will not override the actual preference of the voter being assisted, attempt to influence the voter's choice or mislead the voter into voting for someone other than the candidate of voter's choice. The person assisting the voter shall also swear or affirm that he or she believes that the voter is voting free of intimidation or manipulation. *Provided, That* No person providing assistance to a voter is required to sign an oath or affirmation where the reason for requesting assistance is the voter's inability to vote without assistance because of blindness as defined in section three, article fifteen, chapter five of this code and the inability to vote without assistance because of blindness is certified in writing by a physician of the voter's choice and is on file in the office of the clerk of the county commission.

(6) In accordance with instructions issued by the Secretary of State, the clerk of the county commission shall provide a form entitled "list of assisted voters", ~~the form of which list shall likewise be~~ on a form as prescribed by the Secretary of State. The commissioners shall enter the name of each voter receiving assistance in voting the ballot, together with the poll slip number of that voter and the signature of the person or the commissioner from each party who assisted the voter. If no voter has been assisted in voting, the commissioners shall ~~likewise~~ make and subscribe to an oath of that fact on the list.

(f) After preparing the ballot, the voter shall fold the ballot so that the face is not exposed and ~~so that~~ the names of the poll clerks ~~thereon~~ on it are seen. The voter shall announce his or her name and present his or her ballot to one of the commissioners who shall hand the same to another commissioner, of a different political party, who shall deposit it in the ballot box if the ballot is the official one and properly signed. The commissioner of election may

inspect every ballot before it is deposited in the ballot box to ascertain whether it is single; but without unfolding or unrolling it so as to disclose its content. When the voter has voted, he or she shall retire immediately from the election room and beyond the sixty-foot limit ~~thereof and may~~ and not return except by permission of the commissioners.

(g) Following the election, the oaths or affirmations required by this section from those assisting voters, together with the “list of assisted voters”, shall be returned by the Election Commissioners to the clerk of the county commission along with the election supplies, records and returns. The clerk of the county commission shall make the oaths, affirmations and list available for public inspection and ~~shall~~ preserve them for a period of twenty-two months or until disposition is authorized or directed by the Secretary of State or court of record. ~~Provided, That~~ The clerk may use these records to update the voter registration records in accordance with subsection (d), section eighteen, article two of this chapter.

(h) Any person making an oath or affirmation required under the provisions of this section who knowingly swears falsely or any person who counsels, advises, aids or abets another in the commission of false swearing under this section, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in jail for a period of not more than one year, or both fined and confined.

(i) Any Election Commissioner or poll clerk who authorizes or provides unchallenged assistance to a voter when the voter is known to the Election Commissioner or poll clerk not to require assistance in voting, is guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned in a state correctional facility for a period of not less than one year nor more than five years, or both fined and imprisoned.

**§3-1-41. Challenged and provisional voter procedures; counting of provisional voters’ ballots; ballots of election officials.**

(a) It is the duty of the members of the receiving board, jointly or severally, to challenge the right of any person requesting a ballot to vote in any election:

(1) If the person's registration record is not available at the time of the election;

(2) If the signature written by the person in the poll book does not correspond with the signature purported to be his or hers on the registration record;

(3) If the registration record of the person indicates any other legal disqualification; or

(4) If the person fails to present a valid identifying document pursuant to section thirty-four of this article; or

~~(4)~~(5) If any other valid challenge exists against the voter pursuant to section ten, article three of this chapter.

(b) Any person challenged shall nevertheless be permitted to vote in the election. He or she shall be furnished an official ballot not endorsed by the poll clerks. In lieu of the endorsements, the poll clerks shall complete and sign an appropriate form indicating the challenge, the reason thereof and the name or names of the challengers. The form shall be securely attached to the voter's ballot and deposited together with the ballot in a separate box or envelope marked "provisional ballots".

(c) At the time that an individual casts a provisional ballot, the poll clerk shall give the individual written information stating that an individual who casts a provisional ballot will be able to ascertain under the free access system established in this section whether the vote was counted and, if the vote was not counted, the reason that the vote was not counted.

(d) Before an individual casts a provisional ballot, the poll clerk shall provide the individual written instructions, supplied by the board of ballot commissioners, stating that if the voter is casting a ballot in the incorrect precinct, the ballot cast may not be counted for that election: *Provided*, That if the voter is found to be in the

incorrect precinct, then the poll worker shall attempt to ascertain the appropriate precinct for the voter to cast a ballot and immediately give the voter the information if ascertainable.

(e) Provisional ballots may not be counted by the election officials. The county commission shall, on its own motion, at the time of canvassing of the election returns, sit in session to determine the validity of any challenges according to the provisions of this chapter. If the county commission determines that the challenges are unfounded, each provisional ballot of each challenged voter, if otherwise valid, shall be counted and tallied together with the regular ballots cast in the election. The county commission, as the board of canvassers, shall protect the privacy of each provisional ballot cast. The county commission shall disregard technical errors, omissions or oversights if it can reasonably be ascertained that the challenged voter was entitled to vote.

(f) Any person duly appointed as an Election Commissioner or clerk under the provisions of section twenty-eight of this article who serves in that capacity in a precinct other than the precinct in which the person is legally entitled to vote may cast a provisional ballot in the precinct in which the person is serving as a commissioner or clerk. The ballot is not invalid for the sole reason of having been cast in a precinct other than the precinct in which the person is legally entitled to vote. The county commission shall record the provisional ballot on the voter's permanent registration record: *Provided*, That the county commission may count only the votes for the offices that the voter was legally authorized to vote for in his or her own precinct.

(g) The Secretary of State shall establish a free access system, which may include a toll-free telephone number or an Internet website, that may be accessed by any individual who casts a provisional ballot to discover whether his or her vote was counted and, if not, the reason that the vote was not counted.

**§3-1-51. Identity verification of voters executing voter identity affidavit.**

(a) The clerk of the county commission shall cause a letter to be mailed by first class mail to each voter who executed a voter identity affidavit pursuant to section thirty-four of this article. The letter shall be mailed within sixty days after the election. The clerk shall mark the envelope with instructions to the United States Post Office not to forward the letter and to provide address correction information. The letter shall notify the addressee that a person who did not present valid photo identification voted using his or her name and address and instruct the addressee to contact the clerk immediately if he or she did not vote. The letter shall also inform the addressee of the procedure for obtaining a nondriver's picture identification card for voting purposes.

(b) The clerk of the county commission shall cause letters mailed pursuant to subsection (a) of this section that are returned as undeliverable by the United States Post Office to be referred to the Secretary of State. The clerk shall also prepare and forward to the Secretary of State a list of all persons who were mailed letters under subsection (a) of this section and who notified the clerk that they did not vote. Upon receipt of notice from a person who receives a letter mailed pursuant to subsection (a) of this section that the person did not vote, or upon receipt of a referral from the clerk, the Secretary of State shall cause an investigation to be made to determine whether fraudulent voting occurred. Beginning July 1, 2019 and each year thereafter, the Secretary of State shall submit a report to the Joint Committee on the Judiciary and the Joint Committee on Government and Finance detailing the results of all investigations of voter identity affidavits, including, but not limited to, the number of investigations, the number of ballots cast, and the number and results of any determinations made regarding fraudulent voting.

## **ARTICLE 2. REGISTRATION OF VOTERS.**

### **§3-2-11. Registration in conjunction with driver licensing.**

(a) The Division of Motor Vehicles or other division or department that may be established by law to perform motor vehicle driver licensing services shall obtain, ~~provide each qualified registrant,~~ as an integral and simultaneous part of every

process of application for the issuance, renewal or change of address of a motor vehicle driver's license or official identification card pursuant to the provisions of article two, chapter seventeen-b of this code, ~~a voter registration application as prescribed in section five of this article~~ when the division's regional offices are open for regular business. ~~An individual may apply for voter registration using an approved electronic voter registration system if available at a Division of Motor Vehicles regional office.~~ the following information from each qualified registrant:

(1) Full name, including first, middle, last and any premarital names;

(2) Date of birth;

(3) Residence address and mailing address, if different;

(4) The applicant's electronic signature;

(5) Telephone number, if available;

(6) Email address, if available;

(7) Political party membership, if any;

(8) Driver's license number and last four digits of social security number;

(9) A notation that the applicant has attested that he or she meets all voter eligibility requirements, including United States citizenship;

(11) Whether the applicant affirmatively declined to become registered to vote during the transaction with the Division of Motor Vehicles;

(12) Date of application; and

(13) Any other information specified in rules adopted to implement this section.

(b) Unless the applicant affirmatively declines to become registered to vote or update their voter registration during the transaction with the Division of Motor Vehicles, the Division of Motor Vehicles shall release all of the information obtained pursuant to subsection (a) of this section to the Secretary of State who shall forward the information to the county clerk for the relevant county to process the newly registered voter or updated information for the already registered voter pursuant to law. Notwithstanding any other provision of this code to the contrary, if the applicant affirmatively declines to become registered to vote, the Division of Motor Vehicles is required to release the first name, middle name, last name, premarital name, if applicable, complete residence address, complete date of birth of an applicant and the applicant's electronic signature, entered in the division's records for driver license or nonoperator identification purposes to the Office of the Secretary of State in order to facilitate any future attempt of the applicant to register to vote online, along with the notation that the applicant affirmatively declined to become registered at that time. The Division of Motor Vehicles shall notify that applicant that by submitting his or her signature, the applicant grants written consent for the submission of the information obtained and required to be submitted to the Office of the Secretary of State pursuant to this section. ~~upon notice and written consent of the applicant. The notice and consent is a required component of an electronic voter registration application made available to the general public by the Secretary of State. The release of an applicant's signature by the Division of Motor Vehicles to the Office of the Secretary of State applies to any voter registration application approved through an electronic voter registration system approved by the Secretary of State regardless of the location of the online user and provided the user grants written consent.~~

(c) ~~A person who fails to sign the voter registration application or who fails to return the voter registration application to a driver licensing facility or to an appropriate voter registration office is considered to have declined to register.~~ Information regarding a person's failure to sign the voter registration application is confidential and may not be used for any purpose other than to determine voter registration.

(d) A qualified voter who submits the ~~application for registration~~ required information and does not affirmatively decline to become registered or update their voter registration, pursuant to the provisions of subsection (a) of this section, in person at a driver licensing facility at the time of applying for, obtaining, renewing or transferring his or her driver's license or official identification card and who presents identification and proof of age at that time is not required to make his or her first vote in person or to again present identification in order to make that registration valid.

(e) A qualified voter who submits by mail or by delivery by a third party an application for registration on the form used in conjunction with driver licensing is required to make his or her first vote in person and present identification as required for other mail registration in accordance with the provisions of subsection (g), section ten of this article. If the applicant has been previously registered in the jurisdiction and the application is for a change of address, change of name, change of political party affiliation or other correction, the presentation of identification and first vote in person is not required.

(f) An application for voter registration submitted pursuant to the provisions of this section updates a previous voter registration by the applicant and authorizes the cancellation of registration in any other county or state in which the applicant was previously registered.

(g) A change of address from one residence to another within the same county which is submitted for driver licensing or nonoperator's identification purposes in accordance with applicable law serves as a notice of change of address for voter registration purposes if requested by the applicant after notice and written consent of the applicant.

(h) Completed applications for voter registration or change of address for voting purposes received by an office providing driver licensing services shall be forwarded to the Secretary of State within five days of receipt unless other means are available for a more expedited transmission. The Secretary of State shall remove and file any forms which have not been signed by the applicant and

shall forward completed, signed applications to the clerk of the appropriate county commission within five days of receipt.

(i) Voter registration application forms containing voter information which are returned to a driver licensing office unsigned shall be collected by the Division of Motor Vehicles, submitted to the Secretary of State and maintained by the Secretary of State's office according to the retention policy adopted by the Secretary of State.

(j) The Secretary of State shall establish procedures to protect the confidentiality of the information obtained from the Division of Motor Vehicles, including any information otherwise required to be confidential by other sections of this code.

(k) A person registered to vote pursuant to this section may cancel his or her voter registration at any time by any method available to any other registered voter.

(l) This section shall not be construed as requiring the Division of Motor Vehicles to determine eligibility for voter registration and voting.

(m) The changes made to this section during the 2016 Regular Legislative Session shall become effective on July 1, 2017, and any costs associate therewith shall be paid by the Division of Motor Vehicles. If the Division of Motor Vehicles is unable to meet the requirements of this section by February 1, 2017, it shall make a presentation to the Joint Committee on Government and Finance explaining any resources necessary to meet the requirements or any changes to the code that it recommends immediately prior to the 2017 Regular Legislative Session.

(n) The Secretary of State may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code in order to implement the requirements of this section.

**§3-2-12. Combined voter registration and driver licensing fund; transfer of funds.**

(a) Fifty cents of each license fee collected pursuant to the provisions of section one, article three, chapter seventeen of this code shall be paid into the State Treasury to the credit of a special revenue fund to be known as the “Combined Voter Registration and Driver Licensing Fund”. The moneys so credited to such fund may be used by the Secretary of State for the following purposes:

(1) Printing and distribution of combined driver licensing or other agency applications and voter registration forms, or for the printing of voter registration forms to be used in conjunction with driver licensing or other agency applications, or for implementing the automatic voter registration program authorized in section eleven of this article;

(2) Printing and distribution of mail voter registration forms for purposes of this article;

(3) Supplies, postage and mailing costs for correspondence relating to voter registration for agency registration sites and for the return of completed voter registration forms to the appropriate state or county election official;

(4) Reimbursement of postage and mailing costs incurred by clerks of the county commissions for sending a verification mailing, confirmation of registration or other mailings directly resulting from an application to register, change or update a voter’s registration through a driver licensing or other agency;

(5) Reimbursement to state funded agencies, with the exception of the Division of Motor Vehicles, designated to provide voter registration services under this chapter for personnel costs associated with the time apportioned to voter registration services and assistance;

(6) The purchase, printing and distribution of public information and other necessary materials or equipment to be used in conjunction with voter registration services provided by state

funded agencies designated pursuant to the provisions of this article;

(7) The development and continued maintenance of a statewide program of uniform voter registration computerization for use by each county registration office and the Secretary of State, purchase of uniform voter registration software, payment of software installation costs and reimbursement to the county commissions of not more than fifty percent of the cost per voter for data entry or data conversion from a previous voter registration software program;

~~(8) Efforts to maintain correct voter information and conduct general list maintenance to remove ineligible voters and ensure new residents receive voter registration information, including collaborating with other states and non-profit corporations dedicated to improving the election system; Payment of up to fifty percent of the costs of conducting a joint program with participating counties to identify ineligible voters by using the United States postal service information as provided in section twenty five of this article: *Provided*, That such assistance shall be available only to counties which maintain voter registration lists on the statewide uniform voter data system; and~~

(9) Payment of any dues or fees associated with a program to match and transfer data to and from other states;

(10) Resources related to voter registration and list maintenance; and

~~(9)~~ (11) Payment or reimbursement of other costs associated with implementation of the requirements of the National Voter Registration Act of 1993 (42 U. S. C. 1973gg): *Provided*, That revenue received by the fund in any fiscal year shall first be allocated to the purposes set forth in subdivisions (1) through ~~(8)~~ (10), inclusive, of this subsection.

(b) The Secretary of State shall promulgate rules pursuant to the provisions of chapter twenty-nine-a of this code to provide for

the administration of the fund established in subsection (a) of this section.

(c) Any balance in the fund created by subsection (a) of this section which exceeds \$100,000 as of June 30, 2017, and on June 30 of each year thereafter, shall be transferred to the General Revenue Fund.

## **CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.**

### **ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.**

#### **§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards.**

(a) (1) No person, except those hereinafter expressly exempted, may drive ~~any~~ a motor vehicle upon a street or highway in this state or upon ~~any~~ a subdivision street used by the public generally unless the person has a valid driver's license issued pursuant to this code for the type or class of vehicle being driven.

(2) Any person licensed to operate a motor vehicle pursuant to this code may exercise the privilege thereby granted in the manner provided in this code and, except as otherwise provided by law, is not required to obtain any other license to exercise the privilege by ~~any~~ a county, municipality or local board or body having authority to adopt local police regulations.

(b) The division, upon issuing a driver's license, shall indicate on the license the type or general class or classes of vehicles the licensee may operate in accordance with this code, federal law or rule. Licenses shall be issued in different colors for those drivers under age eighteen, those drivers age eighteen to twenty-one and adult drivers. The commissioner is authorized to select and assign colors to the licenses of the various age groups.

(c) The following drivers licenses classifications are hereby established:

(1) A Class A, B or C license shall be issued to those persons eighteen years of age or older with two years of driving experience who have qualified for the commercial driver's license established by chapter seventeen-e of this code and the federal Motor Carrier Safety and Improvement Act of 1999 and subsequent rules and have paid the required fee.

(2) A Class D license shall be issued to those persons eighteen years and older with one year of driving experience who operate motor vehicles other than those types of vehicles which require the operator to be licensed under the provisions of chapter seventeen-e of this code and federal law and rule and whose primary function or employment is the transportation of persons or property for compensation or wages and have paid the required fee. For the purpose of regulating the operation of motor vehicles, wherever the term "chauffeur's license" is used in this code, it ~~shall be construed to mean~~ means the Class A, B, C or D license described in this section or chapter seventeen-e of this code or federal law or rule: *Provided*, That anyone not required to be licensed under the provisions of chapter seventeen-e of this code and federal law or rule and who operates a motor vehicle registered or required to be registered as a Class A motor vehicle, as that term is defined in section one, article ten, chapter seventeen-a of this code, with a gross vehicle weight rating of less than eight thousand one pounds, is not required to obtain a Class D license.

(3) A Class E license shall be issued to ~~those~~ persons who have qualified for a driver's license under the provisions of this chapter and who are not required to obtain a Class A, B, C or D license and who have paid the required fee. The Class E license may be endorsed under the provisions of section seven-b of this article for motorcycle operation. The Class E or ~~(G)~~ G license for ~~any~~ a person under the age of eighteen may also be endorsed with the appropriate graduated driver license level in accordance with the provisions of section three-a of this article.

(4) A Class F license shall be issued to those persons who successfully complete the motorcycle examination procedure provided by this chapter and have paid the required fee but who do not possess a Class A, B, C, D or E driver's license.

(5) A Class G driver's license or instruction permit shall be issued to a person using bioptic telescopic lenses who has successfully completed an approved driver training program and complied with all other requirements of article two-b of this chapter.

(d) All licenses issued under this section may contain information designating the licensee as a diabetic, organ donor, as deaf or hard-of-hearing, ~~or~~ as having any other handicap or disability or that the licensee is an honorably discharged veteran of any branch of the Armed Forces of the United States, according to criteria established by the division, if the licensee requests this information on the license. An honorably discharged veteran may be issued a replacement license without charge if the request is made before the expiration date of the current license and the only purpose for receiving the replacement license is to get the veterans designation placed on the license.

(e) No person, except those hereinafter expressly exempted, may drive ~~any a~~ motorcycle ~~upon~~ on a street or highway in this state or ~~upon any~~ on a subdivision street used by the public generally unless the person has a valid motorcycle license, a valid license which has been endorsed under section seven-b of this article for motorcycle operation or a valid motorcycle instruction permit.

(f) (1) An identification card may be issued to ~~any a~~ person who:

(A) Is a resident of this state in accordance with the provisions of section one-a, article three, chapter seventeen-a of this code;

(B) Has reached the age of two years ~~The division may also issue an identification card to a person under the age of two years, for good cause shown; or, for good cause shown, under the age of two.~~

(C) Has paid the required fee of \$2.50 per year: *Provided*, That ~~the fee is not~~ no fees or charges, including renewal fees, are required if the applicant:

(i) Is sixty-five years or older; ~~or~~

(ii) Is legally blind; ~~and~~ or

(iii) Will be at least eighteen years of age at the next general, municipal or special election and intends to use this identification card as a form of identification for voting; and

(D) Presents a birth certificate or other proof of age and identity acceptable to the division with a completed application on a form furnished by the division.

(2) The identification card shall contain the same information as a driver's license except that the identification card shall be clearly marked as an identification card. The division may issue an identification card with less information to persons under the age of sixteen. An identification card may be renewed annually on application and payment of the fee required by this section.

(A) Every identification card issued to a person who has attained his or her twenty-first birthday expires on the licensee's birthday in those years in which the licensee's age is evenly divisible by five. Except as provided in paragraph (B) of this subdivision, no identification card may be issued for less than three years or for more than seven years and expires on the licensee's birthday in those years in which the licensee's age is evenly divisible by five.

(B) Every identification card issued to a person who has not attained his or her twenty-first birthday expires thirty days after the licensee's twenty-first birthday.

(C) Every identification card issued to persons under the age of sixteen shall be issued for a period of two years and ~~shall~~ expire on the last day of the month in which the applicant's birthday occurs.

(3) The division may issue an identification card to an applicant whose privilege to operate a motor vehicle has been refused, canceled, suspended or revoked under the provisions of this code.

(g) For any person over the age of fifty years who wishes to obtain a driver's license or identification card under the provisions of this section:

(1) A raised seal or stamp on the birth certificate or certified copy of the birth certificate is not required if the issuing jurisdiction does not require one; and

(2) If documents are lacking to prove all changes of name in the history of any such applicant, applicants renewing a driver's license or identification card under the provisions of this section may complete a Name Variance Approval Document as instituted by the division, so long as they can provide:

(A) Proof of identity;

(B) Proof of residency; and

(C) A valid Social Security number.

(3) The division may waive any documents necessary to prove a match between names, so long as the division determines the person is not attempting to:

(A) Change his or her identity;

(B) Assume another person's identity; or

(C) Commit a fraud.

(h) A person over the age of seventy years, or who is on Social Security disability, who wishes to obtain or renew a driver's license or identification card under the provisions of this section, may not be required to furnish a copy of a birth certificate if they can provide:

(1) Proof of identity;

(2) Proof of residency;

(3) A valid Social Security number; and

(4) One of the following identifying items:

(A) A form of military identification, including a DD214 or equivalent;

(B) An US passport, whether valid or expired;

(C) School records, including a yearbook;

(D) A religious document, that in the judgment of the Division is sufficient and authentic to reflect that the person was born in the United States; or

(E) An expired driver's license, employment identification card, or other reliable identification card with a recognizable photograph of the person.

~~(g)~~ (i) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$500 and, upon a second or subsequent conviction, shall be fined not more than \$500 or confined in jail not more than six months, or both fined and confined.

On motion of Senator Snyder, the following amendments to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 4013) were reported by the Clerk and considered simultaneously:

On pages twenty-two and twenty-three, section one, by striking out all of subsections (g) and (h);

And,

By relettering the remaining subsection.

Following discussion,

At the request of Senator Snyder, and by unanimous consent, his foregoing amendments to the Judiciary committee amendment to the bill were withdrawn.

The question now being on the adoption of the Judiciary committee amendment to the bill, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 4013), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4035**, Permitting pharmacists to furnish naloxone hydrochloride.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Health and Human Resources, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §16-46-3, §16-46-5 and §16-46-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §16-46-3a, all to read as follows:

#### **ARTICLE 46. ACCESS TO OPIOID ANTAGONISTS ACT.**

##### **§16-46-3. Licensed health care providers may prescribe opioid antagonists to initial responders and certain individuals; required educational materials; limited liability.**

(a) All licensed health care providers in the course of their professional practice may offer to initial responders a prescription for opioid antagonists, including a standing order, to be used during the course of their professional duties as initial responders.

(b) All licensed health care providers in the course of their professional practice may offer to a person considered by the licensed health care provider to be at risk of experiencing an opiate-related overdose, or to a relative, friend, caregiver or person in a

position to assist a person at risk of experiencing an opiate-related overdose, a prescription for an opioid antagonist.

(c) All licensed health care providers who prescribe an opioid antagonist under this section shall provide educational materials to any person or entity receiving such a prescription on opiate-related overdose prevention and treatment programs, as well as materials on administering the prescribed opioid antagonist.

~~(d) Any person who possesses an opioid antagonist and administers it to a person whom they believe to be suffering from an opioid-related overdose and who is acting in good faith is not, as a result of his or her actions or omissions, subject to criminal prosecution arising from the possession of an opioid antagonist or subject to any civil liability with respect to the administration of or failure to administer the opioid antagonist unless the act or failure to act was the result of gross negligence or willful misconduct.~~

~~(e) Any person who administers an opioid antagonist to a person whom they believe to be suffering from an opioid-related overdose is required to seek additional medical treatment at a medical facility for that person immediately following the administration of the opioid antagonist to avoid further complications as a result of suspected opioid-related overdose.~~

**§16-46-3a. Pharmacist or pharmacy intern may dispense, pursuant to a protocol, opioid antagonists without a prescription; patient counseling required; required educational materials.**

(a) Pursuant to the protocol developed under subsection (f) of this section, a pharmacist or pharmacy intern under the supervision of a pharmacist may dispense an opioid antagonist without a prescription.

(b) A pharmacist or pharmacy intern who dispenses an opioid antagonist without a prescription under this section shall provide patient counseling to the individual for whom the opioid antagonist is dispensed regarding, but not limited to, the following topics: (1) The proper administration of the opioid antagonist; (2) the

importance of contacting emergency services as soon as practicable either before or after administering the opioid antagonist; and (3) the risks associated with failure to contact emergency services following administration of an opioid antagonist. The patient counseling described in this section is mandatory and the person receiving the opioid antagonist may not opt out.

(c) A pharmacist shall document the dispensing of an opioid antagonist without a prescription as set forth in the protocol developed under subsection (f) of this section and the reporting requirements set forth in subsection (a), section four, article nine, chapter sixty-a of this code.

(d) All pharmacists or pharmacy interns who dispense an opioid antagonist under this section shall provide educational materials to any person receiving such an opioid antagonist on opiate-related overdose prevention and treatment programs, as well as materials on administering the opioid antagonist.

(e) This section does not affect the authority of a pharmacist or pharmacy intern to fill or refill a prescription for an opioid antagonist.

(f) To implement the provisions of this section, the Board of Pharmacy shall, after consulting with the Bureau for Public Health: (1) Develop a protocol under which pharmacists or pharmacy interns may dispense an opioid antagonist without a prescription; (2) specify educational materials which shall be provided to the individual receiving the opioid antagonist; and (3) develop a form, template or the like to be used by pharmacists and pharmacy interns when dispensing the opioid antagonist without a prescription. The protocol developed by the board may be updated or revised as necessary.

**§16-46-5. Licensed health care providers limited liability related to opioid antagonist prescriptions.**

(a) A licensed health care provider who is permitted by law to prescribe drugs, including opioid antagonists, may, if acting in good faith, prescribe and subsequently dispense or distribute an

opioid antagonist without being subject to civil liability or criminal prosecution unless prescribing the opioid antagonist was the result of the licensed health care providers gross negligence or willful misconduct.

(b) For purposes of this chapter and chapter sixty-a of this code, any prescription written, as described in section three of this article, shall be presumed as being issued for a legitimate medical purpose in the usual course of professional practice unless the presumption is rebutted by a preponderance of the evidence.

(c) Any person who possesses an opioid antagonist and administers it to a person whom they believe to be suffering from an opioid-related overdose and who is acting in good faith is not, as a result of his or her actions or omissions, subject to criminal prosecution arising from the possession of an opioid antagonist or subject to any civil liability with respect to the administration of or failure to administer the opioid antagonist unless the act or failure to act was the result of gross negligence or willful misconduct.

(d) Any person who administers an opioid antagonist to a person whom they believe to be suffering from an opioid-related overdose is required to seek additional medical treatment at a medical facility for that person immediately following the administration of the opioid antagonist to avoid further complications as a result of suspected opioid-related overdose.

(e) Any pharmacist or pharmacy intern who dispenses or refuses to dispense an opioid antagonist under the provisions of this article who is acting in good faith and subject to the requirements of section three-a of this article is not, as a result of his or her actions or omissions, subject to civil liability or criminal prosecution unless dispensing the opioid antagonist was the result of the pharmacists or pharmacy interns gross negligence or willful misconduct.

#### **§16-46-6. Data collection and reporting requirements; training.**

(a) Beginning March 1, 2016, and annually thereafter the following reports shall be compiled:

(1) The Office of Emergency Medical Services shall collect data regarding each administration of an opioid antagonist by an initial responder. The Office of Emergency Medical Services shall report this information to the Legislative Oversight Commission on Health and Human Resources Accountability and the West Virginia Bureau for Behavioral Health and Health Facilities. The data collected and reported shall include:

(A) The number of training programs operating in an Office of Emergency Medical Services-designated training center;

(B) The number of individuals who received training to administer an opioid antagonist;

(C) The number of individuals who received an opioid antagonist administered by an initial responder;

~~(D) The number of individuals who received an opioid antagonist administered by an initial responder who were revived;~~

~~(E) The number of individuals who received an opioid antagonist administered by an initial responder who were not revived; and~~

~~(F) The cause of death of individuals who received an opioid antagonist administered by an initial responder and were not revived.~~

~~(2) Each licensed health care provider shall submit data to the West Virginia Board of Pharmacy by February 1 of each calendar year, excluding any personally identifiable information, regarding the number of opioid antagonist prescriptions written in accordance with this article in the preceding calendar year. The licensed health care provider shall indicate whether the prescription was written to an individual in the following categories: An initial responder; an individual at risk of opiate-related overdose; a relative of a person at risk of experiencing an opiate-related overdose; a friend of a person at risk of experiencing an opiate-related overdose; or a caregiver or person in a position to assist a person at risk of experiencing an opiate-related overdose.~~

(3) (2) The West Virginia Board of Pharmacy shall query the West Virginia Controlled Substances Monitoring Program database to compile all data described in subdivision (2) of this section and related to the dispensing of opioid antagonists and combine that data with any additional data maintained by the Board of Pharmacy related to prescriptions for and distribution of opioid antagonists. By ~~March~~ February 1 and annually thereafter, the Board of Pharmacy shall provide a report of this information, excluding any personally identifiable information, to the Legislative Oversight Commission on Health and Human Resources Accountability and the West Virginia Bureau for Behavioral Health and Health Facilities.

(b) To implement the provisions of this article, including establishing the standards for certification and approval of opioid overdose prevention and treatment training programs and protocols regarding a refusal to transport, the Office of Emergency Medical Services may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code and shall propose rules for legislative approval in accordance with the provisions of said article.

The bill (Eng. Com. Sub. for H. B. 4035), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4038**, Relating to insurance requirements for the refilling of topical eye medication.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Health and Human Resources, was reported by the Clerk and adopted:

By striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §33-15-4m; that said code be amended by adding thereto a new section, designated §33-

16-3y; that said code be amended by adding thereto a new section, designated §33-24-7n; that said code be amended by adding thereto a new section, designated §33-25-8k; that said code be amended by adding thereto a new section, designated §33-25A-8m, all to read as follows:

The bill (Eng. Com. Sub. for H. B. 4038), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4040**, Regulating step therapy protocols in health benefit plans.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Health and Human Resources, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §33-15-4m; that said code be amended by adding thereto a new section, designated §33-16-3y; that said code be amended by adding thereto a new section, designated §33-24-7n; that said code be amended by adding thereto a new section, designated §33-25-8k; and that said code be amended by adding thereto a new section, designated §33-25A-8m, all to read as follows:

## **CHAPTER 33. INSURANCE.**

### **ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.**

#### **§33-15-4m. Step Therapy.**

*(a) Definitions.* — As used in this article:

(1) “Health benefit plan” means a policy, contract, certificate or agreement entered into, offered or issued by a health plan issuer

to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(2) “Health plan issuer” or “issuer” means an entity required to be licensed under this chapter that contracts, or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services under a health benefit plan, including accident and sickness insurers, nonprofit hospital service corporations, medical service corporations and dental service organizations, prepaid limited health service organizations, health maintenance organizations, preferred provider organizations, provider sponsored network and government payers, including but not limited to Medicaid, Medicare and the public employees insurance agency and any pharmacy benefit manager that administers a fully-funded or self-funded plan.

(3) “Step therapy protocol” means a protocol or program that establishes the specific sequence in which prescription drugs for a specified medical condition, and medically appropriate for a particular patient, are covered by a health plan issuer or health benefit plan.

(4) “Step therapy override determination” means a determination as to whether a step therapy protocol should apply in a particular situation, or whether the step therapy protocol should be overridden in favor of immediate coverage of the health care provider’s selected prescription drug. This determination is based on a review of the patient’s or prescriber’s request for an override, along with supporting rationale and documentation.

(5) “Utilization review organization” means an entity that conducts utilization review, other than a health plan issuer performing utilization review for its own health benefit plan.

(b) *Application of article.* — A health benefit plan that includes prescription drug benefits, and which utilizes step therapy protocols, and which is issued for delivery, delivered, renewed, or otherwise contracted in this state on or after January 1, 2017, shall comply with the provisions of this article.

(c) Step therapy protocol exceptions. —

(1) When coverage of a prescription drug for the treatment of any medical condition is restricted for use by health plan issuer or utilization review organization through the use of a step therapy protocol, the patient and prescribing practitioner shall have access to a clear and convenient process to request a step therapy exception determination. The process shall be made easily accessible on the health plan issuer's or utilization review organization's website. The health plan issuer or utilization review organization must provide a prescription drug for treatment of the medical condition at least until the step therapy exception determination is made.

(2) A step therapy override determination request shall be expeditiously granted if:

(A) The required prescription drug is contraindicated or will likely cause an adverse reaction by or physical or mental harm to the patient.

(B) The required prescription drug is expected to be ineffective based on the known relevant physical or mental characteristics of the patient and the known characteristics of the prescription drug regimen.

(C) The patient has tried the required prescription drug while under their current or a previous health insurance or health benefit plan, or another prescription drug in the same pharmacologic class or with the same mechanism of action and such prescription drug was discontinued due to a lack of efficacy or effectiveness, diminished effect, or an adverse event.

(D) The required prescription drug is not in the best interest of the patient, based upon medical appropriateness.

(E) The patient is stable on a prescription drug selected by their health care provider for the medical condition under consideration.

(3) Upon the granting of a step therapy override determination, the health plan issuer or utilization review organization shall

authorize coverage for the prescription drug prescribed by the patient's treating healthcare provider, provided such prescription drug is a covered prescription drug under such policy or contract.

(4) This section shall not be construed to prevent:

(A) A health plan issuer or utilization review organization from requiring a patient to try an AB-Rated generic equivalent prior to providing coverage for the equivalent branded prescription drug.

(B) A health care provider from prescribing a prescription drug that is determined to be medically appropriate.

## **ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.**

### **§33-16-3y. Step Therapy.**

(a) Definitions. — As used in this article:

(1) "Health benefit plan" means a policy, contract, certificate or agreement entered into, offered or issued by a health plan issuer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(2) "Health plan issuer" or "issuer" means an entity required to be licensed under this chapter that contracts, or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services under a health benefit plan, including accident and sickness insurers, nonprofit hospital service corporations, medical service corporations and dental service organizations, prepaid limited health service organizations, health maintenance organizations, preferred provider organizations, provider sponsored network and government payers, including but not limited to Medicaid, Medicare and the public employees insurance agency and any pharmacy benefit manager that administers a fully-funded or self-funded plan.

(3) "Step therapy protocol" means a protocol or program that establishes the specific sequence in which prescription drugs for a specified medical condition, and medically appropriate for a

particular patient, are covered by a health plan issuer or health benefit plan.

(4) “Step therapy override determination” means a determination as to whether a step therapy protocol should apply in a particular situation, or whether the step therapy protocol should be overridden in favor of immediate coverage of the health care provider’s selected prescription drug. This determination is based on a review of the patient’s or prescriber’s request for an override, along with supporting rationale and documentation.

(5) “Utilization review organization” means an entity that conducts utilization review, other than a health plan issuer performing utilization review for its own health benefit plan.

(b) *Application of article.* — A health benefit plan that includes prescription drug benefits, and which utilizes step therapy protocols, and which is issued for delivery, delivered, renewed, or otherwise contracted in this state on or after January 1, 2017, shall comply with the provisions of this article.

(c) *Step therapy protocol exceptions.* —

(1) When coverage of a prescription drug for the treatment of any medical condition is restricted for use by health plan issuer or utilization review organization through the use of a step therapy protocol, the patient and prescribing practitioner shall have access to a clear and convenient process to request a step therapy exception determination. The process shall be made easily accessible on the health plan issuer’s or utilization review organization’s website. The health plan issuer or utilization review organization must provide a prescription drug for treatment of the medical condition at least until the step therapy exception determination is made.

(2) A step therapy override determination request shall be expeditiously granted if:

(A) The required prescription drug is contraindicated or will likely cause an adverse reaction by or physical or mental harm to the patient.

(B) The required prescription drug is expected to be ineffective based on the known relevant physical or mental characteristics of the patient and the known characteristics of the prescription drug regimen.

(C) The patient has tried the required prescription drug while under their current or a previous health insurance or health benefit plan, or another prescription drug in the same pharmacologic class or with the same mechanism of action and such prescription drug was discontinued due to a lack of efficacy or effectiveness, diminished effect, or an adverse event.

(D) The required prescription drug is not in the best interest of the patient, based upon medical appropriateness.

(E) The patient is stable on a prescription drug selected by their health care provider for the medical condition under consideration.

(3) Upon the granting of a step therapy override determination, the health plan issuer or utilization review organization shall authorize coverage for the prescription drug prescribed by the patient's treating healthcare provider, provided such prescription drug is a covered prescription drug under such policy or contract.

(4) This section shall not be construed to prevent:

(A) A health plan issuer or utilization review organization from requiring a patient to try an AB-Rated generic equivalent prior to providing coverage for the equivalent branded prescription drug.

(B) A health care provider from prescribing a prescription drug that is determined to be medically appropriate.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS,  
MEDICAL SERVICE CORPORATIONS,  
DENTAL SERVICE CORPORATIONS AND  
HEALTH SERVICE CORPORATIONS.**

**§33-24-7n. Step Therapy.**

(a) Definitions. — As used in this article:

(1) “Health benefit plan” means a policy, contract, certificate or agreement entered into, offered or issued by a health plan issuer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(2) “Health plan issuer” or “issuer” means an entity required to be licensed under this chapter that contracts, or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services under a health benefit plan, including accident and sickness insurers, nonprofit hospital service corporations, medical service corporations and dental service organizations, prepaid limited health service organizations, health maintenance organizations, preferred provider organizations, provider sponsored network and government payers, including but not limited to Medicaid, Medicare and the public employees insurance agency and any pharmacy benefit manager that administers a fully-funded or self-funded plan.

(3) “Step therapy protocol” means a protocol or program that establishes the specific sequence in which prescription drugs for a specified medical condition, and medically appropriate for a particular patient, are covered by a health plan issuer or health benefit plan.

(4) “Step therapy override determination” means a determination as to whether a step therapy protocol should apply in a particular situation, or whether the step therapy protocol should be overridden in favor of immediate coverage of the health care provider’s selected prescription drug. This determination is based on a review of the patient’s or prescriber’s request for an override, along with supporting rationale and documentation.

(5) “Utilization review organization” means an entity that conducts utilization review, other than a health plan issuer performing utilization review for its own health benefit plan.

(b) *Application of article.* — A health benefit plan that includes prescription drug benefits, and which utilizes step therapy protocols, and which is issued for delivery, delivered, renewed, or

otherwise contracted in this state on or after January 1, 2017, shall comply with the provisions of this article.

(c) Step therapy protocol exceptions. —

(1) When coverage of a prescription drug for the treatment of any medical condition is restricted for use by health plan issuer or utilization review organization through the use of a step therapy protocol, the patient and prescribing practitioner shall have access to a clear and convenient process to request a step therapy exception determination. The process shall be made easily accessible on the health plan issuer's or utilization review organization's website. The health plan issuer or utilization review organization must provide a prescription drug for treatment of the medical condition at least until the step therapy exception determination is made.

(2) A step therapy override determination request shall be expeditiously granted if:

(A) The required prescription drug is contraindicated or will likely cause an adverse reaction by or physical or mental harm to the patient.

(B) The required prescription drug is expected to be ineffective based on the known relevant physical or mental characteristics of the patient and the known characteristics of the prescription drug regimen.

(C) The patient has tried the required prescription drug while under their current or a previous health insurance or health benefit plan, or another prescription drug in the same pharmacologic class or with the same mechanism of action and such prescription drug was discontinued due to a lack of efficacy or effectiveness, diminished effect, or an adverse event.

(D) The required prescription drug is not in the best interest of the patient, based upon medical appropriateness.

(E) The patient is stable on a prescription drug selected by their health care provider for the medical condition under consideration.

(3) Upon the granting of a step therapy override determination, the health plan issuer or utilization review organization shall authorize coverage for the prescription drug prescribed by the patient's treating healthcare provider, provided such prescription drug is a covered prescription drug under such policy or contract.

(4) This section shall not be construed to prevent:

(A) A health plan issuer or utilization review organization from requiring a patient to try an AB-Rated generic equivalent prior to providing coverage for the equivalent branded prescription drug.

(B) A health care provider from prescribing a prescription drug that is determined to be medically appropriate.

## **ARTICLE 25. HEALTH CARE CORPORATIONS.**

### **§33-25-8k. Step Therapy.**

(a) *Definitions.* — As used in this article:

(1) "Health benefit plan" means a policy, contract, certificate or agreement entered into, offered or issued by a health plan issuer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(2) "Health plan issuer" or "issuer" means an entity required to be licensed under this chapter that contracts, or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services under a health benefit plan, including accident and sickness insurers, nonprofit hospital service corporations, medical service corporations and dental service organizations, prepaid limited health service organizations, health maintenance organizations, preferred provider organizations, provider sponsored network and government payers, including but not limited to Medicaid, Medicare and the public employees insurance agency, and any pharmacy benefit manager that administers a fully-funded or self-funded plan.

(3) "Step therapy protocol" means a protocol or program that establishes the specific sequence in which prescription drugs for a specified medical condition, and medically appropriate for a

particular patient, are covered by a health plan issuer or health benefit plan.

(4) “Step therapy override determination” means a determination as to whether a step therapy protocol should apply in a particular situation, or whether the step therapy protocol should be overridden in favor of immediate coverage of the health care provider’s selected prescription drug. This determination is based on a review of the patient’s or prescriber’s request for an override, along with supporting rationale and documentation.

(5) “Utilization review organization” means an entity that conducts utilization review, other than a health plan issuer performing utilization review for its own health benefit plan.

(b) *Application of article.* — A health benefit plan that includes prescription drug benefits, and which utilizes step therapy protocols, and which is issued for delivery, delivered, renewed, or otherwise contracted in this state on or after January 1, 2017, shall comply with the provisions of this article.

(c) *Step therapy protocol exceptions.* —

(1) When coverage of a prescription drug for the treatment of any medical condition is restricted for use by health plan issuer or utilization review organization through the use of a step therapy protocol, the patient and prescribing practitioner shall have access to a clear and convenient process to request a step therapy exception determination. The process shall be made easily accessible on the health plan issuer’s or utilization review organization’s website. The health plan issuer or utilization review organization must provide a prescription drug for treatment of the medical condition at least until the step therapy exception determination is made.

(2) A step therapy override determination request shall be expeditiously granted if:

(A) The required prescription drug is contraindicated or will likely cause an adverse reaction by or physical or mental harm to the patient.

(B) The required prescription drug is expected to be ineffective based on the known relevant physical or mental characteristics of the patient and the known characteristics of the prescription drug regimen.

(C) The patient has tried the required prescription drug while under their current or a previous health insurance or health benefit plan, or another prescription drug in the same pharmacologic class or with the same mechanism of action and such prescription drug was discontinued due to a lack of efficacy or effectiveness, diminished effect, or an adverse event.

(D) The required prescription drug is not in the best interest of the patient, based upon medical appropriateness.

(E) The patient is stable on a prescription drug selected by their health care provider for the medical condition under consideration.

(3) Upon the granting of a step therapy override determination, the health plan issuer or utilization review organization shall authorize coverage for the prescription drug prescribed by the patient's treating healthcare provider, provided such prescription drug is a covered prescription drug under such policy or contract.

(4) This section shall not be construed to prevent:

(A) A health plan issuer or utilization review organization from requiring a patient to try an AB-Rated generic equivalent prior to providing coverage for the equivalent branded prescription drug.

(B) A health care provider from prescribing a prescription drug that is determined to be medically appropriate.

## **ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.**

### **§33-25A-8m. Step Therapy.**

(a) Definitions. — As used in this article:

(1) "Health benefit plan" means a policy, contract, certificate or agreement entered into, offered or issued by a health plan issuer

to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(2) “Health plan issuer” or “issuer” means an entity required to be licensed under this chapter that contracts, or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services under a health benefit plan, including accident and sickness insurers, nonprofit hospital service corporations, medical service corporations and dental service organizations, prepaid limited health service organizations, health maintenance organizations, preferred provider organizations, provider sponsored network and government payers, including but not limited to Medicaid, Medicare and the public employees insurance agency, and any pharmacy benefit manager that administers a fully-funded or self-funded plan.

(3) “Step therapy protocol” means a protocol or program that establishes the specific sequence in which prescription drugs for a specified medical condition, and medically appropriate for a particular patient, are covered by a health plan issuer or health benefit plan.

(4) “Step therapy override determination” means a determination as to whether a step therapy protocol should apply in a particular situation, or whether the step therapy protocol should be overridden in favor of immediate coverage of the health care provider’s selected prescription drug. This determination is based on a review of the patient’s or prescriber’s request for an override, along with supporting rationale and documentation.

(5) “Utilization review organization” means an entity that conducts utilization review, other than a health plan issuer performing utilization review for its own health benefit plan.

(b) *Application of article.* — A health benefit plan that includes prescription drug benefits, and which utilizes step therapy protocols, and which is issued for delivery, delivered, renewed, or otherwise contracted in this state on or after January 1, 2017, shall comply with the provisions of this article.

(c) *Step therapy protocol exceptions.* —

(1) When coverage of a prescription drug for the treatment of any medical condition is restricted for use by health plan issuer or utilization review organization through the use of a step therapy protocol, the patient and prescribing practitioner shall have access to a clear and convenient process to request a step therapy exception determination. The process shall be made easily accessible on the health plan issuer's or utilization review organization's website. The health plan issuer or utilization review organization must provide a prescription drug for treatment of the medical condition at least until the step therapy exception determination is made.

(2) A step therapy override determination request shall be expeditiously granted if:

(A) The required prescription drug is contraindicated or will likely cause an adverse reaction by or physical or mental harm to the patient.

(B) The required prescription drug is expected to be ineffective based on the known relevant physical or mental characteristics of the patient and the known characteristics of the prescription drug regimen.

(C) The patient has tried the required prescription drug while under their current or a previous health insurance or health benefit plan, or another prescription drug in the same pharmacologic class or with the same mechanism of action and such prescription drug was discontinued due to a lack of efficacy or effectiveness, diminished effect, or an adverse event.

(D) The required prescription drug is not in the best interest of the patient, based upon medical appropriateness.

(E) The patient is stable on a prescription drug selected by their health care provider for the medical condition under consideration.

(3) Upon the granting of a step therapy override determination, the health plan issuer or utilization review organization shall authorize coverage for the prescription drug prescribed by the patient's treating healthcare provider, provided such prescription drug is a covered prescription drug under such policy or contract.

(4) This section shall not be construed to prevent:

(A) A health plan issuer or utilization review organization from requiring a patient to try an AB-Rated generic equivalent prior to providing coverage for the equivalent branded prescription drug.

(B) A health care provider from prescribing a prescription drug that is determined to be medically appropriate.

The bill (Eng. Com. Sub. for H. B. 4040), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4053**, Department of Environmental Protection, Air Quality, rule relating to the control of annual nitrogen oxide emissions.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

**ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL PROTECTION TO PROMULGATE LEGISLATIVE RULES AND REPEAL OF UNAUTHORIZED AND OBSOLETE LEGISLATIVE RULES OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION.**

**§64-3-1. Department of Environmental Protection.**

(a) The legislative rule effective on July 7, 1993, authorized under the authority of section five, article twenty, chapter sixteen of this code, relating to the Department of Environmental Protection (requiring the submission of emission statements for volatile organic compound emissions and oxides, 45 CSR 29), is repealed.

(b) The legislative rule effective on July 1, 1993, authorized under the authority of section one, article one, chapter twenty-two-b of this code, relating to the Department of Environmental Protection (bona fide future use, 38 CSR 21), is repealed.

(c) The legislative rule effective on July 1, 1993, authorized under the authority of section thirteen, article one, chapter twenty-two of this code, relating to the Department of Environmental Protection (abandoned wells, 38 CSR 22), is repealed.

(d) The legislative rule effective on July 1, 2008, authorized under the authority of section four, article twenty-five, chapter twenty-two of this code, relating to the Department of Environmental Protection (Environmental Excellence Program, 60 CSR 8), is repealed.

(e) The legislative rule effective on June 12, 1987, authorized under the authority of section three, article one, chapter twenty-two of this code, relating to the Department of Environmental Protection (oil and gas operations – solid waste, 35 CSR 2), is repealed.

(f) The legislative rule effective on May 1, 2000, authorized under the authority of section five-a, article eleven, chapter twenty of this code, relating to the Department of Environmental Protection (Recycling Assistance Fund Grant Program, 58 CSR 5), is repealed.

(g) The legislative rule effective on June 1, 1994, authorized under the authority of section six, article five, chapter twenty-two-c of this code, relating to the Department of Environmental Protection (commercial hazardous waste management facility siting fees, 33 CSR 21), is repealed.

(h) The legislative rule effective on April 25, 1984, authorized under the authority of article eighteen, chapter twenty-two of this code, relating to the Department of Environmental Protection (groundwater protection standards, 33 CSR 23), is repealed.

(i) The legislative rule effective on July 1, 1999, authorized under the authority of section six, article seventeen, chapter twenty-

two of this code, relating to the Department of Environmental Protection (Underground Storage Tank Insurance Trust Fund, 33 CSR 32), is repealed.

(j) The legislative rule effective on June 1, 1996, authorized under the authority of section one, article eighteen, chapter twenty-two of this code, relating to the Department of Environmental Protection (hazardous waste management, 47 CSR 35), is repealed.

(k) The legislative rule effective on June 2, 1996, authorized under the authority of section five, article fifteen, chapter twenty-two of this code, relating to the Department of Environmental Protection (solid waste management, 47 CSR 38), is repealed.

(l) The legislative rule effective on June 2, 1996, authorized under the authority of section three, article one, chapter twenty-two of this code, relating to the Department of Environmental Protection (waste tire management, 47 CSR 38G), is repealed.

(m) The legislative rule effective on May 1, 1996, authorized under the authority of section twenty, article fifteen, chapter twenty-two of this code, relating to the Department of Environmental Protection (sewage sludge management, 47 CSR 38D), is repealed.

(n) The legislative rule effective on April 14, 1997, authorized under the authority of section five, article five-g, chapter twenty of this code, relating to the Department of Environmental Protection (Hazardous Waste Emergency Response Fund regulations, 47 CSR 40B), is repealed.

(o) The interpretive rule effective on November 20, 2014, authorized under the authority of section twenty-three, article thirty, chapter twenty-two of this code, relating to the Department of Environmental Protection (initial inspection, certification and spill prevention response plan requirements, 47 CSR 62), is repealed.

(p) The legislative rule effective on July 1, 1997, authorized under the authority of section three, article one, chapter twenty-two of this code, relating to the Department of Environmental

Protection (Office of the Environmental Advocate, 60 CSR 1), is repealed.

(q) The legislative rule effective on June 13, 1985, authorized under the authority of article six, chapter twenty of this code, relating to the Department of Environmental Protection (coal refuse, 38 CSR 2B), is repealed.

(r) The procedural rule effective on May 16, 2005, authorized under the authority of section six, article one, chapter twenty-two of this code, relating to the Department of Environmental Protection (administrative procedures and civil administrative penalty assessment – Water Resources Protection Act, 60 CSR 6), is repealed.

(s) The procedural rule effective on January 30, 1983, authorized under the authority of section one, article three, chapter twenty-two-a of this code, relating to the Department of Environmental Protection (procedures and practice before the Department of Energy, 38 CSR 1), is repealed.

(t) The legislative rule filed in the State Register on July 24, 2015, authorized under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protection, Air Quality (control of annual nitrogen oxide emissions, 45 CSR 39), is authorized.

(u) The legislative rule filed in the State Register on July 24, 2015, authorized under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protection, Air Quality (standards of performance for new stationary sources, 45 CSR 16), is authorized.

(v) The legislative rule filed in the State Register on July 24, 2015, authorized under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protection, Air Quality (control of air pollution from combustion of solid waste, 45 CSR 18), is authorized.

(w) The legislative rule filed in the State Register on July 24, 2015, authorized under the authority of section four, article five,

chapter twenty-two, of this code, relating to the Department of Environmental Protection, Air Quality (control of air pollution from hazardous waste treatment, storage and disposal facilities, 45 CSR 25), is authorized.

(x) The legislative rule filed in the State Register on July 24, 2015, authorized under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protection, Air Quality (emission standards for hazardous air pollutants, 45 CSR 34), is authorized.

(y) The legislative rule filed in the State Register on July 24, 2015, authorized under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protection, Air Quality (control of ozone season nitrogen oxides emissions, 45 CSR 40), is authorized.

(z) The legislative rule filed in the State Register on July 24, 2015, authorized under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protection, Air Quality (control of annual sulfur dioxide emissions, 45 CSR 41), is authorized.

(aa) The legislative rule filed in the State Register on July 27, 2015, authorized under the authority of section thirteen, article three, chapter twenty-two, of this code, relating to the Department of Environmental Protection, Division of Mining and Reclamation (surface mining reclamation, 38 CSR 2), is authorized with the following amendments set forth below:

On page 48, subdivision 3.27, after the word “ongoing” by inserting the following: “Once an operation has received a waiver of the renewal requirement, it is exempt from the restriction contained in paragraph 11.4.a.2 of this rule regarding changing from full permit bonding to incremental bonding, and the operation may submit a bonding revision to the Secretary for approval.”

And,

On page 135, paragraph 11.4.a.2. after the words “terms of the permit” by adding the following proviso: “*Provided, That operations that have received a waiver of the renewal requirement are exempt, and the operation may submit a bonding revision to the Secretary for approval.*”

(bb) The legislative rule filed in the State Register on July 27, 2015, authorized under the authority of section twenty-two, article eleven, chapter twenty-two, of this code, relating to the Department of Environmental Protection, Water and Waste Management (administrative proceedings and civil penalty assessment, 47 CSR 30B), is authorized.

(cc) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section five, article thirty, chapter twenty-two, of this code, relating to the Department of Environmental Protection, Water and Waste Management (above ground storage tank fee assessments, 47 CSR 64), is authorized.

(dd) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section five, article thirty, chapter twenty-two, of this code, relating to the Department of Environmental Protection, Department of Environmental Protection, Water and Waste Management (above ground storage tank administrative proceedings and civil penalty assessment, 47 CSR 65), is authorized.

(ee) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section four, article eleven, chapter twenty-two, of this code, modified by the Department of Environmental Protection, Water and Waste Management to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on November 24, 2015, relating to the Department of Environmental Protection, Water and Waste Management (requirements governing water quality standards, 47 CSR 2), is authorized with the following amendments set forth below:

On page 46, in the column labeled “parameter”, immediately following “8.27.1 Selenium (ug/g)” by inserting the following: “g (based on instantaneous measurement)”

8.0 ug/g Fish Whole-body Concentration or

11.3 ug/g Fish muscle (skinless, boneless filet)”;

On page 46, in the column labeled “parameter”, immediately following “8.27.2 Selenium (ug/g) Fish Egg/Ovary Concentration<sup>h</sup>” by inserting the following: “(based on instantaneous measurement)”

On page 47, in the columns labeled “Chron<sup>2</sup>” by inserting the following in each of the two vacant spaces: “X”;

On page 51, note g., after the words “concentration when” by striking the words “both fish tissue and”;

On page 51, note g, immediately following the words “water concentrations” by inserting the following: “and either whole body or fish muscle (skinless, boneless filet)”;

On page 51, note h, immediately following the word “any” by inserting the following: “fish”;

And,

On page 51, note h, immediately following the word “whole-body” by inserting the following: “fish muscle (skinless, boneless filet)”;

(ff) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section five, article thirty, chapter twenty-two, of this code, modified by the Department of Environmental Protection, Water and Waste Management to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on November 24, 2015, relating to the Department of Environmental Protection, Water and Waste Management (above ground storage tanks, 47 CSR 63), is authorized with the following amendments set forth below:

On page one, paragraph 1.5.a.2., after the word “equipment;” by striking out the word “and”;

On page one, paragraph 1.5.a.3., after the word “motors”, by changing the period to a semicolon;

On page one, after paragraph 1.5.a.3., by adding the following new paragraphs:

“1.5.a.4. Tanks containing blasting agents or explosives as defined in 199 CSR 1; and

1.5.a.5. Aboveground storage tanks that contain water treatment chemicals used for maintaining compliance with NPDES permit effluent limits in treatment systems that are located at facilities subject to either the Groundwater Protection Rules for Coal Mining Operations (38 CSR 2F) or a Coal Mining NPDES permit issued pursuant to 47 CSR 30 are not Level 1 tanks for the purpose of this rule unless the tank is located within a zone of critical concern.”

And,

On page forty-one, after paragraph 8.2.e.4., by adding the following new subdivision:

“8.2.f. For any new regulated AST to be constructed in karst terrain, which are areas generally underlain by limestone or dolomite, in which the topography is formed chiefly by the dissolving of rock and which may be characterized by sinkholes, sinking streams, closed depressions, subterranean drainage and caves, as such areas are identified, mapped and published by the West Virginia Geological and Economic Survey, the tank owner must submit to the Secretary documentation of the new construction design criteria and engineering specifications to indicate that surface or subsurface conditions will not result in excessive settling or unstable support of the proposed regulated AST, as approved by a professional engineering or an individual certified by API or STI to perform installations or a person holding certification under another program.”

(gg) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section six, article six-a, chapter twenty-two, of this code, modified by the Department of Environmental Protection, Oil and Gas to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on November 23, 2015 relating to the Department of Environmental Protection, Oil and Gas (horizontal well development, 35 CSR 8), is authorized.

#### **§64-12-2. Commercial Hazardous Waste Management Facility Siting Board.**

The legislative rule effective on May 19, 1994, authorized under the authority of section three, article ten, chapter twenty of this code, relating to the Commercial Hazardous Waste Management Facility Siting Board (certification requirements, 57 CSR 1), is repealed.

#### **§64-12-3. Environmental Quality Board.**

(a) The legislative rule effective on June 30, 2005, authorized under the authority of section four, article three, chapter twenty-two-b of this code, relating to the Environmental Quality Board (requirements governing water quality standards, 46 CSR 1), is repealed.

(b) The procedural rule effective on February 19, 1996, authorized under the authority of section three, article three, chapter twenty-nine-a of this code, relating to the Environmental Quality Board (requests for information, 46 CSR 8), is repealed.

(c) The procedural rule effective on July 27, 1984, authorized under the authority of section three, article one, chapter twenty-two-b of this code, relating to the Environmental Quality Board (rules governing the notice of open meetings under the Open Governments Proceedings Act, 46 CSR 5), is repealed.

#### **§64-12-4. Miner Training, Education and Certification Board.**

(a) The legislative rule effective on June 1, 1992, authorized under the authority of section six, article nine, chapter twenty-two

of this code, relating to the Miner Training, Education and Certification Board (certification of blasters for surface coal mines and surface areas of underground mines, 48 CSR 5), is repealed.

(b) The legislative rule effective on July 1, 1993, authorized under the authority of section six, article nine, chapter twenty-nine of this code, relating to the Miner Training, Education and Certification Board (standards for certification of blasters for surface coal mines and surface areas of underground mines, 56 CSR 5), is repealed.

(c) The procedural rule effective on September 11, 1983, authorized under the authority of section eight, article three, chapter twenty-nine-a of this code, relating to the Miner Training, Education and Certification Board (temporary suspension of certificates issued to persons pending full hearing before the board of appeals, 48 CSR 16), is repealed.

#### **§64-12-5. Water Resources Board.**

(a) The legislative rule effective on August 25, 1993, authorized under the authority of article five-a, chapter twenty of this code, relating to the Water Resources Board (State National Pollutant Discharge Elimination System Program, 46 CSR 2), is repealed.

(b) The legislative rule effective on July 1, 1987, authorized under the authority of article five-a, chapter twenty of this code, relating to the Water Resources Board (requirements governing the State National Pollutant Discharge Elimination System, 46 CSR 3), is repealed.

#### **§64-12-6. Air Quality Board.**

The procedural rule effective on February 2, 1996, authorized under the authority of section three, article three, chapter twenty-nine-a of this code, relating to the Air Quality Board (requests for information, 52 CSR 2), is repealed.

**§64-12-7. Oil and Gas Inspectors Examining Board.**

The procedural rule effective on January 18, 2009, authorized under the authority of section three, article seven, chapter twenty-two-c of this code, relating to the Oil and Gas Inspectors Examining Board (matters pertaining to the rules and regulations dealing with the Oil and Gas Inspectors Examining Board, 40 CSR 1), is repealed.

The bill (Eng. Com. Sub. for H. B. 4053), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4060**, Relating generally to the promulgation of administrative rules by the Department of Military Affairs and Public Safety.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That article 6, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF  
MILITARY AFFAIRS AND PUBLIC  
SAFETY TO PROMULGATE  
LEGISLATIVE RULES AND REPEAL OF  
UNAUTHORIZED AND OBSOLETE  
LEGISLATIVE RULES RELATING TO  
THE DEPARTMENT OF MILITARY  
AFFAIRS AND PUBLIC SAFETY.**

**§64-6-1. Division of Corrections.**

(a) The legislative rule effective on May 22, 1995, authorized under the authority of section thirteen, article one, chapter twenty-

five of this code, relating to the Division of Corrections (furlough program for adult inmates, 90 CSR 3), is repealed.

(b) The legislative rule effective on May 22, 1995, authorized under the authority of section twenty-one, article one, chapter twenty-five of this code, relating to the Division of Corrections (employment of displaced correctional employees, 90 CSR 4), is repealed.

(c) The legislative rule effective on April 1, 2007, authorized under the authority of section two, article thirteen, chapter sixty-two of this code, relating to the Division of Corrections (parole supervision, 90 CSR 2), is repealed.

(d) The legislative rule effective on April 5, 2010, authorized under the authority of section seventeen, article one, chapter twenty-five of this code, relating to the Division of Corrections (recording of inmate phone calls, 90 CSR 5), is repealed.

(e) The legislative rule effective on April 5, 2010, authorized under the authority of section eighteen, article one, chapter twenty-five of this code, relating to the Division of Corrections (monitoring inmate mail, 90 CSR 7), is repealed.

(f) The interpretive rule effective on March 8, 1999, authorized under the authority of section twenty-one, article one, chapter twenty-five of this code, relating to the Division of Corrections (charges assessed against inmates for services provided by state medical co-payment, 90 CSR 6), is repealed.

(g) The procedural rule effective on January 1, 2014, authorized under the authority of section two, article one-a, chapter twenty-five of this code, relating to the Division of Corrections (inmate grievance procedures, 90 CSR 9), is repealed.

#### **§64-6-2. Jails and Prison Standards Commission.**

(a) The legislative rule effective on November 2, 1993, authorized under the authority of section nine, article twenty, chapter thirty-one of this code, relating to the Jails and Prison Standards Commission (minimum standards for construction,

operation and management of holding facilities, 95 CSR 3), is repealed.

**§64-6-3. State Fire Commission.**

(a) The legislative rule filed in the State Register on June 29, 2015, authorized under the authority of section five, article three, chapter twenty-nine, of this code, relating to the State Fire Commission (Fire Code, 87 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on June 29, 2015, authorized under the authority of section five-b, article three, chapter twenty-nine of this code, modified by the State Fire Commission to meet the objections of the Legislative Rule Committee and refiled in the State Register on December 10, 2015, relating to the State Fire Commission (State Building Code, 87 CSR 4), is authorized with the following amendment:

On page 3, subparagraph 4.1.e.1., in the first sentence before the words “If the owner of a premises” and adding the words “Unless authorized by W.Va. Code §8-12-16, or absent the express consent of the owner.”.

(c) The legislative rule filed in the State Register on June 29, 2015, authorized under the authority of section five-b, article three, chapter twenty-nine of this code, modified by the State Fire Commission to meet the objections of the Legislative Rule Committee and refiled in the State Register on December 10, 2015, relating to the State Fire Commission (Standards for the Certification and Continuing Education of Municipal, County and other Public Sector Building Code Officials, Inspectors and Plans Examiners, 87 CSR 7), is authorized.

The bill (Eng. Com. Sub. for H. B. 4060), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4168**, Creating a special motor vehicle collector license plate.

On second reading, coming up in regular order, was read a second time.

The following amendments to the bill, from the Committee on Transportation and Infrastructure, were reported by the Clerk, considered simultaneously, and adopted:

On page two, section two, line ten, after the word “article” by striking out the words “motor vehicle”;

On page two, section three, line five, by striking out the words “vehicle has been owned by the collector for thirty days or less, or the”;

And,

On page two, section three, lines ten through twelve, by striking out all of subsection (c).

On motion of Senator Maynard, the following amendments to the bill (Eng. Com. Sub. for H. B. 4168) were next reported by the Clerk, considered simultaneously, and adopted:

On page two, section two, after line eighteen, by adding thereto a new subsection, designated subsection (e), to read as follows:

(e) Misuse of a motor vehicle collector plate, by intentionally or fraudulently displaying such plate in a manner inconsistent with the provisions of this article, shall be a misdemeanor punishable by a fine of not more than \$50 for a first offense and not more than \$100 for each additional offense. A motor vehicle collector plate may not be used by a car dealer or broker as defined in sections one, article six, chapter seventeen-a of this code.;

And,

On page two, after section three, by adding thereto a new section, designated section four, to read as follows:

#### **§17A-6F-4. Rulemaking.**

The commissioner shall promulgate emergency legislative rules and legislative rules in accordance with the provisions of chapter twenty-nine-a of this code as may be necessary or convenient for the carrying out of the provisions of this article.

Notwithstanding any other provisions of this code to the contrary, upon the enactment of this article in the 2016 Regular Session, the provision of this article shall govern motor vehicle collector plates: *Provided*, That the commissioner may amend existing legislative rules to carry out of the provisions of this article.

The bill (Eng. Com. Sub. for H. B. 4168), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4174**, Exempting activity at indoor shooting ranges from the prohibition of shooting or discharging a firearm within five hundred feet of any church or dwelling house.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

## **CHAPTER 20. NATURAL RESOURCES.**

### **ARTICLE 2. WILDLIFE RESOURCES.**

#### **§20-2-58. Shooting across road or near building or crowd; penalty.**

(a) In addition to any other prohibitions which may exist by law, it shall be unlawful for any person to shoot or discharge any firearms:

(1) Across or in any public road in this state, at any time;

(2) Within five hundred feet of any school or church; or

(3) Within five hundred feet of any dwelling house: *Provided*, That a person who is a resident of a dwelling house, and his or her authorized guest, may shoot or discharge a firearm in a lawful manner within five hundred feet of the dwelling house where the

person lives, if the firearm is being discharged with the express or implied knowledge and consent of all residents of that dwelling house, and no other dwelling houses are located within five hundred feet of where the firearm is discharged; or

(4) ~~On In or near~~ any state, county or municipal park in areas of which the discharge of firearms is prohibited ~~or other place where persons gather for purposes of pleasure.~~

(b) Any person violating this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined in jail for not more than one hundred days, or both fined and confined.

~~(b)~~ (c) Notwithstanding the provisions of subsection (a) of this section, any person operating a gun repair shop, licensed to do business in the State of West Virginia and duly licensed under applicable federal statutes, may be exempted from the prohibition established by this section and section twelve, article seven, chapter sixty-one of this code for the purpose of test firing a firearm. The director of the Division of Natural Resources shall prescribe such rules as may be necessary to carry out the purposes of the exemption under this section and section twelve, article seven, chapter sixty-one and shall ensure that any person residing in any dwelling home within five hundred feet of such gun repair shop be given an opportunity to protest the granting of such exemption.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### **ARTICLE 6. CRIMES AGAINST THE PEACE.**

#### **§61-6-23. Shooting range; limitations on nuisance actions.**

(a) As used in this section:

(1) “Person” means an individual, proprietorship, partnership, corporation, club or other legal entity;

(2) “Shooting range” or “range” means an area, whether indoor or outdoor, designed and operated for the use of rifles, shotguns,

pistols, silhouettes, skeet, trap, black powder or any other similar shooting.

(b) Except as provided in this section, a person may not maintain a nuisance action for noise against a shooting range located in the vicinity of that person's property if the range was established as of the date of the person acquiring the property. If there is a substantial change in use of the range or there is a period of shooting inactivity at a range exceeding one year after the person acquires the property, the person may maintain a nuisance action if the action is brought within two years from the beginning of the substantial change in use of the range, or the resumption of shooting activity.

(c) A person who owned property in the vicinity of a shooting range that was established after the person acquired the property may maintain a nuisance action for noise against that range only if the action is brought within ~~four~~ two years after establishment of the range or two years after a substantial change in use of the range or from the time shooting activity is resumed.

(d) ~~If there has been no shooting activity at a range for a period of two years, resumption of shooting is considered establishment of a new range for the purposes of this section. Actions authorized by the provisions of this section are not applicable to indoor shooting ranges the owner or operator of which holds all necessary and required licenses and the shooting range is in compliance with all applicable state, county and municipal laws, rules or ordinances regulating the design and operation of such facilities.~~

The bill (Eng. Com. Sub. for H. B. 4174), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4237**, Supporting and Strengthening Families Act.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk:

By striking out everything after the enacting section and inserting in lieu thereof the following:

**ARTICLE 8. SUPPORTING AND STRENGTHENING FAMILIES ACT.**

**§49-8-1. Legislative findings; statement of legislative purpose.**

(a) The Legislature finds that in certain circumstances where a parent, guardian or legal custodian of a child is temporarily unable to care for the child due to a crisis or other circumstances, a less intrusive alternative to guardianship or the Department of Health and Human Resources taking custody of the child should be available. In such circumstances, a parent, guardian or legal custodian may benefit from the assistance of charitable organizations in their community that assist families by providing safe, temporary care for children and support for families during difficult times.

(b) It is the purpose of this article to ensure that a parent, guardian or legal guardian has the right to provide for the temporary care of their child with the assistance of a qualified nonprofit organization as set forth in this article.

**§49-8-2. Definitions.**

For purposes of this article:

(1) “Child” means an individual under eighteen years of age;

(2) “Qualified nonprofit organization” means a charitable or religious institution that is exempt from federal income taxation under Section 501(a) of the Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code, which assists the parent or legal guardian of a child with the process of providing for the temporary care of a child through the execution of a power of attorney as described in this section. A qualified nonprofit organization shall be required to register with the Department of Health and Human Resources and to file quarterly reports with the Department of Health and Human Resources concerning its child placements.

**§49-8-3. Delegation of care and custody of a child**

(a) The following shall apply only to situations where a parent, guardian or legal custodian of a child provides for the temporary care and custody of a child with the assistance of a qualified nonprofit organization. Nothing in this section shall be interpreted to restrict the rights of parents, guardians or legal custodians providing for the care of children by power of attorney in other contexts.

(b) A parent, guardian or legal custodian of a child may, by a properly executed power of attorney, delegate to a person, for a period not to exceed one year, the care and custody of the child.

(c) A parent, guardian or legal custodian may not delegate:

(1) The power to consent to marriage or adoption of the child;

(2) The performance or inducement of an abortion on or for the child; or

(3) The termination of parental rights to the child.

(d) A delegation of care and custody of a child, under this article, does not change or modify any parental or legal rights, obligations, or authority established by an existing court order, or deprive the parent, guardian or legal custodian of any parental or legal rights, obligations, or authority regarding the custody, visitation, or support of the child.

(e) The parent, guardian or legal custodian of the child may revoke or withdraw this power of attorney at any time. Upon the termination, expiration, or revocation of the power of attorney the child shall be returned to the custody of the parent, guardian or legal custodian within forty-eight hours.

(f) Unless the authority is revoked or withdrawn by the parent, guardian or legal custodian, the designee shall exercise parental or legal authority on a continuous basis without compensation for the duration of the power of attorney.

(g) The care and custody of a child may only be delegated to the extent, and so long as, the parent, guardian or legal custodian retains care and custody. If the rights of the parent, guardian or custodian of the child are terminated, the power of attorney shall be deemed to be revoked. A court that revokes the care and custody rights of a parent, guardian or legal custodian shall notify the person to whom those parental rights has been delegated, and the child may remain with that person until the court shall finalize the subsequent placement of the child: *Provided*, That no period of placement with a person pursuant to the provisions of this article shall be considered as a factor in a custody hearing in which a family member seeks to be awarded custody of the child.

(h) The execution of a power of attorney by a parent, guardian or legal custodian does not, without other evidence, constitute abandonment, abuse or neglect unless the parent, guardian or legal custodian fails to either take custody of the child or execute a new power of attorney after the one year time limit has elapsed: *Provided*, That nothing in this article may be interpreted to prevent the West Virginia Bureau for Children and Families or law enforcement from investigating allegations of abuse, abandonment, neglect or other mistreatment of a child.

(i) If a parent, guardian or legal custodian of a child wishes to utilize the power of attorney authorized by this section to delegate any powers regarding the care and custody of the child to another person, the qualified nonprofit organization shall conduct a criminal history and federal and state background check on the person to whom powers are delegated prior to the execution of the power of attorney. The criminal history and federal and state background check shall be paid for by the qualified nonprofit organization, the parent, guardian or legal custodian, or the parent's designee. Additionally, the qualified nonprofit organization shall train the designee in the rights, duties, and limitations associated with providing care for a child under this section, including the prevention and reporting of suspected child abuse or neglect.

(j) The designee may not move from the address listed on the parental rights form without written approval of the parent, guardian or legal custodian.

(k) Any person who accepts care and custody of a child pursuant to the provisions of this article shall be deemed a person mandated to report suspected abuse and neglect pursuant to the provisions of section eight hundred three, article two, chapter forty-nine of this code.

(l) If a parent, guardian or legal custodian dies or becomes incapacitated, then the provisions of article ten, chapter forty-four of this code shall apply.

(m) Nothing in this section is intended, nor shall anything herein be interpreted, to otherwise restrict the rights of custodial parents or non-custodial parents to temporarily delegate or provide for the care and custody of a child, or to assert their right to request custody, in accordance with other provisions of West Virginia law.

**§49-8-4. Delegation of parental rights form.**

(a) The following statutory form of power of attorney to delegate parental or legal custody may be used:

STATE OF WEST VIRGINIA

STATUTORY FORM FOR POWER OF ATTORNEY TO DELEGATE PARENTAL OR LEGAL CUSTODIAN POWERS

(1) "I, \_\_\_\_\_, certify that I am the parent or legal custodian of:

\_\_\_\_\_  
(Full name of minor child)

\_\_\_\_\_  
(Date of birth)

\_\_\_\_\_  
(Full name of minor child)

\_\_\_\_\_  
(Date of birth)

\_\_\_\_\_  
(Full name of minor child)

\_\_\_\_\_  
(Date of birth)

who is/are minor children."

(2) “I designate \_\_\_\_\_ (Full name of designee),

\_\_\_\_\_  
 (Street address, \_\_\_\_\_ city, state and zip code of designee)

\_\_\_\_\_  
(Home phone of designee) (Work phone of designee) as the designee of each minor child named above.”

(3) “I delegate to the designee all of my power and authority regarding the care, custody and property of each minor child named above, including but not limited to the right to enroll the child in school, inspect and obtain copies of education records and other records concerning the child, the right to attend school activities and other functions concerning the child, and the right to give or withhold any consent or waiver with respect to school activities, medical and dental treatment, and any other activity, function or treatment that may concern the child. This delegation does not include the power or authority to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child.”

Or

(4) “I delegate to the designee the following specific powers and responsibilities

(write in): \_\_\_\_\_

(In the event paragraph four is completed paragraph three does not apply).

This delegation does not include the power or authority to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child.”

(5) “This power of attorney is effective for a period not to exceed one year, beginning,

\_\_\_\_\_, \_\_\_\_\_, and ending \_\_\_\_\_, \_\_\_\_\_. I reserve the right to revoke this authority at any time.”

By: \_\_\_\_\_ (Parent/Legal Custodian signature)

(6) “I hereby accept my designation as designee for the minor child/children specified in this power of attorney.

By: \_\_\_\_\_ (Designee signature)

State of \_\_\_\_\_

County of \_\_\_\_\_

ACKNOWLEDGMENT

Before me, the undersigned, a Notary Public, in and for said County and State on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, personally appeared \_\_\_\_\_ (Name of Parent/Legal Custodian) and \_\_\_\_\_ (Name of designee), to me known to be the identical persons who executed this instrument and acknowledged to me that each executed the same as his or her free and voluntary act and deed for the uses and purposes set forth in the instrument.

Witness my hand and official seal the day and year above written.

\_\_\_\_\_  
(Signature of notarial officer)

\_\_\_\_\_  
(Title and Rank)

My commission expires: \_\_\_\_\_”

(b) A power of attorney is legally sufficient under this article if the wording of the form substantially complies with this section, the form is properly completed, and the signatures of the parties are acknowledged.

**§49-8-5. Mandatory disclosures by child investigative personnel.**

During a child protective investigation that does not result in an out-of-home placement, a child protective investigator shall provide information to the parent, guardian or legal custodian about community service programs that provide respite care, voluntary guardianship or other support services for families in crisis.

**§49-8-6. Applicability of licensing and other requirements of childcare facilities.**

(a) A delegation under this article by a parent, guardian or legal custodian is not subject to the requirements of the child care facility licensing statutes or foster care licensing statutes, and does not constitute an out of home child placement under this code.

(b) A qualified nonprofit organization as defined herein shall not be considered a child care center, child placing agency, or child welfare agency as defined in section two hundred six of article one, chapter forty-nine of this Code, unless such organization also pursues these activities in addition to providing services outlined under this section.

On motion of Senator Carmichael, the following amendments to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 4237) were next reported by the Clerk, considered simultaneously, and adopted:

On pages one and two, section two, by striking out all of subdivision (2) and inserting in lieu thereof a new subdivision, designated subdivision (2), to read as follows:

(2) "Qualified nonprofit organization" means a charitable or religious institution that is exempt from federal income taxation under Section 501(a) of the Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code, which assists the parent or legal guardian of a child with the process of providing for the temporary care of a child through the execution of a power of attorney as described in this section.;

And,

On page six, section four, after subsection (b), by adding a new subsection, designated subsection (c), to read as follows:

(c) A copy of each power of attorney executed pursuant to this article shall be retained by the qualified nonprofit organization for a period of three years following the conclusion of the power of attorney. The qualified nonprofit organization shall, upon request, make these records available to the Department of Health and Human Resources.

The question now being on the adoption of the Judiciary committee amendment, as amended, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 4237), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4301**, Relating to a framework for initiating comprehensive transformation of school leadership.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 4307**, Clarifying that a firearm may be carried for self defense in state parks, state forests and state recreational areas.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

## **ARTICLE 2. WILDLIFE RESOURCES.**

**§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts.**

Except as authorized by the director or by law, it is unlawful at any time for any person to:

(1) Shoot at any wild bird or wild animal unless it is plainly visible;

(2) Dig out, cut out, smoke out, or in any manner take or attempt to take any live wild animal or wild bird out of its den or place of refuge;

(3) Use or attempt to use any artificial light or any night vision technology, including image intensification, thermal imaging or active illumination while hunting, locating, attracting, taking, trapping or killing any wild bird or wild animal: *Provided*, That it is lawful to hunt or take coyote, fox, raccoon, opossum or skunk by the use of artificial light or night vision technology. Any person violating this subdivision is guilty of a misdemeanor and, upon conviction thereof, shall for each offense be fined not less than \$100 nor more than \$500, and shall be confined in jail for not less than ten days nor more than one hundred days;

(4) Hunt, take, kill, wound or shoot at wild animals or wild birds from an airplane or other airborne conveyance, a drone or other unmanned aircraft, an automobile or other land conveyance, or from a motor-driven water conveyance;

(5) Use a drone or other unmanned aircraft to hunt, take or kill a wild bird or wild animal, or to use a drone or other unmanned aircraft to drive or herd any wild bird or wild animal for the purposes of hunting, trapping or killing;

(6) Take any beaver or muskrat by any means other than a trap;

(7) Catch, capture, take, hunt or kill by seine, net, bait, trap or snare or like device a bear, wild turkey, ruffed grouse, pheasant or quail;

(8) Intentionally destroy or attempt to destroy the nest or eggs of any wild bird or have in his or her possession the nest or eggs;

(9) Carry an uncased or loaded firearm in the woods of this state or in state parks, state forests, state wildlife management areas or state rail trails with the following permissible exceptions:

(A) A person in possession of a valid license or permit during open firearms hunting season for wild animals and nonmigratory wild birds where hunting is lawful;

(B) A person hunting or taking unprotected species of wild animals, wild birds and migratory wild birds during the open season, in the open fields, open water and open marshes of the state where hunting is lawful;

(C) A person carrying a firearm pursuant to sections six and six-a of this article; ~~or~~

(D) A person carrying a ~~firearm~~ handgun for self-defense who is not prohibited from possessing firearms ~~by section seven, article seven, chapter sixty-one of this code; or~~

(E) A person carrying a rifle or shotgun for self-defense who is not prohibited from possessing firearms under state or federal law: *Provided, That this exception does not apply to an uncased rifle or shotgun carried specifically in state park or state forest recreational facilities and marked trails within state park and/or state forest borders or on state rail trails; *Provided, however, That nothing in this subdivision shall be construed as authorizing any county or municipality to limit the right of any person to possess, transfer, own, carry or transport any firearm or ammunition.**

(10) Have in his or her possession a crossbow with a nocked bolt, or a rifle or shotgun with cartridges that have not been removed or a magazine that has not been detached, in or on any vehicle or conveyance, or its attachments. For the purposes of this section, a rifle or shotgun whose magazine readily detaches is considered unloaded if the magazine is detached and no cartridges remain in the rifle or shotgun itself. Except that between five o'clock post meridian of day one and seven o'clock ante meridian, Eastern Standard Time, of the following day, any unloaded firearm or crossbow may be carried only when in a case or taken apart and

securely wrapped. During the period from July 1 to September 30, inclusive, of each year, the requirements relative to carrying unloaded firearms are permissible only from eight-thirty o'clock post meridian to five o'clock ante meridian, Eastern Standard Time: *Provided*, That the time periods for carrying unloaded and uncased firearms are extended for one hour after the post meridian times and one hour before the ante meridian times established in this subdivision, if a person is transporting or transferring the firearms to or from a hunting site, campsite, home or other abode;

(11) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement by which wildlife may be taken after the hour of five o'clock ante meridian on Sunday on private land without the written consent of the landowner any wild animals or wild birds except when a big game season opens on a Monday, the Sunday prior to that opening day will be closed for any taking of wild animals or birds after five o'clock ante meridian on that Sunday: *Provided*, That traps previously and legally set may be tended after the hour of five o'clock ante meridian on Sunday and the person tending the traps may carry firearms for the purpose of humanely dispatching trapped animals. Any person violating this subdivision is guilty of a misdemeanor and, upon conviction thereof, in addition to any fines that may be imposed by this or other sections of this code, is subject to a \$100 fine;

(12) Hunt, catch, take, kill, injure or pursue a wild animal or wild bird with the use of a ferret;

(13) Buy raw furs, pelts or skins of fur-bearing animals unless licensed to do so;

(14) Catch, take, kill or attempt to catch, take or kill any fish by any means other than by rod, line and hooks with natural or artificial lures: *Provided*, That snaring of any species of suckers, carp, fallfish and creek chubs is lawful;

(15) Employ, hire, induce or persuade, with money, things of value or by any means, any person to hunt, take, catch or kill any wild animal or wild bird except those species in which there is no closed season; or to fish for, catch, take or kill any fish, amphibian

or aquatic life that is protected by rule, or the sale of which is otherwise prohibited;

(16) Hunt, catch, take, kill, capture, pursue, transport, possess or use any migratory game or nongame birds except as permitted by the Migratory Bird Treaty Act, 16 U. S. C. §703, *et seq.*, and its regulations;

(17) Kill, take, catch, sell, transport or have in his or her possession, living or dead, any wild bird other than a game bird including the plumage, skin or body of any protected bird, irrespective of whether the bird was captured in or out of this state, except the English or European sparrow (*Passer domesticus*), starling (*Sturnus vulgaris*) and cowbird (*Molothrus ater*), which may be killed at any time;

(18) Use dynamite, explosives or any poison in any waters of the state for the purpose of killing or taking fish. Any person violating this subdivision is guilty of a felony and, upon conviction thereof, shall be fined not more than \$500 or imprisoned for not less than six months nor more than three years, or both fined and imprisoned;

(19) Have a bow and gun, or have a gun and any arrow, in the fields or woods at the same time;

(20) Have a crossbow in the woods or fields, or use a crossbow to hunt for, take or attempt to take any wildlife except as otherwise provided in sections five-g and forty-two-w of this article;

(21) Take or attempt to take turkey, bear, elk or deer with any arrow unless the arrow is equipped with a point having at least two sharp cutting edges measuring in excess of three fourths of an inch wide;

(22) Take or attempt to take any wildlife with an arrow having an explosive head or shaft, a poisoned arrow or an arrow which would affect wildlife by any chemical action;

(23) Shoot an arrow across any public highway;

(24) Permit any dog owned or under his or her control to chase, pursue or follow the tracks of any wild animal or wild bird, day or night, between May 1 and August 15: *Provided*, That dogs may be trained on wild animals and wild birds, except deer and wild turkeys, and field trials may be held or conducted on the grounds or lands of the owner, or by his or her bona fide tenant, or upon the grounds or lands of another person with his or her written permission, or on public lands at any time. Nonresidents may not train dogs in this state at any time except during the legal small game hunting season. A person training dogs may not have firearms or other implements in his or her possession during the closed season on wild animals and wild birds;

(25) Conduct or participate in a trial, including a field trial, shoot-to-retrieve field trial, water race or wild hunt: *Provided*, That any person, group of persons, club or organization may hold a trial upon obtaining a permit pursuant to section fifty-six of this article. The person responsible for obtaining the permit shall prepare and keep an accurate record of the names and addresses of all persons participating in the trial and make the records readily available for inspection by any natural resources police officer upon request;

(26) Hunt, catch, take, kill or attempt to hunt, catch, take or kill any wild animal, wild bird or wild fowl except during open seasons;

(27) Hunting on public lands on Sunday after five o'clock ante meridian is prohibited;

(28) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement which wildlife can be taken, on private lands on Sunday after the hour of five o'clock ante meridian: *Provided*, That the provisions of this subdivision do not apply in any county until the county commission of the county holds an election on the question of whether the provisions of this subdivision prohibiting hunting on Sunday shall apply within the county and the voters approve the allowance of hunting on Sunday in the county. The election is determined by a vote of the resident voters of the county in which the hunting on Sunday is proposed to be authorized. The county commission of the county in which Sunday hunting is proposed shall give notice to the public of the election by

publication of the notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for the publication is the county in which the election is to be held. The date of the last publication of the notice shall fall on a date within the period of the fourteen consecutive days next preceding the election.

On the local option election ballot shall be printed the following:

Shall hunting on Sunday be authorized on private lands only with the consent of the land owner in \_\_\_\_\_ County?

Yes

No

(Place a cross mark in the square opposite your choice.)

Any local option election to approve or disapprove of the proposed authorization of Sunday hunting within a county shall be in accordance with procedures adopted by the commission. The local option election may be held in conjunction with a primary or general election or at a special election. Approval shall be by a majority of the voters casting votes on the question of approval or disapproval of Sunday hunting at the election.

If a majority votes against allowing Sunday hunting, an election on the issue may not be held for a period of one hundred four weeks. If a majority votes "yes", an election reconsidering the action may not be held for a period of five years. A local option election may thereafter be held if a written petition of qualified voters residing within the county equal to at least five percent of the number of persons who were registered to vote in the next preceding general election is received by the county commission of the county in which Sunday hunting is authorized. The petition may be in any number of counterparts. The election shall take place at the next primary or general election scheduled more than ninety days following receipt by the county commission of the petition required by this subsection: *Provided*, That the issue may not be placed on the ballot until all statutory notice requirements have

been met. No local law or regulation providing any penalty, disability, restriction, regulation or prohibition of Sunday hunting may be enacted and the provisions of this article preempt all regulations, rules, ordinances and laws of any county or municipality in conflict with this subdivision.

Amendments to this subdivision promulgated during the 2015 regular session of the Legislature shall have no effect upon the results of elections held prior to their enactment; and

(29) Hunt or conduct hunts for a fee when the person is not physically present in the same location as the wildlife being hunted within West Virginia.

The bill (Eng. Com. Sub. for H. B. 4307), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4314**, Prohibiting the sale of powdered or crystalline alcohol.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

On page seven, section thirty-three, line one, by striking out the words “consists solely or primarily of” and inserting in lieu thereof the words “is comprised of ninety percent or more”.

The bill (Eng. Com. Sub. for H. B. 4314), as amended, was then ordered to third reading.

**Eng. House Bill 4315**, Relating to air-ambulance fees for emergency treatment or air transportation.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 4316**, Relating to reimbursement of certification fee for National Board for Professional Teaching Standards certification.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 4317**, Limiting factors in parenting plans.

On second reading, coming up in regular order, was read a second time.

The following amendments to the bill, from the Committee on the Judiciary, were reported by the Clerk, considered simultaneously, and adopted:

On page one, section two hundred nine, line twelve, by striking out the word “report” and inserting in lieu thereof the word “reports”;

And,

On page one, section two hundred nine, line twelve, after the word “abuse” by changing the period to a colon and inserting the following proviso: *Provided*, That a person’s withdrawal of or failure to pursue a report of domestic violence or child abuse shall not alone be sufficient to consider that report fraudulent.

The bill (Eng. Com. Sub. for H. B. 4317), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4323**, Relating to the reporting of emergency incidents by well operators and pipeline operators.

On second reading, coming up in regular order, was read a second time.

The following amendments to the bill, from the Committee on the Judiciary, were reported by the Clerk, considered simultaneously, and adopted:

On page one, section one, line three, by striking out the words “in the Department of Military Affairs and Public Safety”;

On page one, section one, line six, after the word “injury” by inserting the word “or”;

And,

On page two, section one, line nineteen, after the word “farm” by adding a comma and the words “commercial structure”.

The bill (Eng. Com. Sub. for H. B. 4323), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4352**, Relating to the selling of certain state owned health care facilities by the Secretary of the Department of Health and Human Resources.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 4435**, Authorizing the Public Service Commission to approve expedited cost recovery of electric utility coal-fired boiler modernization and improvement projects.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 4461**, Relating to School Building Authority School Major Improvement Fund eligibility.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 4463**, Permitting the practice of telemedicine.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 4537**, Relating to the regulation of chronic pain clinics.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Health and Human Resources, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

## **ARTICLE 5H. CHRONIC PAIN CLINIC LICENSING ACT.**

### **§16-5H-2. Definitions.**

(a) “Chronic pain” means pain that has persisted after reasonable medical efforts have been made to relieve the pain or cure its cause and that has continued, either continuously or episodically, for longer than three continuous months. For purposes of this article, “chronic pain” does not include pain directly associated with a terminal condition. ~~or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition~~

(b) “Director” means the Director of the Office of Health Facility Licensure and Certification within the Office of the Inspector General.

(c) “Owner” means any person, partnership, association or corporation listed as the owner of a pain management clinic on the licensing forms required by this article.

(d) “Pain management clinic” means all privately owned pain management clinics, facilities or offices not otherwise exempted from this article and which meets both of the following criteria:

(1) Where in any month more than fifty percent of patients of the ~~prescribers or dispensers~~ clinic are prescribed or dispensed opioids or other controlled substances specified in rules promulgated pursuant to this article for chronic pain resulting from ~~nonmalignant~~ nonmalignant conditions that are not terminal; and

(2) The facility meets any other identifying criteria established by the secretary by rule.

(e) “Physician” means an individual authorized to practice medicine or surgery or osteopathic medicine or surgery in this state.

(f) “Prescriber” means an individual who is authorized by law to prescribe drugs or drug therapy related devices in the course of the individual's professional practice, including only a medical or osteopathic physician authorized to practice medicine or surgery; a physician assistant or osteopathic physician assistant who holds a certificate to prescribe drugs; or an advanced nurse practitioner who holds a certificate to prescribe.

(g) “Secretary” means the Secretary of the West Virginia Department of Health and Human Resources. The secretary may define in rules any term or phrase used in this article which is not expressly defined.

#### **§16-5H-5. Exemptions.**

(a) The following facilities are not pain management clinics subject to the requirements of this article:

~~(1) A facility that is affiliated with an accredited medical school at which training is provided for medical or osteopathic students, residents or fellows, podiatrists, dentists, nurses, physician assistants, veterinarians or any affiliated facility to the extent that it participates in the provision of the instruction;~~

~~(2) (1) A facility that does not prescribe or dispense controlled substances for the treatment of chronic pain;~~

~~(3) (2) A hospital licensed in this state, a facility located on the campus of a licensed hospital that is owned, operated or controlled by that licensed hospital, and an ambulatory health care facility as defined by section two, article two-d, chapter sixteen of this code that is owned, operated or controlled by a licensed hospital;~~

~~(4) (3) A physician practice owned or controlled, in whole or in part, by a licensed hospital or by an entity that owns or controls, in whole or in part, one or more licensed hospitals;~~

~~(5) (4) A hospice program licensed in this state;~~

~~(6)~~ (5) A nursing home licensed in this state;

~~(7)~~ (6) An ambulatory surgical facility as defined by section two, article two-d, chapter sixteen of this code; and

~~(8)~~ (7) A facility conducting clinical research that may use controlled substances in studies approved by a hospital-based institutional review board or an institutional review board accredited by the association for the accreditation of human research protection programs.

(b) Any facility that is not included in this section may petition to the secretary for an exemption from the requirements of this article. All such petitions are subject to the administrative procedures requirements of chapter twenty-nine-a of this code.

#### **§16-5H-7. Suspension; revocation.**

(a) The secretary may suspend or revoke a license issued pursuant to this article if the provisions of this article or of the rules promulgated pursuant to this article are violated. The secretary may revoke a clinic's license and prohibit all physicians associated with that pain management clinic from practicing at the clinic location based upon an annual or periodic inspection and evaluation.

(b) Before any such license is suspended or revoked, however, written notice shall be given to the licensee, stating the grounds of the complaint and shall provide notice of the right to request a hearing. ~~, and the date, time and place set for the hearing on the complaint, which date shall not be less than thirty days from the time notice is given~~ The notice shall be sent by certified mail to the licensee at the address where the pain management clinic concerned is located. The licensee shall be entitled to be represented by legal counsel at the hearing.

(c) If a license is revoked ~~as herein provided~~ pursuant to this article, a new application for a license ~~shall~~ may be considered by the secretary if, when and after the conditions upon which revocation was based have been corrected, and evidence of this fact has been furnished to the secretary. A new license ~~shall~~ may then be granted after proper inspection has been made and all provisions

of this article and rules promulgated pursuant to this article have been satisfied.

(d) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern any hearing authorized and required by the provisions of this article and the administrative procedure in connection therewith.

(e) Any applicant or licensee who is dissatisfied with the decision of the secretary as a result of the hearing provided in this section may, within thirty days after receiving notice of the decision, appeal the decision to the circuit court of Kanawha County, in term or in vacation, for judicial review of the decision.

(f) The court may affirm, modify or reverse the decision of the secretary and either the applicant or licensee or the secretary may appeal from the court's decision to the Supreme Court of Appeals.

(g) If the license of a pain management clinic is revoked or suspended, the designated physician of the clinic, any other owner of the clinic or the owner or lessor of the clinic property shall cease to operate the facility as a pain management clinic as of the effective date of the suspension or revocation. The owner or lessor of the clinic property is responsible for removing all signs and symbols identifying the premises as a pain management clinic within thirty days.

(h) Upon the effective date of the suspension or revocation, the designated physician of the pain management clinic shall advise the secretary and the Board of Pharmacy of the disposition of all drugs located on the premises. The disposition is subject to the supervision and approval of the secretary. Drugs that are purchased or held by a pain management clinic that is not licensed may be deemed adulterated.

(i) If the license of a pain management clinic is suspended or revoked, any person named in the licensing documents of the clinic, including persons owning or operating the pain management clinic, may not, as an individual or as part of a group, apply to operate

another pain management clinic for five years after the date of suspension or revocation.

(j) The period of suspension for the license of a pain management clinic shall be prescribed by the secretary, but may not exceed one year.

The bill (Eng. Com. Sub. for H. B. 4537), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4554**, Allowing an increase of gross weight limitations on certain roads in Greenbrier County.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Carmichael, and by unanimous consent, the bill was advanced to third reading with the unreported Transportation and Infrastructure committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. Com. Sub. for House Bill 4575**, Creating criminal offenses relating to money laundering.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §61-14-1, §61-14-2, §61-14-3, §61-14-4 and §61-14-5, all to read as follows:

## **ARTICLE 14. MONEY LAUNDERING.**

### **§61-14-1. Definitions.**

As used in this article, unless the context clearly indicates otherwise:

(a) “Conducts” includes, but is not limited to, initiating, concluding, participating in, or assisting in a transaction.

(b) “Criminal activity” means a violation of the felony provisions of section eleven, article forty-one, chapter thirty-three of this code; the felony provisions of chapter sixty-a of this code; the felony provisions of article two of this chapter; the provisions of sections one, two, three, four, five, eleven, twelve, subsection (a), section thirteen, fourteen, eighteen, nineteen, twenty-four, twenty-four-a, twenty-four-b and twenty-four-d, article three of this chapter; the felony provisions of sections article three-c of this chapter; the felony provisions of article three-e of this chapter; the felony provisions of article four of this chapter; the provisions of section eight, article eight of this chapter; the felony provisions of article eight-a of this chapter and the felony provisions of article eight-c of this chapter.

(c) “Cryptocurrency” means digital currency in which encryption techniques are used to regulate the generation of units of currency and verify the transfer of funds, and which operates independently of a central bank.

(d) “Financial institution” means a financial institution as defined in 31 U. S. C. §5312 which institution is located in this state.

(e) “Financial transaction” means a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects commerce, or a transaction involving the transfer of title to any real property, vehicle, vessel, or aircraft, or a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, commerce in any way or degree.

(f) “Gift card” means a card, voucher or certificate which contains or represents a specific amount of money issued by a

retailer or financial institution to be used as an alternative to cash purposes.

(g) “Knowing” means actual knowledge.

(h) “Monetary instruments” means coin or currency of the United States or of any other country, travelers’ checks, personal checks, bank checks, gift cards, prepaid credit cards, money orders, cryptocurrency, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery.

(i) “Petitioner” means any local, county, state, or federal prosecutor or law-enforcement official or agency.

(j) “Proceeds” means property or monetary instrument acquired or derived, directly or indirectly, from, produced through, realized through, or caused by an act or omission and includes property, real or personal, of any kind.

(k) “Property” means anything of value, and includes any interest therein, including any benefit, privilege, claim or right with respect to anything of value, whether real or personal, tangible or intangible, and monetary instruments.

(l) “Transaction” means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition. With respect to a financial institution, “transaction” includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safety deposit box, or any other payment, transfer, or delivery by, through or to a financial institution, by whatever means effected.

### **§61-14-2. Laundering through financial transactions.**

(a) It is unlawful for any person to conduct or attempt to conduct a financial transaction involving the proceeds of criminal activity knowing that the property involved in the financial

transaction represents the proceeds of, or is derived directly or indirectly from the proceeds of, criminal activity:

(1) With the intent to promote the carrying on of the criminal activity; or

(2) Knowing that the transaction is designed in whole or part:

(i) To conceal or disguise the nature, location, source, ownership, or control of the proceeds of the criminal activity; or

(ii) To avoid any transaction reporting requirement imposed by law.

(b) Any person violating subsection (a) of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$25,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

**§61-14-3. Transportation, transmission, or transfer of proceeds.**

(a) It is unlawful for any person to transport, transmit, or transfer, or attempt to transport, transmit or transfer monetary instruments or property involving the proceeds of criminal activity, knowing that the monetary instruments or property are the proceeds of some form of criminal activity:

(1) With the intent to promote the carrying on of the criminal activity; or

(2) Knowing that transportation, transmission, or transfer is designed in whole or part:

(i) To conceal or disguise the nature, location, source, ownership, or control of the proceeds of criminal activity; or

(ii) To avoid any transaction reporting requirement imposed by law.

(b) Any person violating subsection (a) of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$25,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

**§61-14-4. Forfeiture.**

(a) Any property or monetary instruments involved in a violation of this article, and any property or monetary instruments traceable to the violation, may be seized and, upon a conviction for a violation of section two or three of this article, forfeited to the State of West Virginia consistent with the procedures and standards of proof set forth in the West Virginia Contraband Forfeiture Act, article seven, chapter sixty-a of this code.

(b) Notwithstanding subsection (a) of this section, the court, as part of sentencing for a violation under this article, may direct the forfeiture to the state of any property or monetary instruments involved in the violation and any property or monetary instruments traceable to the violation.

**§61-14-5. General provisions.**

(a) *Separate offenses.* — Notwithstanding any other provision to the contrary, each transaction, transfer, transportation or transmission in violation of this article constitutes a separate offense.

(b) *Venue.* — An offense under this article may be deemed to have been committed where any element of the offense under this article occurred.

The bill (Eng. Com. Sub. for H. B. 4575), as amended, was then ordered to third reading.

**Eng. House Bill 4578**, Creating a criminal offense of conspiracy to violate the drug laws.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk:

By striking out everything after the enacting section and inserting in lieu thereof the following:

#### **ARTICLE 4. OFFENSES AND PENALTIES.**

##### **§60A-4-414. Conspiracy.**

(a) Any person who conspires with one or more other persons to commit a violation of subdivision (i), subsection (a), section four hundred one, subdivision (1), subsection (b), section four hundred nine or section four hundred eleven of this article shall, if one or more of such persons commit any act in furtherance of the conspiracy, be guilty of a felony and, upon conviction, be fined not less than \$10,000 nor more than \$50,000, or imprisoned in a state correctional facility for a determinate period not to exceed five years, or both fined and imprisoned.

(b) Notwithstanding the provisions of subsection (a) of this section, any person who acts as a co-conspirator in violation of the provisions of subsection (a) of this section and who acts as an organizer, leader, financier or manager of a conspiracy involving three or more co-conspirators shall be guilty of a felony and, upon conviction, be fined not less than \$50,000 nor more than \$100,000 or imprisoned in a state correctional facility for a determinate period not to exceed fifteen years, or both fined and imprisoned.

(c) For purposes of subsection (a) of this section, acts done in furtherance of a conspiracy by a co-conspirator are attributable to co-conspirators, whether or not said co-conspirators had actual knowledge of the act.

(d) Prosecution under the provisions of this section precludes a prosecution for a violation of the provisions of section thirty-one, article ten, chapter sixty-one of this code, based upon the same underlying conduct.

On motion of Senator Kessler, the following amendments to the Judiciary committee amendment to the bill (Eng. H. B. 4578)

were reported by the Clerk, considered simultaneously, and adopted:

On page one, section four hundred fourteen, by striking out all of subsections (a) and (b) and inserting in lieu thereof a new subsection, designated subsection (a), to read as follows:

(a) Any person who conspires with one or more other persons to commit a violation of subdivision (i), subsection (a), section four hundred one, subdivision (1), subsection (b), section four hundred nine or section four hundred eleven of this article and who acts as an organizer, leader, financier or manager of a conspiracy involving three or more co-conspirators shall, if one or more of such persons commit any act in furtherance of the conspiracy, be guilty of a felony and, upon conviction, be fined not less than \$50,000 nor more than \$100,000 or imprisoned in a state correctional facility for a determinate period not to exceed fifteen years, or both fined and imprisoned.;

And,

By relettering the remaining subsections.

The question now being on the adoption of the Judiciary committee amendment to the bill, as amended, the same was put and prevailed.

The bill (Eng. H. B. 4578), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4586**, Ensuring that the interest of protected persons, incarcerated persons and unknown owners are protected in condemnation actions filed by the Division of Highways.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 4594**, Relating to predoctoral psychology internship qualifications.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 4606**, Relating to the recusal of certain public officials from voting for appropriation of moneys to nonprofit entities.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

**ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION;  
POWERS AND DUTIES; DISCLOSURE  
OF FINANCIAL INTEREST BY PUBLIC  
OFFICIALS AND EMPLOYEES;  
APPEARANCES BEFORE PUBLIC  
AGENCIES; CODE OF CONDUCT FOR  
ADMINISTRATIVE LAW JUDGES.**

**§6B-2-5. Ethical standards for elected and appointed officials  
and public employees.**

(a) *Persons subject to section.* — The provisions of this section apply to all elected and appointed public officials and public employees, whether full or part time, in state, county, municipal governments and their respective boards, agencies, departments and commissions and in any other regional or local governmental agency, including county school boards.

(b) *Use of public office for private gain.* — (1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of

public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

(2) Notwithstanding the general prohibition against use of office for private gain, public officials and public employees may use bonus points acquired through participation in frequent traveler programs while traveling on official government business: *Provided*, That the official's or employee's participation in such program, or acquisition of such points, does not result in additional costs to the government.

(3) The Legislature, in enacting this subsection, recognizes that there may be certain public officials or public employees who bring to their respective offices or employment their own unique personal prestige which is based upon their intelligence, education, experience, skills and abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige to their office or employment which inures to the benefit of the state and its citizens. Those persons may, in fact, be sought by the state to serve in their office or employment because, through their unusual gifts or traits, they bring stature and recognition to their office or employment and to the state itself. While the office or employment held or to be held by those persons may have its own inherent prestige, it would be unfair to those individuals and against the best interests of the citizens of this state to deny those persons the right to hold public office or to be publicly employed on the grounds that they would, in addition to the emoluments of their office or employment, be in a position to benefit financially from the personal prestige which otherwise inheres to them. Accordingly, the commission is directed, by legislative rule, to establish categories of public officials and public employees, identifying them generally by the office or employment held, and offering persons who fit within those categories the opportunity to apply for an exemption from the application of the provisions of this subsection. Exemptions may be granted by the commission, on a case-by-case basis, when it is shown that: (A) The public office

held or the public employment engaged in is not such that it would ordinarily be available or offered to a substantial number of the citizens of this state; (B) the office held or the employment engaged in is such that it normally or specifically requires a person who possesses personal prestige; and (C) the person's employment contract or letter of appointment provides or anticipates that the person will gain financially from activities which are not a part of his or her office or employment.

(c) *Gifts.* — (1) A public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family: *Provided*, That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position is subordinate to the soliciting official or employee: *Provided, however*, That nothing herein shall prohibit a candidate for public office from soliciting a lawful political contribution. No official or employee may knowingly accept any gift, directly or indirectly, from a lobbyist or from any person whom the official or employee knows or has reason to know:

(A) Is doing or seeking to do business of any kind with his or her agency;

(B) Is engaged in activities which are regulated or controlled by his or her agency; or

(C) Has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his or her official duties.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a public official or public employee may accept a gift described in this subdivision, and there shall be a presumption that the receipt of such gift does not impair the impartiality and independent judgment of the person. This presumption may be rebutted only by direct objective evidence that

the gift did impair the impartiality and independent judgment of the person or that the person knew or had reason to know that the gift was offered with the intent to impair his or her impartiality and independent judgment. The provisions of subdivision (1) of this subsection do not apply to:

(A) Meals and beverages;

(B) Ceremonial gifts or awards which have insignificant monetary value;

(C) Unsolicited gifts of nominal value or trivial items of informational value;

(D) Reasonable expenses for food, travel and lodging of the official or employee for a meeting at which the official or employee participates in a panel or has a speaking engagement;

(E) Gifts of tickets or free admission extended to a public official or public employee to attend charitable, cultural or political events, if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office;

(F) Gifts that are purely private and personal in nature; or

(G) Gifts from relatives by blood or marriage, or a member of the same household.

(3) The commission shall, through legislative rule promulgated pursuant to chapter twenty-nine-a of this code, establish guidelines for the acceptance of a reasonable honorarium by public officials and elected officials. The rule promulgated shall be consistent with this section. Any elected public official may accept an honorarium only when:

(A) That official is a part-time elected public official;

(B) The fee is not related to the official's public position or duties;

(C) The fee is for services provided by the public official that are related to the public official's regular, nonpublic trade, profession, occupation, hobby or avocation; and

(D) The honorarium is not provided in exchange for any promise or action on the part of the public official.

(4) Nothing in this section shall be construed so as to prohibit the giving of a lawful political contribution as defined by law.

(5) The Governor or his or her designee may, in the name of the State of West Virginia, accept and receive gifts from any public or private source. Any gift so obtained shall become the property of the state and shall, within thirty days of the receipt thereof, be registered with the commission and the Division of Culture and History.

(6) Upon prior approval of the Joint Committee on Government and Finance, any member of the Legislature may solicit donations for a regional or national legislative organization conference or other legislative organization function to be held in the state for the purpose of deferring costs to the state for hosting of the conference or function. Legislative organizations are bipartisan regional or national organizations in which the Joint Committee on Government and Finance authorizes payment of dues or other membership fees for the Legislature's participation and which assist this and other state legislatures and their staff through any of the following:

(A) Advancing the effectiveness, independence and integrity of legislatures in the states of the United States;

(B) Fostering interstate cooperation and facilitating information exchange among state legislatures;

(C) Representing the states and their legislatures in the American federal system of government;

(D) Improving the operations and management of state legislatures and the effectiveness of legislators and legislative staff,

and to encourage the practice of high standards of conduct by legislators and legislative staff;

(E) Promoting cooperation between state legislatures in the United States and legislatures in other countries.

The solicitations may only be made in writing. The legislative organization may act as fiscal agent for the conference and receive all donations. In the alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of the Legislature may not be used by the legislative member in conjunction with the fund raising or solicitation effort. The legislative organization for which solicitations are being made shall file with the Joint Committee on Government and Finance and with the Secretary of State for publication in the State Register as provided in article two of chapter twenty-nine-a of the code, copies of letters, brochures and other solicitation documents, along with a complete list of the names and last known addresses of all donors and the amount of donations received. Any solicitation by a legislative member shall contain the following disclaimer:

“This solicitation is endorsed by [name of member]. This endorsement does not imply support of the soliciting organization, nor of the sponsors who may respond to the solicitation. A copy of all solicitations are on file with the West Virginia Legislature’s Joint Committee on Government and Finance, and with the Secretary of State and are available for public review.”

(7) Upon written notice to the commission, any member of the Board of Public Works may solicit donations for a regional or national organization conference or other function related to the office of the member to be held in the state for the purpose of deferring costs to the state for hosting of the conference or function. The solicitations may only be made in writing. The organization may act as fiscal agent for the conference and receive all donations. In the alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of the office of the Board of Public Works member may not be used in conjunction with the fund raising or solicitation effort. The organization for which solicitations are being made shall file with the Joint Committee on

Government and Finance, with the Secretary of State for publication in the State Register as provided in article two of chapter twenty-nine-a of the code and with the commission, copies of letters, brochures and other solicitation documents, along with a complete list of the names and last known addresses of all donors and the amount of donations received. Any solicitation by a member of the Board of Public Works shall contain the following disclaimer: "This solicitation is endorsed by (name of member of Board of Public Works.) This endorsement does not imply support of the soliciting organization, nor of the sponsors who may respond to the solicitation. Copies of all solicitations are on file with the West Virginia Legislature's Joint Committee on Government and Finance, with the West Virginia Secretary of State and with the West Virginia Ethics Commission and are available for public review." Any moneys in excess of those donations needed for the conference or function shall be deposited in the Capitol Dome and Capitol Improvement Fund established in section two, article four of chapter five-a of this code.

(d) *Interests in public contracts.* —

(1) In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code, no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control: *Provided*, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body: *Provided, however*, That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body, or prohibit a part-time appointed public official from entering into a contract which the part-time appointed public official may have direct authority to enter into or over which he or she may have control when the official has not participated in the review or evaluation thereof, has been recused from deciding or evaluating and has been excused from voting on the contract and has fully disclosed the extent of his or her interest in the contract.

(2) In the absence of bribery or a purpose to defraud, an elected or appointed public official or public employee or a member of his or her immediate family or a business with which he or she is associated shall not be considered as having a prohibited financial interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor of the business which is awarded a public contract. A limited interest for the purposes of this subsection is:

(A) An interest which does not exceed \$1,000 in the profits or benefits of the public contract or contracts in a calendar year;

(B) An interest as a creditor of a public employee or official who exercises control over the contract, or a member of his or her immediate family, if the amount is less than \$5,000.

(3) If a public official or employee has an interest in the profits or benefits of a contract, then he or she may not make, participate in making, or in any way attempt to use his office or employment to influence a government decision affecting his or her financial or limited financial interest. Public officials shall also comply with the voting rules prescribed in subsection (j) of this section.

(4) Where the provisions of subdivisions (1) and (2) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make written application to the Ethics Commission for an exemption from subdivisions (1) and (2) of this subsection.

(e) *Confidential information.* — No present or former public official or employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

(f) *Prohibited representation.* — No present or former elected or appointed public official or public employee shall, during or

after his or her public employment or service, represent a client or act in a representative capacity with or without compensation on behalf of any person in a contested case, rate-making proceeding, license or permit application, regulation filing or other particular matter involving a specific party or parties which arose during his or her period of public service or employment and in which he or she personally and substantially participated in a decision-making, advisory or staff support capacity, unless the appropriate government agency, after consultation, consents to such representation. A staff attorney, accountant or other professional employee who has represented a government agency in a particular matter shall not thereafter represent another client in the same or substantially related matter in which that client's interests are materially adverse to the interests of the government agency, without the consent of the government agency: *Provided*, That this prohibition on representation shall not apply when the client was not directly involved in the particular matter in which the professional employee represented the government agency, but was involved only as a member of a class. The provisions of this subsection shall not apply to legislators who were in office and legislative staff who were employed at the time it originally became effective on July 1, 1989, and those who have since become legislators or legislative staff and those who shall serve hereafter as legislators or legislative staff.

(g) *Limitation on practice before a board, agency, commission or department.* — Except as otherwise provided in section three, four or five, article two, chapter eight-a of this code: (1) No elected or appointed public official and no full-time staff attorney or accountant shall, during his or her public service or public employment or for a period of one year after the termination of his or her public service or public employment with a governmental entity authorized to hear contested cases or promulgate or propose rules, appear in a representative capacity before the governmental entity in which he or she serves or served or is or was employed in the following matters:

(A) A contested case involving an administrative sanction, action or refusal to act;

(B) To support or oppose a proposed rule;

(C) To support or contest the issuance or denial of a license or permit;

(D) A rate-making proceeding; and

(E) To influence the expenditure of public funds.

(2) As used in this subsection, “represent” includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person: *Provided*, That nothing contained in this subsection shall prohibit, during any period, a former public official or employee from being retained by or employed to represent, assist or act in a representative capacity on behalf of the public agency by which he or she was employed or in which he or she served. Nothing in this subsection shall be construed to prevent a former public official or employee from representing another state, county, municipal or other governmental entity before the governmental entity in which he or she served or was employed within one year after the termination of his or her employment or service in the entity.

(3) A present or former public official or employee may appear at any time in a representative capacity before the Legislature, a county commission, city or town council or county school board in relation to the consideration of a statute, budget, ordinance, rule, resolution or enactment.

(4) Members and former members of the Legislature and professional employees and former professional employees of the Legislature shall be permitted to appear in a representative capacity on behalf of clients before any governmental agency of the state or of county or municipal governments, including county school boards.

(5) An elected or appointed public official, full-time staff attorney or accountant who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the one year prohibition against appearing in a representative capacity, when the person’s education and

experience is such that the prohibition would, for all practical purposes, deprive the person of the ability to earn a livelihood in this state outside of the governmental agency. The Ethics Commission shall by legislative rule establish general guidelines or standards for granting an exemption or reducing the time period, but shall decide each application on a case-by-case basis.

(h) *Employment by regulated persons and vendors.* — (1) No full-time official or full-time public employee may seek employment with, be employed by, or seek to purchase, sell or lease real or personal property to or from any person who:

(A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding twelve months; or

(B) Has a matter before the agency on which he or she is working or a subordinate is known by him or her to be working.

(C) Is a vendor to the agency where the official serves or public employee is employed and the official or public employee, or a subordinate of the official or public employee, exercises authority or control over a public contract with such vendor, including, but not limited to:

(i) Drafting bid specifications or requests for proposals;

(ii) Recommending selection of the vendor;

(iii) Conducting inspections or investigations;

(iv) Approving the method or manner of payment to the vendor;

(v) Providing legal or technical guidance on the formation, implementation or execution of the contract; or

(vi) Taking other nonministerial action which may affect the financial interests of the vendor.

(2) Within the meaning of this section, the term “employment” includes professional services and other services rendered by the public official or public employee, whether rendered as employee

or as an independent contractor; “seek employment” includes responding to unsolicited offers of employment as well as any direct or indirect contact with a potential employer relating to the availability or conditions of employment in furtherance of obtaining employment; and “subordinate” includes only those agency personnel over whom the public official or public employee has supervisory responsibility.

(3) A full-time public official or full-time public employee who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the prohibition contained in subdivision (1) of this subsection.

(A) The Ethics Commission shall by legislative rule establish general guidelines or standards for granting an exemption, but shall decide each application on a case-by-case basis;

(B) A person adversely affected by the restriction on the purchase of personal property may make such purchase after seeking and obtaining approval from the commission or in good faith reliance upon an official guideline promulgated by the commission, written advisory opinions issued by the commission, or a legislative rule.

(C) The commission may establish exceptions to the personal property purchase restrictions through the adoption of guidelines, advisory opinions or legislative rule.

(4) A full-time public official or full-time public employee may not take personal regulatory action on a matter affecting a person by whom he or she is employed or with whom he or she is seeking employment or has an agreement concerning future employment.

(5) A full-time public official or full-time public employee may not personally participate in a decision, approval, disapproval, recommendation, rendering advice, investigation, inspection or other substantial exercise of nonministerial administrative discretion involving a vendor with whom he or she is seeking employment or has an agreement concerning future employment.

(6) A full-time public official or full-time public employee may not receive private compensation for providing information or services that he or she is required to provide in carrying out his or her public job responsibilities.

(i) *Members of the Legislature required to vote.* — Members of the Legislature who have asked to be excused from voting or who have made inquiry as to whether they should be excused from voting on a particular matter and who are required by the presiding officer of the House of Delegates or Senate of West Virginia to vote under the rules of the particular house shall not be guilty of any violation of ethics under the provisions of this section for a vote so cast.

(j) *Limitations on voting.* —

(1) Public officials, excluding members of the Legislature who are governed by subsection (i) of this section, may not vote on a matter:

(A) In which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest. Business with which they are associated means a business of which the person or an immediate family member is a director, officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or more of the total outstanding stocks of any class.

(B) If a public official is employed by a financial institution and his or her primary responsibilities include consumer and commercial lending, the public official may not vote on a matter which directly affects the financial interests of a customer of the financial institution if the public official is directly involved in approving a loan request from the person or business appearing before the governmental body or if the public official has been directly involved in approving a loan for that person or business within the past twelve months: *Provided*, That this limitation only applies if the total amount of the loan or loans exceeds \$15,000.

(C) A personnel matter involving the public official's spouse or relative;

(D) The appropriations of public moneys or the awarding of a contract to a nonprofit corporation if the public official or an immediate family member is employed by, or an officer or board member of, the nonprofit, whether compensated or not.

~~(H)~~ (2) A public official may vote:

(A) If the public official, his or her spouse, immediate family members or relatives or business with which they are associated are affected as a member of, and to no greater extent than any other member of a profession, occupation, class of persons or class of businesses. A class shall consist of not fewer than five similarly situated persons or businesses; or

(B) If the matter affects a publicly traded company when:

(i) The public official, or dependent family members individually or jointly own less than five percent of the issued stock in the publicly traded company and the value of the stocks individually or jointly owned is less than \$10,000; and

(ii) Prior to casting a vote the public official discloses his or her interest in the publicly traded company.

(3) For a public official's recusal to be effective, it is necessary to excuse him or herself from participating in the discussion and decision-making process by physically removing him or herself from the room during the period, fully disclosing his or her interests, and recusing him or herself from voting on the issue.

*(k) Limitations on participation in licensing and rate-making proceedings.* — No public official or employee may participate within the scope of his or her duties as a public official or employee, except through ministerial functions as defined in section three, article one of this chapter, in any license or rate-making proceeding that directly affects the license or rates of any person, partnership, trust, business trust, corporation or association in which the public official or employee or his or her immediate

family owns or controls more than ten percent. No public official or public employee may participate within the scope of his or her duties as a public official or public employee, except through ministerial functions as defined in section three, article one of this chapter, in any license or rate-making proceeding that directly affects the license or rates of any person to whom the public official or public employee or his or her immediate family, or a partnership, trust, business trust, corporation or association of which the public official or employee, or his or her immediate family, owns or controls more than ten percent, has sold goods or services totaling more than \$1,000 during the preceding year, unless the public official or public employee has filed a written statement acknowledging such sale with the public agency and the statement is entered in any public record of the agency's proceedings. This subsection shall not be construed to require the disclosure of clients of attorneys or of patients or clients of persons licensed pursuant to article three, eight, fourteen, fourteen-a, fifteen, sixteen, twenty, twenty-one or thirty-one, chapter thirty of this code.

(1) *Certain compensation prohibited.* — (1) A public employee may not receive additional compensation from another publicly-funded state, county or municipal office or employment for working the same hours, unless:

(A) The public employee's compensation from one public employer is reduced by the amount of compensation received from the other public employer;

(B) The public employee's compensation from one public employer is reduced on a pro rata basis for any work time missed to perform duties for the other public employer;

(C) The public employee uses earned paid vacation, personal or compensatory time or takes unpaid leave from his or her public employment to perform the duties of another public office or employment; or

(D) A part-time public employee who does not have regularly scheduled work hours or a public employee who is authorized by one public employer to make up, outside of regularly scheduled

work hours, time missed to perform the duties of another public office or employment maintains time records, verified by the public employee and his or her immediate supervisor at least once every pay period, showing the hours that the public employee did, in fact, work for each public employer. The public employer shall submit these time records to the Ethics Commission on a quarterly basis.

(2) This section does not prohibit a retired public official or public employee from receiving compensation from a publicly-funded office or employment in addition to any retirement benefits to which the retired public official or public employee is entitled.

(m) *Certain expenses prohibited.* — No public official or public employee shall knowingly request or accept from any governmental entity compensation or reimbursement for any expenses actually paid by a lobbyist and required by the provisions of this chapter to be reported, or actually paid by any other person.

(n) Any person who is employed as a member of the faculty or staff of a public institution of higher education and who is engaged in teaching, research, consulting or publication activities in his or her field of expertise with public or private entities and thereby derives private benefits from such activities shall be exempt from the prohibitions contained in subsections (b), (c) and (d) of this section when the activity is approved as a part of an employment contract with the governing board of the institution or has been approved by the employee's department supervisor or the president of the institution by which the faculty or staff member is employed.

(o) Except as provided in this section, a person who is a public official or public employee may not solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control. A person who is a public official or public employee may solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control when:

(A) The solicitation is a general solicitation directed to the public at large through the mailing or other means of distribution

of a letter, pamphlet, handbill, circular or other written or printed media; or

(B) The solicitation is limited to the posting of a notice in a communal work area; or

(C) The solicitation is for the sale of property of a kind that the person is not regularly engaged in selling; or

(D) The solicitation is made at the location of a private business owned or operated by the person to which the subordinate public official or public employee has come on his or her own initiative.

(p) The commission may, by legislative rule promulgated in accordance with chapter twenty-nine-a of this code, define further exemptions from this section as necessary or appropriate.

The bill (Eng. Com. Sub. for H. B. 4606), as amended, was then ordered to third reading.

**Eng. House Bill 4618**, Relating to limitations on use of a public official's name or likeness.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Carmichael, and by unanimous consent, the bill was advanced to third reading with the unreported Judiciary committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. House Bill 4655**, Prohibiting insurers, vision care plan or vision care discount plans from requiring vision care providers to provide discounts on noncovered services or materials.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Gaunch, as chair of the Committee on Banking and Insurance, and by unanimous consent, the unreported Banking and Insurance committee amendment to the bill was withdrawn.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §33-25E-2 the Code of West Virginia, 1931, as amended, be amended be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-25E-5, all to read as follows:

## **ARTICLE 25E. PATIENTS' EYE CARE ACT.**

### **§33-25E-2. Definitions.**

For the purposes of this article:

(1) "Commissioner" means the Insurance Commissioner of West Virginia.

(2) "Covered services" and "covered materials" means services or materials for which reimbursement from the insurer or vision care plan or vision care discount plan is available under an enrollee's vision plan or contract, or for which a reimbursement would be available but for the application of contractual limitations such as deductibles, copayments, coinsurance, waiting periods, annual or lifetime maximums, frequency limitations, alternative benefit payments or other limitations.

~~(a)~~ (3) "Covered person" means an individual enrolled in a health benefit plan or an eligible dependent of that person.

(4) "Enrollee" means any individual enrolled in a health care plan, vision care plan or vision care discount plan provided by a group, employer or other entity that purchases or supplies coverage for a vision care plan or vision care discount plan.

~~(b) "Eye care provider" means an optometrist or ophthalmologist licensed by the State of West Virginia.~~

(5) "Eye care provider" means a licensed doctor of optometry practicing under the authority of article eight, chapter thirty of this

code or a licensed medical physician specializing in ophthalmology licensed in West Virginia to practice medicine and surgery under the authority of article three, chapter thirty of this code or osteopathy under article fourteen, chapter thirty of this code.

(e) (6) “Eye care benefits” means coverage for the diagnosis, treatment and management of eye disease and injury.

(d) (7) “Health benefit policy” means any individual or group plan, policy or contract providing medical, hospital or surgical coverage issued, delivered, issued for delivery or renewed in this state by an insurer, after January 1, 2001. It does not include credit accident and sickness, long-term care, Medicare supplement, champus supplement, disability or limited benefits policies.

(e) (8) “Insurer” means any health care corporation, health maintenance organization, accident and sickness insurer, nonprofit hospital service corporation, nonprofit medical service corporation or similar entity.

(9) “Materials” means ophthalmic devices, including, but not limited to, lenses, devices containing lenses, artificial intraocular lenses, ophthalmic frames and other lens-mounting apparatus, prisms, lens treatments and coatings, contact lenses and prosthetic devices to correct, relieve or treat defects or abnormal conditions of the human eye or its adnexa.

(10) “Services” means the professional work performed by an eye care provider.

(11) “Subcontractor” means any company, group or third party entity, including, but not limited to, agents, servants, partially- or wholly-owned subsidiaries and controlled organizations that is contracted by the insurer, vision care plan or vision care discount plan to supply services or materials for an eye care provider or enrollee to fulfill the benefit plan of an insurer, vision care plan or vision care discount plan.

(f) (12) “Vision care benefits” means benefits for the refraction of the eyes and other optical benefits.

(13) “Vision care discount plan” means a business arrangement or contract offered by an insurer in which a person, in exchange for fees, dues, charges or other consideration, offers access for its plan members to providers of eye care or ancillary services and the right to receive discounts on eye care or ancillary services provided under the discount vision care plan from those providers.

(14) “Vision care plan” means an entity that creates, promotes, sells, provides, advertises or administers an integrated or stand-alone vision benefit plan, or a vision care insurance policy or contract which provides vision benefits to an enrollee pertaining to the provision of covered services or covered materials.

### **§33-25E-5. Noncovered discounts.**

(a) An agreement between an insurer, vision care plan or vision care discount plan and an eye care provider may not seek to or require that an eye care provider provide services or materials at a fee limited or set by the insurer, vision care plan or vision care discount plan, unless the services or materials are reimbursed as covered services or covered materials under the contract.

(1) An eye care provider may not charge more for services and materials that are non-covered services or non-covered materials to an enrollee of a vision care plan, vision care discount plan or insurer than his or her usual and customary rate for the services and materials.

(2) Reimbursements paid by an insurer, vision care plan or vision care discount plan for covered services and covered materials, regardless of supplier or optical lab used to obtain materials, shall be reasonable, shall be clearly listed on a fee schedule that is made available to the eye care provider prior to accepting a contract from the insurer, vision care plan or vision discount plan and shall not provide nominal reimbursement or advertise services and materials to be covered with additional copay or coinsurance if the health plan, vision care plan or vision care discount plan does not reimburse for the services or materials in order to claim that services and materials are covered services and materials.

(3) Insurers, vision care plans and vision care discount plans shall not falsely represent, publish or disseminate the benefits that are provided to groups, employers or individual enrollees as a means of selling coverage to or communicating benefit coverage to enrollees.

(4) All provisions in this section apply to any successors in interest of an insurer, vision care plan or vision care discount plan and apply to any subcontractors that are used by an insurer, vision care plan or vision care discount plan to supply materials or services to an eye care provider or enrollee and are subject to all applicable penalties as provided in this section.

(b) An agreement between an insurer, vision care plan or vision care discount plan and an eye care provider may not require that an eye care provider must participate with or be credentialed by any specific vision care plan or vision care discount plan as a condition of participation in the health care network of the insurer to provide covered medical services to its enrollees.

(1) Any insurer issuing or renewing a health benefit plan, vision care plan or vision care discount plan issued or renewed which provides coverage for services rendered by an eye care provider shall provide the same reimbursement for services to optometrists as allowed for those services rendered by physicians or osteopaths.

(2) An insurer may not require an optometrist to meet terms and conditions that are not required of a physician or osteopath as a condition for participation in its provider network for the provision of services that are within the scope of practice of an optometrist.

(3) If an eye care provider enters into any subcontract agreement with another provider to provide covered services or covered materials to an enrollee which provides that the subcontracted provider will bill the vision care plan or enrollee directly for the subcontracted services or materials, the subcontract agreement shall meet all requirements of this section.

(4) The provisions of subdivisions (1), (2) and (3) of this subsection also apply to any agreements an insurer enters into for

services covered under the health benefit plan, vision care plan or vision care discount plan.

(c) An insurer, vision care plan or vision care discount plan may not change or alter an agreement entered into with an eye care provider without performing the following steps:

(1) Mailing a certified letter detailing proposed changes to the eye care provider;

(2) Obtaining agreement or disagreement to the proposed changes from the eye care provider; and

(3) Providing a new agreement after three or more material changes are made to an existing agreement from an insurer, vision care plan or vision care discount plan.

(d) An agreement between an insurer, vision care plan or vision care discount plan and an eye care provider may not restrict or limit, either directly or indirectly, the eye care provider's choice of sources and suppliers of services or materials or use of optical labs provided by the eye care provider to an enrollee.

(e) An insurer, vision care plan or vision care discount plan may not change the terms, discounts or reimbursement rates contained in the agreement, regardless of supplier or fabricating lab used to supply materials, without a signed acknowledgement of written agreement from the eye care provider.

(f) A person or entity adversely affected by a violation of this section may bring action in a court of competent jurisdiction for injunctive relief against the insurer, vision care plan or vision care discount plan and, upon prevailing, may recover monetary damages of no more than \$1,000 for each instance found to be in violation of this section, plus attorneys' fees and costs.

(g) In a fiscal year, an insurer, vision care plan or vision care discount plan may not charge back or otherwise recoup administrative fees or other amounts from an eye care provider in a total amount of more than three percent of the payments received by the eye care provider from the insurer, vision care plan or vision

care discount plan for providing services to enrollees without the written agreement of the eye care provider.

(h) The Commissioner may seek an injunction against an insurer, vision care plan or vision care discount plan in a court of competent jurisdiction for violation of this section.

(i) The requirements of this section apply to insurers, vision care plans, vision care discount plans, contracts, addendums and certificates executed, delivered, issued for delivery, continued or renewed in the State of West Virginia.

(1) An insurer, vision care plan or vision care discount plan contract may not be in effect for more than two years from the date that it was first signed.

(2) An insurer, vision care plan or vision care discount plan may not construe recredentialing as recontracting with an eye care provider.

(j) An insurer, vision care plan or vision care discount plan may not discriminate against any eye care provider who is located within the geographic coverage area of the insurer, vision care plan or vision care discount plan and who is willing to meet the terms and conditions for participation established by the insurer, vision care plan or vision care discount plan, including West Virginia Medicaid programs and Medicaid partnerships.

(k) This section becomes effective on July 1, 2016, and applies to vision care plans and vision care discount plans which take effect or are renewed on or after July 1, 2016.

The bill (Eng. H. B. 4655), as amended, was then ordered to third reading.

**Eng. House Bill 4728**, Relating to schedule three controlled substances.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

At the request of Senator Carmichael, and by unanimous consent, the Senate returned to the fourth order of business.

Senator Ferns, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

**Senate Concurrent Resolution 40**, Encouraging Congress pass Toxic Exposure Research Act of 2016.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Ryan J. Ferns,  
*Chair.*

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2665**, Relating to participation in Motor Vehicle Alcohol Test and Lock Program.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2665) contained in the preceding report from the Committee on the Judiciary was taken up

for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2795**, Providing that when a party's health condition is at issue in a civil action, medical records and releases for medical information may be requested and required without court order.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2795) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4001**, Relating to candidates or candidate committees for legislative office disclosing contributions.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4001) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4176**, Permitting the Regional Jail and Correctional Facility Authority to participate in the addiction treatment pilot program.

And has amended same.

Now on second reading, having been read a first time and referred to the Committee on Judiciary on March 9, 2016;

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Ferns, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

**Eng. House Bill 4243**, Extending the time that certain nonprofit community groups are exempt from the moratorium on creating new nursing home beds.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Ryan J. Ferns,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. 4243) contained in the preceding report from the Committee on Health and Human Resources was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. Com. Sub. for House Bill 4271**, Ending discretionary transfers to the Licensed Racetrack Modernization Fund.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Mike Hall,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4271) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. House Bill 4321**, Relating to tax credits for apprenticeship training in construction trades.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Mike Hall,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. 4321) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Ferns, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

**Eng. House Bill 4347**, Providing pregnant women priority to substance abuse treatment.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Ryan J. Ferns,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. 4347) contained in the preceding report

from the Committee on Health and Human Resources was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Ferns, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

**Eng. Com. Sub. for House Bill 4380**, Adding the spouse of an indigent person as a possible individual who may be liable for the funeral service expenses.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Ryan J. Ferns,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4380) was taken up for immediate consideration, second committee reference dispensed with, read a first time and ordered to second reading.

Senator Ferns, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

**Eng. Com. Sub. for House Bill 4388**, Relating to stroke centers.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Ryan J. Ferns,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4388) contained in the preceding report from the Committee on Health and Human Resources was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Ferns, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

**Eng. House Bill 4428**, Clarifying that optometrists may continue to exercise the same prescriptive authority which they possessed prior to hydrocodone being reclassified.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Ryan J. Ferns,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. 4428) contained in the preceding report from the Committee on Health and Human Resources was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Ferns, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

**Eng. Com. Sub. for House Bill 4659**, Authorizing local health departments to bill health insurance plans for services.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Ryan J. Ferns,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4659) contained in the preceding report from the Committee on Health and Human Resources was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Walters, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**Com. Sub. for House Concurrent Resolution 3**, North River Mills Historic Trace.

And has amended same.

**Com. Sub. for House Concurrent Resolution 56**, U.S. Army CPL Robert Eugene Jackson Memorial Bridge.

And has amended same.

**Com. Sub. for House Concurrent Resolution 57**, U.S. Army PVT Leander Reel Memorial Bridge.

And has amended same.

And,

**Com. Sub. for House Concurrent Resolution 72**, Max G. Parkinson Memorial Bridge.

And has amended same.

And reports the same back with the recommendation that they each be adopted, as amended.

Respectfully submitted,

Chris Walters,  
*Chair.*

Senator Walters, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**Com. Sub. for House Concurrent Resolution 4**, CSA LTG Thomas J. “Stonewall” Jackson Bridge.

**Com. Sub. for House Concurrent Resolution 8**, Harry Ripley Memorial Bridge.

**Com. Sub. for House Concurrent Resolution 13**, U.S. Army SPC 4 Everette R. Johnson Memorial Bridge.

**Com. Sub. for House Concurrent Resolution 51**, U.S. Army PFC Danny Mire Stoneking Memorial Bridge.

And,

**Com. Sub. for House Concurrent Resolution 54**, Byron ‘Bray’ Kelley Memorial Bridge.

And reports the same back with the recommendation that they each be adopted.

Respectfully submitted,

Chris Walters,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the resolutions (Com. Sub. for H. C. R. 4, 8, 13, 51 and 54) contained in the preceding report from the Committee on Transportation and Infrastructure were taken up for immediate consideration and considered simultaneously.

The question being on the adoption of the resolutions, the same was put and prevailed.

*Ordered,* That The Clerk communicate to the House of Delegates the action of the Senate.

At the request of Senator Carmichael, unanimous consent being granted, the Senate returned to the consideration of

**Eng. House Bill 4155**, Making a supplementary appropriation to the Department of Health and Human Resources, Division of Health – West Virginia Birth-to-Three Fund, and the Department of Health and Human Resources, Division of Human Services - Medical Services Trust Fund.

Having been reported from the Committee on Finance in earlier proceedings today,

On motion of Senator Carmichael, the bill was rereferred to the Committee on Finance.

Pending announcement of a meeting of a standing committee of the Senate, including a minority party caucus,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Friday, March 11, 2016, at 10 a.m.

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## FRIDAY, MARCH 11, 2016

The Senate met at 10 a.m.

(Senator Cole, Mr. President, in the Chair.)

Prayer was offered by the Reverend A. Joseph Kusimo, Senior Pastor, Christ Life Fellowship, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Mike Hall, a senator from the fourth district.

Pending the reading of the Journal of Thursday, March 10, 2016,

At the request of Senator Boso, unanimous consent being granted, the Journal was approved and the further reading thereof dispensed with.

The Senate proceeded to the second order of business and the introduction of guests.

At the request of Senator Carmichael, and by unanimous consent, the provisions of rule number fifty-four of the Rules of the Senate, relating to persons entitled to the privileges of the floor, were suspended in order to grant Nina Boso, granddaughter of the Honorable Gregory L. Boso, a senator from the eleventh district, privileges of the floor for the day.

The Senate proceeded to the third order of business.

A message from The Clerk of the House of Delegates announced the passage by a vote of a majority of all the members elected to the House of Delegates taken by yeas and nays, notwithstanding the objections of the Governor, of

**Enr. Com. Sub. for Senate Bill 10**, Creating Unborn Child Protection from Dismemberment Abortion Act.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Senate Bill 54**, Altering how tax is collected on homeowners' associations.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page one, section nine-o, line six, by striking out the word "all" and inserting in lieu thereof the word "its";

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Senate Bill 54**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-15-9o, relating generally to exempting certain dues, fees and assessments from the consumers sales and service tax; and defining certain terms.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Senate Bill 54, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 54) passed with its House of Delegates amended title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Com. Sub. for Com. Sub. for Senate Bill 259,**  
Amending Unfair Trade Practices Act.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page five, section eight, line nineteen, by striking out the word “and”;

On page five, section eight, line twenty-one, after the word “institutions” by changing the period to a semicolon and inserting the following: and

(i) During and for fifteen days after a business grand opening as determined by the completion date.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Com. Sub. for Senate Bill 259**—A Bill to repeal §47-11A-10, §47-11A-12 and §47-11A-13 of the Code of West Virginia, 1931, as amended; and to amend and reenact §47-11A-1, §47-11A-2, §47-11A-5, §47-11A-6, §47-11A-8, §47-11A-9 and §47-11A-14 of said code, all relating to unfair trade practices; providing legislative findings; designating article the Unfair Trade Practices Act; making it unlawful for a retailer or wholesaler to sell, offer for sale, or advertise for sale any product or item of merchandise at a price less than cost with the intent to destroy or the effect of destroying competition; providing that a violation of the article constitutes a misdemeanor; defining “retailer” and “wholesaler”; providing for how cost is to be determined; providing for exemptions to cost calculations relating to federal and state motor fuel taxes; exempting certain sales, offers to sell or advertisements to sell from the provisions of the article; providing that an injured person or entity may maintain an action to enjoin continuance of any violation of the article; providing that an injured person or entity may maintain an action for damages; providing that actual damages, if alleged and proven, be assessed; providing for an absolute defense to an action to enjoin or for damages filed under the article; providing jurisdiction to the circuit courts; and providing purposes of the article.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Committee Substitute for Senate Bill 259, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 259) passed with its House of Delegates amended title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, to take effect from passage, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Com. Sub. for Senate Bill 202**, Authorizing Department of Commerce promulgate legislative rules.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That article 10, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 10. AUTHORIZATION FOR DEPARTMENT OF  
COMMERCE TO PROMULGATE  
LEGISLATIVE RULES.**

**§64-10-1. Division of Natural Resources.**

(a) The legislative rule filed in the State Register on July 30, 2015, authorized under the authority of section seven, article one, chapter twenty of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 8,

2015, relating to the Division of Natural Resources (prohibitions when hunting and trapping, 58 CSR 47), is authorized.

(b) The legislative rule filed in the State Register on July 30, 2015, authorized under the authority of section seven, article one, chapter twenty of this code, relating to the Division of Natural Resources (general hunting, 58 CSR 49), is authorized.

(c) The legislative rule filed in the State Register on July 30, 2015, authorized under the authority of section seven, article one, chapter twenty of this code, relating to the Division of Natural Resources (deer hunting, 58 CSR 50), is authorized.

(d) The legislative rule filed in the State Register on July 30, 2015, authorized under the authority of section seven, article one, chapter twenty of this code, relating to the Division of Natural Resources (wild boar hunting, 58 CSR 52), is authorized.

(e) The legislative rule filed in the State Register on July 30, 2015, authorized under the authority of section five-h, article two, chapter twenty of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 29, 2015, relating to the Division of Natural Resources (elk restoration and management, 58 CSR 74), is authorized with the following amendment:

On page one, section three, after the section heading “**§58-74-3. Elk Management Plan.**”, by adding the following:

“3.1. An Elk Management Plan has been developed by the Division which will guide the Division’s management decisions as it relates to the state’s active elk restoration project.

3.1.a. The elk management plan will follow an adaptive management approach and the plan will be updated on a 5-year basis.

3.1.b. The Division shall solicit public comments on the draft elk management plan and will take public input under consideration prior to finalizing the plan.

3.1.c. The elk management plan will include, but is not limited to, the following plan components.

3.1.c.1. Elk biology and life history

3.1.c.2. Overview of elk reintroduction feasibility studies”.

(f) The legislative rule effective on January 1, 1983, authorized under the authority of section seven, article one, chapter twenty of this code, relating to the Division of Natural Resources (shoreline camping of government owned reservoir areas in West Virginia, 58 CSR 30), is repealed.

(g) The legislative rule effective on May 9, 1995, authorized under the authority of section seven, article one, chapter twenty of this code, relating to the Division of Natural Resources (special bear hunting, 58 CSR 48), is repealed.

(h) The procedural rule effective on October 9, 1996, authorized under the authority of section seven, article one, chapter twenty of this code, relating to the Division of Natural Resources (rules for open government proceedings, 58 CSR 1), is repealed.

#### **§64-10-2. Division of Labor.**

(a) The Legislature directs the West Virginia Contractor Licensing Board to promulgate the legislative rule filed in the State Register on May 13, 2005, authorized under the authority of section five, article eleven, chapter twenty-one of this code, relating to the West Virginia Contractor Licensing Act (West Virginia Contractor Licensing Act, 28 CSR 2), with the amendment set forth below:

On page seven, subsection 3.29 by striking “\$15,000” and inserting in lieu thereof “\$40,000”.

(b) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section nine, article five,

chapter twenty-one of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 9, 2015, relating to the Division of Labor (wage payment and collection, 42 CSR 5), is authorized with the following amendment:

On page seven, by striking out subsection 10.4 and subdivisions 10.4.1 and 10.4.2 and inserting in lieu thereof the following:

“10.4. The employer and the claimant shall be entitled to a status conference upon request to the Division.

10.4.1. At that time, the employer and the claimant shall have the opportunity to review all records collected by the Division during its investigation relating to the wage claim with respect to all portions of the investigation that the Division has not resolved in favor of the employer.

10.4.2. Within twenty (20) days of the conclusion of the status conference, an employer or the claimant may prepare and submit a written statement and/or evidence for consideration by the Division.”

(c) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section one, article five-c, chapter twenty-one, of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on December 9, 2015, relating to the Division of Labor (minimum wage and maximum hours, 42 CSR 8), is authorized with the following amendments:

On page 1, section 2, by adding a new subsection, designated subsection 2.2, to read as follows:

“2.2. Pursuant to W. Va. Code § 21-5C-1(e), the provisions of this rule relating to maximum hours and overtime compensation are not enforceable against or applicable to any individual, partnership, association, corporation, person or group of persons or similar unit if eighty percent of the persons employed by him or her are subject

to any federal act relating to maximum hours and overtime compensation.”

And, renumbering the remaining subsection.

On page 8, former subsection 6.3, by striking out the remainder of the subsection.

(d) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section eleven, article three-c, chapter twenty-one of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 17, 2015, relating to the Division of Labor (Elevator Safety Act, 42 CSR 21), is authorized with the following amendment:

On page 1, subsection 3.1, by striking out the word “Three” and inserting in lieu thereof the word “Two”.

(e) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section eleven, article three-c, chapter twenty-one of this code, relating to the Division of Labor (licensing of elevator mechanics and technicians and registration of apprentices, 42 CSR 21A), is authorized with the following amendment:

On page 1, subsection 3.2, by striking out the word “Three” and inserting in lieu thereof the word “Two”.

(f) The legislative rule effective on May 26, 1983, authorized under the authority of section two, article three, chapter twenty-one of this code, relating to the Division of Labor (West Virginia safety code for aerial passenger tramways, lifts and tows, 42 CSR 2), is repealed.

(g) The legislative rule effective on December 31, 1982, authorized under the authority of article five-a, chapter twenty-one of this code, relating to the Division of Labor (West Virginia Prevailing Wage Act, 42 CSR 7), is repealed.

**§64-10-3. Office of Miners' Health, Safety and Training.**

The legislative rule filed in the State Register on July 30, 2015, authorized under the authority of section fourteen, article six, chapter twenty-two-a of this code, relating to the Office of Miners' Health, Safety and Training (substance abuse screening standards and procedures, 56 CSR 19), is authorized.

**§64-10-4. Tourism Commission.**

The legislature directs the Tourism Commission, pursuant to the authority given to the Commission in section nine, article two, chapter five-b of this code, to promulgate the legislative rule filed in the State Register by the Department of Tourism on May 3, 2010, relating to the Direct Advertising Grants Program (144 CSR 1), with the amendments set forth below:

By amending the title of the rule to replace the authorizing agency, currently identified as the Division of Tourism, with the Tourism Commission;

On page one, section two, by striking out all of subdivision 2.4.2 and inserting in lieu thereof a new subdivision 2.4.2 to read as follows:

2.4.2. Entertainment establishments which include, but are not limited to, pari-mutuel gaming establishments, live performing art centers, sporting organizations or arenas, vineyards or wineries, craft breweries, distilleries, and mini-distilleries;

On pages one and two, section two, by striking out all of subdivision 2.7.4 and inserting in lieu thereof a new subdivision 2.7.4 to read as follows:

2.7.4. Entertainment establishments which include, but are not limited to, pari-mutuel gaming establishments, live performing art centers, sporting organizations or arenas, vineyards or wineries, craft breweries, distilleries, and mini-distilleries;

On page six, section six, by striking out all of subsection 6.2 and inserting in lieu thereof a new subsection 6.2 to read as follows:

6.2. Seventy-five percent (75%) of a project's direct advertising must be directed toward areas outside of the local market or in major out-of-state markets, except for direct advertising for a fair or festival grant authorized by subsection 7.3 of this rule. The Commission reserves the right on a case by case basis to allow local market media in excess of 25% of a project's direct advertising that cost effectively reaches a well-researched target market.;

On page eight, section seven, by striking out all of subsection 7.2 and inserting in lieu thereof a new subsection 7.2 to read as follows:

7.2. There is hereby established a small grants program to be administered by the Division. Awards under this program shall not exceed \$7,500 per applicant and no applicant shall receive more than one grant per fiscal year. The applicant and partner(s) must provide a minimum of 25 percent of the total project cost. Total grants awarded under this program in any fiscal year shall be used by the applicant solely for advertising purposes. Small grant awards shall require the approval of the director of the Division. Grant applications must be received by established deadlines. No applicant who has received a grant larger than \$7,500 in any fiscal year may apply for a small grant under this section during the same fiscal year.

On page eight, section seven, by striking out all of subsection 7.3 and inserting in lieu thereof a new subsection 7.3 to read as follows:

7.3. There is hereby established a Fairs and Festivals grants program to be administered by the Division. Awards under this program shall be limited to Fairs and Festivals, and grants shall not exceed \$5,000 per applicant per year. The applicant must provide a minimum of 50 percent of the total project cost, but the requirements of subsection 5.5 of these rules shall not apply to the Fairs and Festivals grants program. Total grants awarded under this program shall be used by the applicant solely for advertising purposes. Fairs and Festivals grant awards shall require the

approval of the Director of the Division. Grant applicants must be received by established deadlines.

**§64-10-5. WorkForce West Virginia.**

The legislative rule filed in the State Register on November 6, 2015, authorized under the authority of section eleven, article five-a, chapter twenty-one of this code, modified by the WorkForce West Virginia to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 4, 2015, relating to the WorkForce West Virginia (West Virginia Prevailing Wage Act, 96 CSR 4), is authorized.

**§64-10-6. Commercial Whitewater Advisory Board.**

(a) The legislative rule effective on October 8, 1987, authorized under the authority of section twenty-three-a, article two, chapter twenty of this code, relating to the Commercial Whitewater Advisory Board (commercial whitewater outfitters, 182 CSR 1), is repealed.

(b) The procedural rule effective on August 31, 1987, authorized under the authority of section three, article nine-a, chapter twenty of this code, relating to the Commercial Whitewater Advisory Board (regulations for open governmental proceedings, 182 CSR 2), is repealed.

**§64-10-7. Commissioner of Employment Security.**

(a) The legislative rule effective on May 1, 1991, authorized under the authority of article two, chapter twenty-one-a of this code, relating to the Commissioner of Employment Security (regulations of the Commissioner of Employment Security, 83 CSR 1), is repealed.

(b) The legislative rule effective on September 2, 1983, authorized under the authority of section five, article two-a, chapter twenty-one-a of this code, relating to Commissioner of Employment Security (implementation of a pilot employment supplemental matching program, 84 CSR 2), is repealed.

**§64-10-8. Division of Forestry.**

The procedural rule effective on June 1, 2004, authorized under the authority of section three, article three, chapter twenty-nine-a of this code, relating to the Division of Forestry (Freedom of Information Act requests, 22 CSR 4), is repealed.

**§64-10-9. Minimum Wage Rate Board.**

The legislative rule effective on January 1, 1983, authorized under the authority of article five-a, chapter twenty-one of this code, relating to the Minimum Wage Rate Board (West Virginia Prevailing Wage Act, 43 CSR 1), is repealed.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 202**—A Bill to amend and reenact article 10, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Commerce; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and with various amendments recommended by the Legislature; directing various agencies to amend and promulgate certain legislative rules; authorizing the Division of Natural Resources to promulgate a legislative rule relating to prohibitions when hunting and trapping; authorizing the Division of Natural Resources to promulgate a legislative rule relating to general hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to deer hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to wild boar hunting; authorizing the

Division of Natural Resources to promulgate a legislative rule relating to elk restoration and management; directing the Division of Labor to promulgate rules relating to the Contractor Licensing Board; authorizing the Division of Labor to promulgate a legislative rule relating to the Elevator Safety Act; authorizing the Division of Labor to promulgate a legislative rule relating to the licensing of elevator mechanics and technicians and registration of apprentices; authorizing the Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to substance abuse screening standards and procedures; directing the Tourism Commission to amend and promulgate a Division of Tourism rule relating to the direct advertising grants program, repealing certain legislative and procedural rules of certain agencies and boards of the Department of Commerce; authorizing WorkForce West Virginia to promulgate a legislative rule relating to prevailing wage; the repealing the Commercial Whitewater Advisory Board legislative rule relating to commercial whitewater outfitters; repealing the Commercial Whitewater Advisory Board procedural rule relating to regulations for open governmental proceedings; repealing the Commissioner of Employment Security legislative rule relating to regulations of the Commissioner of Employment Security; repealing the Commissioner of Employment Security legislative rule relating to implementation of a pilot employment supplemental matching program; repealing the Division of Forestry procedural rule relating to Freedom of Information Act requests; repealing the Division of Labor legislative rule relating to the West Virginia safety code for aerial passenger tramways, lifts and tows; repealing the Division of Labor legislative rule relating to the West Virginia Prevailing Wage Act; repealing the Minimum Wage Rate Board legislative rule relating to the West Virginia Prevailing Wage Act; repealing the Division of Natural Resources legislative rule relating to shoreline camping of government owned reservoir areas in West Virginia; repealing the Division of Natural Resources legislative rule relating to special bear hunting; and repealing the Division of Natural Resources procedural rule relating to rules for open government proceedings.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Senate Bill 202, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 202) passed with its House of Delegates amended title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 202) takes effect from passage.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Com. Sub. for Senate Bill 265**, Allowing library volunteers necessary access to user records.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Senate Bill 306**, Permitting sale of county or district property online.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page one, section three, line five, after the word “sold” by inserting the word “either”;

On page one, section three, line six, after the word “Internet-based” by inserting the words “public auction”;

On page one, section three, line nine, after the word “Internet-based” by inserting the words “public auction”;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Senate Bill 306**—A Bill to amend and reenact §7-3-3 of the Code of West Virginia, 1931, as amended, relating to sale of county or district property; permitting property be sold either at an on-site public auction or by utilizing an Internet-based public auction service; and requiring notice of sale include notice of the time, terms, manner and place of sale or the Internet-based public auction service to be utilized.

On motion of Senator Carmichael, the following amendment to the House of Delegates amendments to the bill was reported by the Clerk and adopted:

**Eng. Senate Bill 306**—A Bill to amend and reenact §7-3-3 of the Code of West Virginia, 1931, as amended, relating to sale of county or district property; permitting property be sold either at an on-site public auction or by utilizing an internet-based public auction service; and requiring notice of sale include notice of the time, terms, manner and place of sale or the internet-based public auction service to be utilized.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments, as amended.

Engrossed Senate Bill 306, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 306) passed with its Senate amended title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Senate Bill 311**, Allowing permanent exception for mortgage modification or refinancing loan under federal Making Home Affordable program.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page three, section eight, line fifty-seven, after the word “date” by changing the semicolon to a colon and inserting the following proviso: “*Provided*, That this prohibition does not apply to any mortgage modification or refinancing loan made in participation with and in compliance with the federal Making Homes Affordable program, or any other mortgage modification or refinancing loan eligible under any government sponsored enterprise requirements or funded through any federal or state program or litigation settlement;”;

On page six, section eight, line one hundred twenty-two, after the word “practice:” by striking out the remainder of the subdivision and inserting in lieu thereof the following proviso: “*Provided*, That this prohibition does not apply to any mortgage modification or refinancing loan made in participation with and in compliance with the federal Making Homes Affordable program, or any other mortgage modification or refinancing loan eligible under any government sponsored enterprise requirements or funded through any federal or state program or litigation settlement;”;

On page six, after line one hundred thirty-one, by adding thereto a new section, designated section seventeen, to read as follows:

**§31-17-17. Loans made in violation of this article void; agreements to waive article void.**

(a) If any primary or subordinate mortgage loan is made in willful violation of the provisions of this article, except as a result of a bona fide error, such loan may be canceled by a court of

competent jurisdiction: *Provided*, That it may not be construed to have been a willful violation of the provisions of this article, if the violation is due to a violation of subdivisions (j)(3) or (m)(8), section eight of this article for a mortgage modification or refinancing loan made after May 1, 2009, in participation with and in compliance with the federal Making Homes Affordable program, or any other mortgage modification or refinancing loan eligible under any government sponsored enterprise requirements or funded through any federal or state program or litigation settlement.

(b) Any agreement whereby the borrower waives the benefits of this article shall be deemed to be against public policy and void.

(c) Any residential mortgage loan transaction in violation of this article shall be subject to an action, which may be brought in a circuit court having jurisdiction, by the borrower seeking damages, reasonable attorneys fees and costs: *Provided*, That this action may not be brought if the violation is due to a violation of subdivisions (j)(3) or (m)(8), section eight of this article for a mortgage modification or refinancing loan made after May 1, 2009, in participation with and in compliance with the federal Making Homes Affordable program, or any other mortgage modification or refinancing loan eligible under any government sponsored enterprise requirements or funded through any federal or state program or litigation settlement.

(d) A licensee who, when acting in good faith in a lending transaction, inadvertently and without intention, violates any provision of this article or fails to comply with any provision of this article, will be excused from such violation if within thirty days of becoming aware of such violation, or being notified of such violation, and prior to the institution of any civil action or criminal proceeding against the licensee, the licensee notifies the borrower of the violation, makes full restitution of any overcharges, and makes all other adjustments as are necessary to make the lending transaction comply with this article.;

By striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

That §31-17-8 and §31-17-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted as follows::

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Senate Bill 311**—A Bill to amend and reenact §31-17-8 and §31-17-17 of the Code of West Virginia, 1931, as amended, all relating to exceptions from certain requirements for certain mortgage modifications or refinancing loans; authorizing exception from certain requirements for mortgage modifications or refinancing loans made in participation with and in compliance with the federal Homes Affordable Modification Program or any other mortgage modification or refinancing loan eligible under any government sponsored enterprise requirements or funded through any federal or state program or litigation settlement; and allowing exceptions from nullification or actions brought for certain mortgage modifications or refinancing loans made in participation with and in compliance with the federal Homes Affordable Modification Program or any other mortgage modification or refinancing loan eligible under any government sponsored enterprise requirements or funded through any federal or state program or litigation settlement.

On motion of Senator Carmichael, the following amendment to the House of Delegates amendments to the bill (Eng. S. B. 311) was reported by the Clerk and adopted:

**Eng. Senate Bill 311**—A Bill to amend and reenact §31-17-8 and §31-17-17 of the Code of West Virginia, 1931, as amended, all relating to exceptions from certain requirements for certain mortgage modifications or refinancing loans; authorizing exception from certain requirements for mortgage modifications or refinancing loans made in participation with and in compliance with the federal Homes Affordable Modification Program or any other mortgage modification or refinancing loan eligible under any government sponsored enterprise requirements or funded through any federal or state program or litigation settlement; and allowing

exceptions from nullification or actions brought for certain mortgage modifications or refinancing loans made in participation with and in compliance with the federal Homes Affordable Modification Program or any other mortgage modification or refinancing loan eligible under any government sponsored enterprise requirements or funded through any federal or state program or litigation settlement.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments, as amended.

Engrossed Senate Bill 311, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 311) passed with its Senate amended title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Senate Bill 333**, Taking and registering of wildlife.

A message from The Clerk of the House of Delegates announced the amendment by that body to the title of the bill, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Senate Bill 352**, Dedicating corporation net income tax proceeds to railways.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the title of the bill was reported by the Clerk:

**Eng. Senate Bill 352**—A Bill to amend and reenact §11-24-43a of the Code of West Virginia, 1931, as amended, relating to the elimination of corporation net income tax proceeds to railways; and specifying that dedication of corporation net income tax proceeds to railways expires and is void on and after January 1, 2016.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment to the title of the bill.

Engrossed Senate Bill 352, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 352) passed with its House of Delegates amended title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins,

Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 352) takes effect from passage.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Com. Sub. for Senate Bill 376**, Expanding authority of Secretary of State and State Police.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Senate Bill 384**, Requiring Bureau for Medical Services seek federal waiver for 30-day waiting period for tubal ligation.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Senate Bill 459**, Requiring county board of education to pay tuition to Mountaineer Challenge Academy.

A message from The Clerk of the House of Delegates announced the amendment by that body to the title of the bill, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Com. Sub. for Senate Bill 468**, Allowing lender charge and receive interest on rescindable loan during rescission period.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the title of the bill was reported by the Clerk:

**Eng. Com. Sub. for Senate Bill 468**—A Bill to amend and reenact §46A-6K-3 of the Code of West Virginia, 1931, as amended, relating to allowing accrual of interest during rescission period on a loan during the rescission period required under the federal Truth-in-Lending Act; providing exception if the loan is rescinded; and providing exception if the loan is for the purpose of paying in full a prior loan made by the same lender.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment to the title of the bill.

Engrossed Committee Substitute for Senate Bill 468, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 468) passed with its House of Delegates amended title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Com. Sub. for Senate Bill 493**, Allowing creation of self-settled spendthrift trusts.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Senate Bill 505**, Exempting certain uses of field gas from motor fuel excise taxes.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-14C-9a, to read as follows:

## **ARTICLE 14C. MOTOR FUEL EXCISE TAX.**

### **§11-14C-9a. Additional exemptions from tax.**

(a) Additional per se exemptions from flat rate component of tax. — In addition to the provisions of section nine of this article, sales of motor fuel to the following, or as otherwise stated in this subsection, are exempt per se from the flat rate of the tax levied by section five of this article and the flat rate may not be paid at the rack:

Field gas used as fuel to run drilling equipment, compressor engines and other stationary internal combustion engines not used on the roads of this state: *Provided*, That any royalty payments shall have previously been paid to the appropriate mineral owners pursuant to the terms of any existing lease. For purposes of this

exemption, “field gas” means “natural gas” or any derivative thereof, extracted from a production well, storage well, gathering system, pipeline, main or transmission line that is used as fuel to power field equipment. The term “field gas” does not include compressed natural gas, liquefied natural gas, liquefied petroleum gas, gasoline, diesel, kerosene or other fuels used to power motor vehicles.

(b) *Additional per se exemptions from variable component of tax.* — In addition to the provisions of section nine of this article, sales of motor fuel to the following are exempt per se from the variable component of the tax levied by section five of this article and the variable component may not be paid at the rack:

Field gas used as fuel to run drilling equipment, compressor engines and other stationary internal combustion engines not used on the roads of this state: *Provided*, That any royalty payments shall have previously been paid to the appropriate mineral owners pursuant to the terms of any existing lease. For purposes of this exemption, “field gas” means “natural gas” or any derivative thereof, extracted from a production well, storage well, gathering system, pipeline, main or transmission line that is used as fuel to power field equipment. The term “field gas” does not include compressed natural gas, liquefied natural gas, liquefied petroleum gas, gasoline, diesel, kerosene or other fuels used to power motor vehicles.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Senate Bill 505**—A Bill to amend and reenact the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-14C-9a, relating to exempting from motor fuel excise tax certain uses of field gas; and defining field gas.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Senate Bill 505, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 505) passed with its House of Delegates amended title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Senate Bill 516**, Relating to registration for selective service.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Com. Sub. for Senate Bill 524**, Rewriting Board of Barbers and Cosmetologists article.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page one, section one, line two, by striking out the word “makeup”;

On page one, section one, line six, by striking out the words “makeup artist”;

On page six, section three, line one hundred thirteen, by striking out “CCTC” and inserting in lieu thereof “CCTCE”;

On page six, section three, line one hundred fourteen, by striking out “CCTC” and inserting in lieu thereof “CCTCE”;

On page six, section three, line one hundred fourteen, after the word “Education” by inserting the words “in conjunction”;

On page seven, section three, lines one hundred forty-two and one hundred forty-three, by striking out all of the subsection (ee);

And by relettering the remaining subsections;

On page seven, section four, line one hundred fifty-seven, after the word “barber” by inserting the words “or barber permanent wavist”;

On page seven, section four, line one hundred fifty-eight, by striking out all of subdivision (3);

And by renumbering the remaining subdivisions;

On page eight, section four, line one hundred sixty-two, by striking out “CCTC” and inserting in lieu thereof “CCTCE”;

On page eight, section four, line one hundred sixty-three, by striking out “CCTC” and inserting in lieu thereof “CCTCE”;

On page eight, section four, line one hundred sixty-four, by striking out the words “One citizen member.” and inserting in lieu thereof the words “Four citizen members representing the public appointed to be evenly distributed from among the congressional districts: *Provided*, That no more than two shall be from the same congressional district.”;

On page eleven, section five, lines sixty-one through sixty-five, by striking out the words “Notwithstanding any other provision of this code, the board may not restrict a certificate holder or licensee from practicing his or her licensed craft at temporary on-site events in connection with, but not limited to: Fairs, carnivals, weddings, pageants or photographs: *Provided*, That the certificate holder or licensee is compliant with all other prescribed requirements and rules under this code.” and inserting in lieu thereof the following: Notwithstanding any other provision of this code, the board may permit a certificate holder or licensee to perform acts of public service, including practicing his or her licensed craft at temporary, off-site events in connection with, but not limited to, fairs, carnivals, fund-raisers, and pageants if the off-site event is for the benefit of a nonprofit entity; The certificate holder or licensee is compliant with all other prescribed requirements and rules under this code, including requirements relating to supervision; and the board has been notified in advance of the date, time, and location of the event. The board may issue rules, including emergency rules, for what constitutes public service and the amount of public service that students may perform.;

On page eleven, section five, line sixty-eight, after the word “period” by changing the period to a colon and inserting the following proviso: *Provided*, That the licensee shall display their license for the duration of the participation of such licensee in any temporary event.;

On page twelve, section eight, line nine, by striking out “CCTC” and inserting in lieu thereof “CCTCE”;

On page twelve, section eight, line ten, by striking out “CCTC” and inserting in lieu thereof “CCTCE”;

On page fourteen, section eight-b, line two, by striking out the word “areas” and inserting in lieu thereof the word “area”;

On pages fourteen and fifteen, section eight-b, lines seventeen through thirty-one, by striking out all of subdivision (2);

On page seventeen, section eleven, line four, by striking out “CCTC” and inserting in lieu thereof “CCTCE”;

And,

On page seventeen, section eleven, line five, by striking out “CCTC” and inserting in lieu thereof “CCTCE”.

On motion of Senator Carmichael, the following amendments to the House of Delegates amendments to the bill (Eng. Com. Sub. for S. B. 524) were reported by the Clerk, considered simultaneously, and adopted:

On page two, section three, line twenty-eight, by striking out all of subdivision (4) and inserting in lieu thereof a new subdivision, designated subdivision (4), to read as follows:

“(4) The waxing and tweezing of hair on another person’s body;”;

On page eight, section four, line one hundred sixty-four, by striking out all of subdivision (6) and inserting in lieu thereof a new subdivision, designated subdivision (6), to read as follows:

“(6) Four citizen members representing the public;”;

On page eleven, section five, lines sixty-one through sixty-eight, by striking out all of subdivision (d) and inserting in lieu thereof a new subdivision, designated subdivision (d), to read as follows:

(d) Notwithstanding any other provision of this code, the board may not restrict a certificate holder or licensee from practicing his or her licensed craft at temporary on-site events in connection with, but not limited to: Fairs, carnivals, weddings, pageants or photographs: *Provided*, That the certificate holder or licensee is compliant with all other prescribed requirements and rules under this code. If an out-of-state licensee works in a temporary capacity, less than five days, in connection with an event or temporary commercial enterprise, he or she may be granted a temporary permit to work after submitting his or her current license

certification to this state and paying the applicable fee: *Provided, however,* That the licensee shall display or have immediately available their license for the duration of his or her practice at a temporary event.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 524**—A Bill to amend and reenact §30-27-1, §30-27-3, §30-27-4, §30-27-5, §30-27-8, §30-27-8a, §30-27-9, §30-27-10, §30-27-11, §30-27-12, §30-27-13, §30-27-14, §30-27-16, §30-27-17, §30-27-18 and §30-27-19 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-27-8b, all relating to the Board of Barbers and Cosmetologists; providing jurisdiction to the board over hairstyling, waxing and shampoo assisting; amending definitions; providing for required clock hours of training; licensing of schools or programs by the Department of Education; modifying composition of the board; requiring examinations meet national standards; requiring licensed schools have one chair per student; regulation of on-site and temporary services; barber apprentice program; requirements to sponsor a barber apprentice; providing for certifications; providing for certification of waxing specialists; modifying reciprocity standards; modifying continuing education requirements; modifying instructor certification; and eliminating biennial license renewal.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments, as amended.

Engrossed Committee Substitute for Senate Bill 524, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings,

Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 524) passed with its Senate amended title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Com. Sub. for Senate Bill 545**, Relating to asbestos abatement on oil and gas pipelines.

A message from The Clerk of the House of Delegates announced that that body had refused to recede from its amendments, and requested the appointment of a committee of conference of three from each house on the disagreeing votes of the two houses, as to

**Eng. Senate Bill 573**, Prohibiting municipal annexation which would result in unincorporated territory within municipality.

The message further announced the appointment of the following conferees on the part of the House of Delegates:

Delegates Howell, Hill and P. White.

On motion of Senator Carmichael, the Senate agreed to the appointment of a conference committee on the bill.

Whereupon, Senator Cole (Mr. President) appointed the following conferees on the part of the Senate:

Senators Blair, Maynard and Williams.

*Ordered,* That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Com. Sub. for Senate Bill 595**, Relating to retirement credit for members of WV National Guard.

A message from The Clerk of the House of Delegates announced that that body had refused to recede from its amendments, and requested the appointment of a committee of conference of three from each house on the disagreeing votes of the two houses, as to

**Eng. Com. Sub. for Senate Bill 597**, Relating generally to Health Care Authority.

The message further announced the appointment of the following conferees on the part of the House of Delegates:

Delegates Ellington, Lane and Perdue.

On motion of Senator Carmichael, the Senate agreed to the appointment of a conference committee on the bill.

Whereupon, Senator Cole (Mr. President) appointed the following conferees on the part of the Senate:

Senators Ferns, Blair and Plymale.

*Ordered,* That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Senate Bill 613**, Defining total capital for purposes of calculating state-chartered bank's lending limit.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Com. Sub. for Senate Bill 614**, Conforming statute with court interpretation by replacing “unconscionable” with “fraudulent” when referring to conduct.

A message from The Clerk of the House of Delegates announced the amendment by that body to the title of the bill, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Com. Sub. for Senate Bill 625**, Revising exceptions from FOIA provided for in Aboveground Storage Tank Act.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the title of the bill was reported by the Clerk:

**Eng. Com. Sub. for Senate Bill 625**—A Bill to amend and reenact §16-1-9c of the Code of West Virginia, 1931, as amended, relating to source water protection plans generally; and clarifying that public disclosure of certain information regarding potential sources of significant contamination within a zone of critical concern is permitted to the extent it is in the public domain through a federal or state agency.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment to the title of the bill.

Engrossed Committee Substitute for Senate Bill 625, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 625) passed with its House of Delegates amended title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Com. Sub. for Senate Bill 634**, Creating William R. Laird IV Second Chance Driver's License Act.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting section and inserting in lieu thereof the following:

**ARTICLE 7. SECOND CHANCE DRIVER'S LICENSE PROGRAM.**

**§17B-7-1. Short Title.**

This article is known as and may be cited as the William R. Laird IV Second Chance Driver's License Act.

**§17B-7-2. Legislative findings and purpose.**

(a) The Legislature finds that allowing individuals who have been unable to obtain a driver's license or to have their driver's licenses reinstated due to unpaid court costs will better enable these

individuals to return to the workforce and repay unpaid court costs in a timely manner.

(b) The purpose of this article is to create a program that allows the commissioner to temporarily stay a driver's license suspension or revocation for individuals who are accepted into the second chance driver's license program if the individual thereafter remains current in the repayment of unpaid court costs as required by the program.

**§17B-7-3. Definitions.**

For the purposes of this article:

(1) "Commissioner" means the Commissioner of the Division of Motor Vehicles, or his or her designee;

(2) "Consolidated repayment schedule" means the schedule by which a participant is expected to make monthly payments for unpaid court costs consistent with the requirements of the program as established by the director;

(3) "Court" means a municipal court, magistrate court, circuit court, family court or drug court in the State of West Virginia and the Supreme Court of Appeals of West Virginia;

(4) "Director" means Director of the Division of Justice and Community Services, or his or her designee;

(5) "Good standing" means compliance by a participant with the requirements of the program, as set forth in this article and legislative rules promulgated hereunder;

(6) "Monthly payment" means the amount that a participant is scheduled to remit to the director each month pursuant to the consolidated repayment schedule;

(7) "Participant" means a person who applies for, and is accepted into, the second chance driver's license program by the director;

(8) “Second chance driver’s license program” or “program” means the program created under this article that establishes a payment structure for a participant to consolidate unpaid court costs into monthly payments over a defined period of time, coordinates the acceptance and distribution of monthly payments from a participant and certifies that a participant in good standing is eligible for a temporary stay of a driver’s license suspension or revocation due to certain unpaid court costs; and

(9) “Unpaid court costs” means any fee, fine, expense, cost or other moneys that are required to be paid by a person to a court, pursuant to one or more valid court orders, and have not been paid in full.

**§17B-7-4. Second chance driver’s license program established; creation and administration by director; program eligibility.**

(a) There is hereby established the second chance driver’s license program which shall be administered by the director pursuant to the requirements of this article.

(b) To be eligible to participate in the program, a person must:

(1) Have his or her driver’s license suspended or revoked for failure to remit unpaid court costs pursuant to section three-a or section three-c, article three, chapter seventeen-b of this code;

(2) Be at least twelve months delinquent in payment of unpaid court costs to a court or courts;

(3) Not have any unpaid court costs incurred from charges that involve driving a commercial motor vehicle or which otherwise violate the commercial driver’s license requirements in chapter seventeen-e of this code; and

(4) Meet other eligibility requirements established pursuant to the rules developed under section nine of this article.

**§17B-7-5. Program acceptance; development of consolidated repayment schedule; no other court fee payments required.**

(a) A person wishing to participate in the second chance driver's license program shall complete an application form prepared by the director.

(b) Upon receipt of a person's application, the director shall coordinate with the courts and the commissioner to verify the total amount of the applicant's unpaid court costs in the State of West Virginia at the time of the application.

(c) All courts shall provide a full accounting of all unpaid court costs assignable to the applicant within thirty days of the request of the director. The accounting shall separately identify the portion of the court costs that constitute a fine, forfeiture or penalty remaining unpaid by the applicant for each order of the court for which unpaid balances remain.

(d) Any unpaid court costs not reported to the director by a court as provided by subsection (c) of this section may not be collected separately by the court during the time in which the applicant is a participant in the program.

(e) If a participant completes the program, any unpaid court costs, except for unpaid fines, not submitted to the director pursuant to subsection (c) of this section shall be deemed waived unless the unpaid court costs were part of an order entered after the date upon which the director requested information for a participant. The driver's license suspension or revocation with respect to any unpaid fine not reported by a court shall be released upon completion of the program by the participant.

(f) Within thirty days after receipt of information concerning unpaid court costs, the director shall determine if the applicant is eligible to participate in the program. Upon determination, the director shall promptly notify the applicant of his or her acceptance into the program.

(g) Upon acceptance of the applicant as a participant in the program, the director shall develop a consolidated repayment schedule for the participant, which will require the participant to remit payments on a monthly basis to the director according to guidelines established by the director in legislative rules, subject to the following conditions:

(1) The monthly payment shall be determined based on the participant's monthly income and expenditures, but may not be less than \$50 per month; and

(2) The consolidated repayment schedule shall require full payment of the unpaid court costs within one year.

(h) The consolidated repayment schedule may be amended to reflect changes in a participant's circumstances.

(i) The director, in his or her discretion, may permit a hardship waiver of the requirements of subsection (g) of this section, upon a determination that the applicant's circumstances may have changed, and that the objectives of this article are best accomplished if the consolidated repayment schedule requires a lesser monthly payment or a longer period of time to remit the unpaid court costs: *Provided*, That the director may not waive the total amount of unpaid court costs submitted by the courts according to subsection (a) of this section.

(j) Upon acceptance into the program, a participant in good standing with the program is under no obligation to make separate or additional payments of unpaid court costs directly to a court if those unpaid court costs are included in the consolidated repayment schedule.

**§17B-7-6. Payments to be made to director; certificate of compliance; failure to comply with consolidated repayment schedule.**

(a) Upon acceptance into the program and establishment of a consolidated repayment schedule, the participant shall remit monthly payments to the director in the manner prescribed by the

director and in compliance with the consolidated repayment schedule.

(b) Upon receipt of the first monthly payment required by the participant's consolidated repayment schedule, the director shall issue to the commissioner, in writing or electronically, a certificate of compliance verifying the participant's good standing in the program.

(c) If a participant fails to make a monthly payment within thirty days of a deadline set by the consolidated repayment schedule, the director shall immediately issue, in writing or electronically, a certificate of noncompliance to the commissioner stating that the participant is not in good standing in the program.

(1) If a participant, after failing to make one or more timely monthly payments, remits the total amount due at that time according to the consolidated repayment schedule, the director shall issue a certificate of compliance to the commissioner stating that the participant is once again in good standing in the program.

(2) If a participant fails to make timely monthly payments in accordance with the consolidated repayment schedule on three occasions, the director shall remove the participant from the program and shall issue a program removal notice to the commissioner and applicable courts receiving payments under the program stating that the participant is no longer a participant in the program.

(d) If a participant is convicted of a subsequent criminal offense after acceptance into the program, the director shall remove the participant from the program and, upon removal, the director shall issue a program removal notice to the commissioner and applicable courts receiving payments under the program stating that the participant is no longer a participant in the program.

(e) Upon completion of all monthly payments in the consolidated repayment schedule by the participant, the director shall issue a program completion certificate to the commissioner and the court or courts to whom the participant owed unpaid court

costs under the program, stating that the participant completed the program in good standing.

(f) Upon receipt of a program completion certificate by the director stating that the participant has completed the program in good standing, the court or courts whose unpaid court costs were paid according to the consolidated repayment schedule shall enter an order acknowledging payment in full of the unpaid court costs.

**§17B-7-7. Stay of driver's license suspension or revocation.**

(a) Upon receipt of a certificate of compliance prepared by the director, the Division of Motor Vehicles shall stay the participant's driver's license suspension or revocation for unpaid court costs: *Provided*, That the participant's drivers license shall be subject to restrictions upon where and when the participant may operate a motor vehicle during this stay of the suspension or revocation, as determined by the Commissioner.

(b) The Division of Motor Vehicles may require retesting for a driver's license for any participant who has not had a valid driver's license within the six months prior to the date of receipt of the certificate of compliance. Notwithstanding any other provision of the code to the contrary, a participant shall not be required to pay any fees to the Division of Motor Vehicles for retesting.

(c) Upon receipt of a certificate of noncompliance prepared by the director, the commissioner shall remove the stay of the participant's driver's license suspension or revocation until further notice from the director regarding the participant's status in the program.

(d) Upon receipt of a program removal notice issued by the director, the commissioner shall remove the stay of the participant's driver's license suspension or revocation.

(e) Notwithstanding any other provision of code to the contrary, no participant in the program shall be required to pay any reinstatement fees for unpaid court costs within the scope of the consolidated repayment schedule.

**§17B-7-8. Second chance driver's license program account created.**

There is hereby created in the State Treasury an account to be known as the Second Chance Driver's License Program Account. The account shall consist of all moneys received from individuals participating in the program. The fund shall be administered by the Division of Justice and Community Services solely for the purposes of this article. Any moneys remaining in the fund at the close of a fiscal year shall be carried forward for use in the next fiscal year. Funds in the account shall not be invested, used, withdrawn or transferred out of the account except for the purposes allowed in the provisions of this article.

**§17B-7-9. Deposit of funds into account; disbursement of funds from account.**

(a) The director shall deposit all money received from participants pursuant to a consolidated repayment schedule into the Second Chance Driver's License Program Account. The director shall prorate, separate and identify the portion of each payment that constitutes payment of a fine, forfeiture or penalty in accordance with the information provided to the director pursuant to subsection (c), section five of this article.

(b) After deposit of a participant's monthly payment into this account, the director shall make disbursements from this account as follows:

(1) Portions of payments identified as payment of a fine, forfeiture or penalty shall be disbursed to the courts identified in the repayment schedule;

(2) Ninety-five percent of the portions of the payments remaining after payment as required in subdivision (1) of this subsection shall be disbursed to the courts identified in the participant's consolidated repayment schedule. Courts shall accept and document these payments of ninety-five percent of the total unpaid court costs, not including court costs received pursuant to subdivision (1) of this subsection, as payment in full of the amount

owed by the participant to the court for this portion of court costs owed; and

(3) The portion of the payments remaining in the account after payment of the court costs in subdivisions (1) and (2) of this subsection may be appropriated by the Legislature to be expended for costs incurred by the director in the administration of this article.

(c) Courts that receive disbursements pursuant to subsection (b) of this section are responsible for making statutory disbursements of amounts received in satisfaction of unpaid court costs according to the requirements of the code.

#### **§17B-7-10. Rule-making Authority.**

(a) To implement the provisions of this article, the director, in consultation with the commissioner, shall promulgate emergency and legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code, which shall include, but not be limited to, the following:

(1) The form, content and information required to be furnished in the application forms;

(2) The procedure and requirements of the eligibility review process;

(3) Guidelines for creation of a consolidated repayment schedule of unpaid court costs;

(4) Terms and conditions for acceptance into the program, maintenance of good standing, and completion of the program;

(5) Forms for certificates of compliance, certificates of noncompliance, program removal notice and program completion certificate; and

(6) The procedures for removal or suspension from the program.

(b) To implement the provisions of this article, the commissioner shall promulgate emergency and legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code, which may include, but are not limited to, the following:

(1) Establishing the procedures for issuing a stay of a participant's driver's license suspension or revocation; and

(2) Establishing the restrictions upon where and when a participant may utilize his or her driver's license to operate a motor vehicle during the stay of the suspension or revocation authorized by this article.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 634**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17B-7-1, §17B-7-2, §17B-7-3, §17B-7-4, §17B-7-5, §17B-7-6, §17B-7-7, §17B-7-8, §17B-7-9 and §17B-7-10, all relating to creation of the Second Chance Driver's License Act; creating short title and designating that the article may be cited as the William R. Laird IV Second Chance Driver's License Act; setting forth legislative findings and purpose; defining terms; establishing program; directing the Director of the Division of Justice and Community Services to administer program; setting eligibility requirements to become program participant; requiring application from person wishing to participate; directing the director to coordinate with officials from courts and commissioner to verify total amount of unpaid court costs; setting deadlines for providing information regarding unpaid court costs to director; requiring the courts to provide an accounting that separately identifies the portion of the court costs that constitute a fine, forfeiture or penalty; directing how unreported court costs are to be handled; requiring notification to applicant of acceptance into program; directing the director to develop consolidated repayment schedule for participant; setting requirements for consolidated repayment schedule; permitting modification of consolidated

repayment schedule; permitting hardship waiver; clarifying that participant is under no obligation to make separate or additional payments directly to court if those costs are included in consolidated repayment schedule; establishing moratorium on collection of unpaid court fees by a court or its designee while a participant is in good standing with the program; requiring monthly remittance of payments to director; directing issuance of certificate of compliance, certificate of noncompliance, program removal notice and program completion certificate under certain conditions; directing Division of Motor Vehicles to place stay or lift stay on suspension or revocation of participant's driver's license under certain conditions; permitting Division of Motor Vehicles to require retesting under certain circumstances; exempting participants from certain retesting fees and reinstatement fees; creating Second Chance Driver's License Program Account; providing for administration of account; directing deposit of funds into account; authorizing expenditure of funds from account for certain purposes; and providing legislative and emergency rule-making authority.

On motion of Senator Carmichael, the following amendments to the House of Delegates amendments to the bill were reported by the Clerk, considered simultaneously, and adopted:

On page one, section two, subsection (a), after the words "to unpaid court costs" by inserting the words "to obtain a stay of the driver's license suspension or revocation";

On page four, section five, subsection (i), by striking out "(a)" and inserting in lieu thereof "(c)";

On page six, section seven, subsection (a), by striking out the word "Commissioner" and inserting in lieu thereof the word "commissioner";

On page seven, section nine, subsection (a), by striking out the word "money" and inserting in lieu thereof the word "moneys";

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 634**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17B-7-1, §17B-7-2, §17B-7-3, §17B-7-4, §17B-7-5, §17B-7-6, §17B-7-7, §17B-7-8, §17B-7-9 and §17B-7-10, all relating to creation of the Second Chance Driver's License Act; creating short title and designating that the article may be cited as the William R. Laird IV Second Chance Driver's License Act; setting forth legislative findings and purpose; defining terms; establishing program; directing the Director of the Division of Justice and Community Services to administer program; setting eligibility requirements to become program participant; requiring application from person wishing to participate; directing the director to coordinate with courts and Commissioner of the Division of Motor Vehicles to verify total amount of unpaid court costs; setting deadlines for providing information regarding unpaid court costs to director; requiring courts to provide an accounting that separately identifies the portion of court costs that constitute fine, forfeiture or penalty; prohibiting separate collection of unreported unpaid court costs while applicant is participant of program; directing how unreported court costs are to be handled; requiring notification to applicant concerning acceptance into program within thirty days; directing the director to develop consolidated repayment schedule for participant; setting certain requirements for consolidated repayment schedule; permitting modification of consolidated repayment schedule; permitting hardship waiver; clarifying that participant is under no obligation to make separate or additional payments directly to court if those costs are included in consolidated repayment schedule; establishing moratorium on collection of unpaid court fees by a court or its designee while participant is in good standing with program; requiring monthly remittance of payments to director; directing issuance of certificate of compliance, certificate of noncompliance, program removal notice and program completion certificate under certain circumstances; directing courts to enter order acknowledging receipt of program completion certificate; directing Division of Motor Vehicles to place stay or lift stay on suspension

or revocation of participant's driver's license under certain circumstances; authorizing Division of Motor Vehicles to place certain restrictions on driver's license of program participant; permitting Division of Motor Vehicles to require retesting under certain circumstances; exempting participants from certain retesting fees and reinstatement fees; creating Second Chance Driver's License Program Account; providing for administration of account; directing deposit of funds into account; authorizing expenditure of funds from account for certain purposes; providing legislative and emergency rule-making authority for Division of Justice and Community Services; and providing legislative and emergency rule-making authority for Division of Motor Vehicles.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments, as amended.

Engrossed Committee Substitute for Senate Bill 634, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 634) passed with its Senate amended title.

*Ordered,* That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from The Clerk of the House of Delegates announced the passage by that body, without amendment, to take effect from passage, and requested the concurrence of the Senate in the changed effective date, as to

**Eng. Com. Sub. for Senate Bill 691**, Modifying certain air pollution standards.

On motion of Senator Carmichael, the bill was taken up for immediate consideration.

On further motion of Senator Carmichael, the Senate concurred in the changed effective date of the bill, that being to take effect from passage, instead of ninety days from passage.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 691) takes effect from passage.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended, with its Senate amended title, of

**Eng. Com. Sub. for House Bill 2588**, Relating to the filing of financial statements with the Secretary of State.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended, to take effect from passage, with its Senate amended title, of

**Eng. House Bill 4346**, Relating to bear hunting and offenses and penalties.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended, with its Senate amended title, of

**Eng. Com. Sub. for House Bill 4587**, Relating to violations associated with absent voters' ballots.

The Senate proceeded to the fourth order of business.

Senator Maynard, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 10th day of March, 2016, 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:

**(S. B. 515)**, Authorizing payment of certain claims against state.

**(H. B. 2796)**, Providing paid leave for certain state officers and employees during a declared state of emergency.

**(H. B. 4157)**, Supplementing, amending, and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation, Division of Highways.

**(H. B. 4159)**, Making a supplementary appropriation to the Public Services Commission – Motor Carrier Division.

**(Com. Sub. for H. B. 4279)**, Relating to disposition of seized firearms.

**(H. B. 4324)**, Authorizing information sharing by Workforce West Virginia.

**(Com. Sub. for H. B. 4330)**, Relating to make unlawful to take a fish, water animal or other aquatic organism from state waters to stock a commercial pond or lake.

**(Com. Sub. for H. B. 4505)**, Allowing powerball winners to remain anonymous.

**(Com. Sub. for H. B. 4540)**, Removing prohibition of disposal of certain electronics in landfills.

**(H. B. 4644)**, Relating to jury fees.

**(H. B. 4654)**, Relating to the Executive Secretary of the Board of Registered Professional Nurses.

**(H. B. 4674)**, Relating to motor vehicle back-up lamps.

And,

**(H. B. 4735)**, Relating to the definition of health care provider, and clarifying that speech-language pathologists and audiologists are two separate providers.

Respectfully submitted,

Mark R. Maynard,  
*Chair, Senate Committee.*  
John B. McCuskey,  
*Chair, House Committee.*

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. Com. Sub. for House Bill 2897**, Young Entrepreneur Reinvestment Act.

With an amendment from the Committee on Economic Development pending;

Now on second reading, having been read a first time and referred to the Committee on Finance on March 8, 2016;

And reports the same back with the recommendation that it do pass as amended by the Committee on Economic Development to which the bill was first referred.

Respectfully submitted,

Mike Hall,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2897) contained in the preceding report from the Committee on Finance was taken up for immediate consideration and read a second time.

At the request of Senator Carmichael, and by unanimous consent, the bill was advanced to third reading with the unreported Economic Development committee amendment pending and the right for further amendments to be considered on that reading.

The Senate proceeded to the sixth order of business.

Senators Unger, Prezioso and Yost offered the following resolution:

**Senate Concurrent Resolution 68**—Requesting that the Lewis and Clark National Historic Trail be extended eastward by the National Park Service through West Virginia.

Whereas, In 1978, Congress established the Lewis and Clark National Historic Trail that stretches 3,700 miles from Wood River, Illinois, to the mouth of the Columbia River, near present-day Astoria, Oregon; and

Whereas, In 2008, Congress authorized a feasibility study to determine whether the Lewis and Clark National Historic Trail should be extended eastward to include routes and sites associated with the preparation and return phases of the Lewis and Clark Corps of Discovery expedition; and

Whereas, The National Park Service has collected a substantial amount of historical data concerning the travels of Meriwether Lewis and William Clark through West Virginia; and

Whereas, Information from the National Park Service indicates that Lewis and Clark traveled during the early 1800s in present-day West Virginia counties, including Jefferson, Berkeley, Morgan, Mineral, Hancock, Brooke, Ohio, Marshall, Wetzel, Tyler, Pleasants, Wood, Jackson, Mason, Cabell and Wayne, and through present-day West Virginia locations, including Harpers Ferry, Fort Ashby, Wheeling and Moundsville; and

Whereas, Extending the portion of the trail that runs through West Virginia would have potential beneficial effects on the economic development and tourism industry, preservation of cultural and natural resources, health benefits of outdoor recreation and educational opportunities in the classroom and outdoors; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Legislature designate and recognize the portion of the Lewis and Clark National Historic Trail that runs through West Virginia; and, be it

*Further Resolved,* That the National Park Service extend the Lewis and Clark National Historic Trail eastward through West Virginia; and, be it

*Further Resolved,* That the Clerk of the Senate is hereby directed to forward a copy of this resolution to Jonathan B. Jarvis, Director, National Park Service; Dennis Frye, Chief Historian with the National Park Service, Tokey Boswell, (Acting) Chief of Planning, Midwest Region, National Park Service; Cameron H. Sholly, Director, Midwest Region, National Park Service; Frank Muhly, past President of the Philadelphia chapter of the Lewis and Clark Trail Heritage Foundation, James L. Mallory, Vice Chairman of the Lewis and Clark Trust; Governor Earl Ray Tomblin; and to the representatives and senators elected by the citizens of West

Virginia serving the citizens of West Virginia in the Congress of the United States in Washington, D.C.

Which, under the rules, lies over one day.

Senator Walters offered the following resolution:

**Senate Concurrent Resolution 69**—Requesting the Joint Committee on Government and Finance study the daily fantasy sports industry which could be operated by the state's casinos and the regulation thereof, if any.

Whereas, The daily fantasy sports industry is a billion dollar industry; and

Whereas, West Virginia casinos desire to enter into the daily fantasy sports industry to become a more attractive destination for out of state patrons; and

Whereas, West Virginia has the opportunity to partner with the West Virginia casinos to increase the profitability to the state; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the daily fantasy sports industry, the ability of the casinos to operate daily fantasy sports within casinos to make casinos a more attractive destination for out of state patrons and regulations that may be required to verify certain requirements of participants, if any; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2017, on its findings, conclusions and recommendations, together with drafts of any legislation necessary 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.

Which, under the rules, lies over one day.

The Senate proceeded to the seventh order of business.

**Senate Concurrent Resolution 40**, Encouraging Congress pass Toxic Exposure Research Act of 2016.

On unfinished business, coming up in regular order, was reported by the Clerk.

The question being on the adoption of the resolution, the same was put and prevailed.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Senate Concurrent Resolution 67**, Requesting study on effectiveness of civics education in WV schools.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Rules.

**Com. Sub. for House Concurrent Resolution 3**, North River Mills Historic Trace.

On unfinished business, coming up in regular order, was reported by the Clerk.

The following amendments to the resolution, from the Committee on Transportation and Infrastructure, were reported by the Clerk, considered simultaneously, and adopted:

On page one, in the first Whereas clause, by striking out the word “raik” and inserting in lieu thereof the word “Craik”;

On page five, in the twentieth Whereas clause, by striking out the word “ninety-six” and inserting in lieu thereof the words “the Siege of Ninety Six”;

On page six, in the twenty-fifth Whereas clause, by striking out the word “where” and inserting in lieu thereof the word “when”;

On page six, in the Resolved clause, after the word “ending” by inserting the word “at”;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Com. Sub. for House Concurrent Resolution 3**—Requesting the Division of Highways to name the section of County Route 45/20, known as Coldstream Road, beginning at a point, latitude 39.336997, longitude -78.494499, and ending at a point, latitude 39.349509, longitude -78.511901, along the North River, Hiatt Run and Maple Run, in Hampshire County, the “North River Mills Historic Trace”.

The question being on the adoption of the resolution (Com. Sub. for H. C. R. 3), as amended, the same was put and prevailed.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Com. Sub. for House Concurrent Resolution 56**, U.S. Army CPL Robert Eugene Jackson Memorial Bridge.

On unfinished business, coming up in regular order, was reported by the Clerk.

The following amendment to the resolution, from the Committee on Transportation and Infrastructure, was reported by the Clerk and adopted:

On page one, in the third Whereas clause, by striking out the word “Booth’s” and inserting in lieu thereof the word “Booths”.

The question being on the adoption of the resolution (Com. Sub. for H. C. R. 56), as amended, the same was put and prevailed.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Com. Sub. for House Concurrent Resolution 57**, U.S. Army PVT Leander Reel Memorial Bridge.

On unfinished business, coming up in regular order, was reported by the Clerk.

The following amendments to the resolution, from the Committee on Transportation and Infrastructure, were reported by the Clerk, considered simultaneously, and adopted:

On page one, in the second Whereas clause, after the words “served in” by inserting the word “the”;

And,

On page two, in the fifth Whereas clause, by striking out the word “infantry” and inserting in lieu thereof the word “Infantry”.

The question being on the adoption of the resolution (Com. Sub. for H. C. R. 57), as amended, the same was put and prevailed.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Com. Sub. for House Concurrent Resolution 72**, Max G. Parkinson Memorial Bridge.

On unfinished business, coming up in regular order, was reported by the Clerk.

The following amendments to the resolution, from the Committee on Transportation and Infrastructure, were reported by the Clerk, considered simultaneously, and adopted:

On page one, in the fourth Whereas clause, by striking out the word “Realtor” and inserting in lieu thereof the word “realtor”;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Com. Sub. for House Concurrent Resolution 72—**Requesting the Division of Highways to name Bridge Number 02-13-0.81 (02A172) (39.46979, -77.97913), locally known as New North Tennessee Avenue Bridge, carrying County Route 13 over Tuscarora Creek in Berkeley County, the “Max G. Parkinson Memorial Bridge”.

The question being on the adoption of the resolution (Com. Sub. for H. C. R. 72), as amended, the same was put and prevailed.

*Ordered,* That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for House Bill 2205,** Creating the crime of prohibited sexual contact by a psychotherapist.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2205) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 2205**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-8-30, relating to creating the offense of a psychotherapist, or one fraudulently representing himself or herself as a psychotherapist, to engage in sexual contact or sexual intercourse with a patient or client by means of therapeutic deception; establishing elements of the crime; providing exceptions; providing definitions; and providing criminal penalties.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 4013**, Requiring a person desiring to vote to present documentation identifying the voter.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 4013 pass?”

On the passage of the bill, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Leonhardt, Maynard, Mullins, Palumbo, Plymale, Sypolt, Takubo, Trump, Walters and Cole (Mr. President)—20.

The nays were: Beach, Facemire, Kessler, Kirkendoll, Laird, Miller, Prezioso, Romano, Snyder, Stollings, Unger, Williams, Woelfel and Yost—14.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4013) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 4013**—A Bill to amend and reenact §3-1-34 and §3-1-41 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §3-1-51; to amend and reenact §3-2-11 and §3-2-12 of said code; and to amend and reenact §17B-2-1 of said code, all relating to voting procedures; requiring a person desiring to vote on or after January 1, 2018, to present valid document identifying the voter to one of the poll clerks; requiring poll clerk to inspect valid identifying document and confirm information with individual's voter registration record; requiring poll clerk to confirm that displayed image is truly an image of the person presenting the document; setting forth requirements for valid identifying document; identifying documents considered to be valid identifying document; permitting registered voter to be accompanied to polling place by adult known to registered voter for at least six months; permitting voter to vote if accompanying adult signs affidavit and presents valid identifying document; authorizing poll worker to allow voter known to the poll worker for at least six months to vote without presenting valid identifying document; permitting person desiring to vote to cast provisional ballot after executing affidavit; setting conditions for counting of provisional ballot; setting content of affidavit to be used for casting provisional ballot; permitting voter who votes in person at precinct polling place located in building which is part of state licensed care facility where voter is resident without presenting valid identifying document; permitting voter to cast ballot if voter objects to photograph requirement because of religious beliefs if he or she executes an affidavit of religious exemption; providing text of affidavit for religious exemption; requiring person entering voter information into centralized voter registration database to notate when a voter has not presented valid identifying documentation and executed a voter identity affidavit; making confidential voter's residential or mailing address if voter is participant in Address Confidentiality Program except for certain statutory and administrative purposes; directing Secretary of State to educate voters about requirement to present valid identifying document; requiring Secretary of State to develop a program to help ensure that all eligible voters obtain identification; directing members of receiving board to challenge the right of person requesting ballot to

vote in election if person fails to present valid identifying documentation; modifying provisional ballot procedures; requiring clerk of county commission to send letter to voters who execute voter identity affidavit; setting deadline for letters to be mailed; specifying contents of letter; directing clerk of county commission to cause letters returned as undeliverable to be referred to Secretary of State; directing clerk of county commission to forward to Secretary of State a list of persons who were mailed letters and notified clerk that they did not vote; requiring Secretary of State to investigate to determine whether fraudulent voting occurred; requiring Secretary of State to submit report to Joint Committee on the Judiciary and Joint Committee on Government and Finance detailing results of all investigations of voter identity affidavits; requiring Division of Motor Vehicles to collect certain information from individuals who are being issued, are renewing, or changing address for a driver's license or official identification card; requiring Division of Motor Vehicles to release all information obtained to Secretary of State unless applicant affirmatively declines to become registered to vote or update voter registration; requiring Secretary of State to forward information to county clerk for relevant county to process newly registered voter or updated information for already-registered voter; requiring Division of Motor Vehicles to release certain information to Secretary of State if applicant affirmatively declines to become registered to vote; requiring Division of Motor Vehicles to notify applicant that signature submission grants written consent for submission of that information; clarifying that qualified voter who is automatically registered to vote need not present identification in order to make registration valid; directing Secretary of State to establish procedures to protect confidentiality of information obtained from Division of Motor Vehicles; permitting person registered to vote to cancel voter registration at any time; clarifying that Division of Motor Vehicles not required to determine eligibility for voter registration and voting; making changes regarding automatic voter registration effective July 1, 2017; requiring Division of Motor Vehicles report to Joint Committee on Government and Finance if unable to meet requirements by February 1, 2017; authorizing Secretary of State promulgate legislative rules; permitting certain uses of moneys in Combined Voter Registration and Driver

Licensing Fund; requiring balance in Fund in excess of \$100,000 be transferred to General Revenue annually; prohibiting Division of Motor Vehicles from charging fees for issuance of identification card if applicant intends to use identification card as form of identification for voting; providing certain provisions for issuance of driver's license or identification card to persons over the age of fifty years; and providing certain provisions for issuance of driver's license or identification card to persons over the age of seventy years.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Thereafter, at the request of Senator Carmichael, and by unanimous consent, the closing remarks by Senator Trump regarding the passage of Engrossed Committee Substitute for House Bill 4013 were ordered printed in the Appendix to the Journal.

**Eng. Com. Sub. for House Bill 4035**, Permitting pharmacists to furnish naloxone hydrochloride.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Carmichael, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

**Eng. Com. Sub. for House Bill 4038**, Relating to insurance requirements for the refilling of topical eye medication.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4038) passed.

The following amendment to the title of the bill, from the Committee on Health and Human Resources, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 4038**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-15-4m; to amend said code by adding thereto a new section, designated §33-16-3y; to amend said code by adding thereto a new section, designated §33-24-7n; to amend said code by adding thereto a new section, designated §33-25-8k; and to amend said code by adding thereto a new section, designated §33-25A-8m, all relating to insurance requirements for the refilling of topical eye medication; requiring a refill take place at a certain time; and establishing when a refill is permitted.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 4040**, Regulating step therapy protocols in health benefit plans.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4040) passed.

The following amendment to the title of the bill, from the Committee on Health and Human Resources, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 4040**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-15-4m; to amend said code by adding thereto a new section, designated §33-16-3y; to amend said code by adding thereto a new section, designated §33-24-7n; to amend said code by adding thereto a new section, designated §33-25-8k; and to amend said code by adding thereto a new section, designated §33-25A-8m, all relating to regulating step therapy protocols in health benefit plans which provide prescription drug benefits; providing for an exception from the protocols; setting out criteria for the exception; providing for an effective date; and setting out exclusions.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 4053**, Department of Environmental Protection, Air Quality, rule relating to the control of annual nitrogen oxide emissions.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sybolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4053) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 4053**—A Bill to amend and reenact article three, chapter sixty-four of the Code of West Virginia, 1931, as amended, relating generally to administrative rules of the Department of Environmental Protection; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; repealing certain legislative, procedural or interpretive rules promulgated by certain agencies, boards and commissions which are no longer authorized or are obsolete; repealing certain legislative, procedural and interpretive rules promulgated by certain agencies and boards under the Department of Environmental Protection; repealing the Department of Environmental Protection legislative rule relating to requiring the submission of emission statements for volatile organic compound emissions and oxides; repealing the Department of Environmental Protection legislative rule relating to bona fide future use; repealing the Department of Environmental Protection legislative rule relating to abandoned wells; repealing the Department of Environmental Protection legislative rule relating to the Environmental Excellence Program; repealing the Department of Environmental Protection legislative rule relating to oil and gas operations – solid waste; repealing the Department of Environmental Protection legislative rule relating to the Recycling Assistance Fund Grant Program; repealing the Department of Environmental Protection legislative rule relating to commercial hazardous waste management facility siting fees; repealing the

Department of Environmental Protection legislative rule relating to groundwater protection standards; repealing the Department of Environmental Protection legislative rule relating to Underground Storage Tank Insurance Trust Fund; repealing the Department of Environmental Protection legislative rule relating to hazardous waste management; repealing the Department of Environmental Protection legislative rule relating to solid waste management; repealing the Department of Environmental Protection legislative rule relating to waste tire management; repealing the Department of Environmental Protection legislative rule relating to sewage sludge management; repealing the Department of Environmental Protection legislative rule relating to Hazardous Waste Emergency Response Fund regulations; repealing the Department of Environmental Protection interpretive rule relating to initial inspection, certification and spill prevention response plan requirements; repealing the Department of Environmental Protection legislative rule relating to the Office of the Environmental Advocate; repealing the Department of Environmental Protection legislative rule relating to coal refuse; repealing the Department of Environmental Protection procedural rule relating to administrative procedures and civil administrative penalty assessment – Water Resources Protection Act; repealing the Department of Environmental Protection procedural rule relating to procedures and practice before the Department of Energy; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of annual nitrogen oxide emissions; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from combustion of solid waste; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from hazardous waste treatment, storage and disposal facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of ozone season nitrogen oxides

emissions; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of annual sulfur dioxide emissions; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to surface mining reclamation; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to administrative proceedings and civil penalty assessment; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to above ground storage tank fee assessments; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to above ground storage tank administrative proceedings and civil penalty assessment; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements governing water quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to above ground storage tanks, authorizing the Department of Environmental Protection to promulgate a legislative rule relating to horizontal well development; repealing the Commercial Hazardous Waste Management Facility Siting Board legislative rule relating to certification requirements; repealing the Environmental Quality Board legislative rule relating to requirements governing water quality standards; repealing the Environmental Quality Board procedural rule relating to requests for information; repealing the Environmental Quality Board procedural rule relating to rules governing the notice of open meetings under the Open Governments Proceedings Act; repealing the Miner Training, Education and Certification Board legislative rule relating to certification of blasters for surface coal mines and surface areas of underground mines; repealing the Miner Training, Education and Certification Board legislative rule relating to standards for certification of blasters for surface coal mines and surface areas of underground mines; repealing the Miner Training, Education and Certification Board procedural rule relating to temporary suspension of certificates issued to persons pending full hearing before the board of appeals; repealing the Water Resources Board legislative rule relating to the State National Pollutant Discharge Elimination System Program; repealing the Water Resources Board legislative rule relating to requirements

governing the State National Pollutant Discharge Elimination System; repealing the Air Quality Board procedural rule relating to requests for information; and repealing the Oil and Gas Inspectors Examining Board procedural rule relating to matters pertaining to the rules and regulations dealing with the Oil and Gas Inspectors Examining Board.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4053) takes effect from passage.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 4060**, Relating generally to the promulgation of administrative rules by the Department of Military Affairs and Public Safety.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4060) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 4060**—A Bill to amend and reenact article 6, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to administrative rules of the Department of Military Affairs and Public Safety; repealing certain legislative, procedural or interpretive rules promulgated by certain agencies, commissions and boards which are no longer authorized or are obsolete; repealing certain legislative rules by certain agencies and commissions under the Department of Military Affairs and Public Safety; repealing the Division of Corrections legislative rule relating to a furlough program for adult inmates; repealing the Division of Corrections legislative rule relating to employment of displaced correctional employees; repealing the Division of Corrections legislative rule relating to parole supervision; repealing the Division of Corrections legislative rule relating to recording of inmate phone calls; repealing the Division of Corrections legislative rule relating to monitoring inmate mail; repealing the Division of Corrections interpretive rule relating to charges assessed against inmates for services provided by state medical co-payment; repealing the Division of Corrections procedural rule relating to inmate grievance procedures; repealing the Jails and Prison Standards Commission legislative rule relating to minimum standards for construction, operation and management of holding facilities; authorizing certain agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing the Fire Commission to promulgate a legislative rule relating to the fire code; authorizing the Fire Commission to promulgate a legislative rule relating to the state building code; and

authorizing the Fire Commission to promulgate a legislative rule relating to the standards for the certification of continuing education of municipal, county and other public sector building code officials, inspectors and plans examiners.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4060) takes effect from passage.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 4168**, Creating a special motor vehicle collector license plate.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Walters, unanimous consent was granted to offer an amendment to the bill on third reading.

Thereupon, on motion of Senator Walters, the following amendment to the bill was reported by the Clerk and adopted:

By striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

That the Code of West Virginia, 1931, as amended, be amended and reenacted by adding thereto a new article, designated §17A-6F-1, §17A-6F-2, §17A-6F-3 and §17A-6F-4, all to read as follows:.

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 4168), as just amended, was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4168) passed.

On motion of Senator Walters, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 4168**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17A-6F-1, §17A-6F-2, §17A-6F-3 and §17A-6F-4, all relating to creating a special motor vehicle collector license plate; defining terms; establishing requirements and fees for a motor vehicle collector license plate application and for use of such plate; creating a misdemeanor offense for violation of the article; specifying fines; and requiring emergency and legislative rulemaking.

Senator Carmichael moved that the bill take effect July 1, 2016.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes,

Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4168) takes effect July 1, 2016.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 4174**, Exempting activity at indoor shooting ranges from the prohibition of shooting or discharging a firearm within five hundred feet of any church or dwelling house.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4174) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 4174**—A Bill to amend and reenact §20-2-58 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-6-23 of said code, all relating to shooting ranges generally; exempting activity at indoor shooting ranges from the prohibition of shooting or discharging a firearm within five hundred feet of any church or dwelling house; amending the definition of “shooting range” to include an indoor range; exempting activity at indoor shooting ranges from criminal penalties for violations for shooting or discharging a firearm within five hundred feet of any church or dwelling house; modifying and clarifying the limitations on nuisance actions against shooting ranges; and exempting indoor shooting ranges which have necessary licenses and are compliant with applicable laws, rules or ordinance from nuisance law.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 4237**, Supporting and Strengthening Families Act.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4237) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 4237**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §49-8-1, §49-8-2, §49-8-3, §49-8-4, §49-8-5, and §49-8-6, all relating to the temporary delegation of certain custodial powers by a parent or legal custodian; setting forth legislative findings and purpose; defining terms; requiring qualified nonprofit organizations to register with Department of Health and Human Resources; requiring qualified nonprofit organizations to provide quarterly reports to Department of Health and Human Resources concerning child placements; permitting the delegation of certain custodial powers; limiting scope of delegation; permitting parent or legal custodian to revoke or withdraw power of attorney at any time; clarifying that scope of delegation of power of attorney only extends to the extent, and so long as, the parent, guardian or legal custodian retains custody; providing that power of attorney shall be revoked if parental rights terminated; directing court to notify person assuming parental rights under power of attorney; permitting child to remain with person assuming parental rights under power of attorney until court finalizes subsequent placement of child; clarifying that period of placement with person shall not be considered as a factor in custody hearing in which family member seeks to be awarded custody of child; providing that execution of power of attorney does not, without other evidence, constitute abandonment, abuse or neglect; creating exception under certain circumstances; reaffirming authority of Bureau for Children and Families and law enforcement to investigate allegations of abuse, abandonment, neglect or other mistreatment of child; requiring qualified nonprofit organization to conduct criminal history and background checks prior to execution of power of attorney; providing for payment of criminal history and background checks; requiring qualified nonprofit organization to train the designee on rights, duties and limitations associated with providing care for a child, including preventing and reporting of suspected child abuse or neglect; prohibiting designee from moving without written approval of parent or legal custodian; making

persons who accept custody under this article mandatory reporters of suspected child abuse and neglect; providing for circumstances in which parent or legal custodian dies or becomes incapacitated; clarifying that temporary delegation of certain custodial powers does not restrict certain other rights; creating a form for delegation of parental or legal custody; making legally sufficient a power of attorney that substantially complies with form contains acknowledged signatures of the parties; mandating certain disclosures by child investigative personnel; and clarifying applicability of licensing and other requirements of childcare facilities.

*Ordered,* That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 4301**, Relating to a framework for initiating comprehensive transformation of school leadership.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: Romano—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4301) passed with its title.

*Ordered,* That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 4307**, Clarifying that a firearm may be carried for self defense in state parks, state forests and state recreational areas.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: Snyder—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4307) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 4307**—A Bill to amend and reenact §20-2-5 of the Code of West Virginia, 1931, as amended, relating to carrying a firearm for self-defense in state parks and state forests generally; providing exceptions; and clarifying that nothing in the section authorizes counties or municipalities to limit a person's ability to possess, transfer over, carry or transport a firearm or ammunition.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 4314**, Prohibiting the sale of powdered or crystalline alcohol.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4314) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 4314**—A Bill to amend and reenact §60-1-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §60-3-11 of said code; to amend and reenact §60-6-7 and §60-6-8 of said code; and to amend said code by adding thereto a new section, designated §61-10-33, all relating to prohibiting the sale of powdered or crystalline alcohol and pure caffeine products; defining terms; prohibiting the commissioner from listing or stocking powdered alcohol in inventory; creating a criminal offense for anyone who manufactures or sells, aids or abets in the manufacture or sale of powdered alcohol, or possesses, uses or in any other manner provides or furnishes powdered alcohol; making a second and subsequent offense a felony and providing for increased penalties; creating a criminal offense for any licensee who sells, possesses, possesses for sale, furnishes or provides any powdered alcohol; making a second and subsequent offense a felony and providing for increased penalties; creating a criminal offense for the sale and possession of pure caffeine

products; defining relevant terms; providing exclusions; and providing penalties.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 4315**, Relating to air-ambulance fees for emergency treatment or air transportation.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Carmichael, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

**Eng. House Bill 4316**, Relating to reimbursement of certification fee for National Board for Professional Teaching Standards certification.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4316) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 4317**, Limiting factors in parenting plans.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 4317 pass?”

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kirkendoll, Leonhardt, Maynard, Mullins, Palumbo, Plymale, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel and Cole (Mr. President)—27.

The nays were: Facemire, Kessler, Laird, Miller, Prezioso, Unger and Yost—7.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4317) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 4317**—A Bill to amend and reenact §48-9-209 of the Code of West Virginia, 1931, as amended, relating to limiting factors in parenting plans; clarifying the court’s consideration of fraudulent reports of domestic violence and child abuse in imposing limits on a parenting plan in order to protect a child from harm; clarifying that a person’s withdrawal of or failure to pursue a report of domestic violence or child abuse is not alone sufficient to establish that report as fraudulent; requiring court to impose limits that are reasonably calculated to protect the child or the child’s parent from harm if a parent who would otherwise be allocated responsibility under a parenting plan has made one or

more fraudulent reports of domestic violence or child abuse; and correcting an internal code reference to clarify a parent's ability to move the court to disclose whether other parent was the source of fraudulent reports of domestic violence or child abuse.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 4323**, Relating to the reporting of emergency incidents by well operators and pipeline operators.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4323) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 4323**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §15-5C-1 and §15-5C-2, all relating to the reporting of emergency incidents by well operators and pipeline operators; defining terms; establishing reporting requirements; establishing time by which report must be made; setting forth contents of report; establishing obligations of local emergency telephone operators; providing for recording and handling of calls;

providing that certain information is available to the public pursuant to the West Virginia Freedom of Information Act; setting forth civil administrative penalty; setting forth situations in which civil administrative penalty shall be waived; permitting pipeline operator or well operator to request reconsideration of civil administrative penalty; and providing right to appeal.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

At the request of Senator Snyder, and by unanimous consent, the Senate returned to the second order of business and the introduction of guests.

Pending announcement of a meeting of a standing committee of the Senate,

On motion of Senator Carmichael, the Senate recessed until 1:30 p.m. today.

Upon expiration of the recess, the Senate reconvened and again proceeded to the eighth order of business, the next bill coming up in numerical sequence being

**Eng. Com. Sub. for House Bill 4352**, Relating to the selling of certain state owned health care facilities by the Secretary of the Department of Health and Human Resources.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On this question, the yeas were: Blair, Boley, Boso, Carmichael, Cline, Ferns, Leonhardt, Maynard, Mullins, Trump, Walters and Cole (Mr. President)—12.

The nays were: Ashley, Beach, Facemire, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Unger, Williams, Woelfel and Yost—22.

Absent: None.

So, a majority of all the members present and voting not having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4352) rejected.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 4435**, Authorizing the Public Service Commission to approve expedited cost recovery of electric utility coal-fired boiler modernization and improvement projects.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4435) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 4461**, Relating to School Building Authority School Major Improvement Fund eligibility.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings,

Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4461) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 4463**, Permitting the practice of telemedicine.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4463) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 4537**, Relating to the regulation of chronic pain clinics.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4537) passed.

The following amendment to the title of the bill, from the Committee on Health and Human Resources, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 4537**—A Bill to amend and reenact §16-5H-2, §16-5H-5 and §16-5H-7 of the Code of West Virginia, 1931, as amended, all relating to the regulation of chronic pain clinics; updating definitions; deleting an exemption for affiliation with a medical school; and clarifying due process concerns regarding the process for hearing notices upon appeal.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 4554**, Allowing an increase of gross weight limitations on certain roads in Greenbrier County.

On third reading, coming up in regular order, with the unreported Transportation and Infrastructure committee amendment pending and with the right having been granted on yesterday, Thursday, March 10, 2016, for further amendments to be received on third reading, was reported by the Clerk.

The following amendment to the bill, from the Committee on Transportation and Infrastructure, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

**WEIGHT LIMITATIONS ON CERTAIN ROADS IN GREENBRIER COUNTY.**

**§1. Authority of the Commissioner of the Division of Highways to increase weight limitations on certain highways within Greenbrier County.**

(a) If the Commissioner of the Division of Highways determines that the design, construction and safety of the highways in Greenbrier County described in subsection (c) of this section are such that gross weight limits and dimensional restrictions may be increased without damage and without unreasonable danger to the public, the commissioner may set new limitations applicable to the highways or portions thereof.

(b) The commissioner may not establish any weight limitation or dimensional restriction in excess or in conflict with any weight limitation or dimensional restriction prescribed by or pursuant to acts of Congress for any road or highway that is part of the National System of Interstate and Defense Highways.

(c) Notwithstanding any provisions of the Code of West Virginia, 1931, as amended, to the contrary, if the commissioner determines that those portions of Greenbrier County Route 10/1 north and southbound from milepost 6.10 to milepost 11.60 are designed and constructed to allow the gross weight and dimensional limitation to be increased without damage, including damage to the road and related infrastructure, and without unreasonable danger to the public, the commissioner may increase the gross weight and vehicle dimensional limitations on the highway section described above: *Provided*, That any person, organization or corporation or other entity proposing to exceed the gross weight and vehicle dimension limitations of current state law

while using these routes must first obtain a permit from the commissioner before proceeding: *Provided, however, That the increased weight limitations and dimensional restrictions are not barred by an act of the United States Congress.*

(d) The commissioner shall create a permit that must be obtained by any person or entity wishing to use the provisions of subsection (c) of this section. The commissioner is authorized to make the permit subject to any restrictions and requirements the commissioner deems necessary to protect the public, road and other infrastructure.

(e) The commissioner shall adopt procedures for the issuance of the permit and those procedures shall be consistent with the existing procedures for the issuance of similar permits. The permit issued shall be valid for one year from the date of issuance.

(f) The information required in the application for the permit includes:

- (1) Vehicle and trailer information;
- (2) Number of axles;
- (3) Axle spacings;
- (4) Overall dimensions;
- (5) Load information;
- (6) Load weight and gross weight; and
- (7) Effective dates.

(g) Upon submission of this information the applicant shall be provided an appropriate permit based on the information provided in subsection (f) of this section.

(h) The commissioner shall charge a permit fee of \$500 for each permitted vehicle.

(i) The commissioner may immediately reduce the weight limit and dimensional restrictions if new information indicates that such reduction is needed to protect the public or road or other infrastructure.

There being no further amendments offered,

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 4554), as just amended, was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4554) passed.

The following amendment to the title of the bill, from the Committee on Transportation and Infrastructure, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 4554**—A Bill to authorize the Commissioner of the Division of Highways to allow an increase of gross weight limitations and dimensional restrictions on certain roads in Greenbrier County; specifying roadway location; and providing for permit application, restrictions, requirements, fees and limitations.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 4575**, Creating criminal offenses relating to money laundering.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Karnes, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: Hall and Kessler—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4575) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 4575**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §61-14-1, §61-14-2, §61-14-3, §61-14-4 and §61-14-5, all relating to laundering of proceeds from specified criminal activities; defining terms; creating felony crime of conducting financial transactions involving proceeds of criminal activity; creating felony crime of transporting, transmitting or transferring monetary instruments or property involving proceeds of criminal activity; providing for penalties; providing for seizure and forfeiture of property or monetary instruments; clarifying that for forfeiture to occur, a conviction pursuant to the article is necessary; clarifying conduct that constitutes separate offenses; and setting forth venue for prosecution of offenses.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 4578**, Creating a criminal offense of conspiracy to violate the drug laws.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Snyder, Sypolt, Takubo, Trump, Unger, Walters, Williams, Yost and Cole (Mr. President)—30.

The nays were: Facemire, Romano, Stollings and Woelfel—4.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4578) passed.

At the request of Senator Trump, as chair of the Committee on the Judiciary, and by unanimous consent, the unreported Judiciary committee amendment to the title of the bill was withdrawn.

On motion of Senator Kessler, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. House Bill No. 4578**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §60A-4-414, relating to creating felony offenses of being an organizer, leader, financier or manager of a conspiracy to manufacture, deliver or possess with intent to deliver Schedule I or II narcotic drugs, to transport Schedule I or II narcotic drugs into the state with intent to deliver, or to manufacture or attempt to manufacture methamphetamine; setting forth elements of offenses; establishing penalties for such offenses; and providing for certain restrictions related to other conspiracy offenses.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 4586**, Ensuring that the interest of protected persons, incarcerated persons and unknown owners are protected in condemnation actions filed by the Division of Highways.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4586) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 4594**, Relating to predoctoral psychology internship qualifications.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4594) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 4606**, Relating to the recusal of certain public officials from voting for appropriation of moneys to nonprofit entities.

On third reading, coming up in regular order, was read a third time.

Pending discussion,

At the request of Senator Romano, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

**Eng. House Bill 4618**, Relating to limitations on use of a public official's name or likeness.

On third reading, coming up in regular order, with the unreported Judiciary committee amendment pending and with the right having been granted on yesterday, Thursday, March 10, 2016, for further amendments to be received on third reading, was reported by the Clerk.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk:

By striking out everything after the enacting section and inserting in lieu thereof the following:

**ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION;  
POWERS AND DUTIES; DISCLOSURE OF  
FINANCIAL INTEREST BY PUBLIC OFFICIALS  
AND EMPLOYEES; APPEARANCES BEFORE  
PUBLIC AGENCIES; CODE OF CONDUCT FOR  
ADMINISTRATIVE LAW JUDGES.**

**ARTICLE 2B. LIMITATIONS ON A PUBLIC OFFICIAL  
FROM USING HIS OR HER NAME OR  
LIKENESS.**

**§6B-2B-1. Definitions.**

As used in this article:

(a) “Advertising” means publishing, distributing, disseminating, communicating or displaying information to the general public through audio, visual or other media tools. It includes, but is not limited to, billboard, radio, television, mail, electronic mail, publications, banners, table skirts, magazines, social media, websites and other forms of publication, dissemination, display or communication.

(b) “Agent” means any volunteer or employee, contractual or permanent, serving at the discretion of a public official or public employee.

(c) “Educational materials” means publications, guides, calendars, handouts, pamphlets, reports or booklets intended to provide information about the public official or governmental office. It includes information or details about the office, services the office provides to the public, updates on laws and services and other informational items that are intended to educate the public.

(d) “Instructional material” means written instructions explaining or detailing steps for completion of a governmental agency document or form.

(e) “Likeness” means a photograph, drawing or other depiction of an individual.

(f) “Mass media communication” means communication through audio, visual, or other media tools, including U. S. mail, electronic mail, and social media, intended for general dissemination to the public. Examples include mass mailing by U. S. mail, list-serve emails and streaming clips on websites. It does not include: (i) Regular responses to constituent requests or questions during the normal course of business; or (ii)

communications that are authorized or required by law to be publicly disseminated, such as legal notices.

(g) “Public employee” means any full-time or part-time employee of any state, or political subdivision of the state, and their respective boards, agencies, departments and commissions, or in any other regional or local governmental agency.

(h) “Public official” means any person who is elected or appointed to any state, county or municipal office or position, including boards, agencies, departments and commissions, or in any other regional or local governmental agency.

(i) “Public payroll” means payment of public monies as a wage or salary from the state, or political subdivision of the state, or any other regional or local governmental agency, whether accepted or not.

(j) “Social media” means forms of electronic communication through which users create online communities to share information, ideas, personal messages and other content. It includes web and mobile-based technologies which are used to turn communication to interactive dialogue among organizations, communities and individuals. Examples include, but are not limited to, Facebook, MySpace, Twitter and YouTube.

(k) “Trinkets” means items of tangible personal property that are not vital or necessary to the duties of the public official’s or public employee’s office, including, but not limited to, the following: magnets, mugs, cups, key chains, pill holders, band-aid dispensers, fans, nail files, matches and bags.

**§6B-2B-2. Limitations on a public official from using his or her name or likeness.**

(a) *Trinkets.* — Public officials, their agents, or anyone on public payroll may not place the public official's name or likeness on trinkets paid for with public funds: *Provided*, That when appropriate and reasonable, public officials may expend a minimal amount of public funds for the purchase of pens, pencils or other markers to be used during ceremonial signings.

(b) Advertising. — (1) Public officials, their agents, or anyone on public payroll may not use public funds, including funds of the office held by the public official, public employees, or public resources to distribute, disseminate, publish or display the public official's name or likeness for the purpose of advertising to the general public.

(2) Notwithstanding the prohibitions in subdivision (1) of this subsection, the following conduct is not prohibited:

(A) A public official's name and likeness may be used in a public announcement or mass media communication when necessary, reasonable and appropriate to relay specific public safety, health or emergency information.

(B) A public official's name and likeness may appear on an agency's social media and website provided it complies with section three of this article.

(C) Dissemination of office press releases or agency information via email, social media or other public media tools for official purposes is not considered advertising or prohibited under this subsection, if it: (i) Is intended for a legitimate news or informational purpose; (ii) is not intended as a means of promotion of the public official; and (iii) is not being used as educational material.

(3) Banners and table skirts are considered advertising and may not include the public official's name or likeness.

(4) Nothing in this article shall be interpreted as prohibiting public officials from using public funds to communicate with constituents in the normal course of their duties as public officials if the communications do not include any reference to voting in favor of the public official in an election.

(c) Vehicles. — Public officials, their agents, or any person on public payroll may not use or place the public official's name or likeness on any publicly owned vehicles.

(d) *Educational Materials.* — A public official’s name or likeness may not be placed on any educational material that is paid for with public funds: *Provided*, That this prohibition does not apply to the submission of a report required to be issued by law.

**§6B-2B-3. Limitations on promotion through social media.**

(a) A public official’s name and likeness may appear on a public agency’s website and social media subject to the following restrictions:

(1) The public official’s name may appear throughout the website if it is reasonable, incidental, appropriate and has a primary purpose to promote the agency’s mission and services rather than to promote the public official.

(2) The public official’s likeness may only appear on the agency’s website home page and on any pages or sections devoted to biographical information regarding the public official.

(3) The public official’s name and likeness may appear on the agency’s social media if it is reasonable, incidental, appropriate and has a primary purpose to promote the agency’s mission and services rather than to promote the public official.

(b) This section does not apply to personal or nonpublic agency social media accounts.

(c) A public agency’s website or social media may not provide links or reference to a public official’s or public employee’s personal or campaign social media or website.

**§6B-2B-4. Use of public resources to display or distribute.**

(a) Unless otherwise permitted under section two of this article, a public official and public employee may not use public resources to display or distribute trinkets, educational material or advertising with his or her name or likeness. This prohibition includes:

(1) Trinkets, educational material or advertising paid for with nonpublic funds, personal funds, third-party funds, campaign funds

and those that have been provided through an in-kind gift to the public agency or official; and

(2) Use of offices, counters, vehicles and other public spaces maintained or controlled by the public official's or public employee's agency;

(b) Notwithstanding any other provisions of this section, public officials or public employees, having a separate personal office or workspace in a public space may, inside that office or workspace;

(1) Display political or nonpolitical awards, certificates, plaques, photographs and other similar materials; or

(2) Display or distribute trinkets of de minimus value to visitors, provided the trinkets are not paid for with public funds, do not advocate for or against any political candidate or political cause, do not promote any private business in which the public official or public employee has a financial interest and contain only general personal information including, but not limited to, the public official or public employee's title, name, address, telephone number and email address.

**§6B-2B-5. Exceptions to use of name or likeness.**

(a) A public official may use his or her name or likeness on any official record or report, letterhead, document or certificate or instructional material issued in the course of his or her duties as a public official: *Provided*, That other official documents used in the normal course of the agency, including, but not limited to, facsimile cover sheets, press release headers, office signage and envelopes may include the public official's name: *Provided, however*, If the official documents are reproduced for distribution or dissemination to the public as educational material, the items are subject to the prohibitions in subsection (d), section two of this article.

(b) When appropriate and reasonable, the West Virginia Division of Tourism may use a public official's name and likeness on material used for tourism promotion.

(c) The prohibitions contained in this article do not apply to any person who is employed as a member of the faculty, staff, administration or president of a public institution of higher education and who is engaged in teaching, research, consulting or publication activities in his or her field of expertise with public or private entities who derive private benefits from the activities: *Provided*, That the activity is approved as a part of an employment contract with the governing board of the institution of higher education or has been approved by the employee's department supervisor or the president of the institution by which the faculty or staff member is employed.

(d) The prohibitions contained in section two of this article do not apply to a public official's campaign-related expenditures or materials.

(e) The prohibitions contained in section two of this article do not apply to items paid for with the public official's personal money.

(f) The prohibitions contained in section two of this article do not apply to items or materials required by law to contain the public official's name or likeness.

#### **§6B-2B-6. Existing items as of the effective date.**

(a) If a public official, public employee or public agency possesses items or materials in contravention of this rule or section five-c, article two of this chapter that were purchased prior to the effective date, the public official, public employee or public agency may not continue to distribute, disseminate, communicate or display publicly these items or materials.

(b) Notwithstanding the prohibition in subsection (a) of this section:

(1) Materials may be used publicly if the public official's name or likeness are permanently removed or covered: *Provided*, That a public official's name or likeness may be covered with a sticker, be marked out or obliterated in any other manner;

(2) The public agency may use the items or materials for internal use if they are not publicly distributed, disseminated, communicated or displayed; and

(3) When appropriate and in compliance with law, a public agency may donate the items to surplus, charity or an organization serving the poor and needy.

**§6B-2B-7. Allowance for exemption.**

If any of the prohibitions contained in this article create an undue hardship or will cause significant financial impact upon the public agency to bring existing material, vehicles or items into compliance with this article, the public agency may seek a written exemption from the West Virginia Ethics Commission. In any request, the Ethics Commission shall make public the name of public agency seeking the exemption, along with the affected public official, if any.

On motions of Senators Prezioso and Plymale, the following amendment to the Judiciary committee amendment to the bill (Eng. H. B. 4618) was reported by the Clerk and adopted:

On page seven, section five, by striking out all of subsection (c) and inserting in lieu thereof the a new subsection, designated subsection (c), to read as follows:

(c) The prohibitions contained in this article do not apply to any person who is employed as a member of the faculty, staff, administration, or president of a public institution of higher education and who is engaged in teaching, research, consulting, coaching, recruiting or publication activities: *Provided*, That the activity is approved as a part of an employment contract with the governing board of the institution of higher education or has been approved by the employee's department supervisor or the president of the institution by which the faculty or staff member is employed.

The question now being on the adoption of the Judiciary committee amendment to the bill, as amended, the same was put and prevailed.

Having been engrossed, the bill (Eng. H. B. 4618), as just amended, was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: Facemire and Miller—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4618) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. House Bill 4618**—A Bill to repeal §6B-2-5c of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §6B-2B-1, §6B-2B-2, §6B-2B-3, §6B-2B-4, §6B-2B-5, §6B-2B-6 and §6B-2B-7, all relating to limitations on use of a public official's name or likeness; repealing current provisions; defining terms; prohibiting public officials, their agents and public employees from placing the public official's name or likeness on trinkets; prohibiting public officials, their agents and public employees from using public funds, public employees, or public resources to distribute, disseminate, publish, or display the public official's name or likeness for the purpose of advertising to the public; prohibiting public officials, their agents or public employees from placing the public official's name or likeness on publicly owned vehicles; prohibiting a public official's name or likeness from being placed on any educational material that is paid for with public funds; placing restrictions on a public official's name or likeness on a public agency's website and social media; prohibiting use of public resources to display or distribute

trinkets, educational material or advertising with a public official's name or likeness except in certain circumstances; providing exceptions; providing for alternative uses for prohibited material after the effective date; and providing an opportunity to obtain an exemption from the Ethics Commission.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 4655**, Prohibiting insurers, vision care plan or vision care discount plans from requiring vision care providers to provide discounts on noncovered services or materials.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Carmichael, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

**Eng. House Bill 4728**, Relating to schedule three controlled substances.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4728) passed with its title.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 4738**, Relating to the offense of driving in an impaired state.

Having been read a third time on yesterday, Thursday, March 10, 2016, and now coming up in regular order, was reported by the Clerk.

At the request of Senator Kessler, unanimous consent was granted to offer an amendment to the bill on third reading.

Thereupon, on motion of Senator Kessler, the following amendment to the bill was reported by the Clerk and adopted:

On page one, section two, line five, after the word “or” by inserting the word “inhalant”.

Having been engrossed, the bill (Eng. H. B. 4738), as just amended, was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4738) passed.

On motion of Senator Kessler, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. House Bill 4738**—A Bill to amend and reenact §17C-5-2 of the Code of West Virginia, 1931, as amended, relating to the

offense of driving in an impaired state; establishing the offense of driving a vehicle while he or she is in an impaired state; establishing the offense of driving a vehicle while he or she is in an impaired state but has an alcohol concentration in his or her blood of less than fifteen hundredths of one percent by weight; adding influence of inhalant substances in definition of impaired state; and providing for penalties.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

The Senate proceeded to the ninth order of business.

**Eng. Com. Sub. for House Bill 2110**, Relating generally to the tax treatment of manufacturing entities.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Finance, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

**ARTICLE 6F. SPECIAL METHOD FOR APPRAISING  
QUALIFIED CAPITAL ADDITIONS TO  
MANUFACTURING FACILITIES.**

**§11-6F-2. Definitions.**

As used in this article, the term:

(a) “Certified capital addition property” means all real property and personal property included within or to be included within a qualified capital addition to a manufacturing facility that has been certified by the State Tax Commissioner in accordance with section four of this article: *Provided*, That airplanes and motor vehicles licensed by the Division of Motor Vehicles shall in no event constitute certified capital addition property.

(b) “Manufacturing” means any business activity classified as having a sector identifier, consisting of the first two digits of the six-digit North American Industry Classification System code number of thirty-one, thirty-two or thirty-three or the six digit code number 211112.

(c) “Manufacturing facility” means any factory, mill, chemical plant, refinery, warehouse, building or complex of buildings, including land on which it is located, and all machinery, equipment, improvements and other real property and personal property located at or within the facility used in connection with the operation of the facility in a manufacturing business.

(d) “Personal property” means all property specified in subdivision (q), section ten, article two, chapter two of this code and includes, but is not limited to, furniture, fixtures, machinery and equipment, pollution control equipment, computers and related data processing equipment, spare parts and supplies.

(e) “Qualified capital addition to a manufacturing facility” means either:

(1) All real property and personal property, the combined original cost of which exceeds \$50 million to be constructed, located or installed at or within two miles of a manufacturing facility owned or operated by the person making the capital addition that has a total original cost before the capital addition of at least \$100 million. If the capital addition is made in a steel, chemical or polymer alliance zone as designated from time-to-time by executive order of the Governor, then the person making the capital addition may for purposes of satisfying the requirements of this subsection join in a multiparty project with a person owning or operating a manufacturing facility that has a total original cost before the capital addition of at least \$100 million if the capital addition creates additional production capacity of existing or related products or feedstock or derivative products respecting the manufacturing facility, consists of a facility used to store, handle, process or produce raw materials for the manufacturing facility, consists of a facility used to store, handle or process natural gas to produce fuel for the generation of steam or electricity for the

manufacturing facility or consists of a facility that generates steam or electricity for the manufacturing facility, including but not limited to a facility that converts coal to a gas or liquid for the manufacturing facility's use in heating, manufacturing or generation of electricity. Beginning on and after July 1, 2011, when the new capital addition is a facility that is or will be classified under the North American Industry Classification System with a six digit code number 211112, or is a manufacturing facility that uses product produced at a facility with code number 211112, then wherever the term "100 million" is used in this subsection, the term "20 million" shall be substituted and where the term "50 million" is used, the term "10 million" shall be substituted; and that beginning on and after July 1, 2016, when the new capital addition is a facility that is or will be classified under the North American Industry Classification System with a six-digit North American Industry Classification System code a product produced at a facility with code numbers 332992 and 332994, then wherever the term "100 million" is used in this subsection, the term "2 million" shall be substituted and where the term "50 million" is used, the term "1 million" shall be substituted; or

(2) (A) All real property and personal property, the combined original cost of which exceeds \$2 ~~billion~~ million to be constructed, located or installed at a facility, or a combination of facilities by a single entity or combination of entities engaged in a unitary business, that:

(i) Is or will be classified under the North American Industry Classification System with a six digit code number 211112, 332992 or 332994; ~~or~~

(ii) Is a manufacturing facility that uses one or more products produced at a facility with code number 211112; 332992 or 332994; or

(iii) Is a manufacturing facility that uses one or more products produced at a facility described in subparagraph (ii) of this subdivision.

(B) No preexisting investment made, or in place before the capital addition shall be required for property specified in this subdivision (2). The requirements set forth in subdivision (1) of this subsection shall not apply to property specified in this subdivision (2) relating to:

(i) Location or installation of investment at or within two miles of a manufacturing facility owned or operated by the person making the capital addition;

(ii) Total original cost of preexisting investment before the capital addition of at least \$100 million or \$20 million; or

(iii) Multiparty projects.

(f) “Real property” means all property specified in subdivision (p), section ten, article two, chapter two of this code and includes, but is not limited to, lands, buildings and improvements on the land such as sewers, fences, roads, paving and leasehold improvements: *Provided*, That for capital additions certified on or after July 1, 2011, the value of the land before any improvements shall be subtracted from the value of the capital addition and the unimproved land value shall not be given salvage value treatment.

## **ARTICLE 13S. MANUFACTURING INVESTMENT TAX CREDIT.**

### **§11-13S-3. Definitions.**

(a) Any term used in this article has the meaning ascribed by this section unless a different meaning is clearly required by the context of its use or by definition in this article.

(b) For purpose of this article, the term:

(1) “Eligible taxpayer” means an industrial taxpayer who purchases new property for the purpose of industrial expansion or for the purpose of industrial revitalization of an existing industrial facility in this state.

(2) “Industrial expansion” means capital investment in a new or expanded industrial facility in this state.

(3) “Industrial facility” means any factory, mill, plant, refinery, warehouse, building or complex of buildings located within this state, including the land on which it is located, and all machinery, equipment and other real and tangible personal property located at or within the facility primarily used in connection with the operation of the manufacturing business.

(4) “Industrial revitalization” or “revitalization” means capital investment in an industrial facility located in this state to replace or modernize buildings, equipment, machinery and other tangible personal property used in connection with the operation of the facility in an industrial business of the taxpayer including the acquisition of any real property necessary to the industrial revitalization.

(5) “Industrial taxpayer” means any taxpayer who is primarily engaged in a manufacturing business.

(6) “Manufacturing” means any business activity classified as having a sector identifier, consisting of the first two digits of the six-digit North American Industry Classification System code number, of thirty-one, thirty-two or thirty-three or the six digit code number 211112.

(7) “Property purchased for manufacturing investment” means real property, and improvements thereto, and tangible personal property but only if the property was constructed or purchased on or after January 1, 2003, for use as a component part of a new, expanded or revitalized industrial facility. This term includes only that tangible personal property with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the federal income tax liability of the industrial taxpayer, that has a useful life, at the time the property is placed in service or use in this state, of four years or more. Property acquired by written lease for a primary term of ten years or longer, if used as a component part of a new or expanded industrial facility, is included within this definition.

(A) “Property purchased for manufacturing investment” does not include:

(i) Repair costs, including materials used in the repair, unless for federal income tax purposes, the cost of the repair must be capitalized and not expensed;

(ii) Motor vehicles licensed by the Department of Motor Vehicles;

(iii) Airplanes;

(iv) Off-premises transportation equipment;

(v) Property which is primarily used outside this state; and

(vi) Property which is acquired incident to the purchase of the stock or assets of an industrial taxpayer which property was or had been used by the seller in his or her industrial business in this state or in which investment was previously the basis of a credit against tax taken under any other article of this chapter.

(B) Purchases or acquisitions of land or depreciable property qualify as purchases of property purchased for manufacturing investment for purposes of this article only if:

(i) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under section 267 or 707(b) of the United States Internal Revenue Code of 1986, as amended;

(ii) The property is not acquired from a related person or by one component member of a controlled group from another component member of the same controlled group. The Tax Commissioner may waive this requirement if the property was acquired from a related party for its then fair market value; and

(iii) The basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined, in whole or in part, by reference to the federal adjusted basis of the property in the hands of the person from whom it was acquired or under

Section 1014(e) of the United States Internal Revenue Code of 1986, as amended.

(8) “Qualified manufacturing investment” means that amount determined under section five of this article as qualified manufacturing investment.

(9) “Taxpayer” means any person subject to any of the taxes imposed by article thirteen-a, twenty-three or twenty-four of this chapter or any combination of those articles of this chapter.

**§11-13S-4. Amount of credit allowed for manufacturing investment.**

(a) *Credit allowed.* — There is allowed to eligible taxpayers and to persons described in subdivision (5), subsection (b) of this section a credit against the taxes imposed by articles thirteen-a, twenty-three and twenty-four of this chapter: *Provided*, That a tax credit for any eligible taxpayer operating a business activity classified as having a sector identifier, consisting of the six digit code number 211112 such eligible taxpayer must comply with the provisions of subsection (e) of this section for all construction related thereto in order to be eligible for any credit under this article. The amount of credit shall be determined as hereinafter provided in this section.

(b) *Amount of credit allowable.* — The amount of allowable credit under this article is equal to five percent of the qualified manufacturing investment (as determined in section five of this article): *Provided*, That the amount of allowable credit under this article is equal to fifty percent of the qualified manufacturing investment (as determined in section five of this article) for any eligible taxpayer operating a business activity classified as having a sector identifier, consisting of the six digit code number 332992 or 332994. This credit ~~and~~ shall reduce the severance tax, imposed under article thirteen-a of this chapter, the business franchise tax imposed under article twenty-three of this chapter and the corporation net income tax imposed under article twenty-four of this chapter, in that order, subject to the following conditions and limitations:

(1) The amount of credit allowable is applied over a ten-year period, at the rate of one-tenth thereof per taxable year, beginning with the taxable year in which the property purchased for manufacturing investment is first placed in service or use in this state;

(2) *Severance tax.* — The credit is applied to reduce the severance tax imposed under article thirteen-a of this chapter (determined before application of the credit allowed by section three, article twelve-b of this chapter and before any other allowable credits against tax and before application of the annual exemption allowed by section ten, article thirteen-a of this chapter). The amount of annual credit allowed may not reduce the severance tax, imposed under article thirteen-a of this chapter, below fifty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax: *Provided*, That for tax years beginning on and after January 1, 2009, the amount of annual credit allowed may not reduce the severance tax, imposed under article thirteen-a of this chapter, below forty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax. When in any taxable year the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year may not reduce the amount of the severance tax, imposed under article thirteen-a of this chapter, below fifty percent of the amount which would be imposed for such taxable year (determined before application of the credit allowed by section three, article twelve-b of this chapter and before any other allowable credits against tax and before application of the annual exemption allowed by section ten, article thirteen-a of this chapter): *Provided, however*, That when in any taxable year beginning on and after January 1, 2009, the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year may not reduce the amount of the severance tax imposed under article thirteen-a of this chapter, below forty percent of the amount which would be imposed for such taxable year as determined before application of the credit allowed by section three, article twelve-b of this chapter and before any other allowable credits against tax and before application of the

annual exemption allowed by section ten, article thirteen-a of this chapter;

(3) *Business franchise tax.* —

After application of subdivision (2) of this subsection, any unused credit is next applied to reduce the business franchise tax imposed under article twenty-three of this chapter (determined after application of the credits against tax provided in section seventeen, article twenty-three of this chapter, but before application of any other allowable credits against tax). The amount of annual credit allowed will not reduce the business franchise tax, imposed under article twenty-three of this chapter, below fifty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax: *Provided*, That for tax years beginning on and after January 1, 2009, the amount of annual credit allowed will not reduce the business franchise tax, imposed under article twenty-three of this chapter, below forty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax. When in any taxable year the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year will not reduce the amount of the business franchise tax, imposed under article twenty-three of this chapter, below fifty percent of the amount which would be imposed for the taxable year (determined after application of the credits against tax provided in section seventeen, article twenty-three of this chapter, but before application of any other allowable credits against tax): *Provided, however*, That when in any taxable year beginning on and after January 1, 2009, the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year will not reduce the amount of the business franchise tax, imposed under article twenty-three of this chapter, below forty percent of the amount which would be imposed for the taxable year as determined after application of the credits against tax provided in section seventeen, article twenty-three of this chapter, but before application of any other allowable credits against tax;

(4) *Corporation net income tax.* —

After application of subdivision (3) of this subsection, any unused credit is next applied to reduce the corporation net income tax imposed under article twenty-four of this chapter (determined before application of any other allowable credits against tax). The amount of annual credit allowed will not reduce corporation net income tax, imposed under article twenty-four of this chapter, below fifty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax: *Provided*, That for tax years beginning on and after January 1, 2009, the amount of annual credit allowed will not reduce corporation net income tax, imposed under article twenty-four of this chapter, below forty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax. When in any taxable year the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year may not reduce the amount of the corporation net income tax, imposed under article twenty-four of this chapter, below fifty percent of the amount which would be imposed for the taxable year (determined before application of any other allowable credits against tax): *Provided, however*, That when in any taxable year beginning on and after January 1, 2009, the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year may not reduce the amount of the corporation net income tax, imposed under article twenty-four of this chapter, below forty percent of the amount which would be imposed for the taxable year as determined before application of any other allowable credits against tax;

(5) *Pass-through entities.* —

(A) If the eligible taxpayer is a limited liability company, small business corporation or a partnership, then any unused credit (after application of subdivisions (2), (3) and (4) of this subsection) is allowed as a credit against the taxes imposed by article twenty-four of this chapter on owners of the eligible taxpayer on the conduit income directly derived from the eligible taxpayer by its owners. Only those portions of the tax imposed by article twenty-four of

this chapter that are imposed on income directly derived by the owner from the eligible taxpayer are subject to offset by this credit.

(B) The amount of annual credit allowed will not reduce corporation net income tax, imposed under article twenty-four of this chapter, below fifty percent of the amount which would be imposed on the conduit income directly derived from the eligible taxpayer by each owner for such taxable year in the absence of this credit against the taxes (determined before application of any other allowable credits against tax): *Provided*, That for tax years beginning on and after January 1, 2009, the amount of annual credit allowed will not reduce corporation net income tax, imposed under article twenty-four of this chapter, below forty percent of the amount which would be imposed on the conduit income directly derived from the eligible taxpayer by each owner for such taxable year in the absence of this credit against the taxes as determined before application of any other allowable credits against tax.

(C) When in any taxable year the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year will not reduce the corporation net income tax imposed on the conduit income directly derived from the eligible taxpayer by each owner below fifty percent of the amount that would be imposed for such taxable year on the conduit income (determined before application of any other allowable credits against tax): *Provided*, That when in any taxable year beginning on and after January 1, 2009, the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year will not reduce the corporation net income tax imposed on the conduit income directly derived from the eligible taxpayer by each owner below forty percent of the amount that would be imposed for such taxable year on the conduit income as determined before application of any other allowable credits against tax;

(6) Small business corporations, limited liability companies, partnerships and other unincorporated organizations shall allocate any unused credit after application of subdivisions (2), (3) and (4)

of this subsection among their members in the same manner as profits and losses are allocated for the taxable year; and

(7) No credit is allowed under this article against any tax imposed by article twenty-one of this chapter.

(c) No carryover to a subsequent taxable year or carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance. Any unused credit is forfeited.

(d) *Application for credit required.* —

(1) *Application required.* — Notwithstanding any provision of this article to the contrary, no credit is allowed or may be applied under this article for any qualified investment property placed in service or use until the person claiming the credit makes written application to the Tax Commissioner for allowance of credit as provided in this section. This application shall be in the form prescribed by the Tax Commissioner and shall provide the number and type of jobs created, if any, by the manufacturing investment, the average wage rates and benefits paid to employees filling the new jobs and any other information the Tax Commissioner may require. This application shall be filed with the Tax Commissioner no later than the last day for filing the annual return, determined by including any authorized extension of time for filing the return, required under article twenty-one or twenty-four of this chapter for the taxable year in which the property to which the credit relates is placed in service or use.

(2) *Failure to file.* — The failure to timely apply the application for credit under this section results in forfeiture of fifty percent of the annual credit allowance otherwise allowable under this article. This penalty applies annually until the application is filed.

(e) (1) Any person or entity undertaking any construction related to any business activity included within North American Industrial Code six-digit code number 211112, the value of which is an amount equal to or greater than \$500,000, shall hire at least seventy-five percent of employees for said construction from the local labor market, to be rounded off, with at least two employees

from outside the local labor market permissible for each employer per project, “the local labor market” being defined as every county in West Virginia and any county outside of West Virginia if any portion of that county is within fifty miles of the border of West Virginia.

(2) Any person or entity unable to employ the minimum number of employees from the local labor market shall inform the nearest office of the bureau of employment programs’ division of employment services of the number of qualified employees needed and provide a job description of the positions to be filled.

(3) If, within three business days following the placing of a job order, the division is unable to refer any qualified job applicants to the person or entity engaged in said construction or refers less qualified job applicants than the number requested, then the division shall issue a waiver to the person or entity engaged in said construction stating the unavailability of applicants and shall permit the person or entity engaged in said construction to fill any positions covered by the waiver from outside the local labor market. The waiver shall be either oral or in writing and shall be issued within the prescribed three days. A waiver certificate shall be sent to the person or entity engaged in said construction for its permanent project records.

The bill (Eng. Com. Sub. for H. B. 2110), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2366**, Relating generally to the solicitation of minors.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

**ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.****§61-3C-14b. Soliciting, etc. a minor via computer; penalty soliciting a minor and traveling to engage the minor in prohibited sexual activity; penalties.**

(a) Any person over the age of eighteen, who knowingly uses a computer to solicit, entice, seduce or lure, or attempt to solicit, entice, seduce or lure, a minor known or believed to be at least four years younger than the person using the computer or a person he or she believes to be such a minor, ~~to commit in order to engage in~~ any illegal act proscribed by the provisions of article eight, eight-b, eight-c or eight-d of this chapter, ~~or any felony offense under section four hundred one, article four, chapter sixty a of this code,~~ is guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned in a state correctional facility not less than two nor more than ten years, or both.

(b) Any person over the age of eighteen who uses a computer in the manner proscribed by the provisions of subsection (a) of this section and who additionally engages in any overt act designed to bring himself or herself into the minor's, or the person believed to be a minor's, physical presence with the intent to engage in violations of article eight, eight-b, eight-c or eight-d of this chapter with such a minor, is guilty of a felony and shall be fined not more than \$25,000 or imprisoned in a state correctional facility for a determinate sentence of not less than five nor more than fifteen years, or both fined and imprisoned: *Provided*, That subsection (a) of this section shall be deemed a lesser included offense to that created by this subsection.

**ARTICLE 8A. PREPARATION, DISTRIBUTION OR EXHIBITION OF OBSCENE MATTER TO MINORS.****§61-8A-4. Use of obscene matter with intent to seduce minor.**

Any adult, having knowledge of the character of the matter, who knows or believes that a person is a minor at least four years

younger than the adult, and who distributes, offers to distribute or displays by any means any obscene matter to the minor or person he or she believes to be a minor at least four years younger than the adult, and such distribution, offer to distribute, or display is undertaken with the intent or for the purpose of ~~facilitating the sexual seduction or abuse of the minor~~ engaging in a violation of the provisions of articles eight, eight-b, eight-c or eight-d of this chapter with the minor or person whom he or she believes is a minor at least four years younger than he or she, is guilty of a felony and, upon conviction thereof, shall be fined not more than \$25,000, or ~~confined~~ imprisoned in a state correctional facility for not more than five years, or both. For a second and each subsequent commission of such offense, such person is guilty of a felony and, upon conviction, shall be fined not more than \$50,000 or ~~confined~~ imprisoned in a state correctional facility for not more than ten years, or both.

The bill (Eng. Com. Sub. for H. B. 2366), as amended, was then ordered to third reading.

**Eng. House Bill 2605**, Removing the limitation on actions against the perpetrator of sexual assault or sexual abuse upon a minor.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Kessler, and by unanimous consent, the bill was advanced to third reading with the unreported Judiciary committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. Com. Sub. for House Bill 2665**, Relating to participation in Motor Vehicle Alcohol Test and Lock Program.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

**ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

**§17C-5-2b. Deferral of further proceedings for certain first offenses upon condition of participation in motor vehicle alcohol test and lock program; procedure on charge of violation of conditions.**

(a) Except as provided in subsections (g) of this section, whenever any person who has not previously been convicted of any offense under this article or under any statute of the United States or of any state relating to driving under the influence alcohol, any controlled substance or any other drug:

(1) Notifies the court within thirty days of his or her arrest of his or her intention to participate in a deferral pursuant to this section; and

(2) Pleads guilty to or is found guilty of driving under the influence of alcohol under subsection (d), section two of this article, the court, without entering a judgment of guilt and with the consent of the accused, shall defer further proceedings and, notwithstanding any provisions of this code to the contrary, place him or her on probation, which conditions shall include that he or she successfully completes the Motor Vehicle Alcohol Test and Lock Program as provided in section three-a, article five-a of this chapter. Participation therein shall be for a period of at least one hundred and sixty five days after he or she has served the fifteen days of license suspension imposed pursuant to section two, article five-a of this chapter.

(b) A defendant's election to participate in deferral under this section shall constitute a waiver of his or her right to an administrative hearing as provided in section two, article five-a of this chapter.

(c) (1) If the prosecuting attorney files a motion alleging that the defendant during the period of the Motor Vehicle Alcohol Test and Lock program has been removed therefrom by the Division of

Motor Vehicles, or has failed to successfully complete the program before making a motion for dismissal pursuant to subsection (d) of this section, the court may issue such process as is necessary to bring the defendant before the court.

(2) A motion alleging such violation filed pursuant to subdivision (1) of this subsection must be filed during the period of the Motor Vehicle Alcohol Test and Lock Program or, if filed thereafter, must be filed within a reasonable time after the alleged violation was committed.

(3) When the defendant is brought before the court, the court shall afford the defendant an opportunity to be heard. If the court finds that the defendant has been rightfully removed from the Motor Vehicle Alcohol Test and Lock Program by the Division of Motor Vehicles, the court may order, when appropriate, that the deferral be terminated, and thereupon enter an adjudication of guilt and proceed as otherwise provided.

(4) Should the defendant fail to complete or be removed from the Motor Vehicle Alcohol Test and Lock Program, the defendant waives the appropriate statute of limitations and the defendant's right to a speedy trial under any applicable federal or state constitutional provisions, statutes or rules of court during the period of enrollment in the program.

(d) When the defendant shall have completed satisfactorily the Motor Vehicle Alcohol Test and Lock Program and complied with its conditions, the defendant may move the court for an order dismissing the charges. This motion shall be supported by affidavit of the defendant and by certification of the Division of Motor Vehicles that the defendant has successfully completed the Motor Vehicle Alcohol Test and Lock Program. A copy of the motion shall be served on the prosecuting attorney who shall within thirty days after service advise the judge of any objections to the motion, serving a copy of such objections on the defendant or the defendant's attorney. If there are no objections filed within the thirty-day period, the court shall thereafter dismiss the charges against the defendant. If there are objections filed with regard to

the dismissal of charges, the court shall proceed as set forth in subsection (c) of this section.

(e) Except as provided herein, unless a defendant adjudicated pursuant to this subsection be convicted of a subsequent violation of this article, discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime except for those provided in article five-a of this chapter. Except as provided in subsection (k), (l) and (m), section two of this article regarding subsequent offenses, the effect of the dismissal and discharge shall be to restore the person in contemplation of law to the status he or she occupied prior to arrest and trial. No person as to whom a dismissal and discharge have been effected shall be thereafter held to be guilty of perjury, false swearing, or otherwise giving a false statement by reason of his or her failure to disclose or acknowledge his or her arrest or trial in response to any inquiry made of him or her for any purpose other than any inquiry made in connection with any subsequent offense as that term is defined in subsection (m), section two of this article.

(f) There may be only one discharge and dismissal under this section with respect to any person.

(g) No person shall be eligible for dismissal and discharge under this section: (1) In any prosecution in which any violation of any other provision of this article has been charged; (2) if the person holds a commercial driver's license or operates commercial motor vehicle(s); ~~or~~ (3) if the person has previously had his or her driver's license revoked under section two-a of this article or under any statute of the United States or of any state relating to driving under the influence alcohol, any controlled substance or any other drug; or (4) if the person refused the secondary chemical test pursuant to section seven of this article.

(h) (1) After a period of not less than one year which shall begin to run immediately upon the expiration of a term of probation imposed upon any person under this section, the person may apply to the court for an order to expunge from all official records all recordations of his or her arrest, trial, and conviction, pursuant to

this section except for those maintained by the Division of Motor Vehicles: *Provided*, That any person who has previously been convicted of a felony may not make a motion for expungement pursuant to this section.

(2) If the prosecuting attorney objects to the expungement, the objections shall be filed with the court within thirty days after service of a motion for expungement and copies of the objections shall be served on the defendant or the defendant's attorney.

(3) If the objections are filed, the court shall hold a hearing on the objections, affording all parties an opportunity to be heard. If the court determines after a hearing that the person during the period of his or her probation and during the period of time prior to his or her application to the court under this subsection has not been guilty of any serious or repeated violation of the conditions of his or her probation, it shall order the expungement.

(i) Notwithstanding any provision of this code to the contrary, any person prosecuted for a violation of subsection ~~(d)~~ (e), section two, article five of this chapter whose case is disposed of pursuant to the provisions of this section shall be liable for any court costs assessable against a person convicted of a violation of subsection ~~(j)~~ (k), section two, article five of this chapter. Payment of such costs may be made a condition of probation. The costs assessed pursuant to this subsection, whether as a term of probation or not, shall be distributed as other court costs in accordance with section two, article three, chapter fifty; section four, article two-a, chapter fourteen; section four, article twenty-nine, chapter thirty; and sections two, seven and ten, article five, chapter sixty-two of this code.

The bill (Eng. H. B. 2665), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2795**, Providing that when a party's health condition is at issue in a civil action, medical records and releases for medical information may be requested and required without court order.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk:

By striking out everything after the enacting section and inserting in lieu thereof the following:

#### **ARTICLE 4. RULES AND PLEADING.**

##### **§56-4-72. Production of medical records in civil actions.**

(a) For purposes of this section, “medical records” and “medical billing records” mean documents created, derived or maintained by a health care provider that relate to a patient’s past, present or future physical, mental or behavioral health condition; the provision of health care to a patient; or payment for the provision of health care to a patient.

(b) A party in a civil action requesting or issuing a subpoena for the medical records or medical billing records of another party shall provide to the party whose medical records or medical billing records are sought, or the party’s attorney if he or she is represented by an attorney, a copy of any request or subpoena directed to a health care provider, which copy shall be provided contemporaneously with the request directed to the health care provider.

(c) The party requesting or subpoenaing the medical records or medical billing records shall provide to the party whose medical records or medical billing records are being sought, or to the party’s attorney, a copy of all documents obtained by the requesting party pursuant to the request or subpoena within seven days of receipt of medical records or medical billing records at no cost.

(d) Nothing in this section is intended to alter or modify any other lawful methods of discovery available to a party under the West Virginia Rules of Civil Procedure or law including, but not limited to, the provisions of section six-a, article seven-b, chapter fifty-five of this code.

(e) All medical records and medical billing records obtained pursuant to a request or subpoena or by any other lawful methods of discovery shall be treated as confidential by the party receiving them, its attorneys, experts, consultants, agents and any insurance carrier who may be obligated to pay all or some of any judgment obtained in the litigation.

(f) Medical records and medical billing records obtained by an insurance company in connection with insurance claims or civil litigation shall be confidentially maintained by the insurance company in accordance with state and federal law, including, but not limited to, the provisions of Title 114, Series 57 of the Code of State Rules.

(g) The Insurance Commissioner shall review the provisions of Title 114, Series 57 of the Code of State Rules and, to the extent necessary, shall propose new rules or modify existing rules to address:

(1) The circumstances under which an insurance company may disclose medical records and medical billing records to other persons or entities;

(2) The circumstances under which personal identifying information of a person must be redacted before that person's medical records or medical billing records may be disclosed to other persons or entities;

(3) The steps an insurance company is required to undertake before medical records or medical billing records are disclosed to other persons or entities to assure that any person or entity to which an insurance company is disclosing a person's medical records or medical billing records will be using such records only for purposes permitted by law; and

(4) The implementation of the requirement that the insurance company has processes or procedures in place to prevent the unauthorized access by its own employees to a person's confidential medical records or medical billing records.

(h) Nothing in this section is intended to restrict, supersede or enlarge any party's rights or obligations under rule twenty-six of the West Virginia Rules of Civil Procedure, nor limit a party's right to object to the production of medical records or medical billing records on the grounds that such records are not discoverable in the circumstances of a particular civil action: *Provided*, That if the court orders the production of disputed records over a party's objection, the requirements and limitations set forth herein apply.

On motion of Senator Romano, the following amendment to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 2795) was reported by the Clerk:

On page three, section seventy-two, after subsection (h), by inserting a new subsection, designated subsection (i), to read as follows:

(i) The provisions of this section, other than the requirements set forth in subsection (g) of this section, shall take effect on the day the amendments required by subsection (g) of this section to Title 114, Series 57 of the Code of State Rules take effect.

Following discussion,

The question being on the adoption of Senator Romano's amendment to the Judiciary committee amendment to the bill, the same was put and prevailed.

The question now being on the adoption of the Judiciary committee amendment, as amended, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 2795), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4001**, Relating to candidates or candidate committees for legislative office disclosing contributions.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

**ARTICLE 8. REGULATIONS AND CONTROL OF ELECTIONS.**

**§3-8-15. Disclosure of fund-raising events during legislative session.**

(a) In addition to other reporting required under this article, any current Governor, State Senator, or member of the House of Delegates who has declared his or her candidacy for election and who has a fund-raising event, as defined in section one-a of this article, while the Legislature is in Regular Session, shall disclose the existence of the event and the receipt of contributions, including the source and amounts, in accordance with the following schedule:

(1) If the fund-raising event occurs during the first thirty days of the Regular Session, within ten calendar days after the thirtieth day of the Regular Session; or

(2) If the fund-raising event occurs between days thirty-one and sixty of the Regular Session, within ten calendar days after the sixtieth day of the Regular Session.

(b) If any disclosure deadline set forth in subsection (a) or (b) falls within ten calendar days of a regularly scheduled reporting deadline under this article, then the deadline is satisfied by the filing of the regularly scheduled report.

(c) The reporting requirements under this section also apply to current Governors, State Senators or members of the House of Delegates who fund-raise in order to retire or pay-off debt of a campaign account while the Legislature is in regular session.

(d) The Secretary of State shall prepare a form for disclosure of these contributions and publish the information on the Secretary of State's website within one business day of the Secretary of State

receiving the completed form: *Provided*, That in the alternative, the Secretary of State is authorized to establish a means for electronic filing and disclosure.

(e) Pursuant to article three, chapter twenty-nine-a of this code, the Secretary of State may propose rules and emergency rules for legislative approval relating to the creation and maintenance of a publically accessible database available on the Secretary of State's website; the establishment of forms and procedures for submission of information to the Secretary of State; and for other procedures and policies consistent with this section.

The bill (Eng. Com. Sub. for H. B. 4001), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4009**, Letting Our Counties Act Locally Act.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Trump, as chair of the Committee on the Judiciary, and by unanimous consent, the unreported Judiciary committee amendment to the bill was withdrawn.

The following amendment to the bill, from the Committee on Finance, was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §7-27-1, §7-27-2, §7-27-3, §7-27-4, §7-27-5, §7-27-6, §7-27-7, §7-27-8, §7-27-9, §7-27-10, §7-27-11, §7-27-12, §7-27-13, §7-27-14, §7-27-15, §7-27-16, §7-27-17, §7-27-18, §7-27-19, §7-27-20, §7-27-21, §7-27-22, §7-27-23, §7-27-24, §7-27-25, §7-27-26, §7-27-27, §7-27-28, §7-27-29, §7-27-30, §7-27-31, §7-27-32, §7-27-33, §7-27-34, §7-27-35, §7-27-36, §7-27-37, §7-27-38, §7-27-39, §7-27-40, §7-27-41, §7-27-42, §7-27-43, §7-27-44, and §7-27-45, and that said code be

amended by adding thereto a new section, designated §31-15-16c; all to read as follows:

**ARTICLE 27. LETTING OUR COUNTIES ACT LOCALLY  
ACT.**

**PART I. GENERAL.**

**§7-27-1. Short title.**

This article shall be known as the “Letting Our Counties Act Locally Act.”

**§7-27-2. Purpose and findings.**

(a) The Legislature hereby makes the following findings:

(1) Roads maintained by the Department of Transportation include:

(A) Thirty-eight thousand six hundred eighty-four miles of public roads;

(B) Thirty-five thousand eight hundred ninety-three miles of state owned highways;

(C) Four hundred sixty-eight miles of state owned Interstate highway;

(D) Eighty-eight miles of West Virginia Turnpike;

(E) One thousand nine hundred seventy-two miles included in the National Highway System, twenty-three miles of which are connectors to other modes of transportation such as airports, trains and buses;

(F) Six thousand nine hundred fourteen bridges, thirty-three percent of which are more than one hundred feet in length;

(G) One all-American road;

(H) Five national byways;

(I) Fourteen state byways; and

(J) Eight backways.

(2) A 2012 road needs assessment prepared for Governor Tomblin's Blue Ribbon Commission by Wilbur Smith Associates reveals that:

(A) During the next seventeen years:

(i) Fifty-one thousand one hundred eight lane miles of road will need to be improved;

(ii) Ten thousand four hundred one lane miles will need modernization improvements including lane widening, road reconstruction, and shoulder improvements; and

(iii) Three thousand four hundred two lane miles will need to be constructed;

(B) Within the next twenty-five years:

(i) Eight hundred fourteen bridges will need to be replaced;

(ii) Five hundred seventy-seven bridges will need to be widened;

(iii) Eight bridges will need to be straightened; and

(iv) One bridge will need to be raised;

(C) The funding gap for road construction and maintenance over the next twenty-five years is estimated to be \$36.7 billion, excluding new road construction; and

(D) The funding gap for bridges construction and maintenance was \$2.4 billion, excluding new bridge construction.

(3) Modern, safe roads are critical to economic development.

(4) Modern, safe roads and bridges are essential to the growth of our communities and to the public health, welfare and safety.

(5) Counties need greater ability to influence when and where new roads are constructed and existing roads and bridges are modernized or upgraded, including the ability to recommend to the Division of Highways road and bridge construction projects and to assist in the financing of those projects.

(b) The purpose of this article is to provide county commissions with a source of funding to finance the accelerated construction of new roads and bridges in their respective counties; and the accelerated upgrading or modernizing of existing state roads and bridges in their counties, by allowing them to impose transportation sales and use taxes as provided in this article.

### **§7-27-3. Definitions.**

For purposes of this article:

(1) “Business” means any activity engaged in by any person, or caused to be engaged in by any person, with the object of direct or indirect economic gain, benefit or advantage, and includes any purposeful revenue generating activity in a county of this state that imposes transportation sales and use taxes pursuant to this article.

(2) “Calendar quarter” means the three-month time period beginning on January 1, April 1, July 1 and October 1 of each year.

(3) “Commissioner of Highways” means the chief executive officer of the Division of Highways of the Department of Transportation provided in section one, article two-a, chapter seventeen of this code, or his or her designee. The term “designee” in the phrase “or his or her designee”, when used in reference to the Commissioner of Highways, means any officer or employee of the Division of Highways duly authorized by the commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or rules promulgated for this article.

(4) “Consumer” means any person purchasing tangible personal property, custom software or a taxable service from a retailer, as that term is defined in subdivision (14) of this section or

from a seller, as that term is defined in section two, article fifteen-b, chapter eleven of this code.

(5) “County transportation sales tax” means the sales tax imposed by a county commission pursuant to this article.

(6) “County transportation sales and use taxes” means the transportation sales tax and the transportation use tax imposed by a county commission pursuant to this article.

(7) “County transportation use tax” means the use tax imposed by a county commission pursuant to this article.

(8) “Custom software” means software prepared for a particular customer to meet the specific needs or circumstances of the customer.

(9) “Executive Director of the West Virginia Economic Development Authority” means the chief executive officer of the West Virginia Economic Development Authority created in section five, article fifteen, chapter thirty-one, of this code.

(10) “Expansion projects” are road and bridge construction projects that add to the existing road system and include, but are not limited to, new roads, new bridges, new lanes and new interchanges.

(11) “Highway authority” or “highway association” means any entity created by the Legislature for the advancement and improvement of the state road and highway system, including, but not limited to, the New River Parkway Authority, Midland Trail Scenic Highway Association, Shawnee Parkway Authority, Corridor G Regional Development Authority, Coalfields Expressway Authority, Robert C. Byrd Corridor H Highway Authority, West Virginia 2 and I-68 Authority, Little Kanawha River Parkway Authority, King Coal Highway Authority, Coal Heritage Highway Authority, Blue and Gray Intermodal Highway Authority and the West Virginia Eastern Panhandle Transportation Authority or, if an authority is abolished, any entity succeeding to the principal functions of the highway authority or to whom the powers given to the highway authority are given by law.

(12) “Modernization projects” are road and bridge construction projects that improve safety by improving the existing roadway including, but not limited to, shoulder improvements, reducing the grade of hills, straightening curves, and improving interchanges.

(13) “Person” includes any individual, firm, partnership, joint venture, joint stock company, association, public or private corporation, limited liability company, limited liability partnership, cooperative, estate, trust, business trust, receiver, executor, administrator, any other fiduciary, any representative appointed by order of any court or otherwise acting on behalf of others, or any other group or combination acting as a unit and the plural as well as the singular number.

(14) “Preservation projects” are road and bridge construction projects that take care of infrastructure already in place and include, but are not limited to, pavement rehabilitation and reconstruction, and bridge repairs and replacements.

(15) “Project costs” means capital costs, costs of financing, planning, designing, constructing, expanding, improving, or maintaining a road; the cost of land, equipment, machinery, installation of utilities and other similar expenditures; and all other charges or expenses necessary, appurtenant or incidental to the foregoing.

(16) “Purchase” means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means, for a consideration.

(17) “Purchaser” means a person to whom a sale of personal property is made or to whom a service is furnished.

(18) “Retailer” means and includes every person engaging in the business of selling, leasing or renting tangible personal property or custom software or furnishing a taxable service for use within the meaning of this article, or in the business of selling, at auction, tangible personal property or custom software owned by the person or others for use in the county imposing taxes pursuant to this article. However, when, in the opinion of the Tax Commissioner, it

is necessary for the efficient administration of county use taxes imposed pursuant to this article to regard any salespersons, representatives, truckers, peddlers or canvassers as the agents of the dealers, distributors, supervisors, employees or persons under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of the dealers, distributors, supervisors, employers or persons, the Tax Commissioner may so regard them and may regard the dealers, distributors, supervisors, employers, or persons as retailers for purposes of county use taxes.

(19) “Retailer engaging in business in the county” or any like term, unless otherwise limited by federal statute, means and includes, but is not limited to:

(A) Any retailer having or maintaining, occupying or using, within the county, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent, however called, operating within the county under the authority of the retailer or its subsidiary, irrespective of whether the place of business or agent is located in the county permanently or temporarily, or whether the retailer or subsidiary is admitted to do business within this state pursuant to article fifteen, chapter thirty-one-d of this code or article fourteen, chapter thirty-one-e of this code; or

(B) Any retailer that is related to, or part of a unitary business with, a person, entity or business that, without regard to whether the retailer is admitted to do business in this state pursuant to article fifteen, chapter thirty-one-d of this code or article fourteen, chapter thirty-one-e of this code, is a subsidiary of the retailer, or is related to, or unitary with, the retailer as a related entity, a related member or part of a unitary business, all as defined in section three-a, article twenty four, chapter eleven of this code, that:

(i) Pursuant to an agreement with or in cooperation with the related retailer, maintains an office, distribution house, sales house, warehouse or other place of business in the county;

(ii) Performs services in the county in connection with tangible personal property or services sold by the retailer, or any related entity, related member or part of the unitary business;

(iii) By any agent, or representative (by whatever name called), or employee, performs services in the county in connection with tangible personal property or services sold by the retailer, or any related entity, related member or part of the unitary business; or

(iv) Directly or indirectly, through or by an agent, representative or employee located in, or present in, the county, solicits business in the county for or on behalf of the retailer, or any related entity, related member or part of the unitary business.

(C) For purposes of paragraph (B) of this subdivision, the term “service” means and includes, but is not limited to, customer support services, help desk services, call center services, repair services, engineering services, installation service, assembly service, delivery service by means other than common carrier or the United States Postal Service, technical assistance services, the service of investigating, handling or otherwise assisting in resolving customer issues or complaints while in the county, the service of operating a mail order business or telephone, Internet or other remote order business from facilities located within the county, the service of operating a website or internet-based business from a location within the county imposing the use tax or any other service.

(20) “Road” means a public highway, road, bridge, tunnel, or overpass to be used for the transportation of persons or goods including bicycle and pedestrian facilities.

(21) “Road project” means any project to acquire, design, construct, expand, renovate, extend, enlarge, increase, equip, improve, maintain or operate a road in this state, including, but not limited to, providing bicycle and pedestrian facilities in conjunction with a road in this state, that is under the jurisdiction of the Division of Highways.

(22) “Road construction project” means and includes any road construction project included in a road construction project plan that is adopted by a county commission pursuant to this article and approved by the Commissioner of Highways as provided in this article.

(23) “Sale” means any transaction resulting in the purchase or lease of tangible personal property, custom software or a taxable service from a retailer.

(24) “Tax Commissioner” means the State Tax Commissioner provided in article one, chapter eleven of this code or his or her delegate. The term “delegate” in the phrase “or his or her delegate”, when used in reference to the Tax Commissioner, means any officer or employee of the state Tax Division duly authorized by the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or rules promulgated for this article.

(25) “Taxpayer” means a taxpayer, as that term is defined in section two, article fifteen-b, chapter eleven of this code, who is subject to a county transportation sales tax or county transportation use tax imposed by a county commission pursuant to this article, whether acting for himself or herself or as a fiduciary, and who is liable for payment of any additions to tax, penalties or interest imposed by article ten, chapter eleven of this code for failure to timely pay or remit the county transportation sales taxes or county transportation use taxes imposed by a county commission pursuant to this article.

(26) “Vendor” means any person furnishing services subject to a county’s sales and use taxes imposed pursuant to this article, or making sales of tangible personal property or custom software subject to a county’s sales and use taxes imposed pursuant to this article. The terms “vendor,” “retailer” and “seller” are used interchangeably in this article.

(27) “West Virginia Economic Development Authority” or “Authority” means the governmental entity created in section five, article fifteen, chapter thirty-one, of this code.

As used in this article, the terms “computer software,” “lease,” “purchase price,” “retail sale,” “sale at retail,” “sales price,” “seller,” “service,” “selected service,” and “tangible personal property” have the same meanings as those terms are given in section two, article fifteen-b, chapter eleven of this code.

## PART II. COUNTY ROAD AND BRIDGE CONSTRUCTION PROJECTS.

### **§7-27-4. Creation of county road construction project plan.**

A county commission may, upon its own initiative or upon application of: (1) a highway authority; (2) a local, county or regional economic development authority; or (3) any resident of the county, propose creation of a road construction project plan for the county, or propose an amendment to an existing road construction project plan of the county.

### **§7-27-5. Public hearing and notice requirements.**

(a) *General.* — The county commission shall hold one or more public hearings at which interested persons may express their views on the county’s proposed road construction project plan.

(b) *Notice of public hearing.* – Notice of the public hearing or hearings shall be published as a Class II legal advertisement in accordance with the requirements of article three, chapter fifty-nine of this code. The published notice shall include, at a minimum:

(1) The date, time, place and purpose of the public hearing or hearings;

(2) A description of each road construction project included in the proposed road construction project plan in sufficient detail to give the public notice of the contents of the proposed road construction project plan to cause residents of the county and other interested persons to examine the proposed road construction project plan and attend the public hearing or submit written comments thereon;

(3) The places in the county where the proposed road construction project plan may be viewed: *Provided*, That the county commission shall include the proposed road construction project plan on its webpage; and

(4) Information regarding how the county commission anticipates funding the road construction projects contained in the road construction project plan, including, but not limited to, whether one or more projects in the proposed road construction project plan, will be financed, in whole or in part, by the imposition of a county transportation sales and use tax and the proposed rate of the taxes the county finds necessary to finance, in whole or in part, the proposed road construction project plan, and any proposed road construction special revenue bonds to be issued to finance the road construction project plan.

(c) *Notice by mail.* – On or before the first day of publication of the public notice required in subsection (b) of this section, the county commission shall send a copy of the notice by first-class mail to the Commissioner of Highways, the Executive Director of the West Virginia Economic Development Authority and the mayor of each municipality located within the county. When the county commission reasonably anticipates that a proposed road construction project may affect one or more bordering counties, it shall send a copy of the notice by first-class mail to the president of the county commission of the bordering county or counties.

(d) *Public Hearing.* – All persons who appear at any public hearing held pursuant to this section shall be afforded a reasonable opportunity to express their views on all or any part of the proposed road construction project plan. Each public hearing shall be recorded by a court reporter, or be digitally recorded.

(e) *Written comments.* – Written comments may be submitted to the county commission before, during, or within five business days after the last public hearing. Timely mailing of the written comments to the county commission, at the mailing address of the courthouse, postage prepaid, shall be deemed timely submission of the written comments.

**§7-27-6. Finalization of road construction project plan.**

(a) Resolution of county commission. – After the public hearing or hearings are concluded and the public comment period is closed, and after receipt of any required resolution of the governing body of a municipality, as required in subsection (b) of this section, the county commission may, by resolution, finalize its road construction project plan: *Provided*, That if there is more than one road construction project in the road construction project plan, the road construction project plan shall include a prioritization of each road construction project.

(b) Consent of municipality in which project located. – No county commission may adopt a resolution approving a road construction project plan, any portion of which is located within the boundaries of a Class I, II, III or IV municipality, without the adoption of a resolution by the governing body of that municipality consenting to the road construction project.

**§7-27-7. Submission of road construction project plan to Commissioner of Highways; contents of application.**

(a) After the county commission has finalized its road construction project plan, the commission may submit the plan to the Commissioner of Highways.

(b) Each application submitted pursuant to this article shall include:

(1) A true copy of the county's proposed road construction project plan, or proposed amendment to a project plan previously approved by the Commissioner of Highways, that is adopted, after the public hearing, by resolution of the county commission;

(2) A true copy of the resolution adopted by the county commission approving submission of the adopted road construction project plan, or the proposed amendment to a project plan previously approved by the Commissioner of Highways, to the Commissioner of Highways for approval;

(3) A true copy of the notice of public hearing or hearings on the county's proposed road construction plan, or proposed amendment to a previously adopted project plan, and a true copy of the proposed plan, or the proposed amendment to an existing project plan that was the subject of the public hearing;

(4) An affidavit signed by the president of the county commission confirming publication of the notice of public hearing;

(5) A true copy of the transcript of the public hearing or hearings, or a true copy of the digital recording of the public hearing or hearings,

(6) True copies of any written comments received by the commission on the proposed road construction project plan, or the proposed amendment to an existing project plan;

(7) A statement generally describing each project included in the county's road construction project plan, or the proposed amendment to an existing project plan, and identifying:

(A) Type of project, as a road project, bridge project, or both road and bridge project;

(B) Location of the project;

(C) Length of the project (in miles or feet);

(D) Scope of the work;

(E) Classification of the project as a preservation project, modernization project, or expansion project;

(F) Estimated cost of the project;

(G) Method of financing the project; and

(H) Timeline for completion of the project.

(8) A map of the county showing the geographic location of each road construction project included in the county's road construction project plan;

(9) When the road construction project is located, in whole or in part, within the corporate limits of any municipality, a true copy of the resolution adopted by the governing body of the municipality consenting to the road construction project;

(10) Identification of any businesses or residents that the county commission anticipates will be displaced because of the road construction project;

(11) A good faith estimate of the annual net county transportation sales and use tax collections to be deposited in the county's sub-account in the County Road Improvement Account created pursuant to section fourteen of this article that will be available to finance the project, in whole or in part; and

(12) Any additional information the Commissioner of Highways may reasonably require to analyze a proposed road construction project.

**§7-27-8. Application to Commissioner of Highways for approval of road construction project plans.**

(a) *Review of applications.* – The Commissioner of Highways shall review all proposed road construction project plans for conformity to statutory and regulatory requirements, the reasonableness of the project's budget, and the timetable for completion using the following criteria:

(1) The quality of the proposed road construction project and how it addresses transportation problems in the area in which the road construction project will be located;

(2) Whether there is credible evidence that, unless county transportation sales and use tax revenues are used to finance the road construction project, in whole or in part, the project would not otherwise be feasible in the time line proposed by the county commission;

(3) Whether the county transportation sales and use tax revenues will leverage or be the catalyst for the effective use of state or federal funding that is available;

(4) Whether there is substantial and credible evidence that the proposed road construction project is likely to be started and completed in a timely fashion;

(5) Whether the proposed project will, directly or indirectly, improve transportation in the area where the road construction project will occur, thereby benefitting county residents and facilitating commercial business development and expansion in the county;

(6) Whether the proposed road construction project will, directly or indirectly, assist in the creation of additional long-term employment opportunities in the area and the quality of jobs created to include, but not be limited to, wages and benefits;

(7) Whether the proposed road construction project will fulfill a pressing transportation need for the county, or part of the county, in which the road construction project would be located;

(8) Whether the county commission has a strategy for road construction in the county and whether the proposed road construction project is consistent with that strategy;

(9) Whether the road construction project is consistent with the goals of this article;

(10) Whether the road construction project is economically and fiscally sound using recognized business standards of finance and accounting; and

(11) Any other additional criteria established by the Commissioner of Highways by legislative rule.

(b) *Decision of Commissioner of Highways.* — Within sixty days after receipt of the county commission's proposed road construction project plan or an amendment to a previously approved project plan, the Commissioner of Highways shall either (1) approve the plan as submitted, in whole or in part; (2) reject the plan as submitted, in whole or in part; or (3) return the plan to the county commission for further development or review in accordance with instructions from the Commissioner of Highways.

The decision of the commissioner is final and is not subject to judicial review.

(c) Certification of road construction project. — If the Commissioner of Highways approves a county's road construction project application, in whole or in part, the commissioner shall issue to the county commission a written certificate evidencing approval of each approved project.

(d) Assignment of project plan and individual projects. — Upon approval of a road construction project plan or an amendment to an existing project, the Commissioner of Highways shall:

(1) Assign a name to the road construction project for identification purposes, which name may include a geographic or other designation; and

(2) Assign each project within the road construction project plan a project number that begins with the federal information processing (FIPS) code number for the county, followed by a hyphen and a consecutive number beginning with the number "01," with each additional road construction project in the plan being assigned the next consecutive number.

(e) Rules. — The Commissioner of Highways may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to implement the county road construction project application approval process and to further identify and describe the criteria and procedures he or she has established in connection therewith.

**§7-27-9. Requirement for referendum on final road construction project plan.**

(a) After obtaining project certification from the Commissioner of Highways under section eight of this article the county commission shall submit the question of the adoption of a road construction project plan to the voters in a county-wide referendum to be held in conjunction with a primary or general election. The question to be voted on in the referendum shall identify the project plan by its name and location, its projected cost estimate and how

the cost of the road construction project plan is to be financed. The question shall state if the road construction plan is to be financed in whole or in part by the imposition of a county transportation sales and use tax, including the rate of the tax to be imposed, and if it is to be financed in whole or in part by the issuance of special revenue bonds as authorized by this article.

(b) No county commission may proceed with a road construction plan which will be financed, in whole or in part, by the imposition of a transportation sales and use tax or by the issuance of special revenue bonds as authorized by this article unless a majority of voters casting votes in the referendum vote to approve the road construction project plan.

**§7-27-10. Amendment of road construction project plan.**

(a) General. — A road construction project plan adopted by order of the county commission may be amended by the county commission at any time to add one or more projects, delete one or more projects, or redesignate the order in which projects are to be completed as funds become available.

(b) Procedure to amend project plan. — The procedures that apply to creation of a road construction project plan shall also apply to each proposed amendment to the adopted road construction project plan.

**§7-27-11. Termination of road construction project plan.**

(a) General. — No road construction project plan may be in existence for a period longer than thirty years, except as otherwise provided in this section, and no revenue bond secured by collections of the taxes imposed by a county commission may have a final maturity date more than thirty years after date of issuance of the revenue bonds.

(b) Extension of plan. — Each amendment of a county's roads construction project plan approved by the Commissioner of Highways that results in execution of an intergovernmental agreement by the county commission and the Commissioner of Highways shall extend the term of the project plan for thirty years

from the date on which the intergovernmental agreement is fully executed.

(c) Termination of county transportation sales and use taxes. — The county transportation sales and use tax imposed by a county commission pursuant to this article shall expire on the first day of the calendar quarter that begins one hundred twenty days after the following:

(1) If no special revenue bonds are issued as authorized by this article, the day the county commission notifies the Tax Commissioner in writing that its road construction projects financed, in whole or in part, with transportation sales and use tax revenue have been completed; or

(2) If special revenue bonds have been issued as authorized by this article, the West Virginia Economic Development Authority certifies to the county commission and to the Tax Commissioner that all principal and interest due, or to become due, on the bonds issued under this article has been paid or is otherwise provided for.

(d) Shorter period. — The county commission may set an earlier termination date for the county transportation sales and use tax imposed pursuant to this article: *Provided*, That no revenue bonds may have a final maturity date later than the termination date of the county transportation sales and use tax.

(e) Termination order. — Prior to expiration of the county transportation sales and use tax, the county commission shall adopt an order terminating the county transportation sales and use tax on the date specified therein: *Provided*, That the order may not extinguish any person's liability for payment of county transportation sales and use taxes that were assessed prior to termination of the taxes. With respect to any such taxes, the rights and duties of the taxpayer and of the State of West Virginia shall be fully and completely preserved.

(f) Prohibition on termination or rate reduction. — The county commission may not repeal the order imposing a county transportation sales and use tax pursuant to this article, or reduce

the rate at which the county transportation sales and use taxes are imposed so long as any revenue bonds secured by the taxes remain outstanding, unless payment of the bonds has been secured in full.

PART III. IMPLEMENTATION OF ROAD CONSTRUCTION  
PROJECT PLAN.

**§7-27-12. Order adopting road construction project plan or plan amendment.**

Upon approval of a road construction project plan or an amendment to an existing project plan by the Commissioner of Highways, and approval of the voters in the referendum provided in section nine of this article, the county commission shall enter an order that:

(1) Describes each approved road construction project sufficiently to identify with ordinary and reasonable certainty the geographic location in the county of each road construction project included in the county's plan;

(2) Identifies the road construction project plan by the name assigned by the Commissioner of Highways, and identifies each project within the road construction project plan by the project number assigned by the Commissioner of Highways; and

(3) Establishes a county transportation sales tax and a county transportation use tax as provided in this article at rates not to exceed one percent: *Provided*, That the rate of the sales tax and the rate of the use tax shall at all times be identical.

**§7-27-13. Joint road construction projects.**

(a) The Legislature hereby finds and declares that the citizens of the state would benefit from coordinated road construction efforts by county commissions funded by county transportation sales and use taxes imposed pursuant to this article.

(b) Notwithstanding any other section of this code to the contrary, any two or more county commissions may contract to share expenses and dedicate county funds or county transportation

sales and use tax revenues, on a pro rata basis, to facilitate construction of one or more road construction projects: *Provided*, That each of the road construction projects must be a part of a road construction project plan created and approved pursuant to this article by each county commission contracting to share expenses and funds.

(c) When a road construction project begins in one county and ends in one or more other counties of this state, the county commission of each county may, by resolution, adopt a written intergovernmental agreement with each county and the Commissioner of Highways regarding the proposed multicounty road construction project.

(d) No county commission may withdraw from an intergovernmental agreement so long as revenue bonds, the proceeds of which were used by the Commissioner of Highways to finance construction of the road, remain outstanding.

(e) No county commission that withdraws from an intergovernmental agreement shall be entitled to the return of any money or property advanced to the road construction project.

(f) Notwithstanding any provision of this code to the contrary, any county commission imposing county transportation sales and use taxes pursuant to this article may enter into an intergovernmental agreement with one or more other counties that also impose transportation sales and use taxes pursuant to this article that have an interest in completion of a proposed road construction project, with respect to the pooling of county transportation sales and use tax revenues to finance construction of the road construction project either on a cash basis or to pay debt service on revenue bonds issued by the West Virginia Economic Development Authority to fund the road construction project.

(g) The obligations of the parties under any intergovernmental agreement executed pursuant to this article may not be considered debt within the meaning of sections six or eight, article X of the Constitution of West Virginia.

(h) Any intergovernmental agreement shall be approved by resolution adopted by a majority vote of the county commission of each county participating in the agreement and by the Commissioner of Highways. After the resolution is adopted, the agreement shall be signed by at least one member of the county commission and by the Commissioner of Highways.

(i) The Commissioner of Highways may enter into intergovernmental agreements with county commissions or other political subdivisions of the state, or with the federal government or any agency thereof, respecting the financing, planning, and construction of roads and bridges constructed pursuant to this article.

#### **§7-27-14. Creation of County Road Improvement Account.**

(a) *Account created.* — There is hereby created in the State Treasury a Special Revenue Revolving Fund account known as the “County Road Improvement Account” which is an interest-bearing account that shall be invested in the manner described in section nine-c, article six, chapter twelve of this code, with the interest income a proper credit to the account.

(b) *County subaccount.* — A separate and segregated subaccount within the account shall be established for each county that imposes a county transportation sales and use tax pursuant to this article.

(c) *Additional funds.* — In addition to the county transportation sales and use taxes levied and collected as provided in this article, funds paid into the account for the credit of any subaccount may also be derived from the following sources:

(1) All interest or return on the investment accruing to the subaccount;

(2) Any gifts, grants, bequests, transfers, appropriations or donations which are received from any governmental entity or unit or any person, firm, foundation or corporation; and

(3) Any appropriations by the Legislature which are made for this purpose.

(d) Expenditures from account. — The Commissioner of Highways may withdraw funds from a county's subaccount only in accordance with one or more intergovernmental agreements or contracts executed by the county commission of that county.

**§7-27-15. Cash basis projects; issuance of road construction special revenue bonds by West Virginia Economic Development Authority.**

(a) Cash basis projects. — Each county commission that has a subaccount in the County Road Improvement Account established pursuant to this article may, in its discretion and pursuant to an intergovernmental written agreement with the county commission, authorize the Commissioner of Highways to use the moneys in its subaccount to finance the costs of road construction projects in the county on a cash basis.

(b) Special revenue bonds. — The county commission may, by intergovernmental written agreement, authorize the West Virginia Economic Development Authority to issue, in the manner prescribed by this article, special revenue bonds secured by county transportation sales and use taxes imposed pursuant to this article to finance or refinance all or part of a road construction project in the county and pledge all or any part of the county transportation sales and use taxes for the payment of the principal of and interest on such bonds and the reserves therefor.

**§7-27-16. Commissioner's authority over road construction projects accepted into the state road system; use of state road funds.**

(a) Notwithstanding anything in this article to the contrary, the Commissioner of Highways has final approval of any road construction project. However, no state road funds may be used, singly or together with funds from any other source, for any purpose or in any manner contrary to or prohibited by the Constitution and laws of this state or the federal government or

where such use, in the sole discretion of the Commissioner of Highways, would jeopardize receipt of federal funds.

(b) All road construction projects that shall be accepted as part of the state road system, and all real property interests and appurtenances, are under the exclusive jurisdiction and control of the Commissioner of Highways, who may exercise the same rights and authority as he or she has over other transportation facilities in the state road system.

**§7-27-17. Qualifying a transportation project as a public improvement.**

All road construction projects authorized under this article are public improvements subject to article one-c, chapter twenty-one of this code, and either article twenty-two, chapter five of this code or article two-d, chapter seventeen of this code.

**§7-27-18. Reports by Commissioner of Highways.**

Each year, the Commissioner of Highways shall prepare a report giving the status of each road construction project being constructed pursuant to this article and file it by October 1 with the Governor, the Joint Committee on Government and Finance of the Legislature and with each county commission with which the Commissioner of Highways has an intergovernmental agreement executed pursuant to this article. The report shall include the following information:

(1) The identification, by county, of each road construction project for which an intergovernmental agreement has been executed pursuant to this article, and the status of the road construction project as of June 30 preceding the due date of the report;

(2) The estimated cost of each road construction project included in the report;

(3) The source or sources of funding for each road construction project included in the report;

(4) If revenue bonds have been issued by the West Virginia Economic Development Authority, the amount of the bonds issued that are outstanding as of June 30 preceding the due date of the report for each project included in the report;

(5) The balance as of June 30 preceding the due date of the report of each county's subaccount in the County Improvement Account;

(6) The amount of county transportation sales and use taxes deposited into each county's subaccount in the County Road Improvement Account during the fiscal year ending June 30 preceding the due date of the report; and

(7) The amount the Commissioner of Highways withdrew from each county's subaccount in the County Road Improvement Account during the fiscal year ending June 30 preceding the due date of the report to pay debt service on revenue bonds issued pursuant to this article or to construct projects financed on a pay-as-you-go basis.

#### PART IV. COUNTY ROAD CONSTRUCTION SPECIAL REVENUE BONDS.

##### **§7-27-19. Issuance of county road construction special revenue bonds.**

Special revenue bonds may be issued by the West Virginia Economic Development Authority pursuant to an intergovernmental written agreement between the county commission and the Commissioner of Highways to finance or refinance, in whole or in part, road construction projects in an aggregate principal amount not exceeding the amount which the county commission(s) and the Authority mutually agree can be paid as to both principal and interest and reasonable margins for a reserve, if any, therefor from county transportation sales and use tax collections. In the discretion of the Authority, special revenue bonds issued pursuant to this article may be issued for road construction projects in two or more counties.

(1) The Authority shall establish a fund to deposit county transportation sales and use tax collections to pay debt service on the bonds.

(2) The State Treasurer shall thereafter transfer from the county's subaccount all county transportation sales and use tax revenues pledged to the payment of principal and interest of the road construction special revenue bonds into the fund established under subdivision (1) of this section.

(3) The road construction special revenue bonds shall be authorized to be issued by the Authority pursuant to this article, and shall be secured, shall bear such date and shall mature at such time, not exceeding thirty years from the date of issue, shall bear interest at such rate or rates, including variable rates, be in such denominations, be in such form, carry such registration privileges, be payable in such medium of payment and at such place or places and such time or times and be subject to such terms of redemption as the Authority may authorize. Road construction special revenue bonds may be sold by the West Virginia Economic Development Authority, at public or private sale, at or not less than the price the Authority determines. The road construction special revenue bonds shall be executed by manual or facsimile signature of an authorized officer of the West Virginia Economic Development Authority. In case any authorized officer whose signature, or a facsimile of whose signature, appears on any bond ceases to be an authorized officer before delivery of those bonds, the signature or facsimile is nevertheless sufficient for all purposes the same as if he or she had remained in office until the delivery.

**§7-27-20. Trustee for bondholders; contents of trust agreement; pledge or assignment of revenues and funds.**

For bonds issued pursuant to this article, any bonds, including refunding bonds issued by the Authority, may be secured by a trust agreement between the Authority and a corporate trustee, which trustee may be any bank or trust company within or without the state. Any such trust agreement may contain binding covenants with the holders of the bonds as to any matter or provisions as are

considered necessary or advisable to the Authority to enhance the marketability and security of the bonds and may also contain such other provisions with respect thereto as the Authority may authorize and approve. Any trust agreement may contain a pledge or assignment of revenues to be received in connection with the financing.

**§7-27-21. Refunding bonds.**

Any bonds issued by the West Virginia Economic Development Authority pursuant to the provisions of this article or any other provision of this code and at any time outstanding may at any time and from time to time be refunded by the Authority by the issuance of its refunding bonds in such amount as it may consider necessary to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon, to provide additional funds to approved project costs and to pay any premiums and commissions necessary to be paid in connection therewith. Refunding may be effected by whether the bonds to be refunded have then matured or thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the redemption of the bonds to be refunded thereby or by exchange of the refunding bonds for the bonds to be refunded thereby. Refunding bonds shall be issued in conformance with the provisions of this article related to issuance of bonds.

**§7-27-22. Obligations of the West Virginia Economic Development Authority undertaken pursuant to this article not debt of state, county, municipality or any political subdivision.**

(a) Bonds, including refunding bonds, issued under this article and any other obligations undertaken by the West Virginia Economic Development Authority pursuant to this article, do not constitute a debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality or any other political subdivision of this state, and the holders and owners thereof have no right to have taxes levied by the Legislature or the taxing authority of any county, municipality or any other political subdivision of this state for the payment of the principal thereof or

interest thereon. The bonds and other obligations are payable solely from the revenues and funds pledged for their payment as authorized by this article unless the bonds are refunded by refunding bonds issued under the authority of this article, which bonds or refunding bonds shall be payable solely from revenues and funds pledged for their payment as authorized by this article.

(b) All bonds, and all documents evidencing any other obligation, shall contain on the face thereof a statement to the effect that the bonds or other obligation as to both principal and interest are not debts of the state or any county, municipality or political subdivision thereof, but are payable solely from revenues and funds pledged for their payment as authorized by this article.

**§7-27-23. Negotiability of bonds issued pursuant to this article.**

Whether or not the bonds issued pursuant to this article are of the form or character as to be negotiable instruments under the Uniform Commercial Code, the bonds are negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code, subject only to the provisions of the bonds for registration.

**§7-27-24. Exemption from taxation.**

All bonds issued by the Authority pursuant to this article, and all interest and income thereon, are exempt from all taxation by this state and any county, municipality, political subdivision or agency thereof, except inheritance taxes.

**§7-27-25. Personal liability; persons executing bonds issued pursuant to this article.**

Neither the West Virginia Economic Development Authority, nor any officer or employee of the West Virginia Economic Development Authority, or any person executing the bonds issued pursuant to the provisions of this article, are liable personally on the bonds or subject to any personal liability or accountability by reason of the issuance thereof.

**§7-27-26. Cumulative authority as to powers conferred; applicability of other statutes and charters; bonds issued pursuant to this article.**

The provisions of this article relating to the issuance of bonds shall be construed as granting cumulative authority for the exercise of the various powers herein conferred, and neither the powers nor any bonds issued hereunder are affected or limited by any other statutory or charter provision now or hereafter in force, other than as may be provided in this article, it being the purpose and intention of this article to create full, separate and complete additional powers. The various powers conferred herein may be exercised independently and notwithstanding that no bonds are issued hereunder.

**PART V. COUNTY TRANSPORTATION SALES AND USE TAXES.**

**§7-27-27. Criteria and requirements necessary to impose county transportation sales and use taxes.**

As a prerequisite to imposing county transportation sales and use taxes, the county commission shall have entered into one or more intergovernmental agreements with the Commissioner of Highways pursuant to which the county commission agrees to finance one or more road construction projects in the county, in whole or in part, using collections of the county transportation sales and use taxes deposited in the county's subaccount in the County Road Improvement Account.

**§7-27-28. Counties authorized to impose county transportation sales and use taxes.**

(a) In addition to all other powers and duties now conferred by law upon county commissions, said county commissions, may, after first satisfying the requirements of the preceding section, adopt an order duly entered of record imposing county transportation sales and use taxes as provided in this article.

(b) *Rate of county transportation sales and use taxes.* — The rate of the county transportation sales tax and the rate of the county

transportation use tax shall be identical and may not exceed one percent of the purchase price subject to tax under article fifteen, chapter eleven of this code, or one percent of the value upon which the county transportation use tax is imposed.

(c) County transportation sales tax base. — In general, the tax base of the county transportation sales tax imposed pursuant to this article shall be identical to the consumer sales and service tax base of this state, except that: (1) The exemption in section nine-f, article fifteen, chapter eleven of this code may not apply; (2) the county sales tax may not apply when taxation is prohibited by federal law; and (3) the county sales tax may not apply as provided in subsection (e) of this section.

(d) County transportation use tax base. — The base of a county transportation use tax imposed pursuant to this article shall be identical to the base of the use tax imposed pursuant to article fifteen-a, chapter eleven of this code, on the use of tangible personal property, custom software and taxable services, within the boundaries of the county, except that: (1) The exemption in section nine-f, article fifteen, chapter eleven of this code may not apply; (2) the county sales tax may not apply when taxation is prohibited by federal law; and (3) the county sales tax may not apply as provided in subsection (e) of this section.

(e) Exceptions. — County sales and use taxes may not apply to:

(1) Sales and uses of motor vehicles upon which the tax imposed by section three-c, article fifteen, chapter eleven of this code was paid or is payable;

(2) Sales and uses of motor fuel upon which or with respect to which the taxes imposed by articles fourteen-a and fourteen-c, chapter eleven of this code was paid or is payable;

(3) Any sale of tangible personal property or custom software or the furnishing of a service that is exempt from the tax imposed by article fifteen, chapter eleven of this code;

(4) Any use of tangible personal property, custom software or the results of a taxable service that is exempt from the tax imposed

by article fifteen-a, chapter eleven of this code, except that this exception may not apply to any use within the county when the state consumer sales and service tax imposed by article fifteen, chapter eleven of this code, was paid to the seller at the time of purchase but the county transportation sales tax was not paid to the seller; and

(5) Any sale or use of tangible personal property, custom software, taxable service that the county is prohibited from taxing by federal law or the laws of this state.

(f) Whenever tangible personal property, custom software, or a taxable service is purchased in a county of this state that does not impose county transportation sales and use taxes pursuant to this article and the tangible personal property, custom software or results of a taxable service are used in a county that does impose county transportation sales and use taxes pursuant to this article:

(1) A vendor who delivers the tangible personal property, custom software or results of a taxable service to a purchaser, or the purchaser's donee, located in a county that imposes county transportation sales and use taxes pursuant to this article, shall collect, add the tax to the purchase price and collect the tax from the purchaser; and

(2) A person using tangible personal property or custom software in a county of this state that imposes sales and use taxes pursuant to this article, shall remit the county's use tax to the Tax Commissioner unless the amount of sales and use taxes imposed by the county in which the tangible personal property, custom software or taxable service was purchased were lawfully paid.

**§7-27-29. Notification of Tax Commissioner, Auditor and Treasurer.**

(a) Any county that imposes a county transportation sales and use tax pursuant to this article, or changes the rate of the taxes, shall notify the Tax Commissioner at least one hundred eighty days before the effective date of the imposition of the taxes or the change in the rate of taxation and provide the commissioner with a certified

copy of the order of the county commission imposing the taxes or changing the rates of taxation.

(b) A copy of the notice shall at the same time be furnished to the State Auditor and the State Treasurer.

**§7-27-30. State level administration of county transportation sales and use taxes required; fee for services.**

(a) State administration required. — Any county commission that imposes a county transportation sales and use tax may not administer, collect or enforce those taxes. Authority to administer, collect and enforce county transportation sales and use taxes is vested solely in the Tax Commissioner as required by article fifteen-b, chapter eleven of this code.

(b) Fee for services. — The Tax Commissioner may assess a fee to be retained from collections authorized by this article. Said fee shall not exceed the lesser of the cost of the service provided or five percent of the net amount of the taxes imposed pursuant to this article that are collected by the Tax Commissioner during any fiscal year, notwithstanding any provision of this code or rule to the contrary. For purposes of calculating the cost of the service provided, the provisions of section eleven-c, article ten, chapter eleven of this code and the legislative rules promulgated pursuant thereto shall be utilized.

(c) Deposit of fees in special revenue account. — The fees retained by the Tax Commissioner pursuant to subsection (b) of this section shall be deposited in the Local Sales Tax and Excise Tax Administration Fund, created pursuant to section eleven-c, article ten, chapter eleven of this code.

**§7-27-31. County transportation sales tax collected from purchaser.**

A vendor selling tangible personal property or custom software or furnishing a service in a county that imposes a county transportation sales tax pursuant to this article shall for the privilege of doing business in the county collect the county transportation sales tax from the purchaser at the same time and in the same

manner that the tax imposed by article fifteen, chapter eleven of this code, is collected from the customer. All sales of tangible personal property and custom software made in the county and all services furnished in the county are presumed to be subject to the county transportation sales tax unless an exemption or exception applies.

**§7-27-32. Payment of county transportation use tax.**

A county transportation use tax imposed pursuant to this article shall be paid to the Tax Commissioner by the user of tangible personal property or custom software or the results of a taxable service in the county that imposes the county transportation use tax, unless the county's use tax is collected by a retailer located outside the county that is a retailer engaging in business in the county as defined in this article, or the retailer is an out-of-state retailer who is required to collect West Virginia state and local use taxes.

**§7-27-33. County transportation sales and use taxes in addition to other taxes.**

County transportation sales and use taxes imposed pursuant to this article shall be collected and paid in addition to:

(1) The state consumer sales and service tax imposed by article fifteen, chapter eleven of this code;

(2) The state use tax imposed by article fifteen-a, chapter eleven of this code;

(3) Any hotel occupancy tax imposed pursuant to section one, article eighteen of this chapter;

(4) Any tax imposed pursuant to article twenty-two of this chapter;

(5) Any municipal sales or use tax imposed pursuant to section five-a, article one, chapter eight of this code;

(6) Any tax imposed pursuant to sections six and seven, article thirteen, chapter eight of this code;

(7) Any tax imposed by article thirty-eight, chapter eight of this code; and

(8) The tax imposed by section twenty-one, article three-a, chapter sixty of this code.

**§7-27-34. Credit for sales tax paid to another county.**

(a) A person is entitled to a credit against the use tax imposed by a county commission pursuant to this article on the use of tangible personal property, custom software or the results of a taxable service in the county equal to the amount, if any, of sales tax lawfully paid to another county for the acquisition of that tangible personal property, custom software or taxable service. However, the amount of credit allowed may not exceed the amount of use tax imposed on the use of the property or service in the county of use and no credit may be allowed for payment of county special district excise taxes imposed pursuant to article twenty-two of this chapter.

(b) For purposes of this section:

(1) "County" means a county in this state or a comparable unit of local government in another state;

(2) "Sales tax" includes a sales tax, or a compensating use tax, lawfully imposed on the sale or use of tangible personal property, custom software or a taxable service by the county, as appropriate, in which the sale or first use occurred; and

(3) "State" includes the fifty states of the United States and the District of Columbia but does not include any of the several territories organized by Congress.

(c) No credit is allowed under this section for payment of any sales or use taxes imposed by this state or by any other state.

**§7-27-35. Sourcing rules for county transportation sales and use taxes.**

Sales, purchases and uses of tangible personal property, custom software and taxable services shall be sourced for purposes of

imposition and payment of county transportation sales and use taxes imposed pursuant to this article in accordance with the sourcing rules set forth in article fifteen-b, chapter eleven of this code applicable to the taxes imposed by articles fifteen and fifteen-a, chapter eleven of this code.

**§7-27-36. Application of state consumers sales and service tax provisions.**

(a) Application of state sales tax. — The provision of article fifteen, chapter eleven of this code, and any subsequent amendments to that article and the administrative rules of the Tax Commissioner relating to article fifteen of chapter eleven shall apply to a county transportation sales tax imposed pursuant to this article to the extent that article and the rules are applicable to the tax imposed by the county.

(b) Application of state use tax law. — The provisions of article fifteen-a, chapter eleven of this code, and any subsequent amendments to that article and the rules of the Tax Commissioner relating to article fifteen-a of chapter eleven shall apply to a county transportation use tax imposed pursuant to this article to the extent the rules and laws are applicable.

(c) Definitions incorporated. — Any term used in this article or in an order adopted by a county commission pursuant to this article imposing county transportation sales and use taxes that is defined in articles fifteen, fifteen-a and fifteen-b, chapter eleven of this code and used in those articles in a similar context, shall have the same meaning when used in this article or in an order entered by the county commission pursuant to this article imposing county transportation sales and use taxes, unless the context in which the term is used clearly indicates that a different result is intended by the Legislature.

**§7-27-37. Application of West Virginia Tax Procedure and Administration Act.**

Every provision of the West Virginia Tax Procedure and Administration Act set forth in article ten, chapter eleven of this code, and as amended from time to time by the Legislature, applies to the taxes imposed pursuant to this article, except as otherwise

expressly provided in this article, with like effect as if that act were applicable only to the taxes imposed by this article and were set forth in extensor in this article or the order entered by the county commission imposing the taxes pursuant to this article.

**§7-27-38. Application of West Virginia Tax Crimes and Penalties Act.**

Every provision of the West Virginia Tax Crimes and Penalties Act set forth in article nine, chapter eleven of this code, and as amended from time to time by the Legislature, applies to the taxes imposed pursuant to this article with like effect as if that act were applicable only to the taxes imposed pursuant to this article and were set forth in extensor in this article or the order entered by the county commission imposing the taxes pursuant to this article.

**§7-27-39. Local rate and boundary changes.**

(a) *General.* — New county transportation sales and use taxes and any change in the rate of existing county transportation sales and use taxes shall first apply and be collected and paid only on the first day of a calendar quarter that begins at least sixty days after the Tax Commissioner notifies sellers of the imposition of the county taxes, or a change in the rate of those taxes, except as provided in subsection (b) of this section.

(b) *Printed catalogs.* — County transportation sales and use taxes and any change in the rate of taxation shall first apply to purchases from printed catalogs where the purchaser computed the tax based upon the local tax rate published in the catalog only on and after the first day of a calendar quarter that begins after the Tax Commissioner provides sellers at least one hundred twenty days' notice of imposition of the tax or a change in the rate of taxation.

(c) *County boundary changes.* — A county boundary change shall first apply for purposes of computation of a county transportation sales and use taxes on the first day of a calendar quarter that begins at least sixty days after the Tax Commissioner notifies sellers of the boundary change.

**§7-27-40. Deposit of county transportation sales and use taxes; payment to Division of Highways.**

(a) All county sales and use taxes collected by the Tax Commissioner under this article shall be collected and paid to the credit of each county commission's subaccount in the "County Road Improvement Account" established pursuant to this article.

(b) The credit shall be made to the subaccount of the county commission of the county in which the taxable sales were made and services rendered or taxable uses occurred as shown by the records of the Tax Commissioner and certified by the Tax Commissioner to the State Treasurer, namely, the location of each place of business of every vendor collecting and paying sales and use taxes to the Tax Commissioner without regard to the place of possible use by the purchaser and by every person remitting county transportation use tax to the Tax Commissioner or paying the county's use tax to the Tax Commissioner.

(c) As soon as practicable after the county transportation sales and use taxes for a particular county have been paid into the county's subaccount of the "County Road Improvement Account" in any month for the preceding reporting period, the Commissioner of Highways or the West Virginia Economic Development Authority may issue a requisition to the Auditor requesting issuance of a state warrant for the funds of the county in its subaccount, as provided for by the intergovernmental agreement or agreements executed by the Commissioner of Highways and the county commission.

(1) Upon receipt of the requisition, the Auditor shall issue his or her warrant on the State Treasurer for the funds requested and the State Treasurer shall pay the warrant out of the subaccount.

(2) If errors are made in any payment, or adjustments are otherwise necessary, whether attributable to refunds to taxpayers or to some other fact, the errors shall be corrected and adjustments made in the payments for the next six months as follows: One sixth of the total adjustment shall be included in the payments for each month for the next six months, to be paid in full during this six

months period. In addition, the payment shall include a refund of amounts erroneously not paid to the subaccount of the county commission and not previously remitted to the county's subaccount during the three years preceding the discovery of the error.

(3) A correction and adjustment in payments described in this subsection due to the misallocation of funds by the person remitting the tax shall be made within three years of the date of the payment error.

**§7-27-41. Effective date of county transportation sales and use tax.**

(a) Notwithstanding the effective date of an order of the county commission imposing a county transportation sales and use tax, or changing the rate of tax, the tax or a rate change may not become operational and no vendor may be required to collect the tax and no purchaser or user may be required to pay the tax until the first day of a calendar quarter that begins at least sixty days after the Tax Commissioner complies with the requirements of section thirty-five, article fifteen-b, chapter eleven of this code.

(b) The Tax Commissioner shall issue his or her notice to vendors and other persons required to collect sales and use taxes within thirty days after receiving notice from the county:

(1) A certified copy of the order of the county commission imposing a county transportation sales and use tax, or changing the rate of tax, notwithstanding any other provision of this code or rule to the contrary;

(2) The rate and boundary database of the county identifying all of the five digit zip codes and nine-digit zip codes located in the county in conformity with the requirements for West Virginia to maintain full membership in the Streamlined Sales Tax Governing Board pursuant to article fifteen-b, chapter eleven of this code; and

(3) Such other information as the Tax Commissioner may reasonably require.

**§7-27-42. Early retirement of special revenue bonds; termination of county transportation sales and use taxes; excess funds.**

(a) *General.* — When special revenue bonds have been issued as provided in this article and the amount of county transportation sales and use taxes collected, less costs of administration, collection and enforcement, exceeds the amount needed to pay project costs and annual debt service, including the funding of required debt service and maintenance reserves, if any, the additional amount remaining in the county's subaccount in the County Road Improvement Account shall be used to retire outstanding revenue bonds before their maturity date in accordance with the terms of such bonds.

(b) *Termination of county transportation sales and use taxes.* — Once the special revenue bonds issued as provided in this article are no longer outstanding or have been defeased, and no additional road construction projects have been requested and approved by the Commissioner of Highways, the county transportation sales and use taxes shall be discontinued by order adopted by the county commission as provided in this article. Termination of the county transportation sales and use taxes as provided in this section may not bar or otherwise prevent the Tax Commissioner from collecting county transportation sales and use taxes that accrued before the termination date and the rights of the state and the taxpayers as to those taxes shall be preserved.

(c) *Excess funds.* — After all intergovernmental agreements with the Commissioner of Highways have ended and all debt service on special revenue bonds issued to finance, in whole or in part, the road construction projects has been paid or provided for, and county transportation sales and use taxes imposed by the county have terminated, the Commissioner of Highways shall forward the unencumbered balance of moneys remaining in the county's subaccount in the County Road Improvement Account to the county commission of that county for deposit in the county's general fund.

PART VI. MISCELLANEOUS.

**§7-27-43. Powers supplemental.**

(a) County commissions. — The powers conferred by this article are in addition and supplemental to the powers conferred upon county commissions by the Legislature elsewhere in this chapter.

(b) Commissioner of Highways. — The powers conferred by this article are in addition and supplemental to the powers conferred upon the Commissioner of Highways, the Division of Highways, and the Department of Transportation by the Legislature elsewhere in this code.

(c) West Virginia Economic Development Authority. — The powers conferred by this article are in addition and supplemental to the powers conferred upon the West Virginia Economic Development Authority by the Legislature elsewhere in this code.

**§7-27-44. Public officials exempt from personal liability.**

No member of a county commission or other county officer may be personally liable on any contract or obligation executed pursuant to the authority contained in this article, nor may these contracts or obligations or the issuance of revenue bonds by the Authority secured by county transportation sales and use taxes imposed by county commissions under this article be considered as misfeasance in office.

**§7-27-45. Severability.**

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this article is for any reason held to be invalid, unlawful or unconstitutional, that decision does not affect the validity of the remaining portions of this article or any part thereof.

**CHAPTER 31. CORPORATIONS**

**ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT  
AUTHORITY.**

**§31-15-16c. Bonds for county capital improvements; limitations; authority to issue revenue bonds; use of funds to pay for projects.**

(a) The West Virginia Economic Development Authority may, in accordance with the provisions of this article and article twenty seven, chapter seven of this code, issue special revenue bonds from time to time, to pay for a portion of the cost of constructing, equipping, improving or maintaining road projects under article twenty seven, chapter seven of this code or to refund the bonds, at the request of the county. The principal amount of the bonds issued under this section may not exceed, in the aggregate, an amount that, in the opinion of the Authority, is necessary to provide sufficient funds for achievement of the purposes of this section and article twenty seven, chapter seven of this code, and is within the limits of moneys pledged for the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding bonds authorized by this section and article twenty seven, chapter seven of the code. Any revenue bonds issued on or after the effective date of this section which are secured by county transportation sales and use tax shall mature at a time or times not exceeding thirty years from their respective dates except as otherwise provided in article twenty-seven, chapter seven of the code. The principal, interest and redemption premium, if any, on the bonds shall be payable solely from the county's subaccount in the County Road Improvement Account in the State Treasury established in article twenty-seven, chapter seven of this code.

(b) All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this section. The Authority may further provide in the trust agreement for priorities on the revenues paid into the county's subaccount in the County Road Improvement Account as may be necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this section or article twenty seven, chapter seven of this code. The bonds issued pursuant to this section shall be separate from all other bonds which may be or have been issued from time to time under the

provisions of this article or article twenty seven, chapter seven of this code. The debt service fund established for each bond issue shall be pledged solely for the repayment of bonds issued pursuant to this section and article twenty seven, chapter seven of this code. On or prior to May 1 of each year, commencing May 1, 2017, the Authority shall certify to each county commission the principal and interest and coverage ratio requirements for the following fiscal year on any revenue bonds or refunding revenue bonds issued pursuant to this section, and for which moneys deposited in the debt service fund have been pledged, or will be pledged, for repayment pursuant to this section.

(c) After the Authority has issued bonds authorized by this section, and after the requirements of all funds have been satisfied, including coverage and reserve funds established in connection with the bonds issued pursuant to this section, any balance remaining in the debt service fund may be used for the redemption of any of the outstanding bonds issued under this section which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which redeemable, and all bonds redeemed or purchased shall be immediately canceled and shall not again be issued. Any funds not used as provided in this subsection shall be returned to the county commission of the county for which the bonds were issued.

On motion of Senator Hall, the following amendment to the Finance committee amendment to bill (Eng. Com. Sub. for H. B. 4009) was reported by the Clerk and adopted:

On page thirty-six, section sixteen-c, subsection (a), after the words “provided in article twenty” by adding the word “seven”.

The question now being on the adoption of the Finance committee amendment, as amended, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 4009), as amended, was then ordered to third reading.

**Eng. House Bill 4033**, Adding criminal penalties for the unauthorized practice of pharmacists care.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §30-5-12b and §30-5-34 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**§30-5-12b. Definitions; selection of generic drug products; exceptions; records; labels; manufacturing standards; rules; notice of substitution; complaints; notice and hearing; immunity.**

(a) As used in this section:

(1) “Brand name” means the proprietary or trade name selected by the manufacturer and placed upon a drug or drug product, its container, label or wrapping at the time of packaging.

(2) “Generic name” means the official title of a drug or drug combination for which a new drug application, or an abbreviated new drug application, has been approved by the United States Food and Drug Administration and is in effect.

(3) “Substitute” means to dispense without the prescriber’s express authorization a therapeutically equivalent generic drug product in the place of the drug ordered or prescribed.

(4) “Equivalent” means drugs or drug products which are the same amounts of identical active ingredients and same dosage form and which will provide the same therapeutic efficacy and toxicity when administered to an individual and is approved by the United States Food and Drug Administration.

(b) A pharmacist who receives a prescription for a brand name drug or drug product shall substitute a less expensive equivalent generic name drug or drug product unless in the exercise of his or her professional judgment the pharmacist believes that the less expensive drug is not suitable for the particular patient: *Provided*, That no substitution may be made by the pharmacist where the prescribing practitioner indicates that, in his or her professional judgment, a specific brand name drug is medically necessary for a particular patient.

(c) A written prescription order shall permit the pharmacist to substitute an equivalent generic name drug or drug product except where the prescribing practitioner has indicated in his or her own handwriting the words “Brand Medically Necessary”. The following sentence shall be printed on the prescription form. “This prescription may be filled with a generically equivalent drug product unless the words ‘Brand Medically Necessary’ are written, in the practitioner’s own handwriting, on this prescription form.”: *Provided*, That “Brand Medically Necessary” may be indicated on the prescription order other than in the prescribing practitioner’s own handwriting unless otherwise required by federal mandate.

(d) A verbal prescription order shall permit the pharmacist to substitute an equivalent generic name drug or drug product except where the prescribing practitioner shall indicate to the pharmacist that the prescription is “Brand Necessary” or “Brand Medically Necessary”. The pharmacist shall note the instructions on the file copy of the prescription or chart order form.

(e) No person may by trade rule, work rule, contract or in any other way prohibit, restrict, limit or attempt to prohibit, restrict or limit the making of a generic name substitution under the provisions of this section. No employer or his or her agent may use coercion or other means to interfere with the professional judgment of the pharmacist in deciding which generic name drugs or drug products shall be stocked or substituted: *Provided*, That this section shall not be construed to permit the pharmacist to generally refuse to substitute less expensive therapeutically equivalent generic drugs for brand name drugs and that any pharmacist so refusing

shall be subject to the penalties prescribed in section ~~twenty-two~~  
thirty-four of this article.

(f) A pharmacist may substitute a drug pursuant to the provisions of this section only where there will be a savings to the buyer. Where substitution is proper, pursuant to this section, or where the practitioner prescribes the drug by generic name, the pharmacist shall, consistent with his or her professional judgment, dispense the lowest retail cost, effective brand which is in stock.

~~(g) All savings in the retail price of the prescription shall be passed on to the purchaser; these savings shall be equal to the difference between the retail price of the brand name product and the customary and usual price of the generic product substituted therefor. Provided, That in no event shall such savings be less than the difference in acquisition cost of the brand name product prescribed and the acquisition cost of the substituted product.~~

~~(h)~~ (g) Each pharmacy shall maintain a record of any substitution of an equivalent generic name drug product for a prescribed brand name drug product on the file copy of a written, electronic or verbal prescription or chart order. Such record shall include the manufacturer and generic name of the drug product selected.

(i) (h) All drugs shall be labeled in accordance with the instructions of the practitioner.

(j) (i) Unless the practitioner directs otherwise, the prescription label on all drugs dispensed by the pharmacist shall indicate the generic name using abbreviations, if necessary, and either the name of the manufacturer or packager, whichever is applicable in the pharmacist's discretion. The same notation will be made on the original prescription retained by the pharmacist.

~~(k)~~ (j) A pharmacist may not dispense a product under the provisions of this section unless the manufacturer has shown that the drug has been manufactured with the following minimum good manufacturing standards and practices by:

(1) Labeling products with the name of the original manufacturer and control number;

(2) Maintaining quality control standards equal to or greater than those of the United States Food and Drug Administration;

(3) Marking products with identification code or monogram; and

(4) Labeling products with an expiration date.

~~(j)~~ (k) The West Virginia Board of Pharmacy shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code which establish a formulary of generic type and brand name drug products which are determined by the board to demonstrate significant biological or therapeutic inequivalence and which, if substituted, would pose a threat to the health and safety of patients receiving prescription medication. The formulary shall be promulgated by the board within ninety days of the date of passage of this section and may be amended in accordance with the provisions of chapter twenty-nine-a of this code.

~~(m)~~ (l) No pharmacist shall substitute a generic-named therapeutically equivalent drug product for a prescribed brand name drug product if the brand name drug product or the generic drug type is listed on the formulary established by the West Virginia Board of Pharmacy pursuant to this article or is found to be in violation of the requirements of the United States Food and Drug Administration.

~~(n)~~ (m) Any pharmacist who substitutes any drug shall, either personally or through his or her agent, assistant or employee, notify the person presenting the prescription of such substitution. The person presenting the prescription shall have the right to refuse the substitution. Upon request the pharmacist shall relate the retail price difference between the brand name and the drug substituted for it.

~~(o)~~ (n) Every pharmacy shall post in a prominent place that is in clear and unobstructed public view, at or near the place where prescriptions are dispensed, a sign which shall read: "West Virginia

law requires pharmacists to substitute a less expensive generic-named therapeutically equivalent drug for a brand name drug, if available, unless you or your physician direct otherwise.” The sign shall be printed with lettering of at least one and one-half inches in height with appropriate margins and spacing as prescribed by the West Virginia Board of Pharmacy.

~~(p)~~ (o) The West Virginia Board of Pharmacy shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code setting standards for substituted drug products, obtaining compliance with the provisions of this section and enforcing the provisions of this section.

~~(q)~~ (p) Any person shall have the right to file a complaint with the West Virginia Board of Pharmacy regarding any violation of the provisions of this article. Such complaints shall be investigated by the Board of Pharmacy.

~~(r)~~ (q) Fifteen days after the board has notified, by registered mail, a person, firm, corporation or copartnership that such person, firm, corporation or copartnership is suspected of being in violation of a provision of this section, the board shall hold a hearing on the matter. If, as a result of the hearing, the board determines that a person, firm, corporation or copartnership is violating any of the provisions of this section, it may, in addition to any penalties prescribed by section twenty-two of this article, suspend or revoke the permit of any person, firm, corporation or copartnership to operate a pharmacy.

~~(s)~~ (r) No pharmacist or pharmacy complying with the provisions of this section shall be liable in any way for the dispensing of a generic-named therapeutically equivalent drug, substituted under the provisions of this section, unless the generic-named therapeutically equivalent drug was incorrectly substituted.

~~(t)~~ (s) In no event where the pharmacist substitutes a drug under the provisions of this section shall the prescribing physician be liable in any action for loss, damage, injury or death of any person occasioned by or arising from the use of the substitute drug unless the original drug was incorrectly prescribed.

~~(t)~~ (t) Failure of a practitioner to specify that a specific brand name is necessary for a particular patient shall not constitute evidence of negligence unless the practitioner had reasonable cause to believe that the health of the patient required the use of a certain product and no other.

### **§30-5-34. Criminal offenses.**

~~When, as a result of an investigation under this article or otherwise, the board has reason to believe that a person authorized under this article has committed a criminal offense the board may bring its information to the attention of an appropriate law-enforcement official.~~

(a) When, as a result of an investigation under this article or otherwise, the board has reason to believe that a person authorized under this article has committed a criminal offense under this article, the board may bring its information to the attention of an appropriate law-enforcement official.

(b) Any person who intentionally practices, or presents himself or herself out as qualified to practice pharmacist care or to assist in the practice of pharmacist care, or uses any title, word or abbreviation to indicate to or induce others to believe he or she is licensed to practice as a pharmacist or pharmacist technician without obtaining an active, valid West Virginia license to practice that profession; or

With a license that is:

(1) Expired, suspended or lapsed; or

(2) Inactive, revoked, suspended as a result of disciplinary action, or surrendered; is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than ten thousand dollars.

The bill (Eng. H. B. 4033), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4046**, Relating to the promulgation of rules by the Department of Administration.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk:

By striking out everything after the enacting section and inserting in lieu thereof the following:

**ARTICLE 2. AUTHORIZATION FOR THE  
DEPARTMENT OF ADMINISTRATION TO  
PROMULGATE LEGISLATIVE RULES;  
REPEALING UNAUTHORIZED AND  
OBSOLETE RULES OF THE DEPARTMENT  
OF ADMINISTRATION.**

**§64-2-1. Department of Administration.**

(a) The legislative rule filed in the State Register on September 1, 2015, authorized under the authority of section four, article three, chapter five-a, of this code, relating to the Department of Administration (Purchasing Division, 148 CSR 1), is authorized.

(b) The legislative rule effective on April 3, 1991, authorized under the authority of section seven, article eight, chapter nine of this code, relating to the Department of Administration (availability of state surplus buildings and equipment to charity food banks, 148 CSR 5), is repealed.

**§64-2-2. Consolidated Public Retirement Board.**

(a) The legislative rule filed in the State Register on July 28, 2015, authorized under the authority of section one, article ten-d, chapter five, of this code, modified by the Consolidated Public Retirement Board to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on November 5, 2015, relating to the Consolidated Public Retirement

Board (benefit determination and appeal, 162 CSR 2), is authorized.

(b) The legislative rule filed in the State Register on July 28, 2015, authorized under the authority of section one, article ten-d, chapter five, of this code, modified by the Consolidated Public Retirement Board to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on September 22, 2015, relating to the Consolidated Public Retirement Board (Teachers' Defined Contribution System, 162 CSR 3), is authorized with the following amendment:

On page 7, subsection 7.4.1, line 4, following the word "amounts" and the period, by adding the following: "Using irrevocably forfeited amounts pursuant to the authority of this subsection will reduce the employer contributions in future years as required by W. Va. Code §18-7B-11."

(c) The legislative rule filed in the State Register on July 28, 2015, authorized under the authority of section one, article ten-d, chapter five, of this code, modified by the Consolidated Public Retirement Board to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on September 22, 2015, relating to the Consolidated Public Retirement Board (Teachers' Retirement System, 162 CSR 4), is authorized.

(d) The legislative rule filed in the State Register on July 28, 2015, authorized under the authority of section one, article ten-d, chapter five, of this code, modified by the Consolidated Public Retirement Board to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on September 22, 2015, relating to the Consolidated Public Retirement Board (refund, reinstatement, retroactive service, loan and correction of error interest factors, 162 CSR 7), is authorized.

(e) The legislative rule filed in the State Register on July 28, 2015, authorized under the authority of section one, article ten-d, chapter five, of this code, relating to the Consolidated Public Retirement Board (service credit for accrued and unused sick leave, 162 CSR 8), is authorized.