

# JOURNAL of THE SENATE State of West Virginia

**EIGHTY-SIXTH LEGISLATURE**

Regular Sixty-Day Session, 2024

First Extraordinary Session, 2024

Second Extraordinary Session, 2024

**VOLUME II**



NOTE: The second volume continues with Journal proceedings proper (page 1049) of February 23 and concludes with the proceedings of March 7 ending with page 2102 of the Regular Session.



**Com. Sub. for Senate Bill 805** (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 §9-5-29a, relating to residential substance use disorder treatment facilities; prohibiting payment to facilities that do not meet certain requirements; requiring licensure; requiring accreditation; requiring the Bureau for Medical Services to make necessary filings; setting forth specific time frame to obtain licensure and accreditation; stating licensed treatment beds are subject to specific provisions; and providing for rulemaking.

And,

**Senate Bill 820**, Requiring automatic enrollment of substance abuse disorder population into managed care.

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

**Com. Sub. for Senate Bill 820** (originating in the Committee on Health and Human Resources)—A Bill to amend and reenact §9-5-29 of the Code of West Virginia, 1931, as amended, relating to substance abuse; defining terms; requiring the Department of Human Services to develop performance measures; establishing deadlines; requiring reporting; requiring the department to develop a quality withhold program; establishing deadlines; and requiring the department to develop a workplan for automatic day one enrollment to a managed care organization for all Medicaid enrollees.

With the recommendation that the two committee substitutes do pass; but under the original double committee references first be referred to the Committee on Finance.

Respectfully submitted,

Michael J. Maroney,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bills (Com. Sub. for S. B. 805 and 820) contained in

the preceding report from the Committee on Health and Human Resources were each taken up for immediate consideration, read a first time, ordered to second reading, and, under the original double committee references, were then referred to the Committee on Finance.

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

Your Committee on Education has had under consideration

**Senate Bill 813**, Allowing students to participate in non-school competitive activities.

And,

**Senate Bill 859**, Limiting requirements for issuance of professional teaching certificate.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Amy N. Grady,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bills (S. B. 813 and 859) 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 Woodrum, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Senate Bill 819**, Modifying requirements for public water systems or businesses having backflow preventers.

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

**Com. Sub. for Senate Bill 819** (originating in the Committee on Government Organization)—A Bill to amend and reenact §16-1-4 and §16-1-9a of the Code of West Virginia, 1931, as amended, all relating to the regulation of public water systems; and providing that the Secretary of the Department of Health may not require public water systems or businesses that have backflow prevention assemblies to be inspected more frequently than once in 10 years.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Jack David Woodrum,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for S. B. 819) 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 Grady, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

**Senate Bill 842**, Modifying training requirements for county boards of education members.

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

**Com. Sub. for Senate Bill 842** (originating in the Committee on Education)—A Bill to amend and reenact §18-5-1a and §18-5-4 of the Code of West Virginia, 1931, as amended, all relating to county boards of education members; increasing the number of annual training hours for county board members; modifying the

subjects on which county board members must be trained; authorizing the State Board to require board members to complete additional training upon request from the State Superintendent; adding ex officio members to the county board member training standards review committee; requiring the State Superintendent to make an annual report to the Legislative Oversight Commission on Education Accountability relating to county board member training; increasing compensation for attending meetings; reducing the number of meetings board members may be compensated to attend; and prohibiting county board members from receiving compensation if training requirements are not met.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Amy N. Grady,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for S. B. 842) 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 Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Senate Bill 848**, Creating special revenue account within Department of Health.

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

**Com. Sub. for Senate Bill 848** (originating in the Committee on Finance)—A Bill to amend and reenact the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated, §16-1-22d, relating to creating a special revenue

account within the State Treasury; placing special revenue account designated the Office of the Inspector General Reimbursement Fund within Department of Health; providing for the purpose of the account; and designating revenue sources for the account.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for S. B. 848) 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 Smith, 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

**Senate Bill 853**, Requiring Fire Commission promulgate standards for propane tank installation in certain homes.

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

**Com. Sub. for Senate Bill 853** (originating in the Committee on Energy, Industry, and Mining)—A Bill to amend and reenact §15A-10-15 of the Code of West Virginia, 1931, as amended, relating to the performance of installation of fuel gas systems; directing the Fire Commission to propose rules for legislative approval for the installation of propane fuel tanks at certain dwellings; providing for the State Fire Marshal to enforce propane fuel tank rules; and defining "propane fuel tanks".

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,

Randy E. Smith,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for S. B. 853) contained in the preceding report from the Committee on Energy, Industry, and Mining 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.

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

Your Committee on Government Organization has had under consideration

**Senate Bill 858**, Clarifying filing requirements and deadlines in property tax cases.

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

Respectfully submitted,

Jack David Woodrum,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (S. B. 858) 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 Grady, from the Committee on Education, submitted the following report, which was received:



Your Committee on Education has had under consideration

**Senate Bill 861**, Increasing support and professional development for educators.

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,

Amy N. Grady,  
*Chair.*

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

At the request of Senator Takubo, and by unanimous consent, the bill (S. B. 861) was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Maroney, 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 4233**, Non-binary not permitted on birth certificates.

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

Respectfully submitted,

Michael J. Maroney,  
*Chair.*

Senator Maroney, 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 4320**, Relating to access for minor children's medical records.

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,

Michael J. Maroney,  
*Chair.*

The bill, under the original double committee reference, was then referred to the Committee on the Judiciary, with amendments from the Committee on Health and Human Resources pending.

Senator Maroney, 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 4874**, Relating to fatality and mortality review team.

And has amended same.

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

Respectfully submitted,

Michael J. Maroney,  
*Chair.*

Senator Maroney, 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 4933**, Relating to Medicaid dental coverage.

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,

Michael J. Maroney,  
*Chair.*

The bill, under the original double committee reference, was then referred to the Committee on Finance, with amendments from the Committee on Health and Human Resources pending.

The Senate proceeded to the sixth order of business.

On motions for leave, severally made, the following bill was introduced, read by its title, and referred to the appropriate committee:

**By Senators Blair (Mr. President) and Woelfel (By Request of the Executive):**

**Senate Bill 871**—A Bill making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2024, to the Department of Veterans' Assistance, Veterans' Facilities Support Fund, fund 6703, fiscal year 2024, organization 0613, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

Referred to the Committee on Finance.

At the request of Senator Oliverio, and by unanimous consent, the Senate returned to the second order of business and the introduction of guests.

At the request of Senator Takubo, unanimous consent being granted, the Senate returned to the consideration of

**Eng. Com. Sub. for House Bill 4933**, Relating to Medicaid dental coverage.

Having been reported from the Committee on Health and Human Resources and, under the original double committee reference, referred to the Committee on Finance in earlier proceedings today.

At the request of Senator Tarr, 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 4933.

The Senate again proceeded to the fourth order of business.

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

Your Committee on Government Organization has had under consideration

**Senate Bill 872** (originating in the Committee on Government Organization)—A Bill to amend and reenact §7-17-12 of the Code of West Virginia, 1931, as amended, relating to county fire service fees; expanding authority of county commission after receipt of resolution from county fire board; and providing for amendment of fire fee by ballot referendum upon county commission determination that amendment of fee is necessary.

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

Respectfully submitted,

Jack David Woodrum,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (S. B. 872) 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 Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Senate Bill 873** (originating in the Committee on Finance)—A Bill to amend and reenact §11-13A-9 of the Code of West Virginia, 1931, as amended, relating to due date for certain installment payments.

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

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (S. B. 873) 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 seventh order of business.

**Com. Sub. for Senate Concurrent Resolution 30**, Honoring Hershel "Woody" Williams as one of two WV statues in National Statuary Hall Collection.

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

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

**Com. Sub. for Senate Resolution 6**, Honoring life of Edith Levy, Holocaust survivor.

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

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

**Senate Resolution 52**, Designating February 23, 2024, as WV Motorsports Day.

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

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

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for Senate Bill 167**, Establishing statewide health and safety fee for tourism and recreational activities by county commissions.

On third reading, coming up in regular order, with the right having been granted on yesterday, Thursday, February 22, 2024, for amendments to be received on third reading, was read a third time.

There being no amendments offered,

Engrossed Committee Substitute for Senate Bill 167 was then put upon its passage.

Pending discussion,

(Senator Rucker in the Chair.)

Pending discussion,

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

The question being "Shall Engrossed Committee Substitute for Senate Bill 167 pass?"

On the passage of the bill, the yeas were: Barrett, Boley, Caputo, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—30.

The nays were: Azinger, Chapman, Martin, and Maynard—4.

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. 167) 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 188**, Mountain Homes Act.

On third reading, coming up in regular order, with the right having been granted on yesterday, Thursday, February 22, 2024, for amendments to be received on third reading, was read a third time.

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

On page 8, section 8, line 2, after the words "by the" by inserting the words "Economic Development Authority".

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

Engrossed Committee Substitute for Committee Substitute for Senate Bill 188 was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Maroney, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: Karnes and Martin—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. 188) 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 225**, Establishing revocation of authority for spending by agency in support of challenge to WV law.

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

At the request of Senator Takubo, and by unanimous consent, further consideration of the bill was deferred until the conclusion of bills on today's third reading calendar.

**Eng. Com. Sub. for Com. Sub. for Senate Bill 562**, Expanding employment and training requirements necessary for SNAP benefits.

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

Pending discussion,

Senator Caputo moved that the bill be rereferred to the Committee on Finance.

Following discussion,

The question being on the adoption of Senator Caputo's aforestated motion, and on this question, Senator Caputo demanded the yeas and nays.

The roll being taken, the yeas were: Caputo and Woelfel—2.



The nays were: Azinger, Barrett, Boley, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—32.

Absent: None.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Caputo's aforesated motion had not prevailed.

The question now being "Shall Engrossed Committee Substitute for Committee Substitute for Senate Bill 562 pass?"

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—32.

The nays were: Caputo 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 Com. Sub. for S. B. 562) 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 603**, Solid Waste Management Act.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson,

Oliverio, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: Phillips—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. 603) passed.

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

**Eng. Com. Sub. for Senate Bill 603**—A Bill to amend and reenact §22-15-2 of the Code of West Virginia, 1931, as amended, relating to amending definition of "commercial solid waste facility"; amending definition to exclude solid waste facility that accepts solid waste collected by facility's owner or operator, who is a Public Service Commission-certificated common carrier, for consolidation and subsequent transportation to disposal or recycling facility; providing that such facility comply with bonding and pre-siting notice requirements; and providing that such facility be located on site that contains a mixed waste processing and resource recovery facility that possesses a solid waste facility permit issued by Department of Environmental Protection.

*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 685**, Continuing and updating Board of Risk and Insurance Management.

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

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

**Eng. Senate Bill 712**, Reducing minimum age for State Police cadet.

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 Senate Bill 712 pass?"

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 712) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 712) 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 746**, Modifying composition of Regional Jail and Correctional Facility Authority Board.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 746) 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 778**, Amending certain qualifying offenses to enhance sentences of repeat offenders.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 778) 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 806**, Removing certain required reports to Legislative Oversight Commission on Education Accountability.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 806) 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 815**, Requiring annual analysis of contracts from DHS and Bureau for Social Services.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson,

Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 815) 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 844**, Redesignating Educational Broadcasting Authority as Educational Broadcasting Commission.

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 844 pass?"

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Queen, Roberts, Rucker, Smith, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—30.

The nays were: Caputo, Plymale, Stover, 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. Com. Sub. for S. B. 844) passed with its title.

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

**Eng. Com. Sub. for House Bill 4850**, Removing the sunset clause from Oil and Gas Personal Property 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 House Bill 4850 pass?"

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Deeds, Grady, Hamilton, Hunt, Jeffries, Maroney, Martin, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Woelfel, Woodrum, and Blair (Mr. President)—28.

The nays were: Caputo, Chapman, Clements, Karnes, Maynard, and Weld—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. 4850) 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 5057**, To raise the threshold for nominal referral fees from \$25 to \$100.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts,

Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—30.

The nays were: Chapman, Maroney, Martin, and Maynard—4.

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. 5057) passed with its title.

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

The end of today's third reading calendar having been reached, the Senate returned to the consideration of

**Eng. Com. Sub. for Senate Bill 225**, Establishing revocation of authority for spending by agency in support of challenge to WV law.

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

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

The Senate proceeded to the ninth order of business.

**Com. Sub. for Senate Bill 306**, Equipment Right to Repair Act.

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

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

On page 5, section 9, line 1, after "2024" by inserting the words "and shall have no further force and effect on and after July 1, 2027".



The bill (Com. Sub. for S. B. 306), as amended, was then ordered to engrossment and third reading.

**Com. Sub. for Senate Bill 348**, Updating definition of "electioneering communication" to be consistent with FEC.

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

**Senate Bill 452**, Designating certain water and wastewater facilities as emergency project.

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

**Com. Sub. for Com. Sub. for Senate Bill 493**, Relating to use of criminal records as disqualification from authorization to practice particular profession.

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

**Senate Bill 650**, Supplementing and amending appropriations to Higher Education Policy Commission, Fairmont State University.

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

**Senate Bill 653**, Supplementing and amending appropriations to School Building Authority, School Construction Fund.

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

**Senate Bill 657**, Expiring funds from Excess Lottery Revenue Fund to General Revenue.

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 742**, Updating retirement eligibility for certain sheriffs.

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

**Senate Bill 760**, Modifying length of service for certain employees to obtain credit for retirement.

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 774**, Mountain Bike Responsibility Act.

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

**Senate Bill 782**, Defining deadlines for local permits and extensions for property development or improvement.

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 824**, Increasing membership of WV Motorsport Committee.

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

**Senate Bill 827**, Providing definition for regional distribution and dismantling center of salvage yards.

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 851**, Establishing requirements for contingency fee agreements between political subdivisions and private attorneys.

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

**Senate Bill 864**, Clarifying reporting requirements of Grant Transparency and Accountability 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 865**, Changing reference to Curator of Department of Arts, Culture, and History to secretary.

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

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

**Eng. Com. Sub. for House Bill 4809**, Health Care Sharing Ministries Freedom to Share Act.

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

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

**Eng. House Bill 5268**, Relating to the enhanced recovery of oil and natural gas in horizontal wells.

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

**Eng. Com. Sub. for House Bill 5540**, Relating to fentanyl prevention and awareness Education (Laken's Law).

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

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

On page 1, section 1, line 7, after the word "of" by striking out the remainder of the sentence and inserting the words "FDA-approved opioid reversal agents;".

The bill (Eng. Com. Sub. for H. B. 5540), as amended, was then ordered to third reading.

**Eng. House Bill 5549**, Relating to allowing license plates to be obtained from alternative sources when the Division of Corrections and Rehabilitation is unable to produce them.

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

On motion of Senator Clements, 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:

#### **ARTICLE 4. CORRECTIONS MANAGEMENT.**

##### **§15A-4-15. Manufacture of license plates, road signs or markers; ~~securing signs and markers when federal government reimburses state for cost thereof.~~**

~~For the purpose of obtaining license plates to be used upon motor vehicles licensed for operation in this state and road signs or markers of any description for state roads, the commissioner is hereby authorized and empowered on behalf of the state, to establish and operate a plant for the manufacture of the license plates and road signs or markers in his or her institution.~~

~~It shall be unlawful for any state official or employee to manufacture or obtain the license plates, road signs, or markers otherwise than as herein specified: Provided, That the Commissioner of Highways may originally secure road signs or markers from sources other than that provided herein.~~

(a) The commissioner is hereby authorized and empowered to establish and operate a plant in his or her institution for the manufacture of road signs and markers of any description for state roads and of license plates.

(b) The Commissioner of Motor Vehicles shall secure all license plates from the division: *Provided*, That the Commissioner of Motor Vehicles may secure license plates from alternative sources if the division is unable to provide a six-month supply of license plates due to a shortage of resources, labor, or other circumstance beyond the control of the division.

(c) The Commissioner of Highways may obtain road signs and markers of any description for state roads from the division.

The bill (Eng. H. B. 5549), as amended, was then ordered to third reading.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senator Oliverio.

Thereafter, at the request of Senator Caputo, and by unanimous consent, the remarks by Senator Oliverio were ordered printed in the Appendix to the Journal.

The Senate proceeded to the thirteenth order of business.

The following communications were reported by the Clerk:

The Senate of West Virginia  
Charleston

LEE CASSIS  
CLERK OF THE SENATE



STATE CAPITOL, ROOM M-211  
1900 KANAWHA BOULEVARD, EAST  
CHARLESTON, WV 25305-0800  
304-357-7800

February 23, 2024

The Honorable Jim Justice, II  
Governor, State of West Virginia  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305


Dear Governor Justice,

The following bill, authenticated by the signature of the Clerk of each House, and signed by the President of the Senate and the Speaker of the House of Delegates, has been examined and found truly enrolled:

**S. B. 507**, Relating to repeal of WV EDGE.

This bill is presented to you on this day, February 23, 2024.

Respectfully submitted,

  
Lee Cassis  
Clerk of the Senate

C: The Honorable Stephen J. Harrison  
Clerk of the House of Delegates



STEPHEN J. HARRISON  
CLERK OF THE HOUSE

West Virginia House of Delegates  
OFFICE OF THE CLERK  
BUILDING 1, SUITE 212  
1900 KANAWHA BLVD., EAST  
CHARLESTON 25305

(304) 340-3200  
STEVE.HARRISON@WVHOUSE.GOV

February 23, 2024

The Honorable Jim Justice, II  
Governor, State of West Virginia  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305

Dear Governor Justice,

The following bills, authenticated by the signature of the Clerk of each House, and signed by the Speaker of the House of Delegates and the President of the Senate, have been examined and found truly enrolled:

**H. B. 4594**, Relating to extending managed care;

**H. B. 4976**, Providing the contact information of the Inspector General on the agencies and boards websites of the executive departments;

**H. B. 5019**, Relating to surrender and return of license not required for disqualifying or downgrading a driver's license;

**Com. Sub. for H. B. 5045**, Related to the administration of the West Virginia Water Pollution Control Act, and Underground Carbon Dioxide Sequestration and Storage;

**H. B. 5153**, Relating to revising, updating and streamlining the requirements governing the West Virginia Science, Technology, Engineering, and Mathematics Scholarship;

And,

**Com. Sub. for H. B. 5157**, Relating to contingent increase of tax rate on certain eligible acute care hospitals.

These bills are presented to you on this day, February 23, 2024.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Steve Harrison", is written over a horizontal line.

Stephen J. Harrison  
Clerk of the House of Delegates

C: The Honorable Lee Cassis  
Clerk of the Senate

Under the provisions of Rule 15 of the Rules of the Senate, the following senator was removed as a co-sponsor of the following bill on February 22, 2024:

**Senate Bill 813:** Senator Nelson.

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were added as co-sponsors to the following bills and resolution on February 22, 2024:

**Senate Bill 190:** Senators Takubo and Caputo;

**Senate Bill 347:** Senators Boley, Martin, and Roberts;

**Senate Bill 418:** Senator Taylor;

**Senate Bill 496:** Senator Woelfel;

**Senate Bill 725:** Senator Deeds;

**Senate Bill 756:** Senator Hamilton;

**Senate Bill 777:** Senator Stuart;

**Senate Bill 810:** Senator Stuart;

And,

**Senate Resolution 52:** Senator Rucker.

Pending announcement of meetings of standing committees of the Senate, including the Committee on Rules,

On motion of Senator Takubo, at 12:21 p.m., the Senate adjourned until tomorrow, Saturday, February 24, 2024, at 10 a.m.

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## SATURDAY, FEBRUARY 24, 2024

The Senate met at 10:09 a.m.

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

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

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Jason Barrett, a senator from the sixteenth district.

Pending the reading of the Journal of Friday, February 23, 2024,

At the request of Senator Trump, 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 Takubo, and by unanimous consent, the provisions of Rule 54 of the Rules of the Senate, relating to persons entitled to the privileges of the floor, were suspended in order to grant the family of Hershel "Woody" Williams 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 concurrence by that body in the passage, to take effect from passage, of

**Eng. Senate Bill 658**, Supplementing and amending appropriations to Department of Administration, Public Defender Services.

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 4191**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §3-8-12a, relating to the requirements imposed on social media companies to prevent corruption and provide transparency of election-related content made available on social media websites; providing for equal opportunities for all candidates and political parties to speak without policy or partisan-based censorship; aiming to uphold the integrity of elections by ensuring election-related content hosted, posted, and made available on social media websites is not monetized or otherwise used or manipulated for nefarious purposes; providing findings; defining terms; requiring and forbidding certain conduct; providing exceptions for application; providing for appeal of decisions; providing penalties for violation; and providing rulemaking authority.

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 and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 5235**—A Bill to amend and reenact §61-8B-5 and §61-8B-9 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-8D-5 and §61-8D-6 of the Code of West Virginia, 1931, as amended, all relating to increasing penalties for child sexual assault and sexual abuse, and for distributing, possessing, and transporting material depicting a child engaged in sexually explicit conduct, and to clarify that failure to report sexual assault, sexual abuse, or sexual exploitation of a child is a felony.

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 5395**—A Bill to amend and reenact §21A-7-17 of the Code of West Virginia, 1931, as amended, relating to judicial review of Board decisions; and amending the status of the commissioner shall in relation to judicial review of Board decisions; and to repeal §21A-7-20 of said code, relating to repealing the section making the Board of Review of the West Virginia Bureau of Employment a party to judicial action and identifying the Board's legal counsel.

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 5520**—A Bill to amend and reenact §49-4-727, §49-4-729, and §49-4-733 of the Code of West Virginia, 1931, as amended, all relating to juvenile competency; repealing the presumption of competence of a child 14 years of age or older; repealing the presumption of incompetence of a child under the age of 14 years; and clarifying that a juvenile under the age of 14 years may not be detained in certain circumstances.

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 5593**—A Bill to amend and reenact §29-12-3 of the Code of West Virginia, 1931, as amended, relating to the creation, composition, qualifications, and compensation of the State Board of Risk and Insurance Management; continuing the board; providing for voting membership of the board; providing qualifications of citizen members; providing procedures for

appointment of citizen members; providing initial appointment terms of citizen members; providing terms of subsequent appointment of citizen members; providing procedures for vacancy, expiration of term, and removal of citizen members; providing end date for term of citizen members appointed prior to the effective date of the reenactment of this section; authorizing reappointment of any qualified citizen member appointed prior to the effective date of the reenactment; providing that Insurance Commissioner shall serve as non-voting board secretary; and providing for compensation of board members.

At the request of Senator Takubo, and by unanimous consent, reference of the bill to a committee was dispensed with.

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 5647**—A Bill to amend and reenact §11-27-10a of the Code of West Virginia, 1931, as amended, relating to increasing and maintaining the bracketed tax rates on the privilege of establishing or operating a health maintenance organization; specifying effective dates; and providing a process for rates to be certified to the tax commissioner and notice to be provided.

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 5662**—A Bill to amend and reenact §61-8D-2, §61-8D-2a, §61-8D-3, §61-8D-3a, §61-8D-4, and §61-8D-4a of the Code of West Virginia, 1931, as amended, all relating to murder of a child by refusal or failure to supply necessities, or by delivery, administration or ingestion of a controlled substance; death of a child by a parent, guardian, or custodian or other person by child abuse; child abuse resulting in injury; child abuse resulting in risk of injury; female genital

mutilation; child neglect resulting in injury; child neglect creating risk of injury; child neglect resulting in death.

Referred to the Committee on the Judiciary.

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 the following resolutions:

**House Concurrent Resolution 8**—Requesting the Division of Highways name a bridge bearing the Bridge Number: 14-050/00-007.31 (14A120), (39.33950, -78.77510) locally known as ROMNEY BRIDGE, carrying US 50 over SOUTH BR POTOMAC RIVER in Hampshire County. the "Judy Brothers Memorial Bridge".

**House Concurrent Resolution 66**—Requesting the Division of Highways name Bridge Numbers: 20-077/00-110.10 (NB & SB) (20A228, 20A446), (38.46281, -81.64366) locally known as I-77 TUPPER CREEK BRIDGES 110.10 NB & SB, carrying IS 77 over CR 29 in Kanawha County. the "U. S. Army SP4 Lonnie "Bill" Walker Memorial Bridge".

The preceding resolutions were referred to the Committee on Transportation and Infrastructure.

### **Executive Communications**

The Clerk presented the following communications from His Excellency, the Governor, regarding bills approved by him:



*Jim Justice*  
*Governor of West Virginia*

February 23, 2024

The Honorable Lee Cassis, Clerk  
West Virginia Senate  
State Capitol  
Charleston, West Virginia 25305

Dear Mr. Clerk:

Enclosed for filing in your office, pursuant to the provisions of law, are the following bills:

Senate Bill No. One Hundred Seventy-One (171), which was presented to me on February 19, 2024.

Committee Substitute for Senate Bill No. Three Hundred Fifty-Four (354), which was presented to me on February 19, 2024.

You will note that I have approved these bills on February 23, 2024.

Sincerely,

A handwritten signature in blue ink, reading "Jim Justice".

Jim Justice  
Governor

JJ/mh

cc: The Honorable Stephen J. Harrison, Clerk



*Jim Justice*  
*Governor of West Virginia*

February 23, 2024

The Honorable Stephen J. Harrison, Clerk  
West Virginia House of Delegates  
State Capitol  
Charleston, West Virginia 25305

Dear Mr. Clerk:

Enclosed for filing in your office, pursuant to the provisions of law, is the following bill:

Committee Substitute for House Bill No. Four Thousand Eight Hundred One (4801), which was presented to me on February 19, 2024.

You will note that I have approved this bill on February 23, 2024.

Sincerely,

A handwritten signature of Jim Justice in black ink, written over a circular embossed seal.

Jim Justice  
Governor

JJ/mc

cc: The Honorable Lee Cassis

State Capitol | 1900 Kanawha Blvd., East, Charleston, WV 25305 | (304) 558-2000

The Senate proceeded to the fourth order of business.

Senator Blair (Mr. President), from the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration

**Com. Sub. for Senate Bill 468** (originating in the Committee on Education), Requiring course in public schools on human development.

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

**Com. Sub. for Com. Sub. for Senate Bill 468** (originating in the Committee on Rules)—A Bill to amend and reenact §18-2-9 of the Code of West Virginia, 1931, as amended, relating to the required instruction in human growth and development and the Holocaust; providing for courses to include human growth and development related to pregnancy and human development inside the womb; requiring methods of presenting this instruction; and requiring age appropriate instruction and reading on the Holocaust.

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

Respectfully submitted,

Craig Blair,  
*Chair ex officio.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for Com. Sub. for S. B. 468) contained in the preceding report from the Committee on Rules was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Weld, 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 470** (originating in the Committee on Banking and Insurance), Uniform Special Deposits Act.

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



**Com. Sub. for Com. Sub. for Senate Bill 470** (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 §31A-9-1, §31A-9-2, §31A-9-3, §31A-9-4, §31A-9-5, §31A-9-6, §31A-9-7, §31A-9-8, §31A-9-9, §31A-9-10, §31A-9-11, §31A-9-12, §31A-9-13, §31A-9-14, §31A-9-15, and §31A-9-16, all relating to the Uniform Special Deposits Act; providing citation; defining terms; providing for applicability to special deposits in certain circumstances; providing exceptions; allowing variation by agreement or amendment; setting forth requirements for a special deposit; requiring permissible purpose for special deposit; allowing termination of special deposit in certain circumstances; describing when bank is obligated to pay beneficiary; clarifying who has a property interest in special deposit; providing for creditor process enforceability in certain circumstances; permitting injunctive or similar relief by court; generally prohibiting recoupment or set off against special deposit; providing exceptions to prohibition on recoupment or set off against special deposit; describing duties and liability of bank holding special deposit; terminating special deposit after five years unless otherwise agreed; providing for payment of remaining balance; providing for supplementation of article by specified West Virginia laws; providing for promotion of uniformity; and providing applicability after effective date.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for Com. Sub. for S. B. 470) 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 Weld, 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 482** (originating in the Committee on Government Organization), Relating generally to Ethic's Commission's rule making authority and lobbying rules.

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

**Com. Sub. for Com. Sub. for Senate Bill 482** (originating in the Committee on the Judiciary)—A Bill to amend and reenact §6B-2-2 of the Code of West Virginia, 1931, as amended; and to repeal §6B-2A-1 of said code, relating to the rule-making authority of the Ethics Commission; authorizing the Ethics Commission to propose legislative rules to carry out purposes of chapter; and requiring disclosure forms, statements, and reports required by chapter to be made in a manner prescribed by legislative rule.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for Com. Sub. for S. B. 482) 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 Weld, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Senate Bill 503**, Protecting belief-based student organizations from certain types of discrimination.

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

**Com. Sub. for Senate Bill 503** (originating in the Committee on the Judiciary)—A Bill to amend and reenact §18B-20-5 of the Code of West Virginia, 1931, as amended, relating to prohibiting state institutions of higher education from discriminating against student organizations which limit membership to those persons who adhere to the organization's sincerely held beliefs; compliance with the organization's standards of conduct, and furthering the organization's mission or purpose.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for S. B. 503) 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 Weld, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Senate Bill 717**, Prohibiting sale of tobacco products to individuals younger than 21 years of age.

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

**Com. Sub. for Senate Bill 717** (originating in the Committee on the Judiciary)—A Bill to amend and reenact §16-9A-1, §16-9A-2, §16-9A-3, §16-9A-4, §16-9A-7, and §16-9A-8 of the Code of West Virginia, 1931, as amended, all relating to tobacco products;

amending legislative intent; defining terms; prohibiting sale or gift of tobacco products to persons younger than 21 years of age; setting forth fines and criminal penalties; removing penalties for possession of a tobacco product by a person younger than the age of 21; providing that an employee who sells a tobacco product to a person younger than 21 years of age is subject to noncriminal, nonmonetary penalties; allowing an employee who sells a tobacco product to a person younger than 21 years of age to be fired under certain circumstances; permitting persons younger than 21 years of age to be used in inspections of retail outlets where tobacco products are sold; removing the West Virginia Alcohol Beverage Control Administration as an agency with authority to conduct inspections; designating the Bureau for Behavioral Health as one of the agencies to conduct inspections; removing the requirement for the West Virginia Alcohol Beverage Control Administration to submit a report; requiring the Commissioner of the Bureau for Behavioral Health to submit a report; and amending language regarding vending machines to conform to the increased age requirement.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for S. B. 717) 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 (Mr. President), from the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration

**Eng. Senate Bill 732**, Requiring cooperation between law-enforcement agencies and military authorities.

And has amended same.

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

Respectfully submitted,

Craig Blair,  
*Chair ex officio.*

Senator Weld, 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 769**, Prohibiting certain medical exams on anesthetized patients.

And has amended same.

Now on second reading, having been read a first time and referred to the Committee on the Judiciary on February 21, 2024;

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

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

Your Committee on the Judiciary has had under consideration

**Senate Bill 803**, Updating definitions for assessment of real property.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (S. B. 803) 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 Rucker, from the Committee on School Choice, submitted the following report, which was received:

Your Committee on School Choice has had under consideration

**Senate Bill 860**, Creating alternative high-risk population public charter schools.

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

**Com. Sub. for Senate Bill 860** (originating in the Committee on School Choice)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5G-14a, relating to creating alternative high-risk population public charter schools; describing students of said schools; and requiring the state board to promulgate a rule for funding.

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

Respectfully submitted,

Patricia Puertas Rucker,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for S. B. 860) contained in the preceding report from the Committee on School Choice 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 Weld, 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 6**, Incorporation of Churches or Religious Denominations Amendment.

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

**Com. Sub. for Senate Joint Resolution 6** (originating in the Committee on the Judiciary)—Proposing an amendment to the Constitution of the State of West Virginia, amending section 47, article VI thereof, relating to authorizing the incorporation of religious denominations; 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; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the resolution (Com. Sub. for S. J. R. 6 ) 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.

The Senate proceeded to the seventh order of business.

**Com. Sub. for Senate Concurrent Resolution 30**, Honoring Hershel "Woody" Williams as one of two WV statues in National Statuary Hall Collection.

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

The question being on the adoption of the resolution, and on this question, Senator Tarr demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Smith and Woelfel—2.

So, a majority of those present and voting having voted in the affirmative, the President declared the resolution (Com. Sub. for S. C. R. 30) adopted.

*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 Takubo, and by unanimous consent, the remarks by Senators Tarr, Plymale, Caputo, Weld, Stuart, Woodrum, and Oliverio as to the adoption of Committee Substitute for Senate Concurrent Resolution 30 were ordered printed in the Appendix to the Journal.

At the request of Senator Takubo, unanimous consent being granted, at 10:43 a.m., the Senate recessed.

The Senate reconvened at 10:46 a.m. and proceeded to the eighth order of business.



**Eng. Com. Sub. for Senate Bill 225**, Establishing revocation of authority for spending by agency in support of challenge to WV law.

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

At the request of Senator Tarr, unanimous consent was granted to offer an amendment to the bill on third reading.

Thereupon, on motion of Senator Tarr, 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:

### **ARTICLE 3. LIMITATIONS ON AGENCY SPENDING.**

#### **§12-3-21. Limitation on agencies' use of funding.**

Notwithstanding any provision to the contrary, there is no spending authority for any political subdivision or state agency for the purposes of challenging a West Virginia state law: *Provided*, That the provisions of this section shall not apply to the Attorney General of West Virginia who may, from time to time, have reason to challenge any and all laws of the State of West Virginia: *Provided, however*, That the provisions of this section shall not apply to the Governor, Secretary of State, State Treasurer, State Auditor, the Commissioner of Agriculture, or other constitutionally elected officers when challenging a West Virginia state law directly related to the constitutional duties and functions of their respective offices.

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

Engrossed Committee Substitute for Senate Bill 225 was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson,

Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Smith and Woelfel—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 S. B. 225) 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 306**, Equipment Right to Repair 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: Barrett, Boley, Clements, Deeds, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Nelson, Phillips, Roberts, Rucker, Stover, Swope, Takubo, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—22.

The nays were: Azinger, Caputo, Chapman, Grady, Maynard, Oliverio, Plymale, Queen, Stuart, and Tarr—10.

Absent: Smith and Woelfel—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 S. B. 306) passed.

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

**Eng. Com. Sub. for Senate Bill 306**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §19-39-1, §19-39-2, §19-39-3, §19-39-4, §19-39-5, §19-39-6, §19-39-7, §19-39-8, and §19-39-9, all relating to

creating the Equipment Right to Repair Act; creating a short title; defining terms; establishing jurisdiction of the Commissioner of Agriculture; establishing requirements; establishing limitations; providing for rulemaking; establishing violations; imposing civil penalties; authorizing civil actions, penalties, and injunctive relief; providing for applicability of article; providing for an effective date; and providing for a sunset provision.

Senator Takubo moved that the bill take effect July 1, 2024.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Smith and Woelfel—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 S. B. 306) takes effect July 1, 2024.

*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 348**, Updating definition of "electioneering communication" to be consistent with FEC.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Smith and Woelfel—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 S. B. 348) passed with its title.

Senator Takubo moved that the bill take effect January 1, 2025.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Smith and Woelfel—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 S. B. 348) takes effect January 1, 2025.

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

**Eng. Senate Bill 452**, Designating certain water and wastewater facilities as emergency project.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Smith and Woelfel—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 452) 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 493**, Relating to use of criminal records as disqualification from authorization to practice particular profession.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Smith and Woelfel—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 Com. Sub. for S. B. 493) 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 650**, Supplementing and amending appropriations to Higher Education Policy Commission, Fairmont State University.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Smith and Woelfel—2.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 650) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Smith and Woelfel—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 650) 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 653**, Supplementing and amending appropriations to School Building Authority, School Construction 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: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Stover, Stuart, Swope, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—31.

The nays were: Taylor—1.

Absent: Smith and Woelfel—2.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 653) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Stover, Stuart, Swope, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—31.

The nays were: Taylor—1.

Absent: Smith and Woelfel—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 653) 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 657**, Expiring funds from Excess Lottery Revenue Fund to General 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: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Smith and Woelfel—2.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 657) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Smith and Woelfel—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 657) 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 742**, Updating retirement eligibility for certain sheriffs.

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



At the request of Senator Nelson, unanimous consent being granted, the name of Senator Nelson was added as a co-sponsor to Engrossed Committee Substitute for Senate Bill 742 (*Updating retirement eligibility for certain sheriffs*).

The question being "Shall Engrossed Committee Substitute for Senate Bill 742 pass?"

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Smith and Woelfel—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 S. B. 742) 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 760**, Modifying length of service for certain employees to obtain credit for retirement.

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

At the request of Senator Nelson, unanimous consent was granted to offer amendments to the bill on third reading.

Thereupon, on motion of Senator Nelson, the following amendments to the bill were reported by the Clerk, considered simultaneously, and adopted:

On page 3, section 2, line 56, by striking out the word "consecutive";

And,

On page 12, section 14, line 97, by striking out the words "seven consecutive" and inserting in lieu thereof the words "five calendar".

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

Engrossed Senate Bill 760 was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Smith and Woelfel—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 760) passed with its title.

Senator Takubo moved that the bill take effect July 1, 2024.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Smith and Woelfel—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 760) takes effect July 1, 2024.

*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 774**, Mountain Bike Responsibility Act.

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

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

**Eng. Senate Bill 782**, Defining deadlines for local permits and extensions for property development or improvement.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Smith and Woelfel—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 782) 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 824**, Increasing membership of WV Motorsport Committee.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Smith and Woelfel—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 S. B. 824) 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 827**, Providing definition for regional distribution and dismantling center of salvage yards.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Smith and Woelfel—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 827) 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 851**, Establishing requirements for contingency fee agreements between political subdivisions and private attorneys.

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

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

**Eng. Senate Bill 864**, Clarifying reporting requirements of Grant Transparency and Accountability Act.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Smith and Woelfel—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 864) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Smith and Woelfel—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 864) takes effect from passage.

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

**Eng. House Bill 5268**, Relating to the enhanced recovery of oil and natural gas in horizontal wells.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—31.

The nays were: Chapman—1.

Absent: Smith and Woelfel—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 5268) 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 5540**, Relating to fentanyl prevention and awareness Education (Laken's Law).

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 5540 pass?"

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Smith and Woelfel—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. 5540) 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 Plymale, and by unanimous consent, the remarks by Senators Caputo, Woodrum, Oliverio, and Stuart regarding the passage of Engrossed Committee Substitute for House Bill 5540 were ordered printed in the Appendix to the Journal.

**Eng. House Bill 5549**, Relating to allowing license plates to be obtained from alternative sources when the Division of Corrections and Rehabilitation is unable to produce them.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Smith and Woelfel—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 5549) passed.

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

**Eng. House Bill 5549**—A Bill to amend and reenact §15A-4-15 of the Code of West Virginia, 1931, as amended, relating to allowing license plates, road signs, and markers to be obtained from sources other than the Division of Corrections and Rehabilitation.

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

On motion of Senator Queen, the Senate reconsidered the vote by which in earlier proceedings today it passed

**Eng. House Bill 5268**, Relating to the enhanced recovery of oil and natural gas in horizontal wells.

The vote thereon having been reconsidered,

The question again being on the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Smith and Woelfel—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 5268) 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.

**Com. Sub. for Senate Bill 190**, Modifying definition of sexual contact.

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 442**, Providing for immunity for mental health providers who are involved in mental hygiene checks.

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

**Com. Sub. for Com. Sub. for Senate Bill 568**, Creating multi-tiered system for school absenteeism.

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

**Com. Sub. for Com. Sub. for Senate Bill 575**, Assisted Reproduction 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 583**, Relating to employer liability and damages in civil actions involving commercial motor vehicles.

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

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

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

**ARTICLE 7. ACTIONS FOR INJURIES.****§55-7-32. Liability for employee negligence in actions involving commercial motor vehicles.**

(a) As used in this section:

"Commercial motor vehicle" means as defined in §17E-1-3(7) (A), (B), and (D) of this code, and also includes a truck tractor, road tractor, trailer, semitrailer, and pole trailer as defined in §17A-1-1 of this code. For purposes of this section, "commercial motor vehicle" does not include a vehicle serving as a common carrier of passengers, a commercial motor vehicle as defined in §17E-1-3(7)(C) of this code, a school bus as defined in §17E-1-3(33) of this code, or other vehicle that is primarily engaged in transporting passengers.

"Employer defendant" means (A) the owner of a commercial motor vehicle; (B) the employer of the person operating a commercial motor vehicle; or (C) any other person or entity that owns, leases, rents, or otherwise holds or exercises legal control over a commercial motor vehicle or operator of a commercial motor vehicle.

"Operation" means driving, operating, or being in physical control of a commercial motor vehicle in any place open to the general public for purposes of vehicular traffic.

(b) In any civil action for personal injury or wrongful death involving the operation of a commercial motor vehicle requiring a commercial driver's license, the maximum amount recoverable by each person injured or killed against the employer defendant of a commercial motor vehicle as compensatory damages for noneconomic loss may not exceed \$5 million for each occurrence, regardless of the number of claims or theories of liability.

(c) The limitation on noneconomic damages contained in subsection (b) of this section is not available to any employer defendant that does not have commercial motor vehicle insurance in the aggregate amount of at least \$3 million for each occurrence covering the personal injury that is the subject of the action.

(d) This section does not apply if the civil action involving a commercial motor vehicle arises from an incident for which an operator or driver is found to have:

(1) At the time of the incident, operated a commercial motor vehicle with an alcohol concentration of .04 or more as defined in §17E-1-14 of this code;

(2) Following the incident, refused to submit to testing required under §17E-1-15 of this code;

(3) At the time of the incident, operated a commercial motor vehicle under the influence of any controlled substance, other drug, or inhalant substance;

(4) At the time of the incident, operated a commercial motor vehicle in excess of the hours of operation established under state or federal regulations;

(5) At the time of the incident, operated a commercial motor vehicle in willful or wanton disregard for the safety of persons or property;

(6) At the time of incident, operated a commercial motor vehicle loaded in excess of the maximum gross vehicle weight rating established under state or federal regulations; or

(7) At the time of the incident, operated a commercial motor vehicle while engaging in one or more of the acts that constitute distracted driving as set forth in §17C-14-15(e) of this code.

(e) On January 1, 2026, and in each year thereafter, the limitation on compensatory damages for noneconomic loss contained in subsection (b) 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 the amounts specified in said subsection.

(f) This section shall be effective on July 1, 2024, and shall only apply to causes of action arising after the effective date.

Following discussion,

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

The bill (Com. Sub. for S. B. 583), as amended, was then ordered to engrossment and third reading.

**Com. Sub. for Com. Sub. for Senate Bill 679**, Regulating certain plant-based derivatives, hemp-derived cannabinoid products, and Kratom.

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

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

**Senate Bill 686**, Prohibiting actions for damages or attorney's fees in cases involving Board of Risk and Insurance Management.

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

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

**Com. Sub. for Senate Bill 725**, Clarifying conditions for pretrial release and maximum bail amount for certain defendants.

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

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

**Com. Sub. for Senate Bill 751**, Creating online charitable raffles.

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

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

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

**ARTICLE 21A. ONLINE CHARITABLE RAFFLES.**

**§47-21A-1. Legislative intent.**

The Legislature, in recognition of the need for charitable and public service organizations to have for a practicable way of raising funds by means of the internet, declares its intent to grant the privilege of holding online raffles to those organizations as provided in this article.

**§47-21A-2. Definitions.**

For purposes of this article, unless specified otherwise:

"Charitable or public service activity or endeavor" means any bona fide activity or endeavor which directly benefits a number of people by:

(1) Contributing to educational or religious purposes;

(2) Relieving them from disease, distress, suffering, constraint, or the effects of poverty;

(3) Increasing their comprehension of, and devotion to, the principles upon which this nation was founded and to the principles of good citizenship;

(4) Making them aware of, or educating them about, issues of public concern so long as the activity or endeavor is not aimed at supporting or participating in the campaign of any candidate for public office;

(5) Lessening the burdens borne by government or voluntarily supporting, augmenting, or supplementing services which government would normally render to the people;

(6) Providing or supporting nonprofit community activities for youth, senior citizens, or the disabled;

(7) Providing or supporting nonprofit cultural or artistic activities; or

(8) Providing or supporting any political party executive committee.

"Charitable or public service organization" means a bona fide, not-for-profit, tax-exempt, benevolent, educational, philanthropic, humane, patriotic, civic, religious, fraternal, or eleemosynary, incorporated or unincorporated association, or organization; or a volunteer fire department, rescue unit, or other similar volunteer community service organization or association; but does not include any nonprofit association or organization, whether incorporated or not, which is organized primarily for the purposes of influencing legislation or supporting or promoting the campaign of any single candidate for public office.

"Commissioner" means the State Tax Commissioner.

"Conduct" means to direct the actual holding of a online raffle by activities including, but not limited to, selling tickets, collecting money, drawing or arranging for the drawing of the winning numbers or names, announcing the winning numbers or names, posting the winning numbers or names, verifying winners, and awarding prizes.

"Expend net proceeds for charitable or public service purposes" means to devote the net proceeds of an online raffle occasion or occasions to a qualified recipient organization or as otherwise provided by this article and approved by the commissioner pursuant to §47-21A-113 of this code.

"Gross proceeds" means all moneys collected or received from the conduct of an online raffle held by a licensee during a license period.

"Licensee" means any charitable or public service organization or association granted an annual or limited occasion license pursuant to the provisions of this article.

"Net proceeds" means all moneys collected or received from the conduct of an online raffle or online raffles at occasions held by a licensee during a license period after payment of the online raffle expenses authorized by §47-21A-111, §47-21A-112, and §47-21A-113 of this code.

"Person" means any individual, association, society, incorporated or unincorporated organization, firm, partnership, or other nongovernmental entity or institution.

"Patron" means any individual who participates in an online raffle by purchasing an online raffle ticket other than an individual who is participating in the conduct of the online raffle.

"Platform provider" means any third-party entity that contracts by written agreement with a licensee to host, conduct, or otherwise administer an online raffle by using a software system, web application, method, or other process for the purpose of conducting online raffles over the Internet.

"Qualified recipient organization" means any bona fide, not-for-profit, tax-exempt, incorporated or unincorporated association or organization which is organized exclusively for charitable or public services activities or endeavors.

"Online Raffle" has the same meaning as "raffle" as defined in §47-21-2 of this code but conducted using a software system, web application, method, or other process for the purpose of conducting online raffles over the Internet.

"Online raffle occasion" or "occasion" means a single online session at which a series of one or more successive online raffles is conducted by a single licensee.

"Tax-exempt association or organization" means an association or organization which is, and has received from the Internal Revenue Service a determination letter that is currently in effect stating that the organization is, exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the Internal Revenue Code of 1986, as amended; or is exempt from income taxes under subsection 527(a) of that code.

"Virtually Present" means live, real-time availability by online or other electronic means and includes, but is not limited to, audio or video appearance or by an instant, live chat or messaging program.

**§47-21A-3. Authorizing the conduct of certain online raffles without a license.**

Notwithstanding any other provisions of this article to the contrary, any charitable or public service organization which has been in existence in this state for at least one year may conduct online raffles without compliance with the licensing provisions of this article: *Provided*, That any prize awarded in any single online raffle in an online raffle occasion may not exceed in \$4,000 value: *Provided, however*, That the cumulative gross proceeds derived from the conduct of online raffle occasions by the charitable or public service organization may not exceed \$15,000 during any calendar year: *Provided further*, That the charitable or public service are not subject to the record keeping provisions of §47-21A-114 of the code but shall maintain a separate accounting for the operation of online raffles. All records required by this section shall be maintained for at least three calendar years and shall be available for reasonable inspection by the commissioner.

**§47-21A-4. Who may hold online raffles; application for license; licenses not transferable.**

(a) Except as provided in §47-21A-103 of this code, only persons who are residents of this state and who are active members of any charitable or public service organization which has been in existence in this state for at least two years prior to filing an



application for an online raffle license issued pursuant to §47-21A-105 and §47-21A-106 of the code may hold online raffle occasions in accordance with the provisions of this article and only during the time it holds a valid license.

(b) The charitable or public service organization applies for an online raffle license to the Tax Commissioner and shall be on a form supplied by him or her. The application shall contain the information required by §47-21A-108 of the code and any other information which the commissioner considers necessary. An online raffle may not be held and online raffle tickets may not be sold pursuant to this article until the online raffle application has been approved by the Tax Commissioner and the license has been received by the applicant: *Provided*, That an online raffle occasion may not be held and an online raffle tickets may not be sold until a 60-day filing period, which is that time period between the receipt of that application by the Tax Commissioner and the first online raffle occasion, has expired: *Provided, however*, That the Tax Commissioner shall send the applicant its license within five days after the application is approved. If the 60-day filing period has expired and the application has not been denied and the online raffle license has not been received by the applicant, the applicant may consider the application approved and begin to sell tickets for the online raffle or hold the online raffle occasion. The Tax Commissioner shall send the applicant its license within five days after the expiration of the filing period if the application has not been otherwise denied.

(c) An online raffle license issued pursuant to this article may not be transferred.

**§47-21A-105. Annual license; conditions on holding of online raffles.**

(a) A charitable or public service organization or any of its auxiliaries or other organizations otherwise affiliated with it, may apply for an annual license. Only one license per year in the aggregate may be granted to a charitable or public service organization and all of its auxiliaries or other associations or organizations otherwise affiliated with it: *Provided*, That for

purposes of this section, the various branches, chapters, or lodges of any national association or organization or local churches of a nationally organized church are not considered affiliates or auxiliaries of each other. The commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code, to provide for the manner for determining to which organization, whether the parent organization, an affiliate, or an auxiliary, the one license allowed under this section is granted. An annual license is valid for one year from the date of issuance. Charitable or public service organizations may not may hold a joint online raffle occasion under any annual licenses.

(b) A licensee shall utilize geo-location or geo-fencing technology to ensure that online charitable raffles patrons are located in the state of West Virginia. A licensee shall maintain in the state of West Virginia its servers used to transmit information for the purposes of patron participation.

(c) The Tax Commissioner shall provide on his or her website a list of every active and approved licensee to conduct an online raffle occasion. A licensee shall provide a conspicuous hyperlink on any online raffle ticket that is purchased by a patron to the Tax Commissioner's website. A licensee shall conspicuously display at its physical location, that was provided on its application, the approved license to conduct an online raffle.

**§47-21A-6. Limited occasion license; conditions on holding of online raffles.**

(a) Two or more charitable or public service organizations may hold a joint online raffle occasion provided each participating organization has been granted a limited occasion online raffle license for the jointly held occasion: *Provided*, That a licensee which holds an annual license may not obtain more than one limited occasion license.

(b) A limited occasion license is valid only for the time period specified in the application and entitles only the licensee to hold two online raffle occasions during the specified time period which

may not exceed six months from the date of issuance of the limited occasion license.

(c) Subject to the limitations set forth in this section for charitable or public service organization having an annual license, a charitable or public service organization and all of its auxiliaries or other associations or organizations otherwise affiliated with it, may be granted only three limited occasion licenses per year in the aggregate. For purposes of this section the various branches, chapters, or lodges of any national association or organization or local churches of a nationally organized church are not considered affiliates or auxiliaries of each other. The commissioner shall by rulemaking provide the manner for determining to which organization, whether the parent organization, an affiliate, or an auxiliary, the three licenses allowed under this section are granted.

(d) The Tax Commissioner shall provide a hyperlink on its website that will display a list of every active and approved licensee to conduct an online raffle occasion. A licensee shall provide this hyperlink on any online raffle ticket that is purchased by a patron. A licensee shall conspicuously display at its physical location, that was provided on its application, the approved license to conduct an online raffle.

#### **§47-21A-7. License fee and exemption from taxes.**

(a) A license fee shall be paid to the Tax Commissioner for annual licenses in the amount of \$500. A license fee shall be paid to the Tax Commissioner for a limited occasion license in the amount of \$50. All revenue from the license fees shall be deposited in the special revenue account established under the authority of §11-9-2a of this code and used to support the investigatory activities provided for in that section. The license fee imposed by this section is in lieu of all other license or franchise taxes or fees of this state and a county or municipality or other political subdivision of this state may not impose a license or franchise tax or fee on any online raffle or online raffle occasion.

(b) The gross proceeds derived from the conduct of an online raffle occasion are exempt from state and local business and

occupation taxes, income taxes, excise taxes, and all special taxes. Any charitable or public service organization conducting an online raffle occasion pursuant to the provisions of this article is exempt from payment of consumers sales and service taxes, use taxes, and all other taxes on all purchases for use or consumption in the conduct of an online raffle occasion and is exempt from collecting consumers sales taxes on any admission fees and sales of online raffle tickets.

**§47-21A-8. Information required in application.**

An application for an online raffle license shall include the following information:

(a) The name of the applicant and the name and headquarter's address of any state or national organization of which the applicant is a local branch or lodge;

(b) The address and telephone number of the applicant organization, if any, and if the applicant organization has no telephone, then the address and telephone number of the person applying on behalf of the organization shall be supplied;

(c) For a limited occasion license, the names and addresses of two or more bona fide active members of the applicant organization who are charged with overall responsibility for the applicant's online raffle operations, at least one of whom shall be virtually present and available when the winning numbers or names are drawn, announced, posted, and verified and present when the prizes are awarded; and the names and addresses of the highest elected officer of the licensee and his or her officially appointed designee, one of whom shall be virtually present and available when the winning numbers or names are drawn, announced, posted, and verified and present when the prizes are awarded; for an annual license, the names, addresses and telephone numbers of three or more bona fide active members of the applicant organization who are charged with overall responsibility for the applicant's online raffle operations, at least one of whom shall be virtually present and available when the winning numbers or names are drawn, announced, posted, and verified and present when the prizes are

awarded; and the names and addresses and telephone numbers of the highest elected officer of the licensee and his or her officially appointed designee, one of whom shall be virtually present and available when the winning numbers and names are drawn, announced, posted, and verified and present when the prizes are awarded;

(e) The address and the location of any platform provider that manages a website software system, web application, method, or process for the purpose of collecting moneys related to the sale of online raffles, securing and safekeeping all moneys collected related to the sale of online raffle tickets, disbursing moneys collected from the sale of online raffle tickets to the licensee before or after the online raffle or online raffle occasion, and conducting licensed online raffles over the Internet. A copy of all written agreements between the licensee and the platform provider providing these services shall specifically provide a statement of all costs and fees to be incurred by the licensee for receiving these services by the platform provider. A copy of any written agreements shall be provided to the Tax Commissioner;

(f) Information required by the commissioner to satisfy him or her that the applicant meets the requirements of:

(1) Being a charitable or public service organization as defined by this article; and

(2) Being in existence in this state for at least one year prior to filing an application for an online raffle license.

(g) Designate the date or dates and the time or times when the online raffle occasions will be held;

(h) State whether the applicant has ever had a previous application for any online raffle or raffle license refused, or whether any previous online raffle license or raffle license has been revoked or suspended;

(i) State the charitable or public service purpose or purposes for which the online raffle proceeds will be expended;

(j) Provide statements to the effect that the individuals specified in subdivision (c) of this section and the officers of the applicant understand:

(1) That it is a violation of this article to allow any persons other than those authorized by this article to conduct the online raffle;

(2) That they are required to file the reports and keep the records as provided by this article; and

(3) That it is a crime to violate the provisions of this article and that a violation of the provisions may result in suspension or revocation of the online raffle license or other raffle license and denial of applications for subsequent online raffle licenses or raffle licenses;

(k) Provide a sworn statement by an authorized representative of the applicant that the information contained in the application is true to the best of his or her knowledge;

(l) Provide a list and description of estimated expenses to be incurred in connection with the holding of the online raffle occasions and the name and address of each payee;

(m) A list of the names and addresses of all officers and members of the board of directors, governors or trustees, if any, of the applicant organizations; and

(n) Any other necessary and reasonable information which the commissioner may require.

#### **§47-21A-9. Amendment of license.**

If circumstances beyond the control of the licensee prohibit it from holding any online raffle occasion in accordance with the information provided by it in its license application form, the licensee may request approval by the commissioner to modify the terms and conditions of its license.

**§47-21A-10. Licensee rules and regulations.**

(a) Each licensee may adopt rules and regulations, not inconsistent with or in violation of the provisions of this article, or rules promulgated to govern the conduct of online raffle occasions.

(b) Any rules and regulations adopted by the licensee shall be made available for inspection at all raffle occasions held by way of advertising these rules and regulations on its website and by being posted conspicuously at their place of operation that was provided on its application for a license. Any adopted rules and regulations are a part of the records required to be kept by §47-21A-114 of this code.

**§47-21A-11. Limits on prizes awarded; general provisions.**

Prizes may be money, real or personal property, or merchandise other than beer, wine, spirits, or alcoholic liquor as defined in §60-1-5 of this code. If the prizes are real or personal property or merchandise, the value assigned to them is their fair market value at the time of acquisition for the online raffle or at the time of purchase.

**§47-21A-12. Compensation.**

(a) A licensee may pay a salary, the minimum of which is the federal minimum wage and the maximum of which is not more than 120 percent of the state minimum wage to operators of charitable online raffles who are either:

(1) Active members of the licensee organization and who have been active members in good standing for at least two years prior to the date of filing of the application for an online charitable raffle license or the most recent filing of an application for renewal of the license; or

(2) Employees of the licensee organization or its authorized auxiliary organization.

(b) If the licensee's gross receipts from online raffle occasions equal or exceed \$100,000 for the licensee's most recently filed

annual financial report, a salary may be paid to not more than eight operators.

(c) If the licensee's gross receipts from online charitable raffle occasions are less than \$100,000, but equal or exceed \$50,000 for the licensee's most recently filed annual financial report, a salary may be paid to not more than five operators.

(d) If the licensee's gross receipts from online charitable raffle occasions are less than \$50,000 for the licensee's most recently filed annual financial report, a salary may be paid to no more than three operators.

**§47-21A-13. Payment of reasonable expenses from proceeds; net proceeds disbursement.**

(a) The reasonable, necessary and actual expenses incurred in connection with the conduct of online raffle occasions, not to exceed 40 percent of the gross proceeds collected during a license period, may be paid out of the gross proceeds of the conduct of the online raffle, including, but not limited to:

(1) Rent paid for the use of any premises: *Provided*, That a copy of the rental agreement was filed with the online raffle license application with any modifications to the rental agreement to be filed within 10 days of being made: *Provided, however*, That in no event may the rent paid for the use of any premises exceed the fair market value of rent for the premises;

(2) The cost to the licensee organization for equipment and supplies used to conduct the online raffle occasion;

(3) The cost to the licensee organization for advertising the online raffle occasion;

(4) The costs involved in the licensee using technology, Internet service providers, servers, or other necessary infrastructure by which to advertise and conduct the online raffle or online raffle occasion;



(5) The costs relating to any platform provider that manages a website software system, web application, method, or process for the purpose of collecting moneys related to the sale of online raffles, securing and safekeeping all moneys collected related to the sale of online raffle tickets, disbursing moneys collected from the sale of online raffle tickets to the licensee before or after the online raffle or online raffle occasion, and conducting licensed online raffles over the Internet.

(b) The actual cost to the licensee for prizes, not to exceed the amounts as specified in §47-21A-111 of the code, may be paid out of the gross proceeds of the conduct of an online raffle.

(c) The licensee shall expend all net online raffle proceeds and any interest earned on the net online raffle proceeds for the charitable or public service purposes stated in the application within one year after the expiration of the license under which the online raffle occasions were conducted. A licensee which does not qualify as a qualified recipient organization may apply to the commissioner at the time it applies for an online raffle license for permission to apply any or all of its net proceeds to directly support a charitable or public service activity or endeavor which it sponsors.

(d) Gross proceeds from any online raffle occasion may not be devoted or in any manner used by any licensee or qualified recipient organization for the construction, acquisition, or improvement, of real or personal property except that which is used exclusively for one or more charitable or public service purposes or as provided in subsection (a) of this section.

(e) The Tax Commissioner may disapprove any contract for sale of goods or services to any online raffle licensee for use in or with relation to any online raffle operation or occasion, or any lease of real or tangible personal property to any online raffle licensee for use in or with relation to any online raffle operation or occasion, if the contract or lease is unreasonable or not representative of fair market value. Disapproved contracts or leases shall be considered to be in contravention of this article, and are void. Any attempt by any online raffle licensee to engage in transactions under the terms of any disapproved lease or contract is grounds for revocation or suspension of the online raffle license or other charitable raffle

license and for refusal by the Tax Commissioner to renew the online raffle license or raffle license.

(f) Any licensee which, in good faith, finds itself unable to comply with the requirements of the subsections (a) through (e) of this section shall apply to the commissioner for permission to expend its net proceeds for one or more charitable or public service purposes other than that stated in its license application or for permission to expend its net proceeds later than the one-year time period specified in this section. The application shall be on a form furnished by the commissioner and shall include the particulars of the requested changes and the reasons for the changes. The application shall be filed no later than 60 days before the end of the one-year period specified in this section. In the case of an application to extend the time in which the net proceeds are to be expended for a charitable or public service purpose, the licensee shall file periodic reports with the commissioner as directed until the proceeds are expended.

**§47-21A-14. Records; commissioner audit.**

Any licensee which holds an online raffle occasion as provided by this article shall maintain a separate account and separate bookkeeping procedure for its online raffle operations. All records required by this article shall be maintained for at least three years and shall be open to the commissioner for reasonable inspection. Whenever the commissioner has reasonable cause to believe a licensee has violated any of the provisions of this article, he or she may perform or cause to be performed an audit of the licensee's books and records.

**§47-21A-15. Advertising.**

A licensee may advertise its online raffle occasions in a manner reasonably necessary to promote the occasion.

**§47-21A-16. Annual Platform Provider license; conditions on holding of online raffles.**

A platform provider may apply for an annual Platform Provider license: *Provided*, That a platform provider that has a principal place of business located within this state shall be registered with

the West Virginia Secretary of State and also possess a Business Registration Certificate from the West Virginia State Tax Department: *Provided, however,* That a platform provider that has a principal place of business located outside of this state shall be registered as an appropriate foreign corporation with the West Virginia Secretary of State and also possess a Business Registration Certificate from the West Virginia State Tax Department.

**§47-21A-17. Annual Platform Provider License fee and exemption from taxes.**

A license fee shall be paid to the Tax Commissioner for annual Platform Provider licenses in the amount of \$500. All revenue from the license fee shall be deposited in the special revenue account established under the authority of §11-9-2a of this code and used to support the investigatory activities provided for in the section.

**§47-21A-18. Information required in application for an Annual Platform Provider License.**

An application for an Annual Platform Provider license shall include the following information:

(a) The name of the applicant, the legal name of the entity, the jurisdiction and locale of incorporation, telephone number, e-mail address, and the physical and mailing address of its principal place of business;

(b) A description of methods by which they manage, administer, or oversee a website software system, web application, method, or other process for the purposes of collecting moneys related to the sale of online raffles, securing and safekeeping all moneys collected related to the sale of online raffle tickets, disbursing moneys collected from the sale of online raffle tickets to the licensee before or after the online raffle or online raffle occasion, and conducting licensed online raffles over the Internet;

(c) Provide statements that detail the costs and fee structures for any services that are provided by the platform provider.

(d) State whether the applicant has ever had a previous application for any license relating to the regulation of an online raffle refused, or whether any previous license relating to the regulation of an online raffle has been revoked or suspended;

(e) Provide statements to the effect that the individuals and entities specified in subdivision (a) of this section understand:

(1) That it is a violation of this article to allow any persons other than those authorized by this article to conduct business related to being a platform provider;

(2) That it is required to file the reports and keep the records as provided by this article; and

(3) That it is a crime to violate the provisions of this article and, that a violation of such provisions may result in suspension or revocation of the platform provider license and denial of applications for subsequent platform provider licenses;

(f) Provide a sworn statement by an authorized representative of the applicant that the information contained in the application is true to the best of his or her knowledge;

(g) A list of the names and addresses of all officers and members of the board of directors, if any, of the platform provider; and

(h) Any other necessary and reasonable information required by the commissioner.

**§47-21A-19. Records; commissioner audit.**

Any licensee which holds an Annual Platform Provider License as provided by this article shall maintain a bookkeeping procedure for all of its activities relating to being a platform provider for any charitable or public service organization conducting online raffles in the state. All records required by this article shall be maintained for at least three years and shall be open to the commissioner for reasonable inspection. Whenever the commissioner has reasonable cause to believe a licensee has

violated any of the provisions of this article, he or she may perform or cause to be performed an audit of the licensee's books and records.

**§47-21A-20. Fraud; penalties.**

In addition to any other offense set forth in this code, any person, platform provider, or licensee that knowingly conducts or participates in a fraudulently or deceptively conducted, or administered online raffle with intent to defraud is guilty of a felony, and, upon conviction thereof, shall be fined not less than \$500 nor more than \$10,000, or imprisoned in a correctional facility not less than one, nor more than five years, or both fined and imprisoned.

**§47-21A-21. Obtaining license fraudulently; penalty.**

In addition to any other offense set forth in this code, any person, platform provider, or licensee that knowingly obtains or assists another person in obtaining an online raffle license or platform provider license under false, deceptive, or fraudulent pretenses is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$500 nor more than \$10,000.

**§47-21A-22. Violation of provisions; crime; civil penalties.**

(a) Any person, entity, or platform provider that knowingly violates any provisions of this article, other than the provisions of §47-21A-120 or §47-21A-121 of this code is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000; and, upon a second or subsequent conviction thereof, shall be fined not less than \$100 nor more than \$100,000 or confined in jail not more than one year, or both fined and confined.

(b) In addition to any other penalty provided by law, any person, licensed or unlicensed under this article, who violates any provisions of this article, or who fails to perform any of the duties or obligations created and imposed upon them by the provisions of this article, other than the provisions of §47-21A-120 or §47-21A-

121 of this code is subject to a civil penalty determined by the Tax Commissioner in an amount not to exceed \$10,000.

**§47-21A-23. Administration; rules and regulations.**

(a) The commissioner shall propose rules for legislative approval, in accordance with the provisions of §29A-3-1 et seq. of this code, to administer the provisions of this article. The commissioner may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code, to administer the provisions of this article.

(b) The commissioner shall deny an application for any license or modification thereof if he or she finds that the issuance thereof would be in violation of the provisions of this article.

(c) The commissioner may revoke, suspend, or refuse to renew any license if the licensee or any member of a licensee organization has been convicted pursuant to §47-21A-120, §47-21A-121, or §47-21A-122 of this code, and the commissioner finds that it would be in the public interest to do so; or if the licensee has violated any of the provisions of this article: *Provided*, That before revoking or suspending any license issued under the authority of this article, the commissioner shall give at least 10 days, ~~three days for a limited occasion license~~, notice to the licensee. The notice shall be in writing, state the reason for revocation or suspension, and inform the licensee of its right to petition the Office of Tax Appeals for a hearing at which the licensee may show cause why the license should not be revoked or suspended. The notice required by this section shall be by personal or substituted service, in accordance with the West Virginia rules of civil procedure for trial courts of record, on the person who applied for the license on behalf of the licensee. The licensee may, at the time designated for the hearing, present evidence in its behalf and be represented by counsel. A decision of the Office of Tax Appeals upholding in whole or in part the revoking or suspending a license is subject to judicial review as provided in §11-10A-19 of this code.

(d) The commissioner may suspend, revoke, or refuse to renew any license issued under this article for a material failure to

maintain the records or file the reports required by this article if the commissioner finds that the failure will substantially impair the commissioner's ability to administer the provisions of this article with regard to the licensee.

(e) The provisions of §29A-5-1 *et seq.* of this code apply to the denial, revocation, suspension of, or refusal to renew any license.

(g) The burden of proof in any administrative or court proceeding is on the applicant to show cause why any license should be issued or renewed and on the licensee to show cause why any license should not be revoked or suspended.

(h) Notwithstanding any other provision of this article, the commissioner may issue an emergency order suspending any license under the following circumstances and in the following manner:

(1) An emergency order may be issued only when the commissioner believes that:

(i) There has been a criminal violation of this article;

(ii) The action is necessary to prevent a criminal violation of this article; or

(iii) The action is necessary for the immediate preservation of the public peace, health, safety, morals, good order, or general welfare.

(2) The emergency order shall set forth the grounds upon which it is issued, including a statement of facts constituting the alleged emergency necessitating such action. This order shall be served by personal or substituted service on the licensee or the person who applied for the license on behalf of the licensee.

(3) The emergency order is effective immediately upon issuance and service upon the licensee.

(4) Within five days after issuance of an emergency order, the licensee may petition the Office of Tax Appeals to set a time and place for a hearing where the licensee may appear and show cause why its license should not be revoked.

**§47-21A-24. Filing of reports.**

(a) Each licensee holding an annual, limited occasion, or platform provider, or state fair license shall file with the commissioner a financial report summarizing its online raffle operations within 30 days after the expiration date of the license. The time period covered by an annual report is the full license year or, at the election of a licensee receiving state or federal funding, the most recently ended state or federal fiscal year.

(b) The reports required by this section relating to a platform provider license shall additionally contain the name, address, and telephone number of each charitable organization to which the platform provider provided services. The report shall also list the specific online raffle occasions in which platform provider participated, including the date of each online raffle occasion, any costs and fees associated with these online raffle occasions, and any other information required by the commissioner.

(c) The reports required by this section relating to an annual license or a state fair license shall additionally contain the name, address, and social security number of any individual who received during the course of an online raffle occasion prizes the aggregate value of which exceeded \$100, and other information required by the commissioner: *Provided*, That any licensee failing to file the report when due is liable for a penalty of \$25 for each month or fraction of a month during which the failure continues, the penalty not to exceed \$100: *Provided, however*, That annual financial reports shall contain either a compilation or review of the financial report by a certified or licensed public accountant, or may be audited by a certified or licensed public accountant, if a licensee's gross receipts exceed \$50,000.

**§47-21A-25. Filing of copy of license; application open to public inspection.**

Whenever any license is granted pursuant to this article, the commissioner shall cause a copy of the license to be filed and recorded with the clerk of the county commission of the county in which the licensee's physical operations exist as provided in its application: *Provided*, That a platform provider license issued to an entity that has a principal place of business outside of the state



shall provide a hyperlink on their website which will be directed towards a viewable version of the platform provider license. A copy of any application shall be made available for public inspection in the office of the commissioner.

**§47-21A-26. Prohibited acts by convicted persons.**

Any person convicted of any felony, or a misdemeanor for a gambling offense, or of a violation of any provision of §47-20-1 et seq. of this code, is prohibited from directly or indirectly obtaining an online raffle license, conducting an online raffle occasion, or leasing or providing to a licensee any premises where online raffle occasions may be overseen or held, within 10 years from said conviction.

**§47-21A-127. Proceeds of state fair.**

The Legislature declares that the net proceeds of any online raffle game which accrue to the West Virginia state fair are considered used for charitable or public service purposes as defined in §47-21A-2 of this code. Any proceeds allowed by the state fair board to be paid to or retained by persons who conduct or oversee online raffle occasions are considered to be expenses incurred by the state fair board.

**§47-21A-28. State fair online raffle license; rules and regulations.**

The West Virginia state fair board may apply annually to the Tax Commissioner for a state fair online raffle license to provide for the conduct of online raffle occasions. The license shall permit the state fair board to have one or more persons conduct online raffle occasions who have conducted online raffle occasions on a regular basis for a least one year prior to the date of the state fair board's application. The state fair shall pay a license fee of \$500 shall be paid to the Tax Commissioner for the state fair online raffle license. The provisions of §47-21A-111, §47-21A-112, and §47-21A-113 of the code do not apply to a state fair raffle license. A state fair online raffle license may not be issued unless the application includes a copy of any agreement entered into between

the state fair board and the persons or entities who are to conduct online raffle occasions. The state fair board may adopt reasonable rules and regulations, not inconsistent with or in violation of the provisions of this article, to govern the holding of online raffle occasions.

**§47-21A-29. Additional remedies for the commissioner; administrative procedures; deposit of money penalties.**

(a) Additional remedies. Notwithstanding any provision of this article to the contrary, the commissioner may:

(1) Revoke or refuse to renew any license issued under this article for any material violation of the provisions of this article or legislative rules of the commissioner promulgated under this article;

(2) Suspend the license of any licensee for the period of time the commissioner considers appropriate, not to be less than one week nor more than 12 months, for any material violation of the provisions of this article or legislative rule of the commissioner promulgated under this article;

(3) Place any licensee on probation for not less than six months nor more than five years: *Provided*, That if a licensee is placed on probation, as a condition of the probation, the licensee shall pay to the commissioner a probation supervision fee in an amount equal to two percent of the gross proceeds derived by the licensee from the conduct of online raffle occasions, or a probation supervision fee in an amount equal to two percent of the gross proceeds derived by the licensee from the conduct of providing a platform within the state during the period of the suspension, but, in no event, may the probation supervision fee be less than \$2,000. All probation supervision fee revenue shall be placed in a special account and used by the commissioner, ~~after appropriation by the Legislature,~~ to offset the expenses and costs incurred by the Tax Division to supervise the licensee;

(4) Require any licensee to replace any officer who knew or should have known of a material violation of the provisions of this

article or legislative rules of the commissioner promulgated under this article;

(5) Require any licensee to prohibit one or more members, supporters, volunteers, or employees of the licensee involved in acts of material violation of the provisions of this article or legislative rules of the commissioner promulgated under this article, from all future online raffle occasions held under the license, or for the period of time specified by the commissioner;

(6) Impose a civil money penalty in an amount not less than \$100 nor more than two times the annual gross proceeds derived by any licensee, for each material violation of the provisions of this article or legislative rules of the commissioner: *Provided*, That in setting any monetary penalty for a first offense, the commissioner shall take into consideration the ability of the licensee to continue to exist and operate. For each material violation which is a second or subsequent offense, the amount of the civil penalty that may be imposed may not be less than \$500 and may not exceed two times the annual gross proceeds of the licensee. The commissioner may file this rule as an emergency rule. Any licensee aggrieved by the amount of the civil penalty may surrender its license, or, after exhausting all administrative remedies, have the matter reviewed in the West Virginia Intermediate Court of Appeals; or

(7) Order any one or more, or any combination, of the penalties provided for in subdivisions (1) through (6) of this subsection: *Provided*, That no sanctions or other remedy shall be imposed under this article on a licensee which is exempt or qualified to be exempt from federal income taxation under subsection 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1986, as amended, but does not have bona fide members, due to failure to operate online raffle occasions with members if the occasions are or were operated by residents of this state who have been employed by the licensee or been meaningfully associated with the licensee for one or more years before the date of the licensee's application for a license under this article, or its last application for renewal of a license under this article.

(b) *Administrative procedures.*

(1) An order issued under this section shall be served by certified mail or in the manner provided in rule 4(d) of the West Virginia rules of civil procedure for trial courts of record, as amended.

(2) A licensee may appeal an order of the commissioner issued under this section by petitioning the Office of Tax Appeals within 20 days after the licensee is served with a copy of the order.

(3) When a petition is filed timely, the provisions of §11-10A-1 et seq. of this code apply.

(4) The burden of proof in any administrative or court proceeding is on the licensee to show cause why the order of the commissioner under this section should be modified, in whole or in part, or set aside.

(c) Deposit of money penalties. — All fines, money penalties, and fees imposed pursuant to this section, except the probation supervision fee imposed by subdivision (3), subsection (a) of this section, shall be deposited into the General Revenue Fund of this state.

The bill (Com. Sub. for S. B. 751), as amended, was then ordered to engrossment and third reading.

**Com. Sub. for Senate Bill 786**, Relating to massage therapy establishments.

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 791**, Modifying membership requirements of Medical Services Fund Advisory Council.

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

**Senate Bill 813**, Allowing students to participate in non-school competitive activities.

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

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

**Com. Sub. for Senate Bill 819**, Modifying requirements for public water systems or businesses having backflow preventers.

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

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

On page 2, section 4, lines 21 through 28, by striking out all of subdivision (3) and inserting in lieu thereof a new subdivision (3), to read as follows:

(3) Occupational and industrial health hazards, the sanitary conditions of streams, sources of water supply, sewerage facilities, and plumbing systems and the qualifications of personnel connected with any of those facilities, without regard to whether the supplies or systems are publicly or privately owned; and the design of all water systems, plumbing systems, sewerage systems, sewage treatment plants, excreta disposal methods, and swimming pools in this state, whether publicly or privately owned: Provided, That the secretary may not promulgate rules that require a public water supply system or business to have backflow prevention assemblies inspected more frequently than once in 10 years;.

The bill (Com. Sub. for S. B. 819), as amended, was then ordered to engrossment and third reading.

**Com. Sub. for Senate Bill 842**, Modifying training requirements for county boards of education 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 848**, Creating special revenue account within Department of Health.

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

**Senate Bill 858**, Clarifying filing requirements and deadlines in property tax cases.

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

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

**Senate Bill 859**, Limiting requirements for issuance of professional teaching certificate.

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

**Senate Bill 861**, Increasing support and professional development for educators.

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 865**, Changing reference to Curator of Department of Arts, Culture, and History to secretary.

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

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

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

**CHAPTER 5F. REORGANIZATION OF THE  
EXECUTIVE BRANCH OF STATE GOVERNMENT.**

**§5F-2-1. Transfer and incorporation of agencies and boards;  
funds.**

(a) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Administration:

(1) Public Employees Insurance Agency provided in §5-16-1 *et seq.* of this code;

(2) Governor's Mansion Advisory Committee provided in §5A-5-1 *et seq.* of this code;

(3) Commission on Uniform State Laws provided in §29-1A-1 *et seq.* of this code;

(4) West Virginia Public Employees Grievance Board provided in §6C-3-1 *et seq.* of this code;

(5) Board of Risk and Insurance Management provided in §29-12-1 *et seq.* of this code;

(6) Boundary Commission provided in §29-23-1 *et seq.* of this code;

(7) Public Defender Services provided in §29-21-1 *et seq.* of this code;

(8) Division of Personnel provided in §29-6-1 *et seq.* of this code;

(9) West Virginia Ethics Commission provided in §6B-2-1 *et seq.* of this code;

(10) Consolidated Public Retirement Board provided in §5-10D-1 *et seq.* of this code; and

(11) Real Estate Division provided in §5A-10-1 *et seq.* of this code.

(b) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Commerce:

(1) Division of Labor provided in §21-1-1 *et seq.* of this code, which includes:

(A) Occupational Safety and Health Review Commission provided in §21-3A-1 *et seq.* of this code; and

(B) Board of Manufactured Housing Construction and Safety provided in §21-9-1 *et seq.* of this code.

(2) Office of Miners' Health, Safety, and Training provided in §22A-1-1 *et seq.* of this code. The following boards are transferred to the Office of Miners' Health, Safety, and Training for purposes of administrative support and liaison with the Office of the Governor:

(A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review Committee provided in §22A-6-1 *et seq.* of this code;

(B) Board of Miner Training, Education, and Certification provided in §22A-7-1 *et seq.* of this code; and

(C) Mine Inspectors' Examining Board provided in §22A-9-1 *et seq.* of this code.

(3) Division of Natural Resources and Natural Resources Commission provided in §20-1-1 *et seq.* of this code;

(4) Division of Forestry provided in §19-1A-1 *et seq.* of this code;

(5) Geological and Economic Survey provided in §29-2-1 *et seq.* of this code;



(6) Workforce West Virginia provided in chapter 21A of this code, which includes:

(A) Division of Unemployment Compensation;

(B) Division of Employment Service;

(C) Division of Workforce Development;

(D) Division of Research, Information and Analysis; and

(7) Division of Rehabilitation Services provided in §18-10A-1 *et seq.* of this code.

(c) The Economic Development Authority provided in §31-15-1 *et seq.* of this code is continued as an independent agency within the executive branch.

(d) The Water Development Authority and the Water Development Authority Board provided in §22C-1-1 *et seq.* of this code is continued as an independent agency within the executive branch.

(e) The West Virginia Educational Broadcasting Authority provided in §10-5-1 *et seq.* of this code is continued as a separate ~~independent~~ agency within the Department of Arts, Culture, and History, which shall provide administrative support for the authority.

(f) The Division of Culture and History as established in §29-1-1 *et seq.* of this code is continued as a ~~separate independent~~ an agency within the Executive Branch as the Department of Arts, Culture, and History. All references throughout this code to the "Division of Culture and History" ~~means~~ mean the "Department of Arts, Culture, and History".

(g) The following agencies and boards, including all of the allied, advisory, and affiliated entities, are transferred to the Department of Environmental Protection for purposes of administrative support and liaison with the Office of the Governor:

(1) Air Quality Board provided in §22B-2-1 *et seq.* of this code;

(2) Solid Waste Management Board provided in §22C-3-1 *et seq.* of this code;

(3) Environmental Quality Board, or its successor board, provided in §22B-3-1 *et seq.* of this code;

(4) Surface Mine Board provided in §22B-4-1 *et seq.* of this code;

(5) Oil and Gas Inspectors' Examining Board provided in §22C-7-1 *et seq.* of this code;

(6) Shallow Gas Well Review Board provided in §22C-8-1 *et seq.* of this code; and

(7) Oil and Gas Conservation Commission provided in §22C-9-1 *et seq.* of this code.

(h) Subject to the provisions of §5F-2-1a of this code, the following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Health and Human Resources:

(1) Human Rights Commission provided in §5-11-1 *et seq.* of this code;

(2) Bureau for Public Health provided in §16-1-1 *et seq.* of this code;

(3) Office of Emergency Medical Services and the Emergency Medical Service Advisory Council provided in §16-4C-1 *et seq.* of this code;

(4) Health Care Authority provided in §16-29B-1 *et seq.* of this code;

(5) The Developmental Disabilities Council established by Executive Order No. 6-88 and continued by Executive Order No. 15-99;

(i) Subject to the provisions of §5F-2-1a of this code, the following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Human Resources:

~~(6)~~(1) Women's Commission provided in §29-20-1 *et seq.* of this code; and

~~(7)~~(2) Bureau for Child Support Enforcement provided in §48-1-1 *et seq.* of this code.

~~(i)~~(j) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Homeland Security:

(1) West Virginia State Police;

(2) Division of Emergency Management provided in §15-5-1 *et seq.* of this code and Emergency Response Commission provided in §15-5A-1 *et seq.* of this code: *Provided*, That notwithstanding any other provision of this code to the contrary, whenever in this code, or a rule promulgated thereunder, a reference is made to the Division of Homeland Security and Emergency Management, it shall be construed to mean the Division of Emergency Management;

(3) Division of Administrative Services;

(4) Division of Corrections and Rehabilitation;

(5) Fire Commission;

(6) State Fire Marshal;

(7) Board of Probation and Parole;

(8) The West Virginia Fusion Center;

(9) Division of Protective Services; and

(10) Any other agency or entity hereinafter established within the Department of Homeland Security by an act of the Legislature.

~~(j)~~(k) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Revenue:

(1) Tax Division provided in §11-1-1 *et seq.* of this code;

(2) Racing Commission provided in §19-23-1 *et seq.* of this code;

(3) Lottery Commission and position of Lottery Director provided in §29-22-1 *et seq.* of this code;

(4) Insurance Commissioner provided in §33-2-1 *et seq.* of this code;

(5) West Virginia Alcohol Beverage Control Commissioner provided in §11-16-1 *et seq.* of this code and §60-2-1 *et seq.* of this code;

(6) Board of Banking and Financial Institutions provided in §31A-3-1 *et seq.* of this code;

(7) Lending and Credit Rate Board provided in §47A-1-1 *et seq.* of this code;

(8) Division of Financial Institutions provided in §31A-2-1 *et seq.* of this code;

(9) The State Budget Office provided in §11B-2-1 *et seq.* of this code;

(10) The Municipal Bond Commission provided in §13-3-1 *et seq.* of this code;

(11) The Office of Tax Appeals provided in §11-10A-1 *et seq.* of this code; and

(12) The State Athletic Commission provided in §29-5A-1 *et seq.* of this code.

~~(k)~~(l) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Transportation:

(1) Division of Highways provided in §17-2A-1 *et seq.* of this code;

(2) Parkways Authority provided in §17-16A-1 *et seq.* of this code;

(3) Division of Motor Vehicles provided in §17A-2-1 *et seq.* of this code;

(4) Driver's Licensing Advisory Board provided in §17B-2-1 *et seq.* of this code;

(5) Aeronautics Commission provided in §29-2A-1 *et seq.* of this code;

(6) State Rail Authority provided in §29-18-1 *et seq.* of this code; and

(7) Public Port Authority provided in §17-16B-1 *et seq.* of this code.

~~(h)~~(m) Effective July 1, 2011, the Veterans' Council provided in §9A-1-1 *et seq.* of this code, including all of the allied, advisory, affiliated, or related entities and funds associated with it, is incorporated in and administered as a part of the Department of Veterans' Assistance.

~~(m)~~(n) Except for powers, authority, and duties that have been delegated to the secretaries of the departments by §5F-2-2 of this code, the position of administrator and the powers, authority, and

duties of each administrator and agency are not affected by the enactment of this chapter.

~~(n)~~(o) Except for powers, authority, and duties that have been delegated to the secretaries of the departments by §5F-2-2 of this code, the existence, powers, authority, and duties of boards and the membership, terms, and qualifications of members of the boards are not affected by the enactment of this chapter. All boards that are appellate bodies or are independent decision makers may not have their appellate or independent decision-making status affected by the enactment of this chapter.

~~(o)~~(p) Any department previously transferred to and incorporated in a department by prior enactment of this section means a division of the appropriate department. Wherever reference is made to any department transferred to and incorporated in a department created in §5F-1-2 of this code, the reference means a division of the appropriate department and any reference to a division of a department so transferred and incorporated means a section of the appropriate division of the department.

~~(p)~~(q) When an agency, board, or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer is solely for purposes of administrative support and liaison with the Office of the Governor, a department secretary, or a bureau. Nothing in this section extends the powers of department secretaries under §5F-2-2 of this code to any person other than a department secretary and nothing limits or abridges the statutory powers and duties of statutory commissioners or officers pursuant to this code.

~~(q)~~(r) The Department of Economic Development as established in §5B-2-1 *et seq.* of this code is continued as a separate independent agency within the Executive Branch.

~~(r)~~(s) The Department of Tourism as established in §5B-2I-1 *et seq.* of this code is continued as a separate independent agency within the Executive Branch.

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

### **§29-1-1. Division of Culture and History continued as the Department of Arts, Culture, and History; sections and commissions; purposes; definitions; effective date.**

(a) The Division of Culture and History and ~~the office of Commissioner of Culture and History~~ heretofore created are hereby continued as the Department of Arts, Culture, and History. The Governor shall nominate and, by and with the advice and consent of the Senate, appoint the ~~Curator~~ Cabinet Secretary of Arts, Culture, and History, who shall be the chief executive officer of the department and shall be paid an annual salary as provided in §6-7-2a of this code. The curator so appointed shall have: (1) A bachelor's degree in one of the fine arts, social sciences, library science, or a related field; or (2) four years' experience in the administration of museum management, public administration, arts, history, or a related field.

(b) The department shall consist of ~~seven~~ eight sections as follows:

- (1) The arts section;
- (2) The archives and history section;
- (3) The museums section;
- (4) The historic preservation section;
- (5) The state library section;
- (6) The National Coal Heritage Area Commission; ~~and~~
- (7) The administrative section-; and
- (8) The Educational Broadcasting Commission.

(c) The department shall also consist of ~~three~~ four citizens commissions as follows:

- (1) A Commission on the Arts;
- (2) A Commission on Archives and History; ~~and~~
- (3) A Library Commission-; and
- (4) An Educational Broadcasting Council.

(d) The ~~curator~~ secretary shall exercise control and supervision of the department and shall be responsible for the projects, programs, and actions of each of its sections. The purpose and duty of the department is to advance, foster, and promote the creative and performing arts and crafts, including both indoor and outdoor exhibits and performances; to advance, foster, promote, identify, register, acquire, mark, and care for historical, prehistorical, archaeological, and significant architectural sites, structures, and objects in the state; to encourage the promotion, preservation, and development of significant sites, structures, and objects through the use of economic development activities such as loans, subsidies, grants, and other incentives; to coordinate all cultural, historical, and artistic activities in state government and at state-owned facilities; to acquire, preserve, and classify books, documents, records, and memorabilia of historical interest or importance; and, in general, to do all things necessary or convenient to preserve and advance the arts, humanities, culture, and history of the state. In the furtherance of these purposes and duties, the ~~curator~~ secretary shall report directly to the Governor as a ~~curator~~ secretary for both the intrinsic and extrinsic value for individuals, communities, and the economy of the arts, humanities, culture, and history in West Virginia. As such, the ~~curator~~ secretary shall represent the Department of Arts, Culture, and History as a full participating member in meetings of the secretaries of the departments created in §5F-1-2 of this code that are convened at the call of the Governor.

(e) The department ~~shall have~~ has jurisdiction and control and may set and collect fees for the use of all space in the building



presently known as the West Virginia Science and Culture Center, including the deck and courtyards forming an integral part thereof; the building presently known as West Virginia Independence Hall in Wheeling, including all the grounds and appurtenances thereof; "Camp Washington Carver" in Fayette County, as provided in §29-1-14 of this code; and any other sites as may be transferred to or acquired by the department. Notwithstanding any provision of this code to the contrary, beginning on and after July 1, 2018, the department shall have responsibility for, and control of, all visitor touring and visitor tour guide activities within the Capitol Building at Charleston.

(f) For the purposes of this article, "commissioner" or "curator" means the Curator Cabinet Secretary of Arts, Culture, and History, and "division" or "department" means the Department of Arts, Culture and History. References throughout this code to the "Commissioner of Culture and History" mean the "Curator Cabinet Secretary of Arts, Culture, and History", and references throughout this code to the "Division of Culture and History" mean the "Department of Arts, Culture, and History".

~~(g) Nothing in this article or any other provision of this code may be construed to mean that the Department of Arts, Culture, and History is an executive department created pursuant to §5F-1-2 of this code, nor that the curator is the secretary of an executive department created pursuant to that section.~~

The bill (Com. Sub. for S. B. 865), as amended, was then ordered to engrossment and third reading.

**Senate Bill 872**, Relating to county fire service fees.

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

**Senate Bill 873**, Schedule for tax installment payments.

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 4809**, Health Care Sharing Ministries Freedom to Share Act.

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.

**Eng. Com. Sub. for House Bill 4233**, Non-binary not permitted on birth certificates.

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

**Eng. Com. Sub. for House Bill 4874**, Relating to fatality and mortality review team.

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

**Eng. Com. Sub. for House Bill 4933**, Relating to Medicaid dental coverage.

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

The Senate proceeded to the twelfth order of business.

Remarks were made by Senators Taylor and Caputo.

At the request of Senator Caputo, unanimous consent being granted, the Senate stood in observance of a moment of silence in recognition of the passing of Joe Martin, former member of the House of Delegates and former Secretary of the Department of Military Affairs and Public Safety.

The Senate proceeded to the thirteenth order of business.

Under the provisions of Rule 15 of the Rules of the Senate, the following senator was removed as a co-sponsor of the following bill on February 23, 2024:

**Senate Bill 801:** Senator Taylor.

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were added as co-sponsors to the following bills and resolution on February 23, 2024:

**Senate Bill 347:** Senators Barrett and Queen;

**Senate Bill 503:** Senator Rucker;

**Senate Bill 717:** Senator Nelson;

**Com. Sub. for Senate Bill 769:** Senator Rucker;

And,

**Senate Joint Resolution 6:** Senators Trump and Hunt.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Takubo, at 12:01 p.m., the Senate adjourned until Monday, February 26, 2024, at 10 a.m.

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## MONDAY, FEBRUARY 26, 2024

The Senate met at 10:08 a.m.

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

Prayer was offered by Pastor Gary W. Hall, Mount Olivet Baptist Church, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Amy N. Grady, a senator from the fourth district.

Pending the reading of the Journal of Saturday, February 24, 2024,

At the request of Senator Tarr, 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 172**, Revising requirements of local school improvement councils.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

On page 6, section 2, line 120 – 122 by striking out the first sentence and inserting in lieu the following:

The state board shall ensure that training in the role and governance of local school improvement councils is provided to principals, county boards, and others the state board determines appropriate, upon employment and every three years thereafter.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Senate Bill 172, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—29.

The nays were: None.

Absent: Boley, Maroney, Rucker, Smith, and Woelfel—5.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 172) 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 602**, Cardiac Emergency Response Plan Act.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page 1, after the enacting clause, by striking the remainder of the bill and inserting, in lieu thereof, the following:

## **CHAPTER 16. PUBLIC HEALTH.**

### **ARTICLE 57. SUDDEN CARDIAC ARREST PREVENTION ACT.**

#### **§16-57-1. Purpose.**

[Repealed]

#### **§16-57-2. Definitions.**

[Repealed]

**§16-57-3. Applicability, educational materials, removal from play, and training.**

[Repealed]

**§16-57-4. Rulemaking.**

[Repealed]

**CHAPTER 18. EDUCATION.**

**ARTICLE 5. COUNTY BOARD OF EDUCATION.**

**§18-5-22e. Cardiac response plans.**

(a) For the purposes of this section, the following terms are defined:

"Cardiac Emergency Response Plan" or "the plan" means a written document that establishes the specific steps to reduce death from cardiac arrest.

"Automated External Defibrillator" means a lightweight, portable device that delivers an electric shock through the chest to the heart.

"School" means any school with an athletic department or organized athletic program under the jurisdiction of a county board of education.

"Sudden Cardiac Arrest" means when the heart malfunctions and stops beating unexpectedly.

(b) A school shall develop a cardiac emergency response plan that provides for the following:

(1) A school with an athletic department or organized athletic program shall develop a cardiac emergency response plan that addresses the appropriate use of school personnel to respond to incidents involving an individual experiencing sudden cardiac arrest or a similar life-threatening emergency while attending or

participating in an athletic practice or event while on school grounds; and

(2) School staff trained in first-aid, CPR, and automated external defibrillator use that follow evidence-based guidelines including but not limited to licensed coaches, school nurses, and athletic trainers.

(c) Prior to the start of each athletic season, a school subject to this section shall hold an informational meeting for students, parents, guardians, or other persons having care or charge of a student, regarding the warning signs of sudden cardiac arrest for children of all ages.

(d) No student may participate in an athletic activity until the student has submitted to a designated school official, a form signed by the student and the parent, guardian, or other person having care or charge of the student, stating that the student and the parent, guardian, or other person having care or charge of the student have received and reviewed a copy of the cardiac emergency response plan developed by the school and posted on its webpage. A completed form shall be submitted each school year in which the student participates in an athletic activity.

(e) No individual may coach an athletic activity unless the individual has completed, on an annual basis, the sudden cardiac arrest training course approved by the Department of Education.

(f) A student shall not be allowed to participate in an athletic activity if either of the following is the case:

(1) The student is known to have exhibited syncope or fainting at any time prior to or following an athletic activity and has not been evaluated and cleared for return after exhibiting syncope or fainting; or

(2) The student experiences syncope or fainting while participating in, or immediately following, an athletic activity.

(g) If a student is not allowed to participate in or is removed from participation in an athletic activity under subsection (f) of this

section, the student shall not be allowed to return to participation until the student is evaluated and cleared for return in writing by any of the following:

(1) A physician authorized under §30-14-1 et seq. of this code;

(2) A certified nurse practitioner, or certified nurse specialist;  
or

(3) A physician assistant licensed under §30-3E-1 et seq. and §30-14A-1 et seq. of this code.

(h) School officials shall work directly with local emergency service providers to integrate the plan into the community's EMS responder protocols, which shall include, at a minimum, the following:

(1) Establishing a cardiac emergency response team;

(2) Activating the team in response to a sudden cardiac arrest;

(3) Implementing automated external defibrillator placement and routine maintenance within the school;

(4) Disseminating the plan throughout the school campus;

(5) Maintaining ongoing staff training in CPR/AED use;

(6) Plan for practicing skills learned;

(7) Integrating local EMS with the plan;

(8) Ongoing and annual review and evaluation of the plan; and

(9) Appropriate automated external defibrillator placement.

(i) The State Board of Education may promulgate a legislative rule pursuant §29A-3B-1 et seq. of this code to ensure compliance with this section by county school boards.

(j) A county board of education may accept gifts, grants, and donations, including in-kind donations designated for the purchase of an automatic external defibrillator that meets the standards



established by the United States Food and Drug Administration and for the costs incurred to inspect and maintain such device and train staff in the use of such device.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Senate Bill 602**—A Bill to repeal §16-57-1, §16-57-2, §16-57-3, and §16-57-4 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18-5-22e; all relating to cardiac response plans; repealing sudden cardiac arrest prevention act; creating cardiac response plans section for county boards of education; providing definitions; requiring schools to develop an emergency response plan and parameters therefore; requiring informational meetings regarding cardiac arrest; requiring a form be completed by students prior to participation in an athletic activity; requiring annual sudden cardiac arrest training for coaches; setting forth circumstances in which students are not allowed to participate in athletic activities; requiring evaluation by authorized physician, certified nurse practitioner or certified nurse specialist, or a physician assistant before returning to athletic activity; requiring school officials to work directly with local emergency service providers to integrate the plan into the community's EMS responder protocols and setting forth parameters therefore; allowing state board rulemaking; and allowing county boards to accept gifts, grants and donations.

On motion of Senator Takubo, the following amendment to the House of Delegates amendments to the bill (Eng. S. B. 602) was reported by the Clerk and adopted:

On page 3, section 22e, line 41, after the word "under" by inserting the words "§30-3-1 *et seq.* and".

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendments, as amended.

Engrossed Senate Bill 602, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—30.

The nays were: None.

Absent: Boley, Maroney, Rucker, and Smith—4.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 602) passed with its House of Delegates 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 and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4706**—A Bill to amend the Code of the West Virginia, 1931, as amended, by adding thereto a new section, designated §31G-4-2a, relating to creating the utility pole rights-of-way and easement mapping initiative; requiring pole owners to provide information to the Department of Economic Development to map the poles; requiring the Department of Economic Development to create maps with specific information about the poles; requiring confidentiality of information about electrical facilities connected to poles; allowing the Department of Economic Development to provide information to parties who demonstrate the need for the information to determine feasibility of projects; requiring confidentiality agreement of any requestor of the information; and providing exception to reporting if pole owner provides information directly to telecommunications entity.

Referred to the Committee on Economic Development; 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 5561**—A Bill to amend and reenact §44D-1-103, §44D-4-402, §44D-5-503c, §44D-7-701, §44D-7-704, §44D-7-705, §44D-8B-2, and §44D-10-1011 of the Code of West Virginia, 1931, as amended, all relating to permitting the electronic execution of trusts.

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 5569**—A Bill to amend and reenact §30-38A-15 of the Code of West Virginia, 1931, as amended, relating to prohibiting the requirement that appraisers pay for background checks.

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 5582**—A Bill to amend and reenact §30-38-1, §30-38-3, §30-38-6, §30-38-7, and §30-38-11 of the Code of West Virginia, 1931, as amended, relating to updating the requirements regarding real estate appraisal licenses.

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 5621**—A Bill to amend and reenact §55-7-22 of the Code of West Virginia, 1931, as amended, relating to employment protections for employees who are physically attacked, or in reasonable apprehension of being physically attacked, by another person, who is not an employee co-worker, at their place of employment and who uses reasonable and proportionate force to defend themselves or others shall not be subject to adverse actions by their employer, including, but not limited to, termination of their employment solely for the act of such use of reasonable and proportionate force; relating to permissive use of deadly force against an attacker in their place of employment, without a duty to retreat, if the person reasonably believes that he or she or another is in imminent danger of death or serious bodily harm from which he or she or another can only be saved by the use of deadly force against the intruder or attacker.

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 5690**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5A-6-9, related to creating a "West Virginia Task Force on Artificial Intelligence"; setting forth the membership of the same; providing for appointment of members; delineating responsibilities of the task force; providing it complete a report and specifying contents of same; and providing a date for termination of the task force.

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 5694**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5A-13-1, §5A-13-2, §5A-13-3, §5A-13-4, §5A-13-5,

and §5A-13-6, all relating to the Firearms Industry Nondiscrimination Act; establishing the short title; defining terms; establishing application of act to certain government contracts; prohibiting governmental entities from entering into contracts with any financial institution that discriminates against any firearm entity or firearm trade association; providing that any such prohibited contracts are void; providing an exception for sole-source providers; prohibiting financial institutions who do business or contract with this state from discriminating against a firearm entity or firearm trade association; specifying the applicability of the prohibition; providing a private right of action; stating available remedies in private rights of action; providing for enforcement by the Attorney General; providing that an enforcement action by the Attorney General does not prohibit a private civil action; specifying available remedies in actions brought by the Attorney General; requiring the Attorney General to submit names of financial institutions who violate this law to the Governor and to request that the state terminate any business relationship with those financial institutions; providing a statute of limitations for actions; and providing a safe harbor for financial institutions.

Referred to the Committee on Government Organization.

The Senate proceeded to the fourth order of business.

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

Your Committee on the Judiciary has had under consideration

**Senate Bill 766**, Relieving railroad companies of liability during parades.

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

**Com. Sub. for Senate Bill 766** (originating in the Committee on the Judiciary)—A Bill to amend and reenact §31-2A-2 of the Code of West Virginia, 1931, as amended, relating to relieving a railroad company of any liability for injury to any person using a

crossing during a parade where the train is stopped during the parade.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for S. B. 766) 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 Weld, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Senate Bill 816**, Truth in Giving Act.

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

**Com. Sub. for Senate Bill 816** (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 §29-19A-1, §29-19A-2, §29-19A-3, §29-19A-4, and §29-19A-5, all relating to the Truth in Giving Act; providing a short title and purpose; defining terms; requiring certain information to be disclosed by thrift operators to donors and customers; specifying manner of disclosure; authorizing the Secretary of State to investigate violations; establishing criminal and civil penalties; providing for deposit of recovered funds; and authorizing Secretary of State to promulgate legislative rules.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for S. B. 816) 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 Weld, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Senate Bill 837**, Reorganizing offices of Public Defender Corporations to conform to circuit reconfiguration.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (S. B. 837) 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 Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Senate Bill 840**, Modifying unemployment benefits.

And,

**Senate Bill 866**, Designating State Treasurer as chairperson of WV Investment Management Board.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

Senator Takubo requested unanimous consent that the bills (S. B. 840 and 866) contained in the preceding report from the Committee on Finance be taken up for immediate consideration and read a first time.

Which consent was not granted, Senator Caputo objecting.

Thereafter, Senator Takubo moved that the bills (S. B. 840 and 866) contained in the preceding report from the Committee on Finance be taken up for immediate consideration and read a first time.

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

At the request of Senator Takubo, and by unanimous consent, his aforestated motion was withdrawn.

Senator Takubo then moved that Senate Bill 840 contained in the preceding report from the Committee on Finance be taken up for immediate consideration and read a first time.

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

The question being on the adoption of Senator Takubo's aforestated motion, and on this question, Senator Caputo demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Barrett, Clements, Deeds, Grady, Hunt, Jeffries, Martin, Maynard, Nelson,



Oliverio, Phillips, Plymale, Queen, Roberts, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—25.

The nays were: Caputo, Chapman, Hamilton, Karnes, and Woelfel—5.

Absent: Boley, Maroney, Rucker, and Smith—4.

So, a majority of those present and voting having voted in the affirmative, the President declared Senator Takubo's aforesated motion had prevailed.

Whereupon, Senate Bill 840 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.

On motion of Senator Takubo, Senate Bill 866 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 Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Senate Bill 841**, Setting amount of unemployment taxes and benefits.

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

**Com. Sub. for Senate Bill 841** (originating in the Committee on Finance)—A Bill to amend and reenact §21A-1A-28 of the Code of West Virginia, 1931, as amended; and to amend and reenact §21A-6-10 of said code, all relating to the amount of unemployment taxes and benefits; removing definitions; modifying the calculation of the taxable wage base; and modifying methodology for calculating the maximum benefit rate.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

Senator Takubo requested unanimous consent that the bill (Com. Sub. for S. B. 841) contained in the preceding report from the Committee on Finance be taken up for immediate consideration and read a first time.

Which consent was not granted, Senator Caputo objecting.

Senator Takubo then moved that the bill (Com. Sub. for S. B. 841) contained in the preceding report from the Committee on Finance be taken up for immediate consideration and read a first time.

Following discussion,

The question being on the adoption of Senator Takubo's aforestated motion, and on this question, Senator Caputo demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Barrett, Clements, Deeds, Grady, Hunt, Jeffries, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—25.

The nays were: Caputo, Chapman, Hamilton, Karnes, and Woelfel—5.

Absent: Boley, Maroney, Rucker, and Smith—4.

So, a majority of those present and voting having voted in the affirmative, the President declared Senator Takubo's aforestated motion had prevailed.

Whereupon, Committee Substitute for Senate Bill 841 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 Weld, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Senate Bill 850**, Updating Consumer Credit and Protection Act.

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

**Com. Sub. for Senate Bill 850** (originating in the Committee on the Judiciary)—A Bill to amend and reenact §46A-6N-1, §46A-6N-4, §46A-6N-6, §46A-6N-7, and §46A-6N-9 of the Code of West Virginia, 1931, as amended, all relating to consumer litigation financing; defining terms; adding term; removing commercial tort claims exclusion from definition of litigation financing; excluding certain non-profit organizations from the definition of litigation financing; prohibiting assignment of litigation financing contract in certain instances; requiring disclosure of third-party litigation financing agreements to parties; clarifying who is to provide disclosure of third-party litigation financing agreements; and establishing cap for the annual fee a litigation financier may charge a natural person.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for S. B. 850) 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.

The Senate proceeded to the sixth order of business.

Senators Grady, Rucker, and Chapman offered the following resolution:

**Senate Resolution 53**—Designating February 27, 2024, as Domestic Violence Awareness Day at the Legislature.

Which, under the rules, lies over one day.

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for Senate Bill 190**, Modifying definition of sexual contact.

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: Barrett, Caputo, Chapman, Clements, Deeds, Hamilton, Maroney, Nelson, Oliverio, Phillips, Plymale, Queen, Stover, Stuart, Swope, Takubo, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—22.

The nays were: Azinger, Grady, Hunt, Jeffries, Karnes, Martin, Maynard, Roberts, and Tarr—9.

Absent: Boley, Rucker, and Smith—3.

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. 190) 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 442**, Providing for immunity for mental health providers who are involved in mental hygiene checks.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—30.

The nays were: Martin—1.

Absent: Boley, Rucker, and Smith—3.

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. 442) 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 568**, Creating multi-tiered system for school absenteeism.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: None.

Absent: Boley, Rucker, and Smith—3.

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. 568) 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 575**, Assisted Reproduction 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: Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Stover, Stuart, Swope, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—28.

The nays were: Azinger, Karnes, and Taylor—3.

Absent: Boley, Rucker, and Smith—3.

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. 575) 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 583**, Relating to employer liability and damages in civil actions involving commercial motor vehicles.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—30.

The nays were: Caputo—1.

Absent: Boley, Rucker, and Smith—3.

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. 583) 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 Senate Bill 583**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-32, relating to employer liability and damages in civil actions arising out of the operation of commercial motor vehicles; defining terms; establishing cap on noneconomic loss in certain circumstances; providing exceptions to applicability of cap; permitting cap to increase annually to account for inflation; setting forth effective date; providing for applicability to causes of action arising after effective date.

Senator Takubo moved that the bill take effect July 1, 2024.

On this question, the yeas were: Azinger, Barrett, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—30.

The nays were: Caputo—1.

Absent: Boley, Rucker, and Smith—3.

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. 583) takes effect July 1, 2024.

*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 725**, Clarifying conditions for pretrial release and maximum bail amount for certain defendants.

On third reading, coming up in regular order, with the right having been granted on February 24, 2024, for amendments to be received on third reading, was read a third time.

On motion of Senator Tarr, 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:

## **ARTICLE 1C. BAIL.**

### **§62-1C-1a. Pretrial release; types of release; conditions for release; considerations as to conditions of release.**

(a) Subject to the provisions of §62-1C-1 of this code when a ~~person~~ defendant charged with a violation or violations of the criminal laws of this state first appears before a judicial officer:

(1) Except for good cause shown, a judicial officer shall release a ~~person~~ defendant charged with a misdemeanor ~~an~~ offense on his or her own recognizance at the initial appearance unless ~~that person~~ he or she is charged with:

(A) A misdemeanor offense of actual violence or threat of violence against a person;

(B) A misdemeanor offense where the victim was a minor, as defined in §61-8C-1 of this code;

(C) A misdemeanor offense involving the use of a deadly weapon, as defined in §61-7-2 of this code;

(D) A misdemeanor ~~offense~~ violation of the Uniform Controlled Substances Act involving a Schedule I or II narcotic drug or methamphetamine as set forth in chapter 60A of this code;

(E) A misdemeanor offenses of sexual abuse;

(F) A serious misdemeanor traffic offense set forth in §17C-5-1 or §17C-5-2 of this code; or



(G) A misdemeanor offense involving auto tampering; petit larceny; or possession, transfer, or receiving of stolen property when the alleged value ~~on~~ of the property involved exceeds \$250.

(2) For the ~~misdemeanor~~ offenses ~~specified~~ listed in this subsection, and all other offenses ~~which~~ that carry a possible penalty of incarceration, ~~the arrested person is entitled to a~~ defendant shall be admitted to bail subject to the least restrictive condition or combination of conditions that the judicial officer determines reasonably necessary to assure that person will appear as required, and ~~which~~ that will not jeopardize the safety of the ~~arrested person~~ defendant, victims, witnesses, or other persons in the community or the safety and maintenance of evidence: Provided, That a magistrate may not release a defendant charged with a felony offense on his or her own recognizance at an initial appearance. Further conditions may include that the ~~person~~ charged defendant shall:

(A) Not violate any criminal law of this state, another state, or the United States;

(B) Remain in the custody of a person designated by the judicial officer who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is reasonably able to assure the judicial officer that the ~~person~~ defendant will appear as required and will not pose a danger to himself or herself or to the safety of any other person or the community;

(C) Participate in home incarceration pursuant to §62-11B-1 *et seq.* of this code;

(D) Participate in an electronic monitoring program if one is available where the person is charged or will reside;

(E) Maintain employment, or, if unemployed, actively seek employment;

(F) Avoid all contact with an alleged victim of the alleged offense and with potential witnesses and other persons as directed by the court;

(G) Refrain from the use or excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in §60A-1-1 *et seq.* of this code without a prescription from a licensed medical practitioner; or

~~(H) Execute an agreement to forfeit, upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required. The person charged shall provide the court with proof of ownership, the value of the property, and information regarding existing encumbrances of the property as, in the discretion of the judicial officer, is reasonable and necessary collateral to ensure the subsequent appearance of the person as required;~~

~~(I) Post a cash bond, or execute a bail bond with solvent sureties who will execute an agreement to forfeit an amount reasonably necessary to assure appearance of the person as required. If other than an approved surety, the surety shall provide the court with information regarding the value of its assets and liabilities and the nature and extent of encumbrances against the surety's property. The surety shall have a net worth of sufficiently unencumbered value to pay the amount of the bail bond; or~~

~~(J)~~(H) Satisfy any other condition that is reasonably necessary to assure the appearance of the person defendant as required and to assure the safety of the arrested person defendant, victims, witnesses, other persons in the community, or the safety and maintenance of evidence.

(3) ~~Proper~~ The considerations in determining whether to release the arrested person defendant on an unsecured bond his or her own recognizance, fixing a reasonable amount of bail, or imposing other reasonable conditions of release ~~are~~ shall be:

(A) The ability of the arrested person defendant to give bail;

(B) The nature, number, and gravity of the offenses;

(C) The potential penalty the arrested person defendant faces;

(D) Whether the alleged acts were violent in nature;

(E) The ~~arrested person's~~ defendant's prior record of criminal convictions and delinquency adjudications, if any;

(F) The character, health, residence, and reputation of the ~~arrested person~~ defendant;

(G) The character and strength of the evidence which has been presented to the judicial officer;

(H) Whether the ~~arrested person~~ defendant is currently on probation, extended supervision, or parole;

(I) Whether the ~~arrested person~~ defendant is already on bail or subject to other release conditions in other pending cases;

(J) Whether the ~~arrested person~~ defendant has been bound over for trial after a preliminary examination;

(K) Whether the ~~arrested person~~ defendant has in the past forfeited bail or violated a condition of release or was ever a fugitive from justice; and

(L) The policy against unnecessary incarceration of ~~arrested persons~~ defendants pending trial set forth in this section.

(b) In all misdemeanors, ~~each~~ bail may not exceed three times the maximum fine provided for the offense. If the person is charged with more than one misdemeanor, ~~each~~ bail may not exceed three times the highest combined total maximum fine ~~of the charged offenses for the offenses~~.

(c) Notwithstanding any provisions of this article to the contrary, whenever a defendant ~~person not subject to the provisions of §62-1C-1 of this code~~ not released on his or her own recognizance pursuant to subsection (a) of this section remains incarcerated after his or her initial appearance; relating to a misdemeanor, ~~due to the inability to meet the requirements of a secured bond~~, a magistrate or judge shall hold a hearing within five days of setting the initial bail to determine if there is a condition or

combination of conditions which can meet the considerations set forth in §62-1C-1a(a)(2) of this code.

(d) A judicial officer may upon notice and hearing modify the conditions of release at any time by imposing additional or different conditions.

(e) A prosecuting attorney and defense counsel, unless expressly waived by the defendant, shall appear at all hearings in which bail ~~or bond conditions~~ condition is or are at issue other than the proceeding at which the conditions of release are initially set.

(f) ~~No~~ A judicial officer may not recommend the services of a surety who is his or her relative as that term is defined in §6B-1-3 of this code.

**§62-1C-2. Bail defined; ~~form~~ selection of form by defendant; receipts; right of judicial officer to impose conditions on release.**

(a) Bail is the pretrial release of a defendant from custody upon terms and conditions specified by order of an appropriate judicial officer. Bail shall be set at a monetary amount determined by a judicial officer to provide adequate security for the appearance of a defendant to answer to a specific criminal charge before any court or magistrate at a specific time or at any time to which the case may be continued.

(b) ~~It may take any~~ Except as provided in §62-1C-2(e), a defendant is entitled to and may select one of the following forms for making bail:

~~(a) The~~ (1) By the deposit by the defendant or by some other person for him or her of cash, in a manner consistent with rules promulgated by the Supreme Court of Appeals;

(2) By executing an agreement to forfeit, upon failing to appear as required, real or personal property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required which shall be known as a recognizance. The defendant or person or persons owning the

property shall provide the court with proof of ownership, the value of the property, and information regarding existing encumbrances of the property as, in the discretion of the judicial officer, is reasonable and necessary collateral to ensure the subsequent appearance of the defendant as ordered; or

(3) By use of a bail bondsman, as defined in §51-10A-1 of this code, who shall post a cash bond or execute a bail bond with a solvent surety or sureties who will execute an agreement to forfeit an amount reasonably necessary to assure appearance of the defendant as required. If other than an approved surety is used, the surety shall provide the judicial officer with information regarding the value of its assets and liabilities and the nature and extent of encumbrances against the surety's property. The surety shall have a net worth of sufficiently unencumbered value to pay the amount of the bail bond.

~~(b) The written undertaking by one or more persons to forfeit a sum of money equal to the amount of the bail if the defendant is in default for appearance, which shall be known as a recognizance;~~

~~(c) Such other form as the judge of the court that will have jurisdiction to try the offense may determine.~~

(c) All bail shall be received by the clerk of the court, or by the magistrate and, except in case of recognizance, receipts shall be given therefor by him to the surety.

(d) Nothing in this article shall be construed as limiting a circuit court at any stage of a proceeding from imposing any condition or combination of conditions that he or she determines are reasonably necessary to assure that the defendant will appear as required, and that will not jeopardize the safety of the defendant, victims, witnesses, or other persons in the community or the safety and maintenance of evidence pursuant to the provisions of §62-1C-1a of this code, including, but not limited to, release of a defendant on his or her own recognizance.

(e) A magistrate, in his or her discretion, may set a cash only bail, in a manner consistent with rules promulgated by the Supreme Court of Appeals for the following offenses:

(1) Violations of the Uniform Controlled Substances Act for manufacturing, delivering, or possessing with the intent to deliver a Schedule I or II substance as set forth in chapter 60A of this code;

(2) Crimes against a person included in §61-2-1 *et seq.* of this code;

(3) Sexual offenses included in §61-8B-1 *et seq.* of this code;

(4) Filming of sexually explicit conduct of minors included in §61-8C-1 *et seq.* of this code; or

(5) Child abuse crimes included in §61-8D-1 *et seq.* of this code.

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

Engrossed Committee Substitute for Senate Bill 725 was then put upon its passage.

Pending discussion,

The question being "Shall Engrossed Committee Substitute for Senate Bill 725 pass?"

On the passage of the bill, the yeas were: Azinger, Barrett, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—29.

The nays were: Caputo and Chapman—2.

Absent: Boley, Rucker, and Smith—3.

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. 725) passed.

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

**Eng. Com. Sub. for Senate Bill 725**—A Bill to amend and reenact §62-1C-1a and §62-1C-2 of the Code of West Virginia, 1931, as amended, all relating to pretrial release generally; clarifying right to pretrial release; clarifying maximum bail amount for charges for multiple misdemeanor offenses; defining terms; establishing that defendant has right to select method of securing bail; clarifying that personal recognizance bonds shall include an unsecured monetary amount; prohibiting magistrate from setting cash only or property only bail; authorizing judicial officer to impose reasonably necessary conditions to assure defendant will appear as required, including releasing defendant on his or her own recognizance; clarifying that a magistrate may not release a defendant charged with a felony offense on his or her own recognizance on initial appearance; providing circumstances when a bail bond is not appropriate; providing circumstances when a magistrate has discretion to set a cash only bond; and making technical corrections.

*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, 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 751**, Creating online charitable raffles.

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: Barrett, Caputo, Chapman, Clements, Hamilton, Hunt, Jeffries, Karnes, Maroney, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Stover,

Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—25.

The nays were: Azinger, Deeds, Grady, Martin, Roberts, and Stuart—6.

Absent: Boley, Rucker, and Smith—3.

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. 751) 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 Senate Bill 751**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article designated §47-21A-1, §47-21A-2, §47-21A-3, §47-21A-4, §47-21A-5, §47-21A-6, §47-21A-7, §47-21A-8, §47-21A-9, §47-21A-10, §47-21A-11, §47-21A-12, §47-21A-13, §47-21A-14, §47-21A-15, §47-21A-16, §47-21A-17, §47-21A-18, §47-21A-19, §47-21A-20, §47-21A-21, §47-21A-22, §47-21A-23, §47-21A-24, §47-21A-25, §47-21A-26, §47-21A-27, §47-21A-28, and §47-21A-29, all relating to creating online charitable raffles; declaring the legislative intent to create a practicable way for charitable and public service organizations to raise funds; defining terms; authorizing certain entities to conduct online raffles without obtaining a license based upon the value of items raffled and cumulative annual gross sales; identifying who may hold a license and what system license holders must use to ensure patrons are located in the State of West Virginia; explaining the authority of the Tax Commissioner to review and grant licenses; identifying the different types of licenses available for online raffles; setting licensing fees and the creation of a special revenue fund; setting forth the procedure for amending information provided on licenses; permitting the Commissioner to engage in regular and emergency rule making; limiting awards on prizes; limiting compensation payable to an operator of an online raffle; limiting amount of expenses payable from proceeds of online raffle revenue; requiring



record-keeping and allowing the Commissioner to conduct audits of license holders; defining the scope of permissible advertising for online raffles; allowing platform providers to hold certain licenses; setting criminal penalties for the violation of any provision of this Code; requiring license holders to file periodic reports with the Commissioner; requiring license applications to be available for public inspections; prohibiting individuals convicted of specific crimes from obtaining a license; providing for civil penalties for violations of this article; and permitting review of civil fines by appeal to the Intermediate Court of Appeals.

*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 774, Mountain Bike Responsibility Act.**

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

At the request of Senator Maynard, unanimous consent was granted to offer an amendment to the bill on third reading.

Thereupon, on motion of Senator Maynard, the following amendment to the bill was reported by the Clerk and adopted:

On page 6, after line 3 of section 8, by adding thereto a new section, designated section 9, to read as follows:

**§20-20-9. Release of minor participant.**

A parent or guardian of a minor participant may execute a release assuming responsibility for the risks of the minor participant. The release must give notice to the minor participant, and the parent or guardian, of the risks associated with the release.

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

Engrossed Committee Substitute for Senate Bill 774 was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: None.

Absent: Boley, Rucker, and Smith—3.

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. 774) passed.

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

**Eng. Com. Sub. for Senate Bill 774**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §20-20-1, §20-20-2, §20-20-3, §20-20-4, §20-20-5, §20-20-6, §20-20-7, §20-20-8, and §20-20-9, all relating to the creation of the Mountain Bike Responsibility Act; stating a legislative purpose; defining terms; and providing for duties of trail system operators, mountain bicyclists, and passengers on aerial passenger tramways.

*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 786**, Relating to massage therapy establishments.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Stover, Stuart, Swope, Takubo,

Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: None.

Absent: Boley, Rucker, and Smith—3.

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. 786) 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 791**, Modifying membership requirements of Medical Services Fund Advisory Council.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: None.

Absent: Boley, Rucker, and Smith—3.

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. 791) 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 819**, Modifying requirements for public water systems or businesses having backflow preventers.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: None.

Absent: Boley, Rucker, and Smith—3.

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. 819) 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 842**, Modifying training requirements for county boards of education 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: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: None.

Absent: Boley, Rucker, and Smith—3.

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. 842) 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 848**, Creating special revenue account within Department of Health.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: None.

Absent: Boley, Rucker, and Smith—3.

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. 848) 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 851**, Establishing requirements for contingency fee agreements between political subdivisions and private attorneys.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: None.

Absent: Boley, Rucker, and Smith—3.

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. 851) 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 859**, Limiting requirements for issuance of professional teaching certificate.

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 Senate Bill 859 pass?"

On the passage of the bill, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: None.

Absent: Boley, Rucker, and Smith—3.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 859) 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 861**, Increasing support and professional development for educators.

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 Senate Bill 861 pass?"

On the passage of the bill, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: None.

Absent: Boley, Rucker, and Smith—3.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 861) passed with its title.

Senator Takubo moved that the bill take effect July 1, 2024.

On this question, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: None.

Absent: Boley, Rucker, and Smith—3.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 861) takes effect July 1, 2024.

*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 865**, Changing reference to Curator of Department of Arts, Culture, and History to secretary.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: None.

Absent: Boley, Rucker, and Smith—3.

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. 865) passed.

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

**Eng. Com. Sub. for Senate Bill 865**—A Bill to amend and reenact §5F-2-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact §29-1-1 of said code, all relating to adding the Educational Broadcasting Commission as a section under the Department of Arts, Culture and History as a separate, but not independent agency; changing the designation of the Division of Culture and History as a separate independent agency to an agency within the Executive Branch as the Department of Arts, Culture, and History; adding the Educational Broadcasting Commission as one of the eight sections within the Department of Arts, Culture, and History; and adding the Educational Broadcasting Council as one of the citizen commissions existing withing the Department of Arts, Culture, and History.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Stover, Stuart, Swope, Takubo, Tarr,



Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: None.

Absent: Boley, Rucker, and Smith—3.

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. 865) 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 872**, Relating to county fire service 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: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: None.

Absent: Boley, Rucker, and Smith—3.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 872) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: None.

Absent: Boley, Rucker, and Smith—3.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 872) 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 873**, Schedule for tax installment payments.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: None.

Absent: Boley, Rucker, and Smith—3.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 873) 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 4809**, Health Care Sharing Ministries Freedom to Share Act.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries,

Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Queen, Roberts, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—29.

The nays were: Caputo and Plymale—2.

Absent: Boley, Rucker, and Smith—3.

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. 4809) 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.

**Com. Sub. for Com. Sub. for Senate Bill 468**, Requiring course in public schools on human development.

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

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

**Com. Sub. for Com. Sub. for Senate Bill 470**, Uniform Special Deposits Act.

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

**Com. Sub. for Com. Sub. for Senate Bill 482**, Relating to rule-making authority of Ethics Commission.

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 503**, Protecting belief-based student organizations from certain types of discrimination.

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

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

**Com. Sub. for Com. Sub. for Senate Bill 679**, Regulating certain plant-based derivatives, hemp-derived cannabinoid products, and Kratom.

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

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

On page 5, section 12, line 49, after the word "therewith," by striking out the words "or a product that is unlawful pursuant to 7 U.S.C. §5940".

The bill (Com. Sub. for Com. Sub. for S. B. 679), as amended, was then ordered to engrossment and third reading.

**Senate Bill 686**, Prohibiting actions for damages or attorney's fees in cases involving Board of Risk and Insurance Management.

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

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

**Com. Sub. for Senate Bill 717**, Prohibiting sale of tobacco products to individuals younger than 21 years of age.

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

**Eng. Senate Bill 732**, Requiring cooperation between law-enforcement agencies and military authorities.

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

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

On page 1, section 7, line 8, by striking out the words "The assistance authorized by subsection (a) of this section may be provided for, but not be limited to, a" and inserting in lieu thereof the word "A".

The bill (S. B. 732), as amended, was then ordered to engrossment and third reading.

**Com. Sub. for Senate Bill 769**, Prohibiting certain medical exams on anesthetized patients.

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

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

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

## **ARTICLE 8B. SEXUAL OFFENSES.**

### **§61-8B-20. Prohibited examinations.**

(1) No court may order or otherwise require an alleged victim in a prosecution for a sexual offense to submit to or undergo a gynecological or physical examination of the breasts, buttocks, anus, or any part of the sex organs against his or her will.

(2) The refusal of an alleged victim to undergo an examination described in subdivision (1) of this section may not serve as the basis to exclude evidence obtained from other relevant examinations of the victim.

(3) For purposes of this section, the term "sexual offense" means any offense in which sexual intercourse, sexual contact, or

sexual intrusion is an essential element, and includes any prosecution under §61-8B-1 *et seq.*, §61-8-12, or §61-8D-5 of this code.

The bill (Com. Sub. for S. B. 769), as amended, was then ordered to engrossment and third reading.

**Senate Bill 803**, Updating definitions for assessment of real property.

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

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Takubo, at 11:50 a.m., the Senate recessed until 4 p.m. today.

The Senate reconvened at 5:51 p.m. and resumed consideration of the remainder of its second reading calendar, the next bill coming up in numerical sequence being

**Senate Bill 813**, Allowing students to participate in non-school competitive activities.

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

**Senate Bill 858**, Clarifying filing requirements and deadlines in property tax cases.

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

On motion of Senator Woodrum, 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:

**ARTICLE 3. ASSESSMENTS GENERALLY.****§11-3-25b. Appeal to Office of Tax Appeals.**

(a) In all cases involving appeal to the Office of Tax Appeals from a property tax valuation pursuant to §11-3-15i or §11-3-23a of this code, or from an order of a County Commission sitting as a Board of Equalization and Review pursuant to §11-3-24 of this code, the appeal petition must be filed with the Office of Tax Appeals by March 31 of the property tax year as defined in §11-3-1 of this code to be considered timely filed. If a petition of appeal is not filed with the Office of Tax Appeals by March 31 of the property tax year, then it shall be dismissed as untimely.

(b) In all cases involving appeal to the Office of Tax Appeals from a property tax ruling on taxability or classification by the Tax Commissioner pursuant to §11-3-24a of this code, the appeal petition must be filed within 30 days after receiving written notice of the Tax Commissioner's ruling. If a petition of appeal is not timely filed with the Office of Tax Appeals, then it shall be dismissed.

(c) In all cases involving property tax matters brought before the Office of Tax Appeals pursuant to subsections (a) and (b) of this section, the hearing before the Office of Tax Appeals shall be de novo as provided in §11-10A-10 of this code. Notwithstanding the provisions of §11-10A-10 of this code, a property tax appeal to the Office of Tax Appeals involving valuation, classification, or taxability may be set for hearing within 90 days of the due date of the answer unless continued by order of the Office of Tax Appeals for good cause.

(d) The provisions of this section shall be effective for all property tax appeals to the Office of Tax Appeals made on or after January 1, 2023.

(e) Notwithstanding any provisions of this article to the contrary, failure to file a petition in writing, register a complaint, or request an informal review, as provided in §11-3-15c, §11-3-15d, §11-3-23a, §11-3-24, or §11-3-24a shall not bar the Office of

Tax Appeals' jurisdiction to hear any such property tax appeal. This provision is to clarify that the Office of Tax Appeals will have original property tax jurisdiction to hear such appeals.

The bill (S. B. 858), as amended, was then ordered to engrossment and third reading.

**Eng. Com. Sub. for House Bill 4233**, Non-binary not permitted on birth certificates.

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

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

**Eng. Com. Sub. for House Bill 4874**, Relating to fatality and mortality review team.

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

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

**Eng. Com. Sub. for House Bill 4933**, Relating to Medicaid dental coverage.

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

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

The end of today's second reading calendar having been reached, the Senate returned to the consideration of

**Com. Sub. for Com. Sub. for Senate Bill 468**, Requiring course in public schools on human development.



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

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

On page 3, section 9, line 63-66, by striking out all of paragraph (B) and inserting in lieu thereof a new paragraph (B), to read as follows:

(B) The Meet Baby Olivia video developed by Live Action, showing the process of fertilization and every stage of human development inside the uterus, noting significant markers in cell growth and organ development for every significant marker of pregnancy until birth: *Provided*, That the Department of Education shall at all times maintain a downloaded copy of the Meet Baby Olivia video developed by Live Action to distribute to public county schools, teachers, or staff for purposes of viewing the video in accordance with this subsection.

Following extended discussion,

The question being on the adoption of Senator Grady's amendment to the bill, and on this question, Senator Rucker demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Chapman, Clements, Deeds, Grady, Hunt, Jeffries, Karnes, Martin, Maynard, Oliverio, Phillips, Roberts, Rucker, Smith, Stuart, Tarr, and Taylor—18.

The nays were: Barrett, Caputo, Hamilton, Maroney, Nelson, Plymale, Queen, Stover, Swope, Takubo, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—15.

Absent: Boley—1.

So, a majority of those present and voting having voted in the affirmative, the President declared Senator Grady's amendment to the bill adopted.

The bill (Com. Sub. for Com. Sub. for S. B. 468), as amended, was then ordered to engrossment and third reading.

The Senate proceeded to the tenth order of business.

**Eng. House Bill 5593**, Relating to the creation, composition, qualifications, and compensation of the State Board of Risk and Insurance Management.

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

At the request of Senator Takubo, unanimous consent being granted, the Senate returned to the fourth order of business.

Senator Clements, 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 Bill 377**, Exempting certain physicians from specified traffic laws when responding to emergencies.

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

**Com. Sub. for Senate Bill 377** (originating in the Committee on Transportation and Infrastructure)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17C-2-10, relating to permitting allopathic and osteopathic physicians to be exempt from specified traffic laws in emergency situations when responding to an emergency call; providing that physicians must still exercise due care for safety; and requiring rulemaking by the West Virginia Board of Medicine and West Virginia Board of Osteopathic Medicine.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles H. Clements,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for S. B. 377) contained in the preceding report from the Committee on Transportation and Infrastructure was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Weld, 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**, Creating WV Women's Bill of Rights.

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 §2-2-10 of the Code of West Virginia, 1931, as amended; to amend said code by adding a new article thereto, designated §16-67-1, §61-67-2, §16-67-3 and §16-67-4; all relating to statutory construction creating the Women's Bill of Rights; providing a short title and statement of purpose; defining terms; establishing rules of construction for statutes and ordinances addressing sex discrimination, sex equality and sex specific benefits or services; declaring state interest in single sex environments; and establishing rules of construction in statutes and ordinances related to the sex of a person or persons; and creating protocols for data collection.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for S. B. 601) 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 Tarr, 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 618**, Authorizing Division of Forestry to administer certain exchange program.

And has amended same.

Now on second reading, having been read a first time and referred to the Committee on Finance on February 21, 2024;

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

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

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

Your Committee on Finance has had under consideration

**Senate Bill 726**, Moving functions of Information Services and Communications Division into Office of Technology.

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

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (S. B. 726) 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 Weld, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Senate Bill 755**, Providing safeguards for online sales of tobacco products.

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

**Com. Sub. for Senate Bill 755** (originating in the Committee on the Judiciary)—A Bill to amend and reenact §16-9E-1, §16-9E-2, §16-9E-3, §16-9E-4, §16-9E-5, §16-9E-6, and §16-9E-7 of the Code of West Virginia, 1931, as amended, all relating to the delivery sales of tobacco products; expanding article to regulate all tobacco products; defining terms; clarifying that delivery sale may be via Internet website or mobile application; clarifying that a delivery sale of delta-8 tetrahydrocannabinol, delta-10 tetrahydrocannabinol, or kratom products is prohibited; raising legal minimum age for delivery sale of tobacco product to 21 years of age; prohibiting delivery sales of tobacco products to underage individuals; requiring delivery sales of tobacco products to comply with certain requirements; prohibiting persons from accepting a purchase order, selling, mailing, delivering, or causing to be delivered certain tobacco products without complying with certain applicable requirements for age verification, shipping, labeling, registration, and reporting; authorizing use of check box for confirming certain purchaser information to make purchase order for delivery sale of tobacco products via Internet website or mobile application if certain criteria met; requiring collection and remission of applicable excise taxes; and establishing criminal penalties for violations of article.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for S. B. 755) 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 Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Senate Bill 822**, Defining terms for forest carbon capture use restrictions of landowners.

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

**Com. Sub. for Senate Bill 822** (originating in the Committee on Finance)—A Bill to amend and reenact §11-1C-2 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §11-12-4b; to amend said code by adding thereto a new article, designated §11-12E-1, §11-12E-2, §11-12E-3, and §11-12E-4; and to amend said code by adding thereto a new section, designated §36-4-20, all relating to real property, tax, and registration requirements associated with carbon offset agreements; defining terms; providing exceptions; requiring parties to current and new carbon offset agreements to register with the State Tax Department; requiring reports by Division of Forestry and State Tax Department; authorizing disclosure of information between the Tax Commissioner and Division of Forestry; imposing an excise tax on receipts derived from carbon offset agreements; setting forth reporting requirements; defining "managed timberland" to exclude certain timberland subject to a carbon offset

agreement; specifying application of West Virginia Tax Procedure and Administration Act and West Virginia Tax Crimes and Penalties Act; authorizing promulgation of rules; providing legislative findings and declarations; providing that any covenant, restriction, condition, easement, contract, lease, deed, agreement, option, or other governing document, which is executed or recorded after the effective date, which effectively prohibits or restricts the development of land and minerals or the harvesting of timber for the purposes of carbon capture, carbon offset, and carbon sequestration is void and unenforceable, unless said covenant, restriction, condition, easement, contract, lease, deed, agreement, option, or other governing document is for an initial maximum term of 20 years or less; and providing that options to renew or continue such arrangements beyond the maximum term of 20 years shall be valid only if the consideration is required to be renegotiated to exercise the option and the option is for a maximum of 20 years or less; and providing exceptions.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for S. B. 822) 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 Azinger, from the Committee on Banking and Insurance, submitted the following report, which was received:

Your Committee on Banking and Insurance has had under consideration

**Senate Bill 826**, Allowing depository institutions to provide FDIC coverage to county commissions through reciprocal deposit arrangements.

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

**Com. Sub. for Senate Bill 826** (originating in the Committee on Banking and Insurance)—A Bill to amend and reenact §7-6-2 of the Code of West Virginia, 1931, as amended, relating to creating an exemption from the bond or security requirement of banking institutions holding funds for a county commission in excess of the amount insured by an agency of the federal government by allowing for the redeposit of the funds through a deposit placement program that meets certain conditions.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Michael T. Azinger,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for S. B. 826) contained in the preceding report from the Committee on Banking and Insurance was taken up for immediate consideration, read a first time, and ordered to second reading.

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

Your Committee on Education has had under consideration

**Senate Bill 870, Restoring Sanity Act.**

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

**Com. Sub. for Senate Bill 870** (originating in the Committee on Education)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-9b; to amend said code by adding thereto a new section, designated §18-5-29; to amend said code by adding thereto a new article,



designated §18B-1G-1, §18B-1G-2, §18B-1G-3, §18B-1G-4, and §18B-1G-5; and to amend said code by adding thereto two new sections, designated §18B-14-5 and §18B-14-6, all relating to Restoring Sanity Act; relating to nondiscrimination; prohibiting a school district, a public charter school, the West Virginia Board of Education, the West Virginia Department of Education, or any employee of the aforementioned entities from providing instruction in, requiring instruction in, making part of a course, or requiring a statement or affirmation by any employee of certain specified concepts; prohibiting a state institution of higher education or any of its employees from requiring a student or employee to take instruction in, or include in the curriculum of any required course, or require a statement or affirmation by any student or employee that certain specified concepts are factual and accurate or must be held as a belief of the student or employee; defining terms; recognizing that state institutions of higher education have an obligation to prohibit discrimination and have an obligation to protect the right to free speech and expression; clarifying what is not prohibited; establishing public elementary and secondary school complaint and appeal procedures for alleged violations and complaint reporting procedures; requiring each campus to report to the Higher Education Policy Commission or the Council for Community and Technical College Education, a description of any violations; requiring certain information on the complaints filed and reported violations to be reported to the Legislative Oversight Commission on Education Accountability; providing that neither county board or public charter school employees are required to use a student's preferred pronoun when referring to the student if the preferred pronoun is not consistent with the student's biological sex, civilly liable for using a pronoun that is consistent with the biological sex of the student to whom the teacher or employee is referring, or subject to an adverse employment action for not using a student's preferred pronoun if the student's preferred pronoun is inconsistent with the student's biological sex; providing that neither a county board or public charter school is civilly liable if a county board or public charter school employee refers to a student using a pronoun that is inconsistent with the biological sex of the student to whom the employee is referring; prohibiting state institutions of higher education from establishing, sustaining, supporting, or

staffing a diversity, equity, and inclusion officer or office; stating what prohibition does not cover or affect; stating what diversity, equity, and inclusion office and diversity, equity, and inclusion officer does not include; requiring a state institution of higher education to file and certify with the Joint Committee on Education a report of the steps taken by the academic institution of higher education and its staff, administration, and faculty to comply; prohibiting state institutions of higher education from expending certain moneys until a report is filed with the Joint Committee on Education by July 1; requiring reallocation of certain moneys that would have been expended on prohibited diversity, equity, and inclusion offices and officers to merit scholarships for lower-income and middle-income students, first generation college students, or to reduce tuition and mandatory fees for resident students; stating effective date; declaring the policy of the state that the administrations of state institutions of higher education, and their administrative units, be officially neutral with regard to certain widely contested opinions in the state regarding certain issues; defining "diversity training"; prohibiting a diversity statement from ever being required or solicited in certain instances; prohibiting state institutions of higher education from giving preferential consideration to an applicant, student, staff member, or faculty member due to certain opinions expressed or actions taken.

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

Respectfully submitted,

Amy N. Grady,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for S. B. 870) 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 the Judiciary.

Senator Jeffries, from the Committee on Economic Development, submitted the following report, which was received:

Your Committee on Economic Development has had under consideration

**Senate Bill 874** (originating in the Committee on Economic Development)—A Bill to amend and reenact §17-16F-1, §17-16F-3, §17-16F-4, and §17-16F-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto three new sections, designated §17-16F-10a, §17-16F-10b, and §17-16F-10c, all relating to the West Virginia Division of Multimodal Transportation; providing for additional legislative findings; modifying definitions; authorizing division to create local port authority districts; authorizing division to propose legislative rules for application process for creation of local port authority districts; providing that political subdivisions and certain joint ventures may create local port authority districts in accordance with a certain procedure; establishing an application and approval process for creation of local port authority districts; directing division to make certain considerations relating to creation of local port authority districts; providing for creation of board of directors for local port authority districts and membership composition; authorizing board to exercise certain powers; and directing board to prepare a certain annual plan.

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

Respectfully submitted,

Glenn D. Jeffries,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (S. B. 874) contained in the preceding report from the Committee on Economic Development was taken up for immediate consideration, read a first time, and ordered to second reading.

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

Your Committee on Finance has had under consideration

**Senate Bill 875** (originating in the Committee on Finance)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §29-12-15 and §29-12-16, all relating to liability or other insurance coverage provided by the Board of Risk and Insurance Management to any entity for which such coverage is permissive under state code; placing a moratorium on providing new or additional property or liability coverage to any entity for which such coverage is permissive under state code except county boards of education, public charter schools, and certain other persons and entities for which coverage by the board is mandatory; and authorizing the board to non-renew insurance coverage to any entity for which such coverage is permissive under state code.

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

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (S. B. 875) 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 Weld, 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 10** (originating in the Committee on the Judiciary)—Proposing an amendment to the Constitution of the State of West Virginia, amending section one-b, article X thereof, relating to providing for a homestead exemption for veterans with

90 percent or greater service-connected disabilities; numbering and designating such proposed amendment; and providing a summarized statement of such proposed amendment.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the resolution (S. J. R. 10) 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 Azinger, 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 4786**, Delivery Network Company (DNC) Insurance Model 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 the Judiciary.

Respectfully submitted,

Michael T. Azinger,  
*Chair.*

The bill, 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.

Senator Clements, 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 5317**, Making it permissive for commercial motor vehicles registered in this state to pass an annual inspection of all safety equipment to be consistent with the federal motor carrier safety regulations.

And has amended same.

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

Respectfully submitted,

Charles H. Clements,  
*Chair.*

The Senate proceeded to the twelfth order of business.

Remarks were made by Senators Phillips and Stuart.

At the request of Senator Stuart, unanimous consent being granted, the Senate then stood in observance of a moment of silence in recognition of the anniversary of the Buffalo Creek disaster.

At the request of Senator Takubo, and by unanimous consent, the remarks by Senators Phillips and Stuart were ordered printed in the Appendix to the Journal.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Takubo, at 6:25 p.m., the Senate adjourned until tomorrow, Tuesday, February 27, 2024, at 11 a.m.

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## TUESDAY, FEBRUARY 27, 2024

The Senate met at 11:01 a.m.

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

Prayer was offered by Pastor Bo Burgess, Jordan Baptist Church, Gallipolis Ferry, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Eric J. Tarr, a senator from the fourth district.

Pending the reading of the Journal of Monday, February 26, 2024,

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 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 544**, Raising threshold for bid requirement of municipal public works projects.

On motion of Senator Takubo, 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, following the enacting clause, by striking out the remainder of the bill and inserting in lieu thereof the following:

## CHAPTER 8. MUNICIPAL CORPORATIONS.

### ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

#### **§8-16-5. Powers of board; bidding requirements; emergency repairs.**

(a) The board shall have plenary power and authority to take all steps and proceedings, and to make and enter into all contracts or agreements necessary, appropriate, useful, convenient or incidental to the performance of its duties and the execution of its powers and authority under this article: *Provided*, That any contract or agreement relating to the financing, or the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, operation or maintenance of any such works, and any trust indenture with respect thereto as hereafter provided for, shall be approved by the governing body or bodies.

(b) The board may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys and such other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do such work as the board may direct. All compensation and expenses incurred in carrying out the provisions of this article shall be paid solely from funds provided under the authority of this article, and the board shall not exercise or carry out any power or authority herein given it so as to bind said board or any municipality beyond the extent to which money shall have been, or may be provided under the authority of this article.

(c) No contract or agreement with any contractor or contractors for labor or materials, or both, exceeding in amount the sum of ~~\$25,000~~ \$50,000 ~~shall may~~ be made without advertising for bids, which bids shall be publicly opened and an award made to the lowest responsible bidder, with power and authority in the board to reject any and all bids: *Provided*, That for purposes of the bidding requirements imposed by this section, the term "board" includes the governing body of any municipal public utility.



(d) After the construction, reconstruction, establishment, acquisition, renovation or equipment of any such works, the board shall maintain, operate, manage and control the same, and may order and complete any improvements, extensions, enlargements, increase or repair (including replacements) of and to the works that the board may consider expedient, if funds therefor be available, or are made available, as provided in this article, and shall establish rules for the use, maintenance and operation of the works, and do all things necessary or expedient for the successful operation thereof, and for stormwater systems and associated stormwater management programs, those activities which include, but are not limited to, stormwater and surface runoff water quality improvement activities necessary to comply with all federal and state requirements. All public ways or public works damaged or destroyed by the board in carrying out its authority under this article shall be restored or repaired by the board and placed in their original condition, as nearly as practicable, if requested so to do by proper authority, out of the funds provided under the authority of this article.

(e) Emergency repairs shall be exempt from the bidding requirements of subsection (c) of this section. For the purpose of this ~~subdivision~~ subsection, the term emergency repairs means repairs that if not made immediately will seriously impair the use of building components, systems, and public infrastructure or cause danger to persons using the building components, systems, and public infrastructure.

## **CHAPTER 16. PUBLIC HEALTH.**

### **ARTICLE 13A. PUBLIC SERVICE DISTRICTS.**

#### **§16-13A-7. Acquisition and operation of district properties; bidding requirements; contracts to respond to emergency situations.**

The board of these districts shall have the supervision and control of all public service properties acquired or constructed by the district, and shall have the power, and it shall be its duty, to maintain, operate, extend and improve the same, including, but not

limited to, those activities necessary to comply with all federal and state requirements, including water quality improvement activities. All contracts involving the expenditure by the district of more than ~~\$25,000~~ \$50,000 for construction work or for the purchase of labor, materials equipment and improvements, extensions or replacements, shall be entered into only after notice inviting bids shall have been published as a Class I legal advertisement in compliance with the provision of article ~~three, chapter fifty-nine~~ §59-3-1, et seq. of this code, and the publication area for such publication shall be as specified in ~~section two of this article~~ §16-13A-2 of this code in the county or counties in which the district is located. The publication shall not be less than ten days prior to the making of any such contract. To the extent allowed by law, in-state contractors shall be given first priority in awarding public service district contracts. Each bid shall be publicly opened and an award made to the lowest responsible bidder, with power and authority in the board to reject any and all bids.

It shall be the duty of the board to ensure that local in-state labor shall be utilized to the greatest extent possible when hiring laborers for public service district construction or maintenance repair jobs. It shall further be the duty of the board to encourage contractors to use American made products in their construction to the extent possible. Any obligations incurred of any kind or character shall not in any event constitute or be deemed an indebtedness within the meaning of any of the provisions or limitations of the Constitution, but all such obligations shall be payable solely and only out of revenues derived from the operation of the public service properties of the district or from proceeds of bonds issued as hereinafter provided. No continuing contract for the purchase of materials or supplies or for furnishing the district with electrical energy or power shall be entered into for a longer period than fifteen years.

Emergency repairs shall be exempt from the bidding requirements of this section. For the purpose of this section, the term emergency repairs means repairs that if not made immediately will seriously impair the use of building components, systems, and

public infrastructure or cause danger to persons using the building components, systems, and public infrastructure.

## **ARTICLE 13D. REGIONAL WATER AND WASTEWATER AND STORMWATER AUTHORITY ACT.**

### **§16-13D-4. Furnishing of funds, personnel or services by certain public agencies, agreements for purchase, sale, distribution, transmission, transportation, collection, disposal, and treatment of water, wastewater, or stormwater; terms and conditions; bidding requirements; emergency repairs.**

Any public agency acting individually to organize an authority or entering into an agreement pursuant to this article may appropriate funds and may sell, lease, give, or otherwise supply to the authority created the personnel or services for the operation of the authority as may be within its legal power to furnish.

Subject to the prior approval of the Public Service Commission pursuant to §24-2-12 of this code, any public agency, whether or not a party to an agreement pursuant to this article, and any publicly or privately owned water distribution company may enter into contracts with any regional authority created pursuant to this article for the purchase of water from the authority or the sale of water to the authority, the treatment of water by either party, and the distribution or transmission of water by either party and any such authority may enter into the contracts. The Public Service Commission shall, within 30 days of the filing date, notify the parties to the contract whether they have filed all required documentation regarding the contract. If the Commission determines that additional information is needed it will inform the agency of the information needed. The Public Service Commission shall act on a filing submitted hereunder within 90 days of the date that the Commission has before it all necessary information from the parties to the contract. Failure of the Commission to act on the filing within the 90-day period shall constitute approval thereof: *Provided*, That the 90-day Commission review period may be extended upon request of the parties to the contract.

Any public agency, whether or not a party to an agreement pursuant to this act, and any publicly or privately owned wastewater transportation or treatment system may enter into contracts with any regional authority created pursuant to this article for the transportation and treatment of wastewater by either party and any authority may enter into the contracts, subject to the prior approval of the Public Service Commission pursuant to §24-2-12 of this code. The Public Service Commission shall, within 30 days of the filing date, notify the parties to the agreement whether they have filed all required documentation regarding the contract. If the Commission determines that additional information is needed it will inform the agency of the information needed. The Public Service Commission shall act on a filing submitted hereunder within 90 days of the date that the Commission has before it all necessary information from the parties to the contract. Failure by the Commission to act within the 90-day period shall constitute approval thereof: *Provided*, That the 90-day Commission review period may be extended on upon request of the parties to the contract.

No contract or agreement authorized by the provisions of this article with any contractor or contractors for labor or materials, or both, exceeding in amount the sum of \$50,000 may be made without advertising for bids, which bids shall be publicly opened and an award made to the lowest responsible bidder, with power and authority in the commission to reject any and all bids. Emergency repairs shall be exempt from the bidding requirements of this section. For the purpose of this section, the term emergency repairs means repairs that if not made immediately will seriously impair the use of building components, systems, and public infrastructure or cause danger to persons using the building components, systems, and public infrastructure.

Any public agency, whether or not a party to an agreement pursuant to this article, and any publicly or privately owned stormwater system may enter into contracts with any regional authority created pursuant to this article for the collection and disposition of stormwater by either party and any authority may enter into contracts.

Any contract may include an agreement for the purchase of water not actually received or the treatment of wastewater not actually treated, or the collection and disposition of stormwater not actually collected and disposed. No contract may be made for a period in excess of 40 years, but renewal options may be included therein. The obligations of any public agency under any contract shall be payable solely from the revenues produced from the public agency's water, stormwater and wastewater system, and the Public Service Commission, in the case of a public agency whose rates are subject to its jurisdiction, shall permit the public agency to recover through its rates revenues sufficient to meet its obligations under the agreement.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 544**—A Bill to amend and reenact §8-16-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-13A-7 of said code; and to amend and reenact §16-13D-4 of said code, all relating to raising the threshold from \$25,000 to \$50,000 for the requirement of bids for municipal public works projects, including any municipal public utility projects, and for public service district projects; establishing the threshold at \$50,000 for bids for projects under the Regional Water And Wastewater And Stormwater Authority Act; and exempting emergency repairs from bidding requirements.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Senate Bill 544, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Plymale, Queen, Roberts, Rucker, Smith, Stover, Swope,

Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: Stuart—1.

Absent: Phillips—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. 544) 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 600**, Revising criteria for receiving reenlistment or retention bonus.

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 the following resolutions:

**House Concurrent Resolution 21**—Requesting the Division of Highways name Bridge Numbers: 20-079/00-015.97 (NB & SB) (20A512, 25A213), (38.50709, -81.40960) locally known as I-79 GABES CR BR 2675 NB & SB, carrying IS 79 over CR 53 & GABES CREEK in Kanawha County, West Virginia, as the "Louie Patton Memorial Bridge".

**House Concurrent Resolution 47**—Requesting the Division of Highways name bridge number 49-020/10-000.29 () (49A137), (38.87524, -80.26413) locally known as LAUREL FORK BOX BEAM, carrying CR 20/10 over LAUREL FORK in Upshur County, the "U. S. Army SGT John Claude Roby Memorial Bridge".

**House Concurrent Resolution 49**—Requesting the Division of Highways name Bridge Number: 20-043/04-000.02 () (20A801), (38.51797, -81.45128) locally known as BIG FORK RD BRIDGE, carrying CR 43/04 over LITTLE SANDY CREEK in Kanawha County, the "U. S. Air Force Airman 1st Class "Willis 'Arnold' Karickhoff Memorial Bridge".

**House Concurrent Resolution 67**—Requesting the Division of Highways name the bridge where U.S. Route 60 crosses Hurricane Creek, near the intersection of U.S. Route 60 and State Route 34, the "Kenneth R. Lucas Memorial Bridge."

The preceding resolutions were referred to the Committee on Transportation and Infrastructure.

The Senate proceeded to the sixth order of business.

Senators Blair (Mr. President), Barrett, Rucker, and Trump offered the following resolution:

**Senate Resolution 54**—Recognizing Leadership Berkeley for its services, dedication, and commitment to Berkeley County, West Virginia.

Which, under the rules, lies over one day.

Senators Blair (Mr. President), Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, and Woodrum offered the following resolution:

**Senate Resolution 55**—Memorializing the life of the Honorable William Wayne Bailey, Jr., former Sheriff of Wyoming County, former member of the West Virginia National Guard, former Deputy Secretary of the Department of Veterans Assistance, former member of the West Virginia Senate, statesman, and dedicated public servant.

Which, under the rules, lies over one day.

At the request of Senator Azinger, unanimous consent being granted, the Senate returned to the second order of business and the introduction of guests.

The Senate proceeded to the seventh order of business.

**Senate Resolution 53**, Designating February 27, 2024, as Domestic Violence Awareness Day.

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

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

The question being on the adoption of the resolution, and on this question, Senator Caputo demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Phillips—1.

So, a majority of those present and voting having voted in the affirmative, the President declared the resolution (S. R. 53) adopted.

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for Com. Sub. for Senate Bill 468**, Requiring course in public schools on human development.

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



Pending extended discussion,

(Senator Woodrum in the Chair.)

Pending discussion,

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

Pending discussion,

The question being "Shall Engrossed Committee Substitute for Committee Substitute for Senate Bill 468 pass?"

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Tarr, Taylor, Woodrum, and Blair (Mr. President)—27.

The nays were: Caputo, Plymale, Takubo, Trump, Weld, and Woelfel—6.

Absent: Phillips—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 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 Com. Sub. for Senate Bill 470**, Uniform Special Deposits Act.

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

Senators Trump and Nelson, respectively, requested rulings from the Chair as to whether they should be excused from voting under Rule 43 of the Rules of the Senate.

The Chair replied that any impact on Senators Trump and Nelson would be as members of a class of persons and that they would be required to vote.

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Phillips—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 Com. Sub. for S. B. 470) 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 482**, Relating to rule-making authority of Ethics Commission.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Phillips—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 Com. Sub. for S. B. 482) 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 503**, Protecting belief-based student organizations from certain types of discrimination.

On third reading, coming up in regular order, with the right having been granted on yesterday, Monday, February 26, 2024, for amendments to be received on third reading, was read a third time.

On motions of Senators Grady and Trump, the following amendment to the bill was reported by the Clerk and adopted:

On page 1, section 5, line 8, after the word "mission" by inserting a comma and the word "expression,".

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

Engrossed Committee Substitute for Senate Bill 503 was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Plymale, Queen, Roberts, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: Caputo—1.

Absent: Phillips and Rucker—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 S. B. 503) passed.

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

**Eng. Com. Sub. for Senate Bill 503**—A Bill to amend and reenact §18B-20-5 of the Code of West Virginia, 1931, as amended, relating to prohibiting state institutions of higher

education from discriminating against student organizations which limit membership to those persons who adhere to the organization's sincerely held beliefs, comply with the organization's standards of conduct, and further the organization's mission, expression, or purpose.

*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 679**, Regulating certain plant-based derivatives, hemp-derived cannabinoid products, and Kratom.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Oliverio, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Nelson and Phillips—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 Com. Sub. for S. B. 679) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Oliverio, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Nelson and Phillips—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 Com. Sub. for S. B. 679) 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 686**, Prohibiting actions for damages or attorney's fees in cases involving Board of Risk and Insurance Management.

On third reading, coming up in regular order, with the right having been granted on yesterday, Monday, February 26, 2024, for amendments to be received on third reading, was read a third time.

Senators Woelfel, Stuart, and Trump, respectively, requested rulings from the Chair as to whether they should be excused from voting on any matter pertaining to the bill under Rule 43 of the Rules of the Senate.

The Chair replied that any impact on Senators Woelfel, Stuart, and Trump would be as members of a class of persons and that they would be required to vote on any matter pertaining to the bill.

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

On page 9, section 5, line 218, after the word "apply", by striking the remainder of the sentence and inserting in lieu thereof the words "to all claims and actions accruing after the effective date of the amendments."

Following discussion,

The question being on the adoption of Senator Hunt's amendment to the bill, and on this question, Senator Tarr demanded the yeas and nays.

The roll being taken, the yeas were: Caputo, Chapman, Clements, Deeds, Hamilton, Hunt, Karnes, Maroney, Martin,

Maynard, Oliverio, Roberts, Rucker, Smith, Stover, Stuart, Taylor, and Woelfel—18.

The nays were: Azinger, Barrett, Boley, Grady, Jeffries, Nelson, Plymale, Queen, Swope, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—15.

Absent: Phillips—1.

So, a majority of those present and voting having voted in the affirmative, the President declared Senator Hunt's amendment to the bill adopted.

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

Engrossed Senate Bill 686 was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Phillips—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. 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. Com. Sub. for Senate Bill 717**, Prohibiting sale of tobacco products to individuals younger than 21 years of age.

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 717 pass?"

On the passage of the bill, the yeas were: Barrett, Boley, Caputo, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Maroney, Nelson, Oliverio, Plymale, Queen, Roberts, Stover, Swope, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—24.

The nays were: Azinger, Chapman, Karnes, Martin, Maynard, Rucker, Smith, Stuart, and Taylor—9.

Absent: Phillips—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 S. B. 717) passed with its title.

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

At the request of Senator Trump, and by unanimous consent, Senator Trump addressed the Senate regarding Engrossed Committee Substitute for Senate Bill 717 (*Prohibiting sale of tobacco products to individuals younger than 21 years of age*).

**Eng. Senate Bill 732**, Requiring cooperation between law-enforcement agencies and military authorities.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Phillips—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 732) passed with its title.

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

On motion of Senator Takubo, at 12:21 p.m., the Senate recessed until 12:45 p.m.

The Senate reconvened at 12:49 p.m. and resumed consideration of the remainder of its third reading calendar, the next bill coming up in numerical sequence being

**Eng. Com. Sub. for Senate Bill 769**, Prohibiting certain medical exams on anesthetized patients.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Phillips—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 S. B. 769) 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 Senate Bill 769**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-8B-20, relating to prohibiting court



ordered pelvic, rectal and breast examinations of victims in sexual offense cases; declaring that an alleged victim's refusal may not be used as a basis to exclude otherwise relevant evidence; and setting out proceedings to which the provisions of the section apply.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Phillips—1.

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. 769) 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 803**, Updating definitions for assessment of real property.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Phillips—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 803) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Phillips—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 803) 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 813**, Allowing students to participate in non-school competitive activities.

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 813 pass?"

Senator Taylor requested a ruling from the Chair as to whether he should be excused from voting under Rule 43 of the Rules of the Senate as he is a SSAC coach for a middle school girls soccer team.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Chapman, Deeds, Grady, Hunt, Jeffries, Karnes, Maroney, Maynard, Oliverio, Plymale, Roberts, Rucker, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—24.

The nays were: Caputo, Clements, Hamilton, Martin, Nelson, Queen, Smith, Stover, and Woelfel—9.

Absent: Phillips—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 813) 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 858**, Clarifying filing requirements and deadlines in property tax 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: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Phillips—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 858) passed.

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

**Eng. Senate Bill 858**—A Bill to amend and reenact §11-3-25b of the Code of West Virginia, 1931, as amended, relating to jurisdiction of Office of Tax Appeals; clarifying that Office of Tax Appeals has jurisdiction over property tax appeal cases even when taxpayer fails to take certain actions.

Senator Takubo moved that the bill take effect July 1, 2024.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Phillips—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 858) takes effect July 1, 2024.

*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 377**, Exempting certain physicians from specified traffic laws when responding to emergencies.

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 601**, Creating WV Women's Bill of Rights.

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

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

**Com. Sub. for Senate Bill 618,** Authorizing Division of Forestry to administer certain exchange program.

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

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

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

**ARTICLE 37. FOREST MANAGEMENT EXCHANGE PROGRAM.**

**§22-37-1. Short title.**

This article shall be known and cited as the Forest Management Exchange Program.

**§22-37-2. Legislative findings.**

The Legislature finds that:

(1) West Virginia, as a national energy leader, is positioned to create a voluntary market for the sale and purchase of carbon offset credits.

(2) Increased use of pollution prevention strategies, more cost-effective options for compliance with environmental standards, and improvement of environmental performance can be achieved through the establishment of a Forest Management Exchange Program.

(3) While West Virginia's existing environmental laws play an important role in protecting the environment, environmental protection could be further enhanced by authorizing innovative advances in environmental regulatory methods and approaches.

(4) A state regulated Forest Management Exchange Program will further West Virginia's role as an energy leader, incentivize economic investment, encourage environmental protection, and protect West Virginia forest landowners, forest product businesses, and consumers.

**§22-37-3. Purpose.**

The purpose of this article is to authorize the Division of Forestry to administer a Forest Management Exchange Program, known as the Forest Management Exchange, to regulate the sale and purchase of carbon credits, and which shall serve as the exclusive contracting platform for all carbon credit agreements encumbering or involving real property and standing timber located in West Virginia. The division shall develop scientific methodologies that calculate and include the long-term carbon captures from the production of forest products and a substitution factor (or product displacement factor) accounting for the use of forest products over products that would have a higher carbon emissions footprint.

**§22-37-4. Definitions.**

(a) "Carbon credit" means an emission reduction of one metric ton of carbon dioxide (or carbon dioxide equivalent) resulting from greenhouse gas emissions reductions.

(b) "Carbon credit agreement" means any contract for the sale or purchase of West Virginia carbon credits.

(c) "Carbon dioxide equivalent" means the number of tons of carbon dioxide emissions with the same global warming potential as one ton of another greenhouse gas.

(d) "Country of Particular Concern" means a country that has been designated as such by the Department of State of the United States of America pursuant to 22 U.S.C. § 6448.

(e) "Division" means the Division of Forestry.

(f) "Director" means the Director of the Division of Forestry.

(g) "Greenhouse gas" means carbon dioxide, methane, nitrous oxide, or fluorinated gases.

(h) "West Virginia carbon credit" means a division-certified carbon credit that is generated in, or originates principally as a result of activity in, West Virginia.

**§22-37-5. Scope; eligibility.**

(a) The director shall, by July 1, 2025, establish the West Virginia Forest Management Exchange on which all West Virginia carbon credits shall be listed. No carbon credit originating from real property or standing timber in West Virginia may be sold other than through the West Virginia Forest Management Exchange.

(b) The West Virginia Forest Management Exchange shall regulate all West Virginia carbon credits and carbon credit agreements.

(c) The West Virginia Forest Management Exchange shall be a public marketplace open to businesses and consumers alike: *Provided*, That all persons or businesses shall register with the division before participating in the West Virginia Forest Management Exchange.

(d) West Virginia carbon credits that are created as a result of activities or restrictions on state property, including state forests and parks, are the property of the state, and may be sold as such.

(e) Citizens of, or entities organized in or controlled by citizens or governments of, any country designated as a Country of Particular Concern by the Department of State of the United States of America are ineligible to register with the division for the West Virginia Forest Management Exchange.

(f) The division shall consider the production of forest products and the displacement effect of those products as meeting the definition of "additionality" when certifying carbon credits.

**§22-37-6. Program administration.**

(a) The West Virginia Forest Management Exchange shall allow landowners and timber owners to publish West Virginia

carbon credits on the exchange for the solicitation of carbon credit agreements.

(b) The West Virginia Forest Management Exchange shall allow persons interested in purchasing West Virginia carbon credits to solicit offers for carbon credit agreements.

(c) The division shall certify carbon credits before their publication on the West Virginia Forest Management Exchange.

(d) Only West Virginia carbon credits are eligible for sale or purchase. The division shall maintain a public catalog of available West Virginia carbon credits along with a registry of all West Virginia lands encumbered by carbon agreements beginning upon the effective date of this article.

(e) The West Virginia Forest Management Exchange shall review all carbon credit agreements for compliance with the requirements of this article and associated regulations, including but not limited to:

(1) Carbon credit certification criteria;

(2) Price floors and ceilings; and

(3) Contract term limits.

(f) The division may propose rules, including emergency rules, pursuant to §29A-3-1 *et seq.* of this code to execute and implement the West Virginia Forest Management Exchange, including adopting a fee schedule to fund the administration of the exchange and setting standards for certification of carbon credits.

(g) The division may contract for operational and administration support services from third-party providers as necessary to execute, implement, and administer the West Virginia Forest Management Exchange: *Provided, That* for purposes of this article, the division shall be exempt from the provisions of §5A-3-1 *et seq.* of this code.



**§22-37-7. Appeals.**

Any person or business adversely affected by a final order or decision of the division, including, but not limited to, a carbon credit certification decision or imposition of a condition on a carbon credit agreement, may pursue an appeal in accordance with the provisions of §29A-5-1 *et seq.* and §29A-6-1 *et seq.* of this code.

**§22-37-8. Cooperation with other state agencies; reports to Legislature.**

(a) The division shall cooperate with other state agencies to administer the West Virginia Forest Management Exchange in the best interest of the state.

(1) The West Virginia Geological and Economic Survey shall be available to provide its expertise and assistance.

(2) The West Virginia Department of Environmental Protection shall be available to provide its expertise and assistance.

(b) The division shall submit an annual report on the impacts of the West Virginia Forest Management Exchange to the Governor, the Speaker of the House of Delegates, and the President of the Senate.

The bill (Com. Sub. for S. B. 618), as amended, was then ordered to engrossment and third reading.

**Senate Bill 726**, Moving functions of Information Services and Communications Division into Office of Technology.

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 755**, Providing safeguards for online sales of tobacco products.

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

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

**Com. Sub. for Senate Bill 766**, Relieving railroad companies of liability during parades.

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 816**, Truth in Giving 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 822**, Relating generally to real property, tax, and registration requirements associated with carbon offset agreements.

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 826**, Creating exemption from bond or security requirement of banking institutions holding certain funds for county commissions.

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

**Senate Bill 837**, Reorganizing offices of Public Defender Corporations to conform to circuit reconfiguration.

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

**Senate Bill 840**, Modifying unemployment benefits.

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

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

**Com. Sub. for Senate Bill 841**, Setting amount of unemployment taxes and benefits.

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

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

**Com. Sub. for Senate Bill 850**, Updating Consumer Credit and Protection Act.

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

**Senate Bill 866**, Designating State Treasurer as chairperson of WV Investment Management Board.

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

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

**Senate Bill 874**, Relating to WV Division of Multimodal Transportation.

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

**Senate Bill 875**, Relating to certain insurance coverage provided by BRIM.

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

**Senate Joint Resolution 10, Homestead Exemption for Disabled Veterans 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 4233, Non-binary not permitted on birth certificates.**

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

**Eng. Com. Sub. for House Bill 4874, Relating to fatality and mortality review team.**

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:

**ARTICLE 12A. FATALITY AND MORTALITY REVIEW TEAM.**

**§61-12A-1. Fatality and Mortality Review Team.**

(a) The Fatality and Mortality Review Team is ~~created~~ continued under the ~~Bureau for Public Health~~ Department of Health. The Fatality and Mortality Review Team is a multidisciplinary team created to oversee and coordinate the examination, review, and assessment of:

~~(1) The deaths of all persons in West Virginia who die as a result of unintentional prescription or pharmaceutical drug overdoses;~~

~~(2) The deaths of children under the age of eighteen years;~~

(3) The deaths resulting from suspected domestic violence; and

(4) The deaths of all infants and all women who die during pregnancy, at the time of birth, or within one year of the birth of a child, and the deaths of children under 18 years of age;

(b) The Fatality and Mortality Review Team shall consist of the following members:

(1) ~~The Chief Medical Examiner in the Bureau for Public Health or his or her designee,~~ The state health officer, who is to serve as the chairperson and who is responsible for calling and coordinating at least quarterly, or more often, if needed, meetings of the Fatality and Mortality Review Team; ~~and meetings of any advisory panel created by the Fatality and Mortality Review Team~~

(2) The Commissioner of the Bureau for Public Health or his or her designee;

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

(4) A prosecuting attorney, as appointed by the ~~Governor~~ Prosecuting Attorneys Institute, who shall serve for a term of three years unless otherwise reappointed. ~~to a second or subsequent term.~~ A prosecuting attorney appointed to the team shall continue to serve until his or her term expires or until his or her successor has been appointed;

(5) A designee of the Chief Medical Examiner;

(6) A designee selected by the Chair of the Minority Health Institute at Marshall University that has an expertise in the causes of the disproportionate high mortality rates of minority births in West Virginia;

(7) A designee of the Perinatal Partnership;

(8) A licensed physician with training in obstetrics, appointed by the state health officer;

(9) A licensed physician with training in neonatology, appointed by the state health officer;

(10) A hospital-based nurse with experience in obstetrics, labor and delivery, post-partum, or maternity care, appointed by the state health officer;

(11) A licensed nurse or physician with training in domestic violence, appointed by the state health officer; and

(12) Any additional persons may be added on a case-by-case basis when expertise is needed, as determined by the chair. The designee may change based upon the circumstances of each particular case.

(c) Each member shall serve without additional compensation and may not be reimbursed for any expenses incurred in the discharge of his or her duties under the provisions of this article.

#### **§61-12A-2. Responsibilities of the Fatality and Mortality Review Team.**

(a) The Fatality and Mortality Review Team shall: ~~establish the following advisory panels to carry out the purposes of this article, including~~

~~(1) An unintentional pharmaceutical drug overdose fatality review panel to examine, analyze, and review deaths resulting from unintentional prescription or pharmaceutical drug overdose;~~

~~(2) A child fatality review panel to examine, analyze, and review deaths of children under the age of 18 years;~~

~~(3) A domestic violence fatality review panel to examine, analyze, and review deaths resulting from suspected domestic violence; and~~

~~(4) An infant and maternal mortality review panel to examine, analyze, and review the deaths of infants and women who die during pregnancy, at the time of birth, or within one year of the birth of a child.~~

~~(b) The members of the Fatality and Mortality Review Team shall serve as members of each of the advisory panels established pursuant to this article.~~

~~(c) The Commissioner of the Bureau for Public Health, in consultation with the Fatality and Mortality Review Team, shall propose rules for legislative approval in accordance with §29A 3-1 et seq. of this code, that the advisory panels shall follow. Those rules shall include, at a minimum:~~

~~(1) The representatives that shall be included on each advisory panel;~~

~~(2) The responsibilities of each of the advisory panels, including but not limited to, each advisory panel's responsibility to:~~

~~(A) Review and analyze all deaths as required by this article the deaths resulting from suspected domestic violence, the deaths of all infants and all women who die during pregnancy, at the time of birth or within one year of the birth of a child, and the deaths of children under 18 years of age;~~

~~(B) Ascertain and document the trends, patterns, and risk factors; and~~

~~(C) Provide statistical information and analysis regarding the causes of certain fatalities; and~~

~~(3) The standard procedures for the conduct of the advisory panels;~~

~~(4) (D) The Establish processes and protocols for the review and analysis of fatalities and mortalities of those who were not suffering from mortal diseases shortly before death;~~

~~(5) The processes and protocols to ensure confidentiality of records obtained by the advisory panel;~~

~~(6) That the advisory panels must Submit a report to the Fatality and Mortality Review Team annually, the date the annual report must be submitted, and the contents of the annual report;~~

~~(7) That the advisory panel may include any additional persons with expertise or knowledge in a particular field that it determines are needed in the review and consideration of a particular case as a result of a death in §61-12A-1(a) of this code.~~

~~(8) That the advisory panel may provide training for state agencies and local multidisciplinary teams on the matters examined, reviewed, and analyzed by the advisory panel;~~

~~(9) The advisory panel's responsibility to promote public awareness on the matters examined, reviewed, and analyzed by the advisory panel~~

~~(10) (b) Actions the advisory panel team may not take or engage in, including:~~

~~(A) Call witnesses or take testimony from individuals involved in the investigation of a fatality;~~

~~(B) Contact a family member of the deceased, unless there is a clear public health interest which is approved by a majority vote of the team;~~

~~(C) Enforce any public health standard or criminal law or otherwise participate in any legal proceeding; or~~

~~(D) Otherwise take any action which, in the determination of a prosecuting attorney or his or her assistants, impairs the ability of the prosecuting attorney, his or her assistants or any law-enforcement officer to perform his or her statutory duties. and~~

~~(11) Other rules as may be deemed necessary to effectuate the purposes of this article.~~

~~(d) (c)~~ The Fatality and Mortality Review Team shall submit an annual report to the Governor, the Office of the Inspector General, and to the Legislative Oversight Commission on Health and Human Resources Accountability concerning its activities ~~within the state and the activities of the advisory panels~~. The report is due annually starting on December 1, 2024, and shall reflect the previous year's data. The report is to include statistical information



and an epidemiological analysis concerning cases reviewed during the year, trends and patterns concerning these cases and the team's recommendations to reduce the number of fatalities and mortalities that occur in the state.

~~(e)~~ (d) The Fatality and Mortality Review Team may provide reporting to birth facilities, practitioners, and government entities to inform internal peer review activities of recommend changes to practices or policies. ~~Such~~ The information ~~shall be deemed is~~ confidential and shall be used only for peer review purposes.

### **§61-12A-3. Access to information; other agencies of government required to cooperate.**

(a) Notwithstanding any other provision of this code to the contrary, the Fatality and Mortality Review Team ~~and the advisory panels established by the team pursuant to this article~~ may request information and records as necessary to carry out its responsibilities. Records and information that may be requested under this section include:

(1) Medical, dental, and mental health records;

(2) Substance abuse records to the extent allowed by federal law; and

(3) Information and records maintained by any state, county, and local government agency, except as provided in ~~subsection (c), section two of this article~~ §61-12A-2(b) of this code.

(b) State, county, and local government agencies shall provide the Fatality and Mortality Review Team ~~and the advisory panels established by the team~~ with any information requested in writing. ~~by the team or by an advisory panel.~~

### **§61-12A-4. Confidentiality.**

(a) Proceedings, records, and opinions of the Fatality and Mortality Review Team ~~and the advisory panels established by the team pursuant to this article~~ are confidential and are not subject to discovery, subpoena, or introduction into evidence in any civil or

criminal proceeding. This section does not limit or restrict the right to discover or use in any civil or criminal proceeding anything that is available from another credible source and entirely independent of the proceedings of the team. ~~or advisory panels.~~

(b) Members of the Fatality and Mortality Review Team ~~and members of the advisory panels established by the team~~ may not be questioned in any civil or criminal proceeding regarding information presented in or opinions formed as a result of a meeting of the team. This subsection does not prevent a member of the team ~~or an advisory panel~~ from testifying to information obtained independently of the team ~~or advisory panel~~ which is public information.

(c) Proceedings, records, and opinions of the Fatality and Mortality Review Team ~~and the advisory panels established by the team~~ are exempt from disclosure under the Freedom of Information Act as provided in ~~chapter 29B of this code.~~ §29B-1-1 et seq. of this code.

(d) Notwithstanding any other provisions to the contrary, the Fatality and Mortality Review Team may prepare a data compilation to be shared, on an annual basis or more often as needed, with the Centers for Disease Control and Prevention to study maternal mortality in an effort to reduce mortality rates. No individually identifiable records may be produced.

#### **§61-12A-5. Required reporting and analysis.**

[Repealed]

The bill (Eng. Com. Sub. for H. B. 4874), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4933**, Relating to Medicaid dental coverage.

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:

## **ARTICLE 5. MISCELLANEOUS PROVISIONS.**

### **§9-5-12a. Medicaid program; dental care.**

(a) The following terms are defined:

(1) "Cosmetic services" means dental work that improves the appearance of the teeth, gums, or bite, including, but not limited to, inlays or onlays, composite bonding, dental veneers, teeth whitening, or braces.

(2) "Diagnostic and preventative services" means dental work that maintains good oral health and includes oral evaluations, routine cleanings, x-rays, fluoride treatment, fillings, and extractions.

(3) "Restorative services" means dental work that involves tooth replacement, including, but not limited to, dentures, dental implants, bridges, crowns, or corrective procedures such as root canals.

(b) The Department of Human Services shall extend Medicaid coverage to adults ~~age~~ aged 21 and over covered by the Medicaid program for diagnostic and preventative dental services and restorative dental services, excluding cosmetic services. This coverage is limited to ~~\$1,000 each budget year~~ \$2,000 per two-year budget period. Recipients must pay for services over the ~~\$1,000 yearly limit~~. \$2,000 limit. No provision in this section shall restrict the department in exercising new options provided by, or to be in compliance with, new federal legislation that further expands eligibility for dental care for adult recipients.

(c) The department is responsible for the implementation of, and program design for, a dental care system to reduce the

continuing harm and continuing impact on the health care system in West Virginia. The dental health system design shall include oversight, quality assurance measures, case management, and patient outreach activities. The department shall assume responsibility for claims processing in accordance with established fee schedules and financial aspects of the program necessary to receive available federal dollars and to meet federal rules and regulations. The department shall seek authority from the Centers for Medicare and Medicaid Services to implement the provisions of this section.

~~(d) The provisions of this section enacted during the 2020 regular legislative session shall only become effective upon approval from the federal Centers for Medicare and Medicaid Services of the provider tax as set forth in §11-27-10a of this code.~~

(d) On or before December 1 2027, the Bureau for Medical Services shall file a report with the Legislative Oversight Commission on Health and Human Resources Accountability and the Joint Committee on Government and Finance analyzing Medicaid expenditures related solely to the dental program for the plan year immediately prior to the passage of this legislation and each plan year until the date of submission of the required report. The report shall include at a minimum an analysis of the enrollees served, the state share of the Medicaid expenditures, and the federal share of expenditures.

The bill (Eng. Com. Sub. for H. B. 4933), as amended, was then ordered to third reading.

**Eng. House Bill 5593**, Relating to the creation, composition, qualifications, and compensation of the State Board of Risk and Insurance Management.

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

On motion of Senator Azinger, 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:

## **ARTICLE 12. STATE INSURANCE.**

### **§29-12-3. State Board of Risk and Insurance Management; creation, composition, qualifications, and compensation.**

~~(a)(1) The "state board of insurance of West Virginia" is hereby reestablished, reconstituted and continued as the state Board of Risk and Insurance Management. The board shall be composed of five members. One member shall be the vice chancellor of health sciences of the West Virginia Higher Education Policy Commission. The remaining four members shall be appointed by the Governor with the advice and consent of the Senate. One member shall be appointed by the Governor from a list of three eligible persons submitted to the Governor by the President of the Senate, and one member shall be appointed by the Governor from a list of three eligible persons submitted to the Governor by the Speaker of the House of Delegates. Each member shall be a resident of West Virginia and shall have experience in one or more of the following areas: law, accounting, business, insurance or actuarial science.~~

~~(2) Initial appointment of the members other than the vice chancellor for health sciences shall be for the following terms:~~

~~One member shall be appointed for a term ending June 30, 2003;~~

~~One member shall be appointed for a term ending June 30, 2004;~~

~~One member shall be appointed for a term ending June 30, 2005; and~~

~~One member shall be appointed for a term ending June 30, 2006.~~

~~(3) Except for appointments to fill vacancies, each subsequent appointment shall be for a term ending June 30 of the fourth year~~

~~following the year the preceding term expired. In the event a vacancy occurs it shall be filled by appointment for the unexpired term. A member whose term has expired shall continue in office until a successor has been duly appointed and qualified. No member of the board may be removed from office by the Governor except for official misconduct, incompetency, neglect of duty, or gross immorality.~~

~~(4) Members of the board appointed prior to the reenactment of this article during the sixth extraordinary session of the 2001 Legislature, shall serve until December 15, 2001.~~

~~(b) The Insurance Commissioner of West Virginia shall serve as secretary of the board without vote and shall make available to the board the information, facilities and services of the office of the state Insurance Commissioner.~~

~~(c) The members of the board shall receive from the executive director of the board the same compensation authorized by law for members of the Legislature for the interim duties for each day, or portion thereof, the member is engaged in the discharge of official duties. All board members shall be reimbursed for their actual and necessary expenses incurred in the discharge of official duties, except that mileage shall be reimbursed at the same rate as that authorized for members of the Legislature.~~

~~(d) Notwithstanding any provision of this section to the contrary, the board is subject to the provisions of section twelve of this article~~

(a) The State Board of Risk and Insurance Management is hereby continued. The board shall be composed of five voting members:

(1) The chancellor of the West Virginia Higher Education Policy Commission, or his or her designee; and

(2) Four members with at least 10 years of experience in the insurance industry who shall be appointed by the Governor with the advice and consent of the Senate; *Provided*, That one member shall be appointed by the Governor from a list of three eligible

persons submitted to the Governor by the President of the Senate, and one member shall be appointed by the Governor from a list of three eligible persons submitted to the Governor by the Speaker of the House of Delegates.

(b) Initial appointment of the members shall be for the following terms:

(1) One member shall be appointed for a term ending June 30, 2026;

(2) One member shall be appointed for a term ending June 30, 2027;

(3) One member shall be appointed for a term ending June 30, 2028; and

(4) One member shall be appointed for a term ending June 30, 2029.

(c) Except for appointments to fill vacancies, each subsequent appointment of a member shall be for a term ending June 30 of the fourth year following the year the preceding term expired. In the event a vacancy occurs it shall be filled by appointment for the unexpired term. A member whose term has expired shall continue in office until a successor has been duly appointed and qualified. No member of the board may be removed from office by the Governor except for official misconduct, incompetency, neglect of duty, or gross immorality.

(d) Members of the board appointed prior to the effective date of the reenactment of this section during the 2024 regular session of the Legislature shall serve until June 30, 2024: *Provided*, That any member of the board appointed prior to the effective date of the reenactment of this section during the 2024 regular session of the Legislature who meets the experience requirement of this section as reenacted may be reappointed to serve on the board.

(e) The Insurance Commissioner of West Virginia shall serve as secretary of the board without vote and shall make available to

the board the information, facilities, and services of the office of the State Insurance Commissioner.

(f) The members of the board shall receive from the executive director of the board the same compensation authorized by law for members of the Legislature for the interim duties for each day, or portion thereof, the member is engaged in the discharge of official duties. All board members shall be reimbursed for their actual and necessary expenses incurred in the discharge of official duties, except that mileage shall be reimbursed at the same rate as that authorized for members of the Legislature.

The bill (Eng. H. B. 5593), as amended, was then ordered to third reading.

The Senate proceeded to the tenth order of business.

**Eng. Com. Sub. for House Bill 5317**, Making it permissive for commercial motor vehicles registered in this state to pass an annual inspection of all safety equipment to be consistent with the federal motor carrier safety regulations.

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 Takubo, at 1:25 p.m., the Senate recessed until 4:30 p.m. today.

The Senate reconvened at 5:01 p.m. and, at the request of Senator Takubo, unanimous consent being granted, returned to the fourth order of business.

Senator Tarr, 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 805**, Modifying Medicaid reimbursements for services at residential substance abuse treatment facilities.

And has amended same.

Now on second reading, having been read a first time and referred to the Committee on Finance on February 23, 2024;

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

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for S. B. 805) contained in the preceding report from the Committee on Finance was taken up for immediate consideration and read a second time.

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

Senator Tarr, 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 820**, Requiring automatic enrollment of substance abuse disorder population into managed care.

And has amended same.

Now on second reading, having been read a first time and referred to the Committee on Finance on February 23, 2024;

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

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for S. B. 820) contained in the preceding report from the Committee on Finance was taken up for immediate consideration and read a second time.

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

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

Your Committee on Finance has had under consideration

**Com. Sub. for Senate Joint Resolution 6, Incorporation of Churches or Religious Denominations Amendment.**

Now on second reading, having been read a first time and referred to the Committee on Finance on February 24, 2024;

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the resolution (Com. Sub. for S. J. R. 6) contained in the preceding report from the Committee on Finance was taken up for

immediate consideration, read a second time, and ordered to engrossment and third reading.

Senator Weld, 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 4086**, Authorizing certain agencies of the Department of Commerce to promulgate legislative rules.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4086) 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 Maroney, 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 4376**, Relating to surgical smoke evacuation.

And has amended same.

And,

**Eng. Com. Sub. for House Bill 4431**, Permitting the cremation of unidentified remains.

And has amended same.

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

Respectfully submitted,

Michael J. Maroney,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 4376 and 4431) 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 Grady, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

**Eng. House Bill 4814**, Relating to extending the reporting and sunset dates of the State Advisory Council on Postsecondary Attainment Goals.

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

Respectfully submitted,

Amy N. Grady,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 4814) 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 Grady, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

**Eng. House Bill 4838**, Require county boards of education to provide long-term substitute teachers, upon hiring, with certain information.

And has amended same.

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

Respectfully submitted,

Amy N. Grady,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 4838) 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 Grady, 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 4951**, To facilitate the interstate practice of School Psychology in educational or school settings.

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,

Amy N. Grady,  
*Chair.*

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

Senator Woodrum, 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 5017**, Relating to mobile food establishment reciprocity.

And has amended same.

And,

**Eng. Com. Sub. for House Bill 5122**, Relating to civil service for deputy sheriffs.

And has amended same.

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

Respectfully submitted,

Jack David Woodrum,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 5017 and 5122) 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 Woodrum, 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 5117**, Relating generally to waiver of initial licensing fees for certain individuals.

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

Respectfully submitted,

Jack David Woodrum,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 5117) 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 Maroney, 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 5175**, Eliminate funding for the Center for Nursing and transfer its duties and authorities to the Higher Education Policy Commission.

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

Respectfully submitted,

Michael J. Maroney,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5175) 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 Maroney, 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 5248**, Relating to the regulation of behavioral health centers.

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,

Michael J. Maroney,  
*Chair.*

The bill, under the original double committee reference, was then referred to the Committee on Finance, with an amendment from the Committee on Health and Human Resources pending.

Senator Woodrum, 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 5337**, Establishing the legislative oversight committee of the Division of Corrections and Rehabilitation.

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,

Jack David Woodrum,  
*Chair.*

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

Senator Maroney, 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 5347**, Relating to establishing a program for emergency medical services personnel to become certified paramedics.

And has amended same.

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

Respectfully submitted,

Michael J. Maroney,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5347) 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 Weld, 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 5395**, Relating to judicial review of Board decisions.

And has amended same.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5395) 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.

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

The Senate then proceeded to the thirteenth order of business.

At the request of Senator Takubo, unanimous consent being granted, a leave of absence for the day was granted Senator Phillips.

The following communication was reported by the Clerk:

The Senate of West Virginia  
Charleston

LEE CASSIS  
CLERK OF THE SENATE



STATE CAPITOL, ROOM M-211  
1900 KANAWHA BLVD. EAST  
CHARLESTON, WV 25305-0800  
304-357-7800

February 27, 2024

The Honorable Jim Justice, II  
Governor, State of West Virginia  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305

Dear Governor Justice,

The following bill, authenticated by the signature of the Clerk of each House, and signed by the President of the Senate and the Speaker of the House of Delegates, has been examined and found truly enrolled:

**Com. Sub. for S. B. 400**, Creating limited waiver from certificate of public convenience and necessity requirement for certain water or sewer services projects.

This bill is presented to you on this day, February 27, 2024.

Respectfully submitted,

  
Lee Cassis  
Clerk of the Senate

C: The Honorable Stephen J. Harrison  
Clerk of the House of Delegates

LEE.CASSIS@WVSENATE.GOV

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were added as co-sponsors to the following bills and resolutions on February 26, 2024:

**Senate Bill 766:** Senator Hunt;

**Senate Bill 816:** Senators Deeds, Rucker, and Taylor;

**Senate Bill 837:** Senator Plymale;

**Com. Sub. for Senate Joint Resolution 5:** Senator Hamilton;

And,

**Senate Resolution 53:** Senators Caputo and Hamilton.

On motion of Senator Takubo, at 5:15 p.m., the Senate adjourned until tomorrow, Wednesday, February 28, 2024, at 11 a.m.

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## WEDNESDAY, FEBRUARY 28, 2024

The Senate met at 11:11 a.m.

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

Prayer was offered by the Reverend Bret Layton, 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 Rollan A. Roberts, a senator from the ninth district.

Pending the reading of the Journal of Tuesday, February 27, 2024,

At the request of Senator Woelfel, 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 Takubo, and by unanimous consent, the provisions of Rule 54 of the Rules of the Senate, relating to persons entitled to the privileges of the floor, were suspended in order to grant family members of the Honorable William Wayne Bailey, Jr., a former senator from the ninth district, privileges of the floor for the day.

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 4507**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-21-12o; and to amend said code by adding thereto a new section, designated §11-24-23h, all relating to reducing income tax liability for taxpayers who improve certain building facades in historic districts; providing for a tax credit of the replacement cost of historic facades; providing for a reduction in federal adjusted gross income in certain circumstances for certain replacement costs of historic facades; setting forth conditions; providing for application; and requiring rulemaking.

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 4548**—A Bill to amend and reenact §11-13S-4 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-13Y-5 of said code, all relating to authorizing application of the manufacturing investment tax credit and the manufacturing property tax adjustment credit against personal income tax; defining terms; deleting superannuated language; specifying application of tax credit; specifying effective date; and making stylistic revisions.

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 4549**—A Bill to amend and reenact §11-15-9n of the Code of West Virginia, 1931, as amended, all relating to the consumers sales and service tax and use tax exemption for qualified purchases of computers and computer software, primary material handling equipment, racking and racking systems, and components, building materials and certain tangible personal property to be incorporated into a qualified, new or expanded warehouse or distribution facility; changing threshold jobs creation number from 300 to 50; and making stylistic changes.

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 4667**—A Bill to amend and reenact §16-64-3 of the Code of West Virginia, 1931, as amended, relating to syringe services programs; and prohibiting syringe services programs from distributing listed smoking devices.

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 4744**—A Bill to amend and reenact §17-16A-13 of the Code of West Virginia, 1931, as amended, requiring non-discretionary procedures; providing for certain strict and non-discretionary requirements; limiting Parkways Authority tolls to the West Virginia Turnpike without legislative authorization; requiring public hearings with fourteen days' notice and show of need for operational or maintenance costs before increasing tolls; subjecting tolls to auditing by the Joint Committee on Government

and Finance; and requiring acceptance of credit card payments in lieu of cash.

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 July 1, 2024, and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4753**—A Bill to amend the code of West Virginia, 1931, by adding thereto a new section designated, §5-16-7h; to amend said code by adding thereto a new section designated §9-5-34; to amend said code by adding thereto a new section designated §33-15-4x; to amend said code by adding thereto a new section designated §33-16-3aa; to amend said code by adding thereto a new section designated §33-24-7y; to amend said code by adding thereto a new section designated §33-25-8v; and to amend said code by adding thereto a new section designated §33-25A-8y, all relating to providing health insurance coverage concerning biomarker testing.

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 4829**—A Bill to amend and reenact §18A-2-5 of the Code of West Virginia, 1931, as amended, relating to employment of service personnel and removing the requirement for a high school diploma or general education development certificate for school bus drivers and custodians who are 21 years of age or older.

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 4855**—A Bill to amend and reenact §5A-3-3 and §5A-3-18 of the Code of West Virginia, 1931, as amended, all relating to the purchasing division; and requiring the purchasing division contracts to be nonspecific in regards to manufacturers or suppliers of commodities; providing that the director may allow the purchase of a commodity or service from a specific manufacturer or supplier, or bearing a specific trade name or brand, under certain specified conditions.

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 4882**—A Bill to amend and reenact §18B-10-1a of the West Virginia Code 1931, as amended, to extend in-state tuition rates to all members and veterans of the National Guard, reserves, and armed forces as well as their spouses and dependents, when they choose to move to West Virginia for the purpose of attending state institutions of higher education.

Referred to the Committee on Military; 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 4963**—A Bill to amend the Code of West Virginia, 1931, by adding thereto a new article, designated §61-3F-1, §61-3F-2, §61-3F-3, §61-3F-4, and §61-3F-5, all relating to prohibiting certain uses of deep fake technology; prohibiting the use of deep fake technology to influence an election; providing for definitions; explaining manner of violation; providing exceptions and exemptions; providing for a penalty; and allowing injunctive relief.

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 4967**—A Bill to amend and reenact §22-22-1, §22-22-2, §22-22-3, §22-22-4, §22-22-5, §22-22-6, §22-22-7, §22-22-8, §22-22-9, §22-22-10, §22-22-11, §22-22-12, §22-22-13, §22-22-14, §22-22-15, §22-22-16, of the Code of West Virginia, 1931, as amended, to repeal §22-22-17 of said code, and amend and reenact §22-22-18 and §22-22-20, all relating to the administration of the Voluntary Remediation and Redevelopment Act to provide new liability protections for those who wish to purchase and redevelop former industrial properties; defining terms and revising existing definitions; providing for rulemaking; clarifying procedures involving the Brownfields Revolving Fund; revising public notice provisions concerning the fund; providing that the Secretary may limit the liability of lenders, innocent purchasers, landowners, de minimis contributors, or others who have limited responsibility for contamination under the Hazardous Waste Management Act, the Water Pollution Control Act, the Groundwater Protection Act or any other applicable law; providing that bona fide prospective purchasers are not liable for a containment at a brownfield site if defined conditions are met; providing that an innocent land owner who holds title or security interest in a brownfield site are not liable for contamination at a brownfield site if defined conditions are met; providing that a person that owns contiguous real property that is contaminated by a release of a hazardous substance from real property that is not owned by that person is not liable for contamination under defined conditions; providing that the Secretary may require anyone responsible for contamination to remediate sites where substances have been improperly managed; and making non-substantive technical corrections.

Referred to the Committee on the Judiciary; 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 4999**—A Bill to amend and reenact §57-3-3 of the Code of West Virginia, 1931, as amended, relating to expanding the exception to spousal testimonial privilege to include cases of offenses committed against the grandchildren of either spouse, or minor, as defined in §2-2-10 of this code, or any person deemed incompetent by mental disease, defect, or other disability.

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 5025**—A Bill to amend and reenact §11-10-17 of the Code of West Virginia, 1931, as amended, relating to eliminating the additional one and one-half percent interest rate for underpayments of tax; and specifying an effective date.

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 5031**—A Bill to amend and reenact §61-14-1, §61-14-2, and §61-14-7 of the Code of West Virginia, 1931, as amended, all relating to human trafficking, adding a definition for "illegal alien"; general provisions and penalties; and providing that illegal aliens are not eligible for restitution.

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 5062**—A Bill to amend and reenact §49-4-601 of the Code of West Virginia, 1931, as amended, relating to procedures in cases of child neglect or abuse; allowing

a guardian ad litem to request the appointment of a court appointed special advocate if that circuit court is serviced by a court appointed special advocate.

Referred to the Committee on the Judiciary; 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 5093**—A Bill to amend and reenact §48-5-706 of the Code of West Virginia, 1931, as amended, relating to the revision of an order concerning distribution of marital property; and, providing guidelines for the same.

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 5130**—A Bill to amend and reenact §61-3B-2 and §61-3B-3 of the Code of West Virginia, 1931, as amended, all relating to increasing fines for criminal trespass; creating criminal penalties; and clarifying protected activities.

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 5134**—A Bill to amend and reenact §11-13MM-2 and §11-13MM-4 of the Code of West Virginia, 1931, as amended, all relating to providing for the continuation of the disabled veteran real property tax credit for certain widowed spouses.

Referred to the Committee on Military; 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 5151**—A Bill to amend and reenact §49-1-206 of the Code of West Virginia, 1931, as amended, relating to adding former foster parents with whom a child has previously been placed to the definition of fictive kin.

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 5162**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-7g; to amend and reenact §21-1E-2 of said Code; to amend and reenact §21-1E-3 of said Code; and to amend and reenact §21-6-2 of said Code, all relating to creating the Youth Apprenticeship Program and expanding registered apprenticeship programs.

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 5178**—A Bill to amend and reenact §17D-2A-6a of the Code of West Virginia, 1931, as amended, relating to requiring new and used motor vehicle dealerships in this state to utilize a search engine to determine if prospective buyers of vehicles have valid motor vehicle insurance.

At the request of Senator Takubo, and by unanimous consent, reference of the bill to a committee was dispensed with, and it was taken up for immediate consideration, read a first time, and ordered to second reading.

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 5237**—A Bill to amend and reenact §17C-7-1 of the Code of West Virginia, 1931, as amended, relating to requiring operators of vehicles to drive in rightmost portion or lane of roads or highways and exceptions thereto.

At the request of Senator Takubo, and by unanimous consent, reference of the bill to a committee was dispensed with, and it was taken up for immediate consideration, read a first time, and ordered to second reading.

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 5254**—A Bill to amend and reenact §27-5-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §27-5-1b and §27-5-2 of said code; to amend said code by adding thereto a new section, designated §27-5-2b; to amend and reenact §27-5-4 of said code; to amend said code by adding a new article, designated §27-5A-1, §27-5A-2; and §27-5A-3; all relating generally to the creation of mental hygiene regions by the Supreme Court of Appeals; clarifying that mental hygiene evaluations and proceedings may be conducted by video technology; creating a temporary observation release for mental hygiene respondents; clarifying that chief medical officer releases requiring approval of circuit court only apply to forensic patients; requiring hearings for any commitment period of longer than 90 days and prohibiting any person from being civilly committed to longer than 120 days without a hearing to determine whether the individual continues to meet commitment criteria; removing obsolete language regarding transcripts of proceedings to circuit court of county of residence; restructuring the mental hygiene commissioner system by authorizing new mental hygiene regions; authorizing full-time mental hygiene commissioners employed by the Supreme Court of Appeals; authorizing mental hygiene proceedings and evaluations by video; requiring facilities to

provide technology that meets Supreme Court of Appeals specifications; authorizing statewide coverage for mental hygiene evaluations; permitting a mental hygiene commissioner to exclude evaluator testimony based on the West Virginia Rules of Evidence; and requiring each Certified Community Mental Health Center to ensure that at least one examiner is available to provide coverage in each region.

Referred to the Committee on the Judiciary; 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 5280**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-13NN-1, §11-13NN-2, §11-13NN-3, §11-13NN-4, §11-13NN-5, §11-13NN-6, and §11-13NN-7, all relating to creating the West Virginia Short Line Railroad Modernization Act; definitions; tax credit allowed and credit limitations; and review and accountability.

Referred to the Committee on Economic Development; 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 5345**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-12-1b; and to amend and reenact §15-12-2 of said code, all relating to the registration requirements in the Sex Offender Registration Act; providing for definitions; adding a definition for transient residence; relating to establishing a 10 day timeframe by which registrants are required to update their information when there is a change in information; and clarifying how those required to register sex offenders, who have no

permanent residence, can satisfy their legal obligation by providing a transient residence within 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 5425**—A Bill to amend and reenact §18A-4-7a of the Code of West Virginia, 1931, as amended, relating to clarifying the amount of experience required in the hiring of professional education personnel; and providing that those years of experience gained outside of the county or state shall count towards the required threshold.

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 5430**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §51-3-20, relating to per diem compensation and expenses of newly elected or appointed judicial officers receiving education and training prior to taking the oath of office.

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 5435**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18B-3D-7, establishing the registered apprenticeship to associate of applied science program to be administered by the Council for Community and Technical College Education.

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 5516**—A Bill to amend and reenact §61-8-28 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-8C-1 of said code, all relating to prohibiting the use of deep fake images for the nonconsensual disclosure of private intimate images; prohibiting the unlawful depiction of nude or partially nude minors or minors engaged in sexually explicit conduct; establishing such conduct as criminal offenses, subject to 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 5530**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section designated, §16-5B-21, relating to requiring a hospital to disclose price and fee information for certain health care services.

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 5565**—A Bill to amend and reenact §17B-2-1c of the Code of West Virginia, 1931, as amended, relating to requiring the Division of Motor Vehicles to provide an identification card for eligible released inmates.

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 5572**—A Bill to amend and reenact §49-2-128 of the Code of West Virginia, 1931, as amended, relating to prohibiting cameras, for the purpose of unattended surveillance or recording, in bedrooms and bathrooms of foster homes; exemptions.

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 5613**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-1-31, relating to requiring the Governor to establish crisis preparedness plans.

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 and requested the concurrence of the Senate in the passage of

**Eng. House Bill 5696**—A Bill to amend and reenact §20-17B-2 of the Code of West Virginia, 1931, as amended, relating to lead member county of the Upper Ohio Valley Trail Network Recreation Authority.

Referred to the Committee on Outdoor Recreation.

The Senate proceeded to the fourth order of business.

Senator Clements, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**House Concurrent Resolution 2**, U.S. Army SPC Steven W. Herron Memorial Bridge.

And has amended same.

**Com. Sub. for House Concurrent Resolution 3**, Legg Brothers WWII Veterans Memorial Bridge.

And has amended same.

**Com. Sub. for House Concurrent Resolution 9**, Private Jefferson Howell Memorial Road.

And has amended same.

**House Concurrent Resolution 18**, Caldwell Brothers Memorial Bridge.

And has amended same.

**Com. Sub. for House Concurrent Resolution 26**, PFC Jerry Lee Bassett Memorial Bridge.

And has amended same.

**House Concurrent Resolution 32**, Sloan Brothers Memorial Bridge.

And has amended same.

**Com. Sub. for House Concurrent Resolution 39**, US Army SP3 Delbert Sherdan "Buck" Huffman Sr. Memorial Bridge.

And has amended same.

**Com. Sub. for House Concurrent Resolution 40**, USMC MSG Edward P. & MP Carl A. McCray Memorial Bridge.

And has amended same.

**House Concurrent Resolution 53**, U. S. Navy Quartermaster Third Class Lawrence Earl Boggs Memorial Bridge.

And has amended same.

**House Concurrent Resolution 61**, Mollohan Brothers Memorial Bridge.

And has amended same.

And,

**House Concurrent Resolution 68**, U. S. Army Air Force, Major (Ret.) Willis "Scottie" Adams Memorial Bridge.

And has amended same.

And reports the same back with the recommendation that they each be adopted, as amended.

Respectfully submitted,

Charles H. Clements,  
*Chair.*

At the request of Senator Clements, unanimous consent being granted, the resolutions (H. C. R. 2, Com. Sub. for H. C. R. 3, Com. Sub. for H. C. R. 9, H. C. R. 18, Com. Sub. for H. C. R. 26, H. C. R. 32, Com. Sub. for H. C. R. 39, Com. Sub. for H. C. R. 40, H. C. R. 53, H. C. R. 61, and H. C. R. 68) contained in the preceding report from the Committee on Transportation and Infrastructure were taken up for immediate consideration and considered simultaneously.

The following amendments to the resolutions, from the Committee on Transportation and Infrastructure, were reported by the Clerk, considered simultaneously, and adopted:

**House Concurrent Resolution 2**, U.S. Army SPC Steven W. Herron Memorial Bridge.

On page 1, in the third Whereas clause, line 10, by striking out the words "Bronze Stars" and inserting in lieu thereof the words "Bronze Service Stars".

**Com. Sub. for House Concurrent Resolution 3,** Legg Brothers WWII Veterans Memorial Bridge.

On page 1, in the third Whereas clause, line 10, by striking out the words "Bronze Stars" and inserting in lieu thereof the words "Bronze Service Stars";

And,

On page 2, in the sixth Whereas clause, line 20, by striking out the words "Bronze Stars" and inserting in lieu thereof the words "Bronze Service Stars".

**Com. Sub. for House Concurrent Resolution 9,** Private Jefferson Howell Memorial Road.

On page 2, in the Resolved clause, line 32, by striking out the words "the "Private" and inserting in lieu thereof the words "in Mineral County, the "Union Army Private";

On page 2, in the first Further Resolved clause, line 34, by striking out the word "Private" and inserting in lieu thereof the words "Union Army Private";

And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

Requesting the Division of Highways name a section of WV Route 46, locally known as the Beryl Road and Shaw Road extending from the North Branch of the Potomac River at Piedmont WV to the Kantor Cutoff between 39.47994830263841, - 79.06627907466128 and 39.427643533576884, - 79.09318170874904, in Mineral County, the "Union Army Private Jefferson Howell Memorial Road".

**House Concurrent Resolution 18,** Caldwell Brothers Memorial Bridge.

On page 2, in the Resolved clause, line 41, by striking out the word "Memorial" and inserting in lieu thereof the words "Veterans Memorial";

On page 2, in the first Further Resolved clause, line 43, by striking out the word "Memorial" and inserting in lieu thereof the words "Veterans Memorial";

And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

Requesting the Division of Highways name bridge 06-064/00-21.75 (06A243), locally known as Howells Mill Overpass Westbound, carrying I-64 over Mud River and County Route 1 in Cabell County and 06-064/00-2175 (06A242), locally known as Howells Mill Overpass Eastbound, carrying I-64 over Mud River and County Route 1 in Cabell County, the "Caldwell Brothers Veterans Memorial Bridge".

**Com. Sub. for House Concurrent Resolution 26**, PFC Jerry Lee Bassett Memorial Bridge.

On page 1, in the fourth Whereas clause, line 8, by striking out the words "Bronze Stars" and inserting in lieu thereof the words "Bronze Service Stars";

On page 1, in the Resolved clause, line 17, by striking out the word "PFC" and inserting in lieu thereof the words "U.S. Army PFC";

On page 2, in the first Further Resolved clause, line 20, by striking out the word "PFC" and inserting in lieu thereof the words "U.S. Army PFC";

And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

Requesting the Division of Highways name bridge number 52-054/00-000.75 (52A088), (39.56097, -80.72622) locally known as Crow Run Bridge, carrying CR 04 over Crow Run in Wetzel County, as the "U.S. Army PFC Jerry Lee Bassett Memorial Bridge".

**House Concurrent Resolution 32**, Sloan Brothers Memorial Bridge.

On page 2, in the Resolved clause, line 28, by striking out the word "Memorial" and inserting in lieu thereof the words "Veterans Memorial";

On page 2, in the first Further Resolved clause, line 30, by striking out the word "Memorial" and inserting in lieu thereof the words "Veterans Memorial";

And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

Requesting the Division of Highways name Bridge Number 44-079/00-029.04 (NB) (44A125), at 38.58216 latitude and -81.21047 longitude and originally known as the Big Sandy Creek N (CSPG) at CR29 & Big Sandy Creek, near Amma, WV in Roane County, the "Sloan Brothers Veterans Memorial Bridge."

**Com. Sub. for House Concurrent Resolution 39**, US Army SP3 Delbert Sherdan "Buck" Huffman Sr. Memorial Bridge.

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

Whereas, On March 28, 1933, Delbert Sherdon "Buck" Huffman Sr. was born in Erwin, West Virginia to Charles Frank and Lettia Huffman. He was the youngest of 9 siblings; and

Whereas, Buck graduated from Fellowsville High School in 1951. After high school, Buck enlisted in the United States Army.

Buck was deployed and served in the Korean War in 1956, and he was Honorably Discharged from the United States Army; and

Whereas, Buck immediately reenlisted with the United States Army and continued to serve. In 1965-1966, Buck was deployed to Vietnam for a tour of duty. In 1970-1971, Buck was again deployed to Vietnam for his second tour of duty during that conflict; and

Whereas, Following his return home from his second tour in Vietnam, Buck continued to serve with the United States Army. He was stationed at various military bases across the United States and Germany. In 1976, after 23 years of service to the United States Army, Buck was honorably discharged and retired from the military; and

Whereas, Buck's warrior spirit and dedication to his country did not go unrecognized. For his service Buck was awarded the following: the Bronze Star Medal, Meritorious Service Medal, Air Medal, Army Commendation Medal, Presidential Unit Citation, Meritorious Unit Commendation, Good Conduct Medal, National Defense Service Medal, Vietnam Service Medal, Republic of Vietnam Cross of Gallantry with Palm, Republic of Vietnam Campaign Medal, and Expert Badge W/M14 Rifle Bar; and Silver Service was awarded in view of five Bronze Service Stars; and

Whereas, Following his retirement from the Army, Buck continued to support his fellow military veterans through the Kingwood VFW, of which he was a Post Commander. In addition, he was a member of the American Legion and the Disabled American Veterans; and

Whereas, On August 10, 2023, Buck passed away at the age of 90; and

Whereas, It is fitting that an enduring memorial be established to commemorate U.S. Army SFC Delbert Sherdon "Buck" Huffman Sr. and his contributions to our state and country; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 39-050/02-000.89 () (39A113), (39.32593, -79.81876), locally known as the Israel Bridge, carrying CR50/02 over Little Sandy Creek in Preston County, the "U.S. Army SFC Delbert S. "Buck" Huffman Sr. 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 SFC Delbert S. "Buck" Huffman Sr. Memorial Bridge"; and, be it

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

And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

Requesting the Division of Highways name bridge number 39-050/02-000.89 () (39A113), (39.32593, -79.81876), locally known as the Israel Bridge, carrying CR50/02 over Little Sandy Creek in Preston County, the "U.S. Army SFC Delbert S. "Buck" Huffman Sr. Memorial Bridge".

**Com. Sub. for House Concurrent Resolution 40,** USMC MSG Edward P. & MP Carl A. McCray Memorial Bridge.

On page 2, in the fifteenth Whereas clause, line 37, by striking out the word "MP" and inserting in lieu thereof the words "U.S. Army CPL";

On page 2, in the Resolved clause, line 42, by striking out the word "MP" and inserting in lieu thereof the words "U.S. Army CPL";

On page 3, in the first Further Resolved clause, line 45, by striking out the word "MP" and inserting in lieu thereof the words "U.S. Army CPL";



And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

Requesting the Division of Highways name bridge number 25-033/02-000.55 () (25A077), (39.48162, -80.07274) locally known as REUBEN RUN BRIDGE, carrying CR 33/02 over REUBEN RUN in Marion County as the "USMC MSG Edward P. & U.S. Army CPL Carl A. McCray Memorial Bridge".

**House Concurrent Resolution 53**, U. S. Navy Quartermaster Third Class Lawrence Earl Boggs Memorial Bridge.

On page 1, in the second Whereas clause, line 9, by striking out "1944" and inserting in lieu thereof "1943".

**House Concurrent Resolution 61**, Mollohan Brothers Memorial Bridge.

On page 2, in the Resolved clause, line 11, by striking out the word "Memorial" and inserting in lieu thereof the words "Veterans Memorial";

On page 2, in the first Further Resolved clause, line 14, by striking out the words "*Mollohan Bothers Memorial Bridge*" and inserting in lieu thereof the words "Mollohan Brothers Veterans Memorial Bridge";

And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

Requesting the Division of Highways name Bridge Numbers: 04-079/00-046.18 (NB & SB) (04A103, 04A104), (38.61716, -80.95085) locally known as SERVIA ICHG N & S, carrying IS 79 over Co 11 in Braxton County, the "Mollohan Brothers Veterans Memorial Bridge".

**House Concurrent Resolution 68**, U. S. Army Air Force, Major (Ret.) Willis "Scottie" Adams Memorial Bridge.

On pages 2 and 3, in the Resolved clause, lines 33 and 34, by striking out the words "Air Force, Major (Ret.)" and inserting in lieu thereof the words " Air Force Major";

On page 3, in the first Further Resolved clause, line 36, by striking out the words "*Mollohan Bothers Memorial Bridge*" and inserting in lieu thereof the words "Air Force, Major (Ret.)" and inserting in lieu thereof the words " Air Force Major";

And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

Requesting the Division of Highways name Bridge Number: 11-047/00-004.96 (11A128), (39.04623, -80.83061) locally known as COXCAMP CONCRETE BOX BM, carrying WV 47 over COXCAMP FORK in Gilmer County, the "U. S. Army Air Force Major Willis 'Scottie' Adams Memorial Bridge".

The question being on the adoption of the resolutions, 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.

Senator Clements, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**House Concurrent Resolution 5**, George M. Hall Memorial Bridge.

**Com. Sub. for House Concurrent Resolution 12**, "U. S. Marine Private First Class Calvin Lee Loudin Memorial Bridge".

**House Concurrent Resolution 14**, Assistant Chief David Timothy "Tim" Wilson Memorial Road.

**House Concurrent Resolution 16**, Thomas Leo Starsick Memorial Bridge.

**House Concurrent Resolution 17**, Ab and Laura Baisden Bridge.

**House Concurrent Resolution 25**, U. S. Navy Sonarman First Class William C. Harris Memorial Bridge.

**House Concurrent Resolution 27**, U. S. Army Sergeant Jerry Lee Harris Memorial Bridge.

**House Concurrent Resolution 41**, Thurman W. Whisner Memorial Bridge.

**House Concurrent Resolution 42**, U.S. Army SSG William E. Miller Memorial Bridge.

**House Concurrent Resolution 45**, Alexander Arbuckle "Abe" McLaughlin Memorial Bridge.

**House Concurrent Resolution 46**, Jacob "Jack" Taylor Rudolph, Sr. Memorial Bridge.

**House Concurrent Resolution 50**, Jack A. Hatfield Memorial Bridge.

**Com. Sub. for House Concurrent Resolution 62**, U.S. Army First Sergeant Clarence Shirley Blake Memorial Bridge.

And,

**House Concurrent Resolution 66**, U.S. Army SP4 Lonnie "Bill" Walker Memorial Bridge.

And reports the same back with the recommendation that they each be adopted.

Respectfully submitted,

Charles H. Clements,  
*Chair.*

At the request of Senator Clements, unanimous consent being granted, the resolutions (H. C. R. 5, Com. Sub. for H. C. R. 12, H. C. R. 14, H. C. R. 16, H. C. R. 17, H. C. R. 25, H. C. R. 27, H. C. R. 41, H. C. R. 42, H. C. R. 45, H. C. R. 46, H. C. R. 50, Com. Sub. for H. C. R. 62, and H. C. R. 66) 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 Clements, 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. Navy Radarman 3rd Class Craig W. Haines Memorial Bridge.

And has amended same.

**House Concurrent Resolution 8**, Judy Brothers Memorial Bridge.

And has amended same.

**Com. Sub. for House Concurrent Resolution 19**, CPL Thomas Lowell Wines Memorial Bridge.

And has amended same.

**House Concurrent Resolution 20**, SP4 Donnie Lee Hackney Memorial Bridge.

And has amended same.

**House Concurrent Resolution 30**, Jack L. Hart Memorial Bridge.

And has amended same.

**House Concurrent Resolution 36**, Chief Master Sgt. Dan Chandler Bridge.

And has amended same.

**House Concurrent Resolution 44**, Frank Walker Mosley Memorial Bridge.

And has amended same.

And,

**House Concurrent Resolution 60**, Terra Dawn Lewis Memorial Road and Bridge.

And has amended same.

And reports the same back with the recommendation that they each be adopted, as amended.

Respectfully submitted,

Charles H. Clements,  
*Chair.*

At the request of Senator Clements, unanimous consent being granted, the resolutions (Com. Sub. for H. C. R. 7, H. C. R. 8, Com. Sub. for H. C. R. 19, H. C. R. 20, H. C. R. 30, H. C. R. 36, H. C. R. 44, and H. C. R. 60) contained in the preceding report from the Committee on Transportation and Infrastructure were taken up for immediate consideration and considered simultaneously.

The following amendments to the resolutions, from the Committee on Transportation and Infrastructure, were reported by the Clerk, considered simultaneously, and adopted:

**Com. Sub. for House Concurrent Resolution 7**, U. S. Navy Radarman 3rd Class Craig W. Haines Memorial Bridge.

On page 2, in the Resolved clause, line 24, by striking out the words "Radarman 3rd Class" and inserting in lieu thereof "PO3";

On page 2, in the first Further Resolved clause, line 27, by striking out the words "Radarman 3rd Class" and inserting in lieu thereof "PO3";

And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

Requesting the Division of Highways name bridge number 29-013/00-005.67 () (29A078), (39.29672, -78.93246) locally known as RUSSELDALE BRIDGE, carrying CR 13 over PATTERSON CREEK in Mineral County, the "U.S. Navy PO3 Craig W. Haines Memorial Bridge".

**House Concurrent Resolution 8**, Judy Brothers Memorial Bridge.

On page 1, in the Resolved clause, line 19, by striking out the word "Memorial" and inserting in lieu thereof the words "Veterans Memorial";

On page 2, in the first Further Resolved clause, line 23, by striking out the word "Memorial" and inserting in lieu thereof the words "Veterans Memorial";

And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

Requesting the Division of Highways name a bridge bearing the Bridge Number: 14-050/00-007.31 (14A120), (39.33950, -78.77510) locally known as ROMNEY BRIDGE, carrying US 50 over SOUTH BR POTOMAC RIVER in Hampshire County, the "Judy Brothers Veterans Memorial Bridge".

**Com. Sub. for House Concurrent Resolution 19**, CPL Thomas Lowell Wines Memorial Bridge.

On page 2, in the Resolved clause, line 34, by striking out "CPL" and inserting in lieu thereof the words "U.S. Army CPL";

On page 2, in the first Further Resolved clause, line 37, by striking out "CPL" and inserting in lieu thereof the words "U.S. Army CPL";

And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

Requesting the Division of Highways name bridge number 20-039/00-000.05 (38.4628604688791, -81.5001270435965) locally known as Shady Sadie's Bridge, carrying CR 33 over Little Sandy Creek in Kanawha County, the " U.S. Army CPL Thomas Lowell Wines Memorial Bridge".

**House Concurrent Resolution 20**, SP4 Donnie Lee Hackney Memorial Bridge.

On page 2, in the Resolved clause, line 26, by striking out "SP4" and inserting in lieu thereof the words "U.S. Army SP4";

On page 2, in the first Further Resolved clause, line 28, by striking out "SP4" and inserting in lieu thereof the words "U.S. Army SP4";

And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

Requesting the Division of Highways name bridge number: 20-033/00-005.06 (38°33'23.9 -81°33'45.0) locally known as the Yukon Bridge, carrying CR 33 over the Pocatalico River in Kanawha County, the " U.S. Army SP4 Donnie Lee Hackney Memorial Bridge".

**House Concurrent Resolution 30**, Jack L. Hart Memorial Bridge.

On page 2, in the Resolved clause, line 28, by striking out the word "Jack" and inserting in lieu thereof the words "USAF A1C Jack";

On page 2, in the first Further Resolved clause, line 32, by striking out the word "Jack" and inserting in lieu thereof the words "USAF A1C Jack";

And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

Requesting the Division of Highways name a bridge bearing the Bridge Number: 26-250/00-013.37 () (26A094), (39.84754, -80.55577) locally known as Clouston Bridge, carrying US 250 over North Fork Grave Creek in Marshall County as the "USAF A1C Jack L. Hart Memorial Bridge".

**House Concurrent Resolution 36**, Chief Master Sgt. Dan Chandler Bridge.

On page 2, in the Resolved clause, line 21, by striking out the words "Chief Master Sgt." and inserting in lieu thereof "USAF CMSgt";

On page 2, in the first Further Resolved clause, line 23, by striking out the words "Chief Master Sgt." and inserting in lieu thereof "USAF CMSgt";

And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

Requesting the Division of Highways name Bridge Number 11642, beginning at 38°27'10N 81°51'38W and ending at 38°27'12"N 81°51'39W, on Bills Creek Road near Scott Depot in Putnam County, the "USAF CMSgt Dan Chandler Bridge".



**House Concurrent Resolution 44**, Frank Walker Mosley Memorial Bridge.

On page 2, in the Resolved clause, line 35, by striking out the words "County. The "Frank" and inserting in lieu thereof the words "County, the "U.S. Army PFC Frank";

On page 2, in the first Further Resolved clause, line 38, by striking out the word "Frank" and inserting in lieu thereof the words "U.S. Army PFC Frank";

And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

Requesting the Division of Highways name Bridge Number: 13-060/14-006.39 (13A127), (37.77177, -80.35636) locally known as HARTS RUN BRIDGE, carrying CR 60/14 over HOWARD CREEK in Greenbrier County, the " U.S. Army PFC Frank Walker Mosley Memorial Bridge".

**House Concurrent Resolution 60**, Terra Dawn Lewis Memorial Road and Bridge.

On page 2, in the Resolved clause, lines 18 through 21, by striking out the words "a portion of Arnett Road, approximately 250 feet from the intersection of Arnett Road and Copen Road on W V 2/4,in Braxton County, together with the little bridge in front of the Providence Baptist Church the "Terra Dawn Lewis Memorial Road and" and inserting in lieu thereof the words "the bridge over Copen Run in front of Providence Baptist Church on Arnett Road, approximately 170 feet from the intersection of Arnett Road and Copen Road on WV 2/4, in Braxton County, the "Terra Dawn Lewis Memorial";

On page 2, in the first Further Resolved clause, lines 23 and 24, by striking out the words "at both ends identifying the portion of road as the "Terra Dawn Lewis Memorial Road and" and inserting in lieu thereof the words "identifying the bridge as the "Terra Dawn Lewis Memorial ";

And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

Requesting the Division of Highways name the bridge over Copen Run in front of Providence Baptist Church on Arnett Road, approximately 170 feet from the intersection of Arnett Road and Copen Road on WV 2/4, in Braxton County, the "Terra Dawn Lewis Memorial Bridge".

The question being on the adoption of the resolutions, 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.

Senator Clements, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**House Concurrent Resolution 11**, VFD Gregory Linn Haught Memorial Bridge.

**House Concurrent Resolution 15**, USMC Private Timith Daley Nunn Memorial Bridge.

**Com. Sub. for House Concurrent Resolution 22**, "U.S. Army Corporal William Edgar Hancock Memorial Bridge".

**House Concurrent Resolution 23**, Cody J. Mullens Memorial Bridge.

**House Concurrent Resolution 28**, Karantonis Brothers Armed Forces Memorial Bridge.

**House Concurrent Resolution 29**, U.S. Army Sgt Thomas Lawson Memorial Bridge.

**Com. Sub. for House Concurrent Resolution 33**, U. S. Army PFC Gale Hall Memorial Bridge.

**Com. Sub. for House Concurrent Resolution 34**, U.S. Army Staff Sgt. Harlie Steven Gabbert Memorial Bridge.

**House Concurrent Resolution 35**, Gulf War Veteran's Memorial Bridge.

**House Concurrent Resolution 51**, U. S. Army Colonel Merlin C. Kerns Memorial Bridge.

And,

**House Concurrent Resolution 59**, Asa H. Kisamore, Jr. Memorial Bridge.

And reports the same back with the recommendation that they each be adopted.

Respectfully submitted,

Charles H. Clements,  
*Chair.*

At the request of Senator Clements, unanimous consent being granted, the resolutions (H. C. R. 11, H. C. R. 15, Com. Sub. for H. C. R. 22, H. C. R. 23, H. C. R. 28, H. C. R. 29, Com. Sub. for H. C. R. 33, Com. Sub. for H. C. R. 34, H. C. R. 35, H. C. R. 51, and H. C. R. 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.

The Senate proceeded to the sixth order of business.

Senators Caputo and Oliverio offered the following resolution:

**Senate Concurrent Resolution 33**—Requesting the Division of Highways to erect two supplemental signs along each side of Interstate 79 below existing signage at the northern and southern entry points of Marion County, the first pair of signs at the border of Marion and Monongalia counties around mile marker 142.5, the second pair of signs at the border of Marion and Harrison counties around mile marker 129.5 proclaiming "Home of Legendary Coach - Nick Saban".

Which, under the rules, lies over one day.

Senators Stover, Blair (Mr. President), Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, and Woodrum offered the following resolution:

**Senate Resolution 56**—Memorializing the life of the Honorable Warren Randolph McGraw, Sr., former member of the West Virginia House of Delegates, former President of the West Virginia Senate, former Chief Justice of the West Virginia Supreme Court of Appeals, statesman, and dedicated public servant.

Which, under the rules, lies over one day.

Senator Tarr offered the following resolution:

**Senate Resolution 57**—Recognizing the accomplishments of the Hurricane High School Red Hot Show Choir.

Which, under the rules, lies over one day.

Senators Blair (Mr. President), Takubo, Trump, Tarr, Grady, and Woodrum offered the following resolution:

**Senate Resolution 58**—Designating February 29, 2024, as West Virginia Arts Day at the Legislature.

Which, under the rules, lies over one day.

Senator Blair (Mr. President) offered the following resolution:

**Senate Resolution 59**—Reaffirming the longstanding sisterhood partnership between West Virginia and Taiwan.

Which, under the rules, lies over one day.

### **Petitions**

Senator Blair (Mr. President) presented a petition from Angela Vance and 1,316 AARP members, requesting the elimination of West Virginia's state tax on Social Security income.

Referred to the Committee on Finance.

At the request of Senator Takubo, unanimous consent being granted, the Senate returned to the fourth order of business.

Senator Weld, 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 34** (originating in the Committee on the Judiciary)—Requesting the Joint Standing Committee on the Judiciary study the feasibility of ballot identification and verification measures in statewide elections held in West Virginia.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

The Senate proceeded to the seventh order of business.

**Senate Resolution 54**, Recognizing Leadership Berkeley for its service, dedication and commitment to Berkeley County.

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

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

**Senate Resolution 55**, Memorializing life of Honorable William Wayne Bailey, Jr.

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

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

The question being on the adoption of the resolution, and on this question, Senator Caputo demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of those present and voting having voted in the affirmative, the President declared the resolution (S. R. 55) adopted.

Thereafter, at the request of Senator Takubo, and by unanimous consent, the remarks by Senators Oliverio, Plymale, Stover, and Trump regarding the adoption of Senate Resolution 55 were ordered printed in the Appendix to the Journal.

At the request of Senator Takubo, unanimous consent being granted, at 12:02 p.m., the Senate recessed to present Senate Resolution 55.

The Senate reconvened at 12:07 p.m. and proceeded to the eighth order of business.

**Eng. Com. Sub. for Senate Bill 377**, Exempting certain physicians from specified traffic laws when responding to emergencies.

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

Senator Takubo requested a ruling from the Chair as to whether he should be excused from voting under Rule 43 of the Rules of the Senate as he is a physician.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Maroney and Woelfel—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 S. B. 377) 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**, Creating WV Women's Bill of Rights.

On third reading, coming up in regular order, with the right having been granted on yesterday, Tuesday, February 27, 2024, for amendments to be received on third reading, was reported by the Clerk.

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

**Eng. Com. Sub. for Senate Bill 618**, Authorizing Division of Forestry to administer certain exchange program.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Clements, Deeds, Grady, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Swope, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—27.

The nays were: Chapman, Hamilton, Stover, Stuart, and Taylor—5.

Absent: Maroney and Woelfel—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 S. B. 618) 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 Senate Bill 618**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §22-37-1, §22-37-2, §22-37-3, §22-37-4, §22-37-5, §22-37-6, §22-37-7, and §22-37-8, all relating to authorizing Division of Forestry to administer Forest Management Exchange Program; outlining scope of Forest Management Exchange Program; and providing program requirements for Forest Management Exchange Program.



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

**Eng. Senate Bill 726**, Moving functions of Information Services and Communications Division into Office of Technology.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 726) passed with its title.

Senator Takubo moved that the bill take effect July 1, 2024.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 726) takes effect July 1, 2024.

*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 755**, Providing safeguards for online sales of tobacco products.

On third reading, coming up in regular order, with the right having been granted on yesterday, Tuesday, February 27, 2024, for amendments to be received on third reading, was read a third time.

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

On page 2, section 1, line 15, after the word "of" by striking out the remainder of the proviso and inserting in lieu thereof the words "any THC, as that term is defined in §19-12E-3 of this code, any hemp-derived cannabinoid, as that term is defined in §19-12E-12 of this code, or any kratom or kratom product, as those terms are defined in §19-12F-3 of this code, is prohibited."

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

Engrossed Committee Substitute for Senate Bill 755 was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—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 S. B. 755) passed.

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

**Eng. Com. Sub. for Senate Bill 755**—A Bill to amend and reenact §16-9E-1, §16-9E-2, §16-9E-3, §16-9E-4, §16-9E-5, §16-9E-6, and §16-9E-7 of the Code of West Virginia, 1931, as amended, all relating to the delivery sales of tobacco products; expanding article to regulate all tobacco products; defining terms; clarifying that delivery sale may be via Internet website or mobile application; clarifying that a delivery sale of THC, hemp-derived cannabinoid, kratom, or kratom product is prohibited; raising legal minimum age for delivery sale of tobacco product to 21 years of age; prohibiting delivery sales of tobacco products to underage individuals; requiring delivery sales of tobacco products to comply with certain requirements; prohibiting persons from accepting a purchase order, selling, mailing, delivering, or causing to be delivered certain tobacco products without complying with certain applicable requirements for age verification, shipping, labeling, registration, and reporting; authorizing use of check box for confirming certain purchaser information to make purchase order for delivery sale of tobacco products via Internet website or mobile application if certain criteria met; requiring collection and remission of applicable excise taxes; and establishing criminal penalties for violations of article.

*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 766**, Relieving railroad companies of liability during parades.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—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 S. B. 766) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

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. 766) 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 805**, Modifying Medicaid reimbursements for services at residential substance abuse treatment facilities.

On third reading, coming up in regular order, with the unreported Finance committee amendment pending, and with the right having been granted on yesterday, Tuesday, February 27, 2024, for further amendments to be received on third reading, was read a third time.

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

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

**ARTICLE 5. MISCELLANEOUS PROVISIONS.****§9-5-29a. Prohibition against payments to certain residential substance use disorder facilities; Requirement for licensure and accreditation; and rulemaking.**

(a) Effective January 1, 2026, unless otherwise mandated by federal law or regulation, neither the Bureau for Medical Services, nor any managed care organization contracted to provide services on behalf of the bureau, shall reimburse providers for services rendered on or after January 1, 2026, at a residential substance use disorder treatment facility unless:

At the time treatment was rendered, the facility site was actively:

(A) Licensed by the West Virginia Office of Health Facility Licensure and Certification; and

(B) Accredited by the Commission on Accreditation of Rehabilitation Facilities International (CARF), the Joint Commission, or Det Norske Veritas (DNV) to operate an inpatient facility that provides behavioral health services.

(b) No later than October 1, 2025, the Bureau for Medical Services shall make all necessary filings with the Centers for Medicare and Medicaid Services and submit for public comment any changes to its provider manual that are necessary to ensure the ability to enforce the provisions of subsection (a) of this code section.

(c) Residential substance use disorder facilities shall obtain both licensure and accreditation by January 1, 2026. Any new residential substance use disorder facility established and operational after the effective date of this section shall comply with the provisions of this section within one year of its start of operations. During the first year of operations, this section shall not apply to the facility so long as the facility is actively seeking accreditation by CARF International, the Joint Commission, or DNV to operate an inpatient facility that provides behavioral health services.

(d) Notwithstanding the non-reimbursement dates pursuant to subsection (a) of this section, any facility that is ineligible from applying for the accreditation requirements pursuant to paragraph (a)(1)(B) of this section due to not being in operation at a new site for a sufficient period, or a change in ownership, but otherwise meets all legal requirements and eligibility standards to be reimbursed by the Bureau for Medical Services for residential substance use disorder treatment services after January 1, 2026, shall be provided one year from the commencement of operations at the new site, or operations under new ownership, to become fully accredited. Following the expiration of the one-year period, the facility shall be ineligible for reimbursement from the Bureau for Medical Services for such services until such time as it meets the accreditation standards.

(e) All licensed substance abuse treatment beds are subject to the provisions of §16-2D-9(5) of this code.

(f) The Office of the Inspector General shall propose or amend a rule for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to implement the provisions of this section.

(g) The Bureau for Medical Services shall prepare a report to the Legislative Oversight Commission on Health and Human Resources Accountability on or before December 31, 2030. That report shall provide data on the effectiveness of the provisions of this section.

(h) Effective July 1, 2031, the provisions of this section shall expire and have no further force or effect unless continued by act of the Legislature.

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

Engrossed Committee Substitute for Senate Bill 805 was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio,

Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—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 S. B. 805) 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 Senate Bill 805**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-5-29a, relating to residential substance use disorder treatment facilities; prohibiting payment to facilities that do not meet certain requirements; requiring licensure; requiring accreditation; requiring the Bureau for Medical Services to make necessary filings; setting forth specific timeframe to obtain licensure and accreditation; requiring residential substance use disorder treatment facility to obtain accreditation within one year of operation; providing provisions for operation at a new site or new ownership; requiring a report; stating licensed treatment beds are subject to specific provisions; providing for rulemaking; and providing a sunset date.

*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 816**, Truth in Giving Act.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope,

Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: Martin—1.

Absent: Maroney—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 S. B. 816) 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 820**, Requiring automatic enrollment of substance abuse disorder population into managed care.

On third reading, coming up in regular order, with the unreported Finance committee amendment pending, and with the right having been granted on yesterday, Tuesday, February 27, 2024, for further amendments to be received on third reading, was read a third time.

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

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

#### **ARTICLE 5. MISCELLANEOUS PROVISIONS.**

**~~§9-5-29. Payments to substance use disorder residential treatment facilities based upon performance-based outcomes.~~ Department of Human Services to develop outcome measures for substance use disorder; develop a quality withhold program; and develop and implement plan for day one enrollment of Medicaid enrollees.**

(a) For purposes of this section:



"Department" means the ~~Department of Health and Human Resources~~ Department of Human Services.

~~(2) "Evidence based" means a program or practice that is cost-effective and includes at least two randomized or statistically controlled evaluations that have demonstrated improved outcomes for its intended populations.~~

~~(3) "Managed care organizations" "MCOs" means Medicaid managed care organizations~~ a certified health maintenance organization (HMO) that provides health care services to Medicaid members pursuant to an agreement or contract with the Bureau for Medical Services.

~~(4) "Performance based contracting" means structuring all aspects of the service contract around the purpose of the work to be performed and the desired results with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes and linking payment for services to contractor performance. "Quality withhold" means, in a capitated model, having a portion of a rate withheld subject to performance consistent with established quality requirements.~~

~~(5) "Promising practice" means a practice that presents, based upon preliminary information, potential for becoming a research-based or consensus-based practice.~~

~~(6) "Research based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence based practices.~~

~~(b) Within three months of effective date, Bureau for Medical Services shall seek an amendment to an existing waiver or waivers from the Centers for Medicare and Medicaid Services to support the pilot program. Within 90 days of Centers for Medicare and Medicaid Services approval, Bureau for Medical Services shall enter into contracts with the MCOs wherein, at a minimum, 15 percent of substance use disorder residential treatment contracts for facilities providing substance use disorder treatment services are paid based upon performance based measures~~ The department,

shall develop performance outcome measures to be implemented at the provider level for substance use disorder in-patient providers. These provider-level outcome measures will include, but not be limited to, nationally recognized measures of performance outcomes related to substance use disorder in-patient care. The Department will utilize national standards from Hedis and/or Atlas, as well as other standardized measures, in developing the provider-level outcome measures. The measures will be reported to the Legislative Oversight Commission on Health and Human Resources Accountability on or before August 30, 2024, and will be implemented no later than January 1, 2025, from the initial baseline. These measures shall be shared with the managed care organizations to inform contracting decisions.

~~(c) The department's contracts with the MCOs shall be developed and implemented in a manner that complies with the applicable provisions of this code and are exempt from §5A-3-1 et seq. of this code.~~ The department, shall develop a managed care quality withhold program based upon nationally recognized measures of performance outcomes, including those related to substance use disorder in-patient care. These measures will be reported to the Legislative Oversight Commission on Health and Human Resources Accountability on or before May 30, 2024, and implemented for baseline July 1, 2024. The baseline year will be to establish new entrant into the market. The capitation withhold will begin July 1, 2025.

~~(d) The MCOs shall contract with substance use disorder residential treatment facilities and allow substance use disorder treatment facilities the option to be paid based upon performance-based metrics. Substance use disorder residential treatment facilities that opt for performance-based contracting shall including the following:~~ The department, shall plan for automatic day one enrollment to a managed care organization for all Medicaid enrollees. This workplan shall be presented to the Legislative Oversight Commission on Health and Human Resources Accountability on or before September 30, 2024. The workplan will detail the steps to accomplish this goal, the system changes required, the Center for Medicare and Medicaid Service (CMS)

authority changes required along with a detailed timeline of milestones, and a projected completion deadline.

~~(1) The use of programs that are evidence based, research-based, and supported by promising practices, in providing services to patient population, including fidelity and quality assurance provisions.~~

~~(2) The substance use disorder residential treatment facility shall develop a robust post-treatment planning program, including, but not limited to, connecting the patient population to community-based supports, otherwise known as wraparound services, to include, but not be limited to, designation of a patient navigator to assist each discharged patient with linkage to medical, substance use, and psychological treatment services; assistance with job placement; weekly communication regarding status for up to three years; and assistance with housing and transportation.~~

~~(3) The department shall create an advisory committee that includes representatives from the Office of Drug Control Policy, the Bureau for Behavioral Health, the Bureau for Medical Services, and the MCO to develop the performance-based metrics for which payment is based that shall include, but are not limited to, the following:~~

~~(A) Whether patient is drug free, 30 days post discharge, six months post discharge, one year post discharge, two years post discharge, and three years post discharge;~~

~~(B) Whether patient is employed, 30 days post discharge, six months post discharge, one year post discharge, two years post discharge, and three years post discharge;~~

~~(C) Whether patient has housing, 30 days post discharge, six months post discharge, and one year post discharge;~~

~~(D) Whether substance use disorder residential treatment facility has arranged medical, substance use, psychological services, or other community based supports for the patient and whether the patient attended, 30 days post discharge, six months~~

~~post discharge, one year post discharge, two years post discharge, and three years post discharge;~~

~~(E) Whether the patient has transportation 30 days post discharge; and~~

~~(F) Whether patient has relapsed and needed any additional substance use disorder treatment, 30 days post discharge, six months post discharge, one year post discharge, two years post discharge, and three years post discharge.~~

~~(G) A managed care organization does not have an obligation to provide any of the information specified in this section regarding a patient if that patient ceases to be an enrolled member of that particular MCO.~~

~~(e) The substance use disorder residential treatment facility shall report the performance-based metrics to the Office of Drug Control Policy on the first of every month.~~

~~(f) For the three years of implementation of performance-based contracting, the MCO may transfer risk for the provision of services to the substance use disorder residential treatment facility only to the limited extent necessary to implement a performance-based payment methodology, such as phased payment for services. However, the MCO may develop a shared saving methodology through which the substance use disorder residential treatment facility shall receive a defined share of any savings that result from improved performance.~~

~~(g) The department shall hire a full time employee who will actively monitor the substance use disorder residential treatment facility's compliance with required reporting, monitor contracts executed under this section, and support the advisory committee in determining the best practices and refinement of this pilot.~~

~~(h) The advisory committee shall evaluate this pilot program annually for effectiveness, adjust metrics as indicated to improve quality outcomes, and assess the pilot for continuation.~~

~~(i) The pilot program shall terminate in three years, unless it is recommended for continued evaluation based upon metrics that indicate the effectiveness of this program.~~

~~(j) The department shall conduct actuarial analysis of the pilot program annually and submit this report together with a detailed report of the overall performance of the pilot program, including but not limited to, any performance-based metrics added in the fiscal year, and a recommendation regarding the effectiveness of the program to the Legislative Oversight Commission on Health and Human Resources Accountability by January 15, 2023 and annually thereafter throughout the term of the pilot program.~~

On motion of Senator Takubo, the following amendment to the Finance committee amendment to the bill (Eng. Com. Sub. for S. B. 820) was reported by the Clerk and adopted:

On page 2, section 29, line 31, following the words "outcome measures", by inserting a comma and the words: "and will obtain input from the West Virginia Behavioral Healthcare Providers Association and West Virginia Association of Addiction and Prevention Professionals".

On motion of Senator Weld, the following amendment to the Finance committee amendment to the bill (Eng. Com. Sub. for S. B. 820) was next reported by the Clerk and adopted:

On page 3, section 29, line 47, after the word "enrollees" by inserting the words "who are eligible for managed care".

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

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

Engrossed Committee Substitute for Senate Bill 820 was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton,

Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—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 S. B. 820) passed.

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

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

**Eng. Com. Sub. for Senate Bill 820**—A Bill to amend and reenact §9-5-29 of the Code of West Virginia, 1931, as amended, relating to substance abuse; defining terms; requiring the Department of Human Services to develop performance measures; stating the Department of Human Services will obtain input from specified stakeholders regarding provider-level outcome measures; to receive input establishing deadlines; requiring reporting; requiring the department to develop a quality withhold program; establishing deadlines; and requiring the department to develop a workplan for automatic day one enrollment to a managed care organization for all Medicaid enrollees who are eligible for managed care.

*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 822**, Relating generally to real property, tax, and registration requirements associated with carbon offset agreements.

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

Pending extended discussion,

At the request of Senator Takubo, and by unanimous consent, further consideration of the bill was deferred until the conclusion of bills on today's second reading calendar, following consideration of Engrossed Committee Substitute for Senate Bill 601, already placed in that position.

On motion of Senator Takubo, at 12:52 p.m., the Senate recessed for 30 minutes.

The Senate reconvened at 1:30 p.m. and resumed consideration of the remainder of its third reading calendar, the next bill coming up in numerical sequence being

**Eng. Com. Sub. for Senate Bill 826**, Creating exemption from bond or security requirement of banking institutions holding certain funds for county commissions.

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

Senators Trump, Nelson, and Smith requested rulings from the Chair as to whether they should be excused from voting under Rule 43 of the Rules of the Senate.

The Chair replied that any impact on Senators Trump, Nelson, and Smith would be as members of a class of persons and that they would be required to vote.

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—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 S. B. 826) 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 837**, Reorganizing offices of Public Defender Corporations to conform to circuit reconfiguration.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 837) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.



So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 837) 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 840**, Modifying unemployment benefits.

On third reading, coming up in regular order, with the right having been granted on yesterday, Tuesday, February 27, 2024, for amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the bill was referred to the Committee on Rules, with the right to amend on third reading remaining in effect.

**Eng. Com. Sub. for Senate Bill 841**, Setting amount of unemployment taxes and benefits.

On third reading, coming up in regular order, with the right having been granted on yesterday, Tuesday, February 27, 2024, for amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Takubo, and by unanimous consent, further consideration of the bill was deferred until the conclusion of bills on today's second reading calendar, following consideration of Engrossed Committee Substitute for Senate Bill 822, already placed in that position.

**Eng. Com. Sub. for Senate Bill 850**, Updating Consumer Credit and Protection Act.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio,

Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—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 S. B. 850) 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 866**, Designating State Treasurer as chairperson of WV Investment Management Board.

On third reading, coming up in regular order, with the right having been granted on yesterday, Tuesday, February 27, 2024, for amendments to be received on third reading, was read a third time.

There being no amendments offered,

Engrossed Senate Bill 866 was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Smith, Stover, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—30.

The nays were: Chapman, Rucker, and Stuart—3.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 866) 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 874**, Relating to WV Division of Multimodal Transportation.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 874) 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 875**, Relating to certain insurance coverage provided by BRIM.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 875) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 875) 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 Joint Resolution 6**, Incorporation of Churches or Religious Denominations 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: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

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. 6) adopted, as follows:

**Eng. Com. Sub. for Senate Joint Resolution 6**—Proposing an amendment to the Constitution of the State of West Virginia, amending section 47, article VI thereof, relating to authorizing the incorporation of religious denominations; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

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

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in the year 2024, which proposed amendment is that section 47, article VI thereof, be amended to read as follows:

## **Article VI. The Legislature.**

### **§47. Incorporation of religious denominations ~~prohibited~~ permitted.**

~~No charter of incorporation shall be granted to any church or religious denomination.~~ Provisions may be made by general laws for securing the title to church property, and for the sale and transfer thereof, so that it shall be held, used, or transferred for the purposes of such church, or religious denomination. Provisions may also be made by general laws for churches or religious denominations that choose to incorporate.

*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 1" and designated as the "Incorporation of Churches or Religious Denominations Amendment" and the purpose of the proposed amendment is summarized as follows: "To authorize the

incorporation of churches or religious denominations that choose to incorporate."

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

**Eng. Senate Joint Resolution 10**, Homestead Exemption for Disabled Veterans 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: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the resolution (Eng. S. J. R. 10) adopted, as follows:

**Eng. Senate Joint Resolution 10**—Proposing an amendment to the Constitution of the State of West Virginia, amending section one-b, article X thereof, relating to providing for a homestead exemption for veterans with 90 percent or greater service-connected disabilities; numbering and designating such proposed amendment; and providing a summarized statement of such proposed amendment.

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

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to

the voters of the state at the next general election to be held in the year 2024, which proposed amendment is that section one-b, article X thereof, be amended to read as follows:

## **ARTICLE X. TAXATION AND FINANCE.**

### **§1b. Property tax limitation and homestead exemption amendment of 1982.**

Ad valorem property taxation shall be in accordance with this section and other applicable provisions of this article not inconsistent with this section.

#### **Subsection A — Value; Rate of Assessment; Exceptions**

Notwithstanding any other provisions of this Constitution and except as otherwise provided in this section, all property subject to ad valorem taxation shall be assessed at 60 percent of its value, as directed to be ascertained in this section, except that the Legislature may from time to time, by general law agreed to by two thirds of the members elected to each house, establish a higher percentage for the purposes of this paragraph, which percentage shall be uniform as to all classes of property defined in section one of this article, but not more than 100 percent of such value.

Notwithstanding the foregoing, for the first day of July 1982, and the first day of July of each year thereafter until the values may be fixed as a result of the first statewide reappraisal hereinafter required, assessments shall be made under the provisions of current statutory law, which is hereby validated for such purpose until and unless amended by the Legislature. Assessment and taxation in accord with this section shall be deemed to be equal and uniform for all purposes.

#### **Subsection B — Determination of Value**

The Legislature shall provide by general law for periodic statewide reappraisal of all property, which reappraisal shall be related for all property to a specified base year which, as to each such reappraisal, shall be uniform for each appraisal for all classes of property and all counties. In such law, the Legislature shall

provide for consideration of (1) trends in market values over a fixed period of years prior to the base year, (2) the location of the property, and (3) such other factors and methods as it may determine: *Provided*, That with respect to reappraisal of all property upon the base year of 1980, such reappraisals are deemed to be valid and in compliance with this section: *Provided*, however, That with respect to farm property, as defined from time to time by the Legislature by general law, the determination of value shall be according to its fair and reasonable value for farming purposes, as may be defined by general law.

The results of each statewide appraisal shall, upon completion, be certified and published and errors therein may be corrected, all as provided by general law. The first such statewide appraisal shall be completed, certified, and published on or before the 31st day of March 1985, for use when directed by the Legislature.

The Legislature shall further prescribe by general law the manner in which each statewide reappraisal shall be employed to establish the value of the various separately assessed parcels or interests in parcels of real property and various items of personal property subject to ad valorem property taxation, the methods by which increases and reductions in value subsequent to the base year of each statewide reappraisal shall be ascertained, and require the enforcement thereof.

#### Subsection C — General Homestead Exemption

Notwithstanding any other provisions of this Constitution to the contrary, the first \$20,000 of assessed valuation of any real property, or of personal property in the form of a mobile home, used exclusively for residential purposes and occupied by the owner, or one of the owners thereof, as his residence who is a citizen of this state and who is 65 years of age or older or is permanently and totally disabled as that term may be defined by the Legislature, shall be exempt from ad valorem property taxation, subject to such requirements, limitations and conditions as shall be prescribed by general law.



Notwithstanding any other provision of this Constitution to the contrary, the Legislature shall have the authority to provide by general law for an exemption from ad valorem property taxation in an amount not to exceed the first \$20,000 of value of any real property, or of personal property in the form of a mobile home, used exclusively for residential purposes and occupied by the owner, or one of the owners thereof, as his residence who is a citizen of this state, and who is under 65 years of age and not totally and permanently disabled: *Provided*, That upon enactment of such general law, this exemption shall only apply to such property in any county in which the property was appraised at its value as of the first day of January 1980, or thereafter, as determined by the Legislature, and this exemption shall be phased in over such period of time not to exceed five years from the date such property was so appraised, or such longer time as the Legislature may determine by general law: *Provided, however*, That in no event shall any one person and his spouse, or one homestead be entitled to more than one exemption under these provisions: *Provided further*, That these provisions are subject to such requirements, limitations and conditions as shall be prescribed by general law.

The Legislature shall have the authority to provide by general law for property tax relief to citizens of this state who are tenants of residential or farm property.

#### Subsection D — Additional Limitations on Value

With respect to the first statewide reappraisal, pursuant to this section, the resulting increase in value in each and every parcel of land or interest therein and various items of personal property subject to ad valorem property taxation over and above the previously assessed value shall be allocated over a period of 10 years in equal amounts annually.

The Legislature may by general law also provide for the phasing in of any subsequent statewide reappraisal of property.

#### Subsection E — Levies for Free Schools

In equalizing the support of free schools provided by state and local taxes, the Legislature may require that the local school districts levy all or any portion of the maximum levies allowed under section one of this article which has been allocated to such local school districts.

Within the limits of the maximum levies permitted for excess levies for schools or better schools in sections one and 10 of this article, the Legislature may, in lieu of the exercise of such powers by the local school districts as heretofore provided, submit to the voters, by general law, a statewide excess levy, and if it be approved by the required number of voters, impose such levy, subject however to all the limitations and requirements for the approval of such levies as in the case of a district levy. The law submitting the question to the voters shall provide, upon approval of the levy by the voters, for the assumption of the obligation of any local excess levies for schools then in force theretofore authorized by the voters of a local taxing unit to the extent of such excess levies imposed by the state and so as to avoid double taxation of those local districts. The Legislature may also by general law reserve to the school districts such portions of the power to lay authorized excess levies as it may deem appropriate to enable local school districts to provide educational services which are not required to be furnished or supported by the state. If a statewide excess levy for the support of free schools is approved by the required majority, the revenue from such a statewide excess levy shall be deposited in the state treasury and be allocated first for the local obligations assumed and thereafter for such part of the state effort to support free schools, by appropriation or as the law submitting the levy to the voters shall require, as the case may be.

The defeat of any such proposed statewide excess levy for school purposes shall not in any way abrogate or impair any local existing excess levy for such purpose nor prevent the adoption of any future local excess levy for such purpose.

#### Subsection F — Implementation

In the event of any inconsistency between any of the provisions of this section and other provisions of this Constitution, the

provisions of this section shall prevail. The Legislature shall have plenary power to provide by general law for the equitable application of this article and, as to taxes to be assessed prior to the first statewide reappraisal, to make such laws retroactive to the first day of July 1982, or thereafter.

Subsection G — Homestead exemption for veterans with 90 percent or greater service-connected disabilities

Notwithstanding any other provisions of this Constitution to the contrary, the Legislature by general law may exempt completely from taxation any real property, or personal property in the form of a mobile home, used exclusively for residential purposes and occupied by the owner, or one of the owners thereof, as his or her residence who is a citizen of this state and a veteran of the armed forces of the United States of America and who has a 90 percent or greater service-connected disability as determined by the United States Department of Veterans Affairs or its successor.

*Resolved further*, That in accordance with the provisions of article eleven, chapter 3 of the Code of West Virginia, 1931, as amended, such proposed amendment is hereby numbered "Amendment 1" and designated as the "Homestead Exemption for Disabled Veterans Amendment" and the purpose of the proposed amendment is summarized as follows: "To provide for a homestead exemption for veterans with at least 90 percent service-connected disabilities."

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*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 4233**, Non-binary not permitted on birth certificates.

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

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

**Eng. Com. Sub. for House Bill 4874**, Relating to fatality and mortality review team.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—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. 4874) 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 4874**—A Bill to amend and reenact §61-12A-1, §61-12A-2, §61-12A-3 and §61-12A-4, of the Code of West Virginia, 1931, as amended; and to repeal §61-12A-5 of said code, all relating to fatality and mortality review team; providing team members; providing timeframe for team have meetings; updating the authority of review team; removing the study of certain deaths; removing advisory boards; requiring certain reports; and eliminating required reporting and analysis.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

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. 4874) 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 4933**, Relating to Medicaid dental coverage.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—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. 4933) passed.

At the request of Senator Takubo, as vice chair of the Committee on Health and Human Resources, and by unanimous

consent, the unreported Health and Human Resources committee amendment to the title of the bill was withdrawn.

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

**Eng. Com. Sub. for House Bill 4933**—A Bill to amend and reenact §9-5-12a of the Code of West Virginia, 1931, as amended, relating to Medicaid dental coverage; providing coverage is limited to \$2,000 per two-year budget period; providing recipients must pay for services over the \$2,000; requiring reporting; and removing expired internal effective date.

Senator Takubo moved that the bill take effect July 1, 2024.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

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. 4933) takes effect July 1, 2024.

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

**Eng. House Bill 5593**, Relating to the creation, composition, qualifications, and compensation of the State Board of Risk and Insurance Management.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton,

Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 5593) passed.

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

**Eng. House Bill 5593**—A Bill to amend and reenact §29-12-3 of the Code of West Virginia, 1931, as amended, relating to the creation, composition, qualifications, and compensation of the State Board of Risk and Insurance Management; continuing the board; providing for voting membership of the board; providing for qualifications of members; providing procedures for appointment of members; providing initial appointment terms of members; providing terms of subsequent appointment of members; providing procedures for vacancy, expiration of terms, and removal of members; providing end date for term of members appointed prior to the effective date of the reenactment of this section; authorizing reappointment of any qualified member appointed prior to the effective date of the reenactment; providing that Insurance Commissioner shall serve as non-voting board secretary; and providing for compensation of board members.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 5593) takes effect from passage.

*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 4086**, Authorizing certain agencies of the Department of Commerce to promulgate legislative rules.

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

**Eng. Com. Sub. for House Bill 4376**, Relating to surgical smoke evacuation.

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

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

**Eng. Com. Sub. for House Bill 4431**, Permitting the cremation of unidentified remains.

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

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



**Eng. House Bill 4814**, Relating to extending the reporting and sunset dates of the State Advisory Council on Postsecondary Attainment Goals.

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

**Eng. House Bill 4838**, Require county boards of education to provide long-term substitute teachers, upon hiring, with certain information.

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:

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

## **ARTICLE 2. SCHOOL PERSONNEL.**

### **§18A-2-3. Employment of substitute teachers; and employment of retired teachers as substitutes in areas of critical need and shortage.**

(a) The county superintendent, subject to approval of the county board, may employ and assign substitute teachers to any of the following duties:

(1) Fill the temporary absence of any teacher or an unexpired school term made vacant by resignation, death, suspension, or dismissal;

(2) Fill a teaching position of a regular teacher on leave of absence; and

(3) Perform the instructional services of any teacher who is authorized by law to be absent from class without loss of pay, providing the absence is approved by the board of education in accordance with the law.

The substitute shall be a duly certified teacher.

(b) Notwithstanding any other provision of this code to the contrary, a substitute teacher who has been assigned as a classroom teacher in the same classroom continuously for more than one half of a grading period and whose assignment remains in effect two weeks prior to the end of the grading period, shall remain in the assignment until the grading period has ended, unless the principal of the school certifies that the regularly employed teacher has communicated with and assisted the substitute with the preparation of lesson plans and monitoring student progress or has been approved to return to work by his or her physician. For the purposes of this section, teacher and substitute teacher, in the singular or plural, mean professional educator as defined in ~~section one, article one of this chapter~~ §18A-1-1 of this code.

(c) Persons who are hired as long-term substitute teachers shall be provided information by the county board relating to an IEP plan and 504 plan, detailing their uses and what those long-term substitute teachers should do to implement these plans upon their hiring.

~~(e)~~ (d) (1) The Legislature hereby finds and declares that due to a shortage of qualified substitute teachers, a compelling state interest exists in expanding the use of retired teachers to provide service as substitute teachers in areas of critical need and shortage. The Legislature further finds that diverse circumstances exist among the counties for the expanded use of retired teachers as substitutes.

(2) For the purposes of this subsection:

(A) "Area of critical need and shortage for substitute teachers" means an area of certification and training in which the number of available substitute teachers in the county who hold certification and training in that area and who are not retired is insufficient to meet the projected need for substitute teachers; and

(B) "Teacher or substitute teacher" includes speech pathologists, school nurses, and school counselors.

(3) A person receiving retirement benefits under ~~article seven-a, chapter eighteen §18-7A-1 et seq.~~ of this code or who is entitled to retirement benefits during the fiscal year in which that person retired may accept employment as a critical needs substitute teacher for an unlimited number of days each fiscal year without affecting the monthly retirement benefit to which the retirant is otherwise entitled if the following conditions are satisfied:

(A) The county board adopts a policy recommended by the superintendent to address areas of critical need and shortage for substitute teachers;

(B) The policy sets forth the areas of critical need and shortage for substitute teachers in the county in accordance with the definition of area of critical need and shortage for substitute teachers set forth in subdivision (2) of this subsection;

(C) The policy provides for the employment of retired teachers as critical needs substitute teachers during the school year on an expanded basis in areas of critical need and shortage for substitute teachers as provided in this subsection;

(D) The policy provides that a retired teacher may be employed as a substitute teacher in an area of critical need and shortage for substitute teachers on an expanded basis as provided in this subsection only when no other teacher who holds certification and training in the area and who is not retired is available and accepts the substitute assignment;

(E) The policy is effective for one school year only and is subject to annual renewal by the county board;

(F) The state board approves the policy and the use of retired teachers as substitute teachers on an expanded basis in areas of critical need and shortage for substitute teachers as provided in this subsection; and

(G) Prior to employment of a retired teacher as a critical needs substitute teacher beyond the post-retirement employment limitations established by the Consolidated Public Retirement Board, the superintendent of the affected county submits to the

state board in a form approved by the Consolidated Public Retirement Board and the state board, an affidavit signed by the superintendent stating the name of the county, the fact that the county has adopted a policy to employ retired teachers as substitutes to address areas of critical need and shortage, the name or names of the person or persons to be employed as a critical needs substitute pursuant to the policy, the critical need and shortage area position filled by each person, the date that the person gave notice to the county board of the person's intent to retire, and the effective date of the person's retirement. Upon verification of compliance with this section and the eligibility of the critical needs substitute teacher for employment beyond the post-retirement limit, the state board shall submit the affidavit to the Consolidated Public Retirement Board.

(4) Any person who retires and begins work as a critical needs substitute teacher within the same fiscal year in which that person retired shall lose those retirement benefits attributed to the annuity reserve, effective from the first day of employment as a retiree critical needs substitute teacher in that fiscal year and ending with the month following the date the retiree ceases to perform service as a critical needs substitute teacher.

(5) Retired teachers employed to perform expanded substitute service pursuant to this subsection are considered day-to-day, temporary, part-time employees. The substitutes are not eligible for additional pension or other benefits paid to regularly employed employees and may not accrue seniority.

(6) A retired teacher is eligible to be employed as a critical needs substitute teacher to fill a vacant position without any loss of retirement benefits attributed to the annuity reserve only if the retired teacher's retirement became effective before the first day of July preceding at least the fiscal year during which he or she is employed as a critical needs substitute teacher.

(7) When a retired teacher is employed as a critical needs substitute to fill a vacant position, the county board shall continue to post the vacant position until it is filled with a regularly

employed teacher who is fully certified or permitted for the position.

(8) When a retired teacher is employed as a critical needs substitute to fill a vacant position, the position vacancy shall be posted electronically and easily accessible to prospective employees as determined by the state board.

(9) Until this subsection is expired pursuant to subdivision (10) of this subsection, the state board shall report to the Joint Committee on Government and Finance, prior to February 1 of each year, information indicating the effectiveness of the provisions of this subsection on reducing the critical need and shortage of substitute teachers including, but not limited to, the number of retired teachers, by critical need and shortage area position filled and by county, employed beyond the post-retirement employment limit established by the Consolidated Public Retirement Board, the date that each person gave notice to the county board of the person's intent to retire, and the effective date of the person's retirement. A copy of the report shall also be provided to the Legislative Oversight Commission on Education Accountability.

(10) The provisions of this subsection shall expire on June 30, 2025.

The bill (Eng. H. B. 4838), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 5017**, Relating to mobile food establishment reciprocity.

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

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

**Eng. House Bill 5117**, Relating generally to waiver of initial licensing fees for certain individuals.

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

**Eng. Com. Sub. for House Bill 5122**, Relating to civil service for deputy sheriffs.

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

**Eng. Com. Sub. for House Bill 5175**, Eliminate funding for the Center for Nursing and transfer its duties and authorities to the Higher Education Policy Commission.

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

**Eng. Com. Sub. for House Bill 5317**, Making it permissive for commercial motor vehicles registered in this state to pass an annual inspection of all safety equipment to be consistent with the federal motor carrier safety regulations.

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

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

**Eng. Com. Sub. for House Bill 5347**, Relating to establishing a program for emergency medical services personnel to become certified paramedics.

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

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

**Eng. Com. Sub. for House Bill 5395**, Relating to judicial review of Board decisions.

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

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

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

## **ARTICLE 7. CLAIM PROCEDURE.**

### **§21A-7-17. Finality of board's decision — Judicial review.**

The decision of the board shall be final and benefits shall be paid or denied in accordance therewith, unless a claimant, last employer, or other interested party appeals to the ~~circuit court of Kanawha County~~ Intermediate Court of Appeals within ~~thirty~~ 30 days after mailing of notification of the board's decision: *Provided*, That, in cases relating to a disqualification under ~~subdivision (4) of section three of article six~~ §21A-6-3(4) of this code, the decision of the board shall be final and benefits shall be paid or denied in accordance therewith, unless a claimant, last employer, or other interested party appeals to the ~~circuit court of Kanawha County~~ Intermediate Court of Appeals within ~~twenty~~ 20 days after mailing of notification of the board's decision.

Parties to the proceedings before the board shall be made defendants in any such appeal; and the commissioner shall be a ~~necessary~~ an interested party to ~~with the discretionary authority to appear in any such~~ judicial review.

### **§21A-7-20. Board a necessary party to judicial action; legal counsel.**

[Repealed.]

The bill (Eng. Com. Sub. for H. B. 5395), as amended, was then ordered to third reading.

A message from the Clerk of the House of Delegates announced the amendment by that body, adoption as amended, and

requested the concurrence of the Senate in the House of Delegates amendment, as to

**Senate Concurrent Resolution 21**, US Army MSG James E. Jackson Jr. Memorial Road.

On motion of Senator Takubo, the resolution was taken up for immediate consideration.

The following House of Delegates amendment to the resolution was reported by the Clerk:

On line 5, following the word "in" by striking "New York City" and inserting in lieu thereof "Talcott, West Virginia".

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendment to the resolution.

The question being on the adoption of the resolution, as amended by the House of Delegates, the same was put and prevailed.

*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, including the Committee on Rules,

On motion of Senator Takubo, at 2:10 p.m., the Senate recessed until 5 p.m. today.

The Senate reconvened at 5:35 p.m. and, at the request of Senator Takubo, unanimous consent being granted, returned to the fourth order of business.

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

Your Committee on Finance has had under consideration

**Senate Bill 200**, Budget Bill.



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

**Com. Sub. for Senate Bill 200** (originating in the Committee on Finance)—A Bill making appropriations of public money out of the Treasury in accordance with section 51, article VI of the Constitution.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for S. B. 200) 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.

On motion of Senator Takubo, 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: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—30.

The nays were: None.

Absent: Boley, Hunt, Maroney, and Woelfel—4.

The bill was read a second time and ordered to engrossment and third reading.

Engrossed Committee Substitute for Senate Bill 200 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—31.

The nays were: None.

Absent: Boley, Maroney, and Woelfel—3.

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. 200) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—31.

The nays were: None.

Absent: Boley, Maroney, and Woelfel—3.

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. 200) takes effect from passage.

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

Senator Hamilton, from the Committee on Agriculture and Natural Resources, submitted the following report, which was received:

Your Committee on Agriculture and Natural Resources has had under consideration

**Eng. Com. Sub. for House Bill 4911**, Relating to the sale of raw milk.

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,

Bill Hamilton,  
*Chair.*

The bill, under the original double committee reference, was then referred to the Committee on the Judiciary, with amendments from the Committee on Agriculture and Natural Resources pending.

Senator Takubo announced that in the meeting of the Committee on Rules previously held, the committee, in accordance with Rule 17 of the Rules of the Senate, had ordered Engrossed Committee Substitute for Senate Bill 601 to the foot of the Senate second reading calendar.

Senator Takubo announced that in the same meeting, the Committee on Rules, in accordance with Rule 17 of the Rules of the Senate, had removed from the Senate third reading calendar, Engrossed Committee Substitute for Senate Bill 822.

The end of today's second reading calendar having been reached, the Senate returned to the consideration of

**Eng. Com. Sub. for Senate Bill 822**, Relating generally to real property, tax, and registration requirements associated with carbon offset agreements.

Having been removed from the Senate third reading calendar in earlier proceedings today, no further action thereon was taken.

**Eng. Com. Sub. for Senate Bill 841**, Setting amount of unemployment taxes and benefits.

On third reading, coming up in deferred order, with the right having been granted on yesterday, Tuesday, February 27, 2024, for amendments to be received on third reading, was read a third time.

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

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

#### **ARTICLE 1A. DEFINITIONS.**

##### **§21A-1A-28. Wages; average annual wage; threshold wage.**

(a) "Wages" means all remuneration for personal service, including commissions, gratuities customarily received by an individual in the course of employment from persons other than the employing unit, as long as such gratuities equal or exceed an amount of not less than \$20 each month and which are required to be reported to the employer by the employee, bonuses and the cash value of all remuneration in any medium other than cash except for agricultural labor and domestic service. The term "wages" includes remuneration for service rendered to the state as a member of the state National Guard or Air National Guard only when serving on a temporary basis pursuant to a call made by the Governor under §15-1D-1 and §15-1D-2 of this code.

(b) The term "wages" does not include:

(1) That part of the remuneration which, after remuneration equal to ~~\$8,000~~ \$10,000 ~~or, after the amendment and reenactment of this section during the 2009 legislative session, the threshold wage~~ is paid during a calendar year to an individual by an employer or his or her predecessor with respect to employment during any calendar year, is paid to such individual by such employer during such calendar year unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the purposes of this section, the term "employment" includes service constituting employment under any unemployment compensation law of another state; or which as a

condition for full tax credit against the tax imposed by the federal Unemployment Tax Act is required to be covered under this chapter; and, except that for the purposes of §21A-6-1, §21A-6-10, §21A-6-11, and §21A-6-13 of this code, all remuneration earned by an individual in employment shall be credited to the individual and included in his or her computation of base period wages: *Provided*, That the remuneration paid to an individual by an employer with respect to employment in another state or other states upon which contributions were required of and paid by such employer under an unemployment compensation law of such other state or states shall be included as a part of the remuneration equal to the amounts of ~~\$8,000~~ \$10,000 ~~or, after the amendment and reenactment of this section during the 2009 legislative session, the threshold wage herein referred to~~ In applying such limitation on the amount of remuneration that is taxable, an employer shall be accorded the benefit of all or any portion of such amount which may have been paid by its predecessor or predecessors: *Provided, however*, That if the definition of the term "wages" as contained in Section 3306(b) of the Internal Revenue Code of 1954, as amended, is amended to include remuneration in excess of ~~\$8,000~~ \$10,000 ~~or, after the amendment and reenactment of this section during the 2009 legislative session, the threshold wage~~ paid to an individual by an employer under the federal Unemployment Tax Act during any calendar year, wages for the purposes of this definition shall include remuneration paid in a calendar year to an individual by an employer subject to this chapter or his or her predecessor with respect to employment during any calendar year up to an amount equal to the amount of remuneration taxable under the federal Unemployment Tax Act;

(2) The amount of any payment made (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) to, or on behalf of, an individual in its employ or any of his or her dependents, under a plan or system established by an employer which makes provision for individuals in its employ generally (or for such individuals and their dependents), or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents) on account of: (A) Retirement; or (B) sickness or accident disability

payments made to an employee under an approved state workers' compensation law; or (C) medical or hospitalization expenses in connection with sickness or accident disability; or (D) death;

(3) Any payment made by an employer to an individual in its employ (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(4) Any payment made by an employer on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability to, or on behalf of, an individual in its employ after the expiration of six calendar months following the last calendar month in which such individual worked for such employer;

(5) Any payment made by an employer to, or on behalf of, an individual in its employ or his or her beneficiary: (A) From or to a trust described in Section 401(a) which is exempt from tax under Section 501(a) of the federal Internal Revenue Code at the time of such payments unless such payment is made to such individual as an employee of the trust as remuneration for services rendered by such individual and not as a beneficiary of the trust; or (B) under or to an annuity plan which, at the time of such payment, is a plan described in Section 403(a) of the federal Internal Revenue Code;

(6) The payment by an employer of the tax imposed upon an employer under Section 3101 of the federal Internal Revenue Code with respect to remuneration paid to an employee for domestic service in a private home or the employer of agricultural labor;

(7) Remuneration paid by an employer in any medium other than cash to an individual in its employ for service not in the course of the employer's trade or business;

(8) Any payment (other than vacation or sick pay) made by an employer to an individual in its employ after the month in which he or she attains the age of 65 if he or she did not work for the employer in the period for which such payment is made;

(9) Payments, not required under any contract of hire, made to an individual with respect to his or her period of training or service in the armed forces of the United States by an employer by which such individual was formerly employed; and

(10) Vacation pay, severance pay or savings plans received by an individual before or after becoming totally or partially unemployed but earned prior to becoming totally or partially unemployed: *Provided*, That the term totally or partially unemployed does not include: (A) Employees who are on vacation by reason of the request of the employees or their duly authorized agent, for a vacation at a specific time, and which request by the employees or their agent is acceded to by their employer; (B) employees who are on vacation by reason of the employer's request provided they are so informed at least 90 days prior to such vacation; or (C) employees who are on vacation by reason of the employer's request where such vacation is in addition to the regular vacation and the employer compensates such employee at a rate equal to or exceeding their regular daily rate of pay during the vacation period.

(c) The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the commissioner, except for remuneration other than cash for services performed in agricultural labor and domestic service.

~~(d) "Average annual wage" means the state's average annual wage which is computed on or before September 30 of the year immediately preceding the rate year and is the total remuneration paid by employers as reported on contribution reports on or before that date with respect to all employment during the four consecutive calendar quarters ending on June 30 of that year divided by the average monthly number of individuals performing services in employment during the same four calendar quarters as reported on the contribution reports.~~

~~"Threshold wage" means the wage amount the employer pays unemployment taxes on for each person in his or her employ during a calendar year. On and after the effective date of the amendment~~

~~and reenactment of this chapter by the Legislature in 2009, the threshold wage will be \$12,000: *Provided*, That when the moneys in the unemployment fund reach \$220 million on February 15 of any year, the threshold wage thereafter will be reduced to \$9,000: *Provided, however*, That each year thereafter the threshold wage shall increase or decrease by the same percentage that the state's average wage increases or decreases~~

## **ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.**

### **§21A-6-1d. Jobs and Reemployment Act.**

(a) In addition to compliance with all other eligibility requirements, an individual shall be eligible and shall remain eligible for unemployment benefits only if he or she actively seeks, and continues to seek, work by conducting at least four work search activities weekly, defined as:

(1) Registering for work with the state's labor exchange system, placement firm, temporary work agencies, or educational institution with job placement offices;

(2) Logging on and looking for work in the state's labor exchange or other online job matching system;

(3) Using reemployment services in job centers or completing similar online or self-service activities, including, but not limited to, obtaining and using labor market and career information, participating in Reemployment Services and Eligibility Assessment activities, participating in skills assessment for occupational matching, instructional workshops, or other specialized activities;

(4) Completing job applications for employers that have, or are reasonably expected to have, job openings, or following through on job referrals or job development attempts, as directed by Workforce West Virginia staff;

(5) Applying for or participating in employment and training services provided by partner programs in job centers;



(6) Participating in work-related networking events, such as job clubs, job fairs, industry association events, or networking groups;

(7) Making contacts with, or in-person visits to, employers that have, or are reasonably expected to have, job openings;

(8) Taking a civil service examination;

(9) Going on interviews with employers, either in-person or virtually; or

(10) Performing any other work search activities prescribed or allowed by rules promulgated by Workforce West Virginia.

(b) The commissioner shall:

(1) Require an individual, at the time of application for unemployment benefits and weekly thereafter, to provide proof of all his or her work search activities;

(2) Verify submissions of proof of work search activities by individuals applying for or receiving unemployment benefits; and

(3) Determine any individual who fails to perform work search activities or provide proof of work search activities as required by this section ineligible to receive unemployment benefits unless the individual can reasonably explain his or her failure to do so or timely remedy the failure to provide proof of his or her work search activity.

(c) The commissioner shall have discretion to determine the sufficiency of the proof of work search activities submitted, the explanation of a failure to submit such proof, the provision of such proof after an inaccuracy in the proof provided is identified, and whether an individual has otherwise complied with the requirements of this section.

(d) The commissioner shall, utilizing existing resources:

(1) Establish a process by which Workforce West Virginia will share open positions submitted to or posted by the Division of Personnel or any other state-administered job board by employers

directly with individuals applying for or receiving unemployment benefits; and

(2) Establish a process by which, for the purpose of helping individuals applying for or receiving unemployment benefits secure suitable work, Workforce West Virginia shall refer individuals applying for or receiving unemployment benefits to such open positions, including facilitating contact between employers and those individuals, and monitoring whether those individuals are sufficiently responsive to a referral.

(e) An individual applying for or receiving unemployment benefits who receives referrals from Workforce West Virginia to a job or jobs considered to be suitable, as that term is defined in this chapter, shall apply for that job or those jobs within one-week of receiving the referrals and accept employment in suitable work if offered.

(f) Employers shall report the refusal of any individual who is receiving unemployment benefits and who receives job referrals from Workforce West Virginia to accept an offer of employment to the commissioner. The report shall be made in writing in a manner prescribed by the commissioner and shall be signed by the employer. The report shall become part of the file of the individual's claim for benefits.

(g) Individuals receiving unemployment benefits who accept a referral to a part-time open position or otherwise accept part-time employment for which the wages are less than his or her weekly benefit rate shall continue to receive unemployment benefits without reduction for those wages for the duration of his or her benefits period.

(h) With the exception of individuals who have received or been served with a summons for jury duty or are serving on a jury in any court of this state, the United States, or any state of the United States; are receiving vocational training as described in the provisions of §21A-6-4 of this code; or who are members in good standing of a union that refers its members to employment from a union hall; all individuals applying for or receiving unemployment

benefits shall be subject to the requirements of this section, including, but not limited to, individuals who are seasonally unemployed or laid off subject to recall by their employer.

(i) Workforce West Virginia shall notify individuals seeking benefits, at the time an initial claim is filed and at any other time during the benefit year that the requirements substantively change, of the obligation to actively seek work. Delivery of the notification shall be made by the method selected by the individual seeking benefits, and may include United States mail, email, online mailbox, or text message. The notification shall include, at a minimum, the types of work search activities that are acceptable; the number of work search activities that are required in any week; the requirement that work search activities be documented; and the requirement to apply, and accept if offered, suitable jobs referred by the agency.

(j) The commissioner shall promulgate rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code.

(k) The provisions of this section shall become effective January 1, 2025.

**§21A-6-10. Benefit rate — total unemployment; annual computation and publication of rates.**

~~(a) Each eligible individual who is totally unemployed in any week shall be paid benefits with respect to that week at the weekly rate appearing in Column (C) in the benefit table in this section, on the line on which in Column (A) there is indicated the employee's wage class, except as otherwise provided under the term "total and partial unemployment" in §21A-1A-27 of this code. The employee's wage class shall be determined by his or her base period wages as shown in Column (B) in the benefit table. The right of an employee to receive benefits shall not be prejudiced nor the amount thereof be diminished by reason of failure by an employer to pay either the wages earned by the employee or the contribution due on such wages. An individual who is totally unemployed but earns in excess of \$60 as a result of odd job or subsidiary work, or is paid a~~

~~bonus in any benefit week shall be paid benefits for such week in accordance with the provisions of this chapter pertaining to benefits for partial unemployment.~~

~~(b)(1) The maximum benefit for each wage class shall be equal to twenty six times the weekly benefit rate.~~

~~(2) The maximum benefit rate shall be 66 and two thirds percent of the average weekly wage in West Virginia as determined by the commissioner.~~

~~(c) On July 1 of each year, the commissioner shall determine the maximum weekly benefit rate upon the basis of the formula set forth above and shall establish wage classes as are required, increasing or decreasing the amount of the base period wages required for each wage class by \$150, establishing the weekly benefit rate for each wage class by rounded dollar amount to be 55 percent of one fifty second of the median dollar amount of wages in the base period for such wage class and establishing the maximum benefit for each wage class as an amount equal to twenty six times the weekly benefit rate. Provided, That the commissioner shall may not increase or decrease the maximum weekly benefit rate for the period beginning on the effective date of the amendment and reenactment of this section in the regular session of the Legislature in 2009 until the threshold wage is reduced to \$9,000, as required by §21A-1A-28(d) of this code The maximum weekly benefit rate, when computed by the commissioner, in accordance with the foregoing provisions, shall be rounded to the next lowest multiple of \$1.~~

~~(d) After he or she has established such wage classes, the commissioner shall prepare and publish a table setting forth such information.~~

~~(e) Average weekly wage shall be computed by dividing the number of employees in West Virginia earning wages in covered employment into the total wages paid to employees in West Virginia in covered employment, and by further dividing said result by 52, and shall be determined from employer wage and contribution reports for the previous calendar year which are~~

~~furnished to the department on or before June 1 following such calendar year. The average weekly wage, as determined by the commissioner, shall be rounded to the next higher dollar.~~

~~(f) The computation and determination of rates as aforesaid shall be completed annually before July 1 and any such new wage class, with its corresponding wages in base period, weekly benefit rate, and maximum benefit in a benefit year established by the commissioner in the foregoing manner effective on July 1 shall apply only to a new claim established by a claimant on and after July 1, and does not apply to continued claims of a claimant based on his or her new claim established before said July 1.~~

#### BENEFIT TABLE

<del>A</del>	<del>B</del>	<del>C</del>	
<del>WAGE</del>	<del>WAGES IN</del>	<del>WEEKLY</del>	<del>MAXIMUM</del>
<del>CLASS</del>	<del>BASE PERIOD</del>	<del>BENEFIT RATE</del>	<del>BENEFIT RATE</del>
<del>Under</del>	<del>\$ 2,200.00</del>	<del>Ineligible</del>	
1	\$2,200.00	2,359.99	24.00 624.00
2	2,350.00	2,499.99	25.00 650.00
3	2,500.00	2,649.99	27.00 702.00
4	2,650.00	2,799.99	28.00 728.00
5	2,800.00	2,949.99	30.00 780.00
6	2,950.00	3,099.99	31.00 806.00
7	3,100.00	3,249.99	33.00 858.00
8	3,250.00	3,399.99	35.00 910.00
9	3,400.00	3,549.99	36.00 936.00
10	3,550.00	3,699.99	38.00 988.00
11	3,700.00	3,849.99	39.00 1,014.00
12	3,850.00	3,999.99	41.00 1,066.00

13	4,000.00	4,149.99	43.00	1,118.00
14	4,150.00	4,299.99	44.00	1,144.00
15	4,300.00	4,449.99	46.00	1,196.00
16	4,450.00	4,599.99	47.00	1,222.00
17	4,600.00	4,749.99	49.00	1,274.00
18	4,750.00	4,899.99	51.00	1,326.00
19	4,900.00	5,049.99	52.00	1,352.00
20	5,050.00	5,199.99	54.00	1,404.00
21	5,200.00	5,349.99	55.00	1,430.00
22	5,350.00	5,499.99	57.00	1,482.00
23	5,500.00	5,649.99	58.00	1,508.00
24	5,650.00	5,799.99	60.00	1,560.00
25	5,800.00	5,949.99	62.00	1,612.00
26	5,950.00	6,099.99	63.00	1,638.00
27	6,100.00	6,249.99	65.00	1,690.00
28	6,250.00	6,399.99	66.00	1,716.00
29	6,400.00	6,549.99	68.00	1,768.00
30	6,550.00	6,699.99	70.00	1,820.00
31	6,700.00	6,849.99	71.00	1,846.00
32	6,850.00	6,999.99	73.00	1,898.00
33	7,000.00	7,149.99	74.00	1,924.00
34	7,150.00	7,299.99	76.00	1,976.00
35	7,300.00	7,449.99	78.00	2,028.00
36	7,450.00	7,599.99	79.00	2,054.00
37	7,600.00	7,749.99	81.00	2,106.00
38	7,750.00	7,899.99	82.00	2,132.00

39	7,900.00	8,049.99	84.00	2,184.00
40	8,050.00	8,199.99	85.00	2,210.00
41	8,200.00	8,349.99	87.00	2,262.00
42	8,350.00	8,499.99	89.00	2,314.00
43	8,500.00	8,649.99	90.00	2,340.00
44	8,650.00	8,799.99	92.00	2,392.00
45	8,800.00	8,949.99	93.00	2,418.00
46	8,950.00	9,099.99	95.00	2,470.00
47	9,100.00	9,249.99	97.00	2,522.00
48	9,250.00	9,399.99	98.00	2,548.00
49	9,400.00	9,549.99	100.00	2,600.00
50	9,550.00	9,699.99	101.00	2,626.00
51	9,700.00	9,849.99	103.00	2,678.00
52	9,850.00	9,999.99	104.00	2,704.00
53	10,000.00	10,149.99	106.00	2,756.00
54	10,150.00	10,299.99	108.00	2,808.00
55	10,300.00	10,449.99	109.00	2,834.00
56	10,450.00	10,599.99	111.00	2,886.00
57	10,600.00	10,749.99	112.00	2,912.00
58	10,750.00	10,899.99	114.00	2,964.00
59	10,900.00	11,049.99	116.00	3,016.00
60	11,050.00	11,199.99	117.00	3,042.00
61	11,200.00	11,349.99	119.00	3,094.00
62	11,350.00	11,499.99	120.00	3,120.00
63	11,500.00	11,649.99	122.00	3,172.00
64	11,650.00	11,799.99	124.00	3,224.00

65	11,800.00	11,949.99	125.00	3,250.00
66	11,950.00	12,099.99	127.00	3,302.00
67	12,100.00	12,249.99	128.00	3,328.00
68	12,250.00	12,399.99	130.00	3,380.00
69	12,400.00	12,549.99	131.00	3,406.00
70	12,550.00	12,699.99	133.00	3,458.00
71	12,700.00	12,849.99	135.00	3,510.00
72	12,850.00	12,999.99	136.00	3,536.00
73	13,000.00	13,149.99	138.00	3,588.00
74	13,150.00	13,299.99	139.00	3,614.00
75	13,300.00	13,449.99	141.00	3,666.00
76	13,450.00	13,599.99	143.00	3,718.00
77	13,600.00	13,749.99	144.00	3,744.00
78	13,750.00	13,899.99	146.00	3,796.00
79	13,900.00	14,049.99	147.00	3,822.00
80	14,050.00	14,199.99	149.00	3,874.00
81	14,200.00	14,349.99	150.00	3,900.00
82	14,350.00	14,499.99	152.00	3,952.00
83	14,500.00	14,649.99	154.00	4,004.00
84	14,650.00	14,799.99	155.00	4,030.00
85	14,800.00	14,949.99	157.00	4,082.00
86	14,950.00	15,099.99	158.00	4,108.00
87	15,100.00	15,249.99	160.00	4,160.00
88	15,250.00	15,399.99	162.00	4,212.00
89	15,400.00	15,549.99	163.00	4,238.00
90	15,550.00	15,699.99	165.00	4,290.00



91	15,700.00	15,849.99	166.00	4,316.00
92	15,850.00	15,999.99	168.00	4,368.00
93	16,000.00	16,149.99	170.00	4,420.00
94	16,150.00	16,299.99	171.00	4,446.00
95	16,300.00	16,449.99	173.00	4,498.00
96	16,450.00	16,599.99	174.00	4,524.00
97	16,600.00	16,749.99	176.00	4,576.00
98	16,750.00	16,899.99	177.00	4,602.00
99	16,900.00	17,049.99	179.00	4,654.00
100	17,050.00	17,199.99	181.00	4,706.00
101	17,200.00	17,349.99	182.00	4,732.00
102	17,350.00	17,499.99	184.00	4,784.00
103	17,500.00	17,649.99	185.00	4,810.00
104	17,650.00	17,799.99	187.00	4,862.00
105	17,800.00	17,949.99	189.00	4,914.00
106	17,950.00	18,099.99	190.00	4,940.00
107	18,100.00	18,249.99	192.00	4,992.00
108	18,250.00	18,399.99	193.00	5,018.00
109	18,400.00	18,549.99	195.00	5,070.00
110	18,550.00	18,699.99	196.00	5,096.00
111	18,700.00	18,849.99	198.00	5,148.00
112	18,850.00	18,999.99	200.00	5,200.00
113	19,000.00	19,149.99	201.00	5,226.00
114	19,150.00	19,299.99	203.00	5,278.00
115	19,300.00	19,449.99	204.00	5,304.00
116	19,450.00	19,599.99	206.00	5,356.00

117	19,600.00	19,749.99	208.00	5,408.00
118	19,750.00	19,899.99	209.00	5,434.00
119	19,900.00	20,049.99	211.00	5,486.00
120	20,050.00	20,199.99	212.00	5,512.00
121	20,200.00	20,349.99	214.00	5,564.00
122	20,350.00	20,499.99	216.00	5,616.00
123	20,500.00	20,649.99	217.00	5,642.00
124	20,650.00	20,799.99	219.00	5,694.00
125	20,800.00	20,949.99	220.00	5,720.00
126	20,950.00	21,099.99	222.00	5,772.00
127	21,100.00	21,249.99	223.00	5,798.00
128	21,250.00	21,399.99	225.00	5,850.00
129	21,400.00	21,549.99	227.00	5,902.00
130	21,550.00	21,699.99	228.00	5,928.00
131	21,700.00	21,849.99	230.00	5,980.00
132	21,850.00	21,999.99	231.00	6,006.00
133	22,000.00	22,149.99	233.00	6,058.00
134	22,150.00	22,299.99	235.00	6,110.00
135	22,300.00	22,449.99	236.00	6,136.00
136	22,450.00	22,599.99	238.00	6,188.00
137	22,600.00	22,749.99	239.00	6,214.00
138	22,750.00	22,899.99	241.00	6,266.00
139	22,900.00	23,049.99	243.00	6,318.00
140	23,050.00	23,199.99	244.00	6,344.00
141	23,200.00	23,349.99	246.00	6,396.00
142	23,350.00	23,499.99	247.00	6,422.00

143	23,500.00	23,649.99	249.00	6,474.00
144	23,650.00	23,799.99	250.00	6,500.00
145	23,800.00	23,949.99	252.00	6,552.00
146	23,950.00	24,099.99	254.00	6,604.00
147	24,100.00	24,249.99	255.00	6,630.00
148	24,250.00	24,399.99	257.00	6,682.00
149	24,400.00	24,549.99	258.00	6,708.00
150	24,550.00	24,699.99	260.00	6,760.00
151	24,700.00	24,849.99	262.00	6,812.00
152	24,850.00	24,999.99	263.00	6,838.00
153	25,000.00	25,149.99	265.00	6,890.00
154	25,150.00	25,299.99	266.00	6,916.00
155	25,300.00	25,449.99	268.00	6,968.00
156	25,450.00	25,599.99	269.00	6,994.00
157	25,600.00	25,749.99	271.00	7,046.00
158	25,750.00	25,899.99	273.00	7,098.00
159	25,900.00	26,049.99	274.00	7,124.00
160	26,050.00	26,199.99	276.00	7,176.00
161	26,200.00	26,349.99	277.00	7,202.00
162	26,350.00	26,499.99	279.00	7,254.00
163	26,500.00	26,649.99	281.00	7,306.00
164	26,650.00	26,799.99	282.00	7,332.00
165	26,800.00	26,949.99	284.00	7,384.00
166	26,950.00	27,099.99	285.00	7,410.00
167	27,100.00	27,249.99	287.00	7,462.00
168	27,250.00	27,399.99	289.00	7,514.00

169	27,400.00	27,549.99	290.00	7,540.00
170	27,550.00	27,699.99	292.00	7,592.00
171	27,700.00	27,849.99	293.00	7,618.00
172	27,850.00	27,999.99	295.00	7,670.00
173	28,000.00	28,149.99	296.00	7,696.00
174	28,150.00	28,299.99	298.00	7,748.00
175	28,300.00	28,449.99	300.00	7,800.00
176	28,450.00	28,599.99	301.00	7,826.00
177	28,600.00	28,749.99	303.00	7,878.00
178	28,750.00	28,899.99	304.00	7,904.00
179	28,900.00	29,049.99	306.00	7,956.00
180	29,050.00	29,199.99	308.00	8,008.00
181	29,200.00	29,349.99	309.00	8,034.00
182	29,350.00	29,499.99	311.00	8,086.00
183	29,500.00	29,649.99	312.00	8,112.00
184	29,650.00	29,799.99	314.00	8,164.00
185	29,800.00	29,949.99	315.00	8,190.00
186	29,950.00	30,099.99	317.00	8,242.00
187	30,100.00	30,249.99	319.00	8,294.00
188	30,250.00	30,399.99	320.00	8,320.00
189	30,400.00	30,549.99	322.00	8,372.00
190	30,550.00	30,699.99	323.00	8,398.00
191	30,700.00	30,849.99	325.00	8,450.00
192	30,850.00	30,999.99	327.00	8,502.00
193	31,000.00	31,149.99	328.00	8,528.00
194	31,150.00	31,299.99	330.00	8,580.00

195	31,300.00	31,449.99	331.00	8,606.00
196	31,450.00	31,599.99	333.00	8,658.00
197	31,600.00	31,749.99	335.00	8,710.00
198	31,750.00	31,899.99	336.00	8,736.00
199	31,900.00	32,049.99	338.00	8,788.00
200	32,050.00	32,199.99	339.00	8,814.00
201	32,200.00	32,349.99	341.00	8,866.00
202	32,350.00	32,499.99	342.00	8,892.00
203	32,500.00	32,649.99	344.00	8,944.00
204	32,650.00	32,799.99	346.00	8,996.00
205	32,800.00	32,949.99	347.00	9,022.00
206	32,950.00	33,099.99	349.00	9,074.00
207	33,100.00	33,249.99	350.00	9,100.00
208	33,250.00	33,399.99	352.00	9,152.00
209	33,400.00	33,549.99	354.00	9,204.00
210	33,550.00	33,699.99	355.00	9,230.00
211	33,700.00	33,849.99	357.00	9,282.00
212	33,850.00	33,999.99	358.00	9,308.00
213	34,000.00	34,149.99	360.00	9,360.00
214	34,150.00	34,299.99	361.00	9,386.00
215	34,300.00	34,449.99	363.00	9,438.00
216	34,450.00	34,599.99	365.00	9,490.00
217	34,600.00	34,749.99	366.00	9,516.00
218	34,750.00	34,899.99	368.00	9,568.00
219	34,900.00	35,049.99	369.00	9,594.00
220	35,050.00	35,199.99	371.00	9,646.00

221	35,200.00	35,349.99	373.00	9,698.00
222	35,350.00	35,499.99	374.00	9,724.00
223	35,500.00	35,649.99	376.00	9,776.00
224	35,650.00	35,799.99	377.00	9,802.00
225	35,800.00	35,949.99	379.00	9,854.00
226	35,950.00	36,999.99	381.00	9,906.00
227	36,100.00	36,249.99	382.00	9,932.00
228	36,250.00	36,399.99	384.00	9,984.00
229	36,400.00	36,549.99	385.00	10,010.00
230	36,550.00	36,699.99	387.00	10,062.00
231	36,700.00	36,849.99	388.00	10,088.00
232	36,850.00	36,999.99	390.00	10,140.00
233	37,000.00	37,149.99	392.00	10,192.00
234	37,150.00	37,299.99	393.00	10,218.00
235	37,300.00	37,449.99	395.00	10,270.00
236	37,450.00	37,599.99	396.00	10,296.00
237	37,600.00	37,749.99	398.00	10,348.00
238	37,750.00	37,899.99	400.00	10,400.00
239	37,900.00	38,049.99	401.00	10,426.00
240	38,050.00	38,199.99	403.00	10,478.00
241	38,200.00	38,349.99	404.00	10,504.00
242	38,350.00	38,499.99	406.00	10,556.00
243	38,500.00	38,649.99	408.00	10,608.00
244	38,650.00	38,799.99	409.00	10,634.00
245	38,800.00	38,949.99	411.00	10,686.00
246	38,950.00	39,099.99	412.00	10,712.00

247	39,100.00	39,249.99	414.00	10,764.00
248	39,250.00	39,399.99	415.00	10,790.00
249	39,400.00	39,549.99	417.00	10,842.00
250	39,550.00	39,699.99	419.00	10,894.00
251	39,700.00	39,849.99	420.00	10,920.00
252	39,850.00	39,999.99	422.00	10,972.00
253	40,000.00	40,149.99	423.00	10,998.00
254	40,150.00	and above	424.00	11,024.00
254	40,150.00	40,299.99	425.00	11,050.00
255	40,300.00	40,449.99	427.00	11,102.00
256	40,450.00	40,599.99	428.00	11,128.00
257	40,600.00	40,749.99	430.00	11,180.00
258	40,750.00	40,899.99	431.00	11,206.00
259	40,900.00	41,049.99	433.00	11,258.00
260	41,050.00	41,199.99	434.00	11,284.00
261	41,200.00	41,349.99	436.00	11,336.00
262	41,350.00	41,499.99	438.00	11,388.00
263	41,500.00	41,649.99	439.00	11,414.00
264	41,650.00	41,799.99	441.00	11,466.00
265	41,800.00	41,949.99	442.00	11,492.00
266	41,950.00	42,099.99	444.00	11,544.00
267	42,100.00	42,249.99	446.00	11,596.00
268	42,250.00	42,399.99	447.00	11,622.00
269	42,400.00	42,549.99	449.00	11,674.00
270	42,550.00	42,699.99	450.00	11,700.00
271	42,700.00	42,849.99	452.00	11,752.00

272	42,850.00	42,999.99	454.00	11,804.00
273	43,000.00	43,149.99	455.00	11,830.00
274	43,150.00	43,299.99	457.00	11,882.00
275	43,300.00	43,449.99	458.00	11,908.00
276	43,450.00	43,599.99	460.00	11,960.00
277	43,600.00	43,749.99	461.00	11,986.00
278	43,750.00	43,899.99	463.00	12,038.00
279	43,900.00	44,049.99	465.00	12,090.00
280	44,050.00	44,199.99	466.00	12,116.00
281	44,200.00	44,349.99	468.00	12,168.00
282	44,350.00	44,499.99	469.00	12,194.00
283	44,500.00	44,649.99	471.00	12,246.00
284	44,650.00	44,799.99	473.00	12,298.00
285	44,800.00	44,949.99	474.00	12,324.00
286	44,950.00	45,099.99	476.00	12,376.00
287	45,100.00	45,249.99	477.00	12,402.00
288	45,250.00	45,399.99	479.00	12,454.00
289	45,400.00	45,549.99	480.00	12,480.00
290	45,550.00	45,699.99	482.00	12,532.00
291	45,700.00	45,849.99	484.00	12,584.00
292	45,850.00	45,999.99	485.00	12,610.00
293	46,000.00	46,149.99	487.00	12,662.00
294	46,150.00	46,299.99	488.00	12,688.00
295	46,300.00	46,449.99	490.00	12,740.00
296	46,450.00	46,599.99	492.00	12,792.00
297	46,600.00	46,749.99	493.00	12,818.00



298	46,750.00	46,899.99	495.00	12,870.00
299	46,900.00	47,049.99	496.00	12,896.00
300	47,050.00	47,199.99	498.00	12,948.00
301	47,200.00	47,349.99	500.00	13,000.00
302	47,350.00	47,499.99	501.00	13,026.00
303	47,500.00	47,649.99	503.00	13,078.00
304	47,650.00	47,799.99	504.00	13,104.00
305	47,800.00	47,949.99	506.00	13,156.00
306	47,950.00	48,099.99	507.00	13,182.00
307	48,100.00	48,249.99	509.00	13,234.00
308	48,250.00	48,399.99	511.00	13,286.00
309	48,400.00	48,549.99	512.00	13,312.00
310	48,550.00	48,699.99	514.00	13,364.00
311	48,700.00	48,849.99	515.00	13,390.00
312	48,850.00	48,999.99	517.00	13,442.00
313	49,000.00	49,149.99	519.00	13,494.00
314	49,150.00	49,299.99	520.00	13,520.00
315	49,300.00	49,449.99	522.00	13,572.00
316	49,450.00	49,599.99	523.00	13,598.00
317	49,600.00	49,749.99	525.00	13,650.00
318	49,750.00	49,899.99	526.00	13,676.00
319	49,900.00	50,049.99	528.00	13,728.00
320	50,050.00	50,199.99	530.00	13,780.00
321	50,200.00	50,349.99	531.00	13,806.00
322	50,350.00	50,499.99	533.00	13,858.00
323	50,500.00	50,649.99	534.00	13,884.00

324	50,650.00	50,799.99	536.00	13,936.00
325	50,800.00	50,949.99	538.00	13,988.00
326	50,950.00	51,099.99	539.00	14,014.00
327	51,100.00	51,249.99	541.00	14,066.00
328	51,250.00	51,399.99	542.00	14,092.00
329	51,400.00	51,549.99	544.00	14,144.00
330	51,550.00	51,699.99	546.00	14,196.00
331	51,700.00	51,849.99	547.00	14,222.00
332	51,850.00	51,999.99	549.00	14,274.00
333	52,000.00	52,149.99	550.00	14,300.00
334	52,150.00	52,299.99	552.00	14,352.00
335	52,300.00	52,449.99	553.00	14,378.00
336	52,450.00	52,599.99	555.00	14,430.00
337	52,600.00	52,749.99	557.00	14,482.00
338	52,750.00	52,899.99	558.00	14,508.00
339	52,900.00	53,049.99	560.00	14,560.00
340	53,050.00	53,199.99	561.00	14,586.00
341	53,200.00	53,349.99	563.00	14,638.00
342	53,350.00	53,499.99	565.00	14,690.00
343	53,500.00	53,649.99	566.00	14,716.00
344	53,650.00	53,799.99	568.00	14,768.00
345	53,800.00	53,949.99	569.00	14,794.00
346	53,950.00	54,099.99	571.00	14,846.00
347	54,100.00	54,249.99	573.00	14,898.00
348	54,250.00	54,399.99	574.00	14,924.00
349	54,400.00	54,549.99	576.00	14,976.00

350	54,550.00	54,699.99	577.00	15,002.00
351	54,700.00	54,849.99	579.00	15,054.00
352	54,850.00	54,999.99	580.00	15,080.00
353	55,000.00	55,149.99	582.00	15,132.00
354	55,150.00	55,299.99	584.00	15,184.00
355	55,300.00	55,449.99	585.00	15,210.00
356	55,450.00	55,599.99	587.00	15,262.00
357	55,600.00	55,749.99	588.00	15,288.00
358	55,750.00	55,899.99	590.00	15,340.00
359	55,900.00	56,049.99	592.00	15,392.00
360	56,050.00	56,199.99	593.00	15,418.00
361	56,200.00	56,349.99	595.00	15,470.00
362	56,350.00	56,499.99	596.00	15,496.00
363	56,500.00	56,649.99	598.00	15,548.00
364	56,650.00	56,799.99	599.00	15,574.00
365	56,800.00	56,949.99	601.00	15,626.00
366	56,950.00	57,099.99	603.00	15,678.00
367	57,100.00	57,249.99	604.00	15,704.00
368	57,250.00	57,399.99	606.00	15,756.00
369	57,400.00	57,549.99	607.00	15,782.00
370	57,550.00	57,699.99	608.00	15,808.00
371	57,700.00	57,849.99	611.00	15,886.00
372	57,850.00	57,999.99	612.00	15,912.00
373	58,000.00	58,149.99	614.00	15,964.00
374	58,150.00	58,299.99	615.00	15,990.00
375	58,300.00	58,449.99	617.00	16,042.00

376	58,450.00	58,599.99	619.00	16,094.00
377	58,600.00	58,749.99	620.00	16,120.00
378	58,750.00	58,899.99	622.00	16,172.00
379	58,900.00	59,049.99	623.00	16,198.00
380	59,050.00	59,199.99	625.00	16,250.00
381	59,200.00	59,349.99	626.00	16,276.00
382	59,350.00	59,499.99	628.00	16,328.00
383	59,500.00	59,649.99	630.00	16,380.00
384	59,650.00	59,799.99	631.00	16,406.00
385	59,800.00	59,949.99	633.00	16,458.00
386	59,950.00	60,099.99	634.00	16,484.00
387	60,100.00	60,249.99	636.00	16,536.00
388	60,250.00	60,399.99	638.00	16,588.00
389	60,400.00	60,549.99	639.00	16,614.00
390	60,550.00	60,699.99	641.00	16,666.00
391	60,700.00	60,849.99	642.00	16,692.00
392	60,850.00	60,999.99	644.00	16,744.00
393	61,000.00	61,149.99	645.00	16,770.00
394	61,150.00	61,299.99	647.00	16,822.00
395	61,300.00	61,449.99	649.00	16,874.00
396	61,450.00	61,599.99	650.00	16,900.00
397	61,600.00	61,749.99	652.00	16,952.00
398	61,750.00	61,899.99	653.00	16,978.00
399	61,900.00	62,049.99	655.00	17,030.00
400	62,050.00	62,199.99	657.00	17,082.00
401	62,200.00	62,349.99	658.00	17,108.00

402	62,350.00	62,499.99	660.00	17,160.00
403	62,500.00	62,649.99	661.00	17,186.00
404	62,650.0	and over	662.00	17,212.00

(a) For purposes of this article "average weekly wage" is defined as 1/52nd of an individual's total base period wages from covered employment. For individuals with base period wages of \$53,000 or more, the average weekly wage shall be computed as 1/52nd of \$53,000.

(b) For all valid unemployment compensation claims submitted, the weekly benefit rate shall be calculated as follows:

(1) Throughout the first four-week period of benefits paid, the weekly benefit rate shall be 70% of the individual's average weekly wage rounded to the next lowest multiple of \$1.

(2) Throughout the second four-week period of benefits paid, the weekly benefit rate shall be 65% of the individual's average weekly wage rounded to the next lowest multiple of \$1.

(3) Throughout the third four-week period of benefits paid, the weekly benefit rate shall be 60% of the individual's average weekly wage rounded to the next lowest multiple of \$1.

(4) Throughout the fourth four-week period of benefits paid, the weekly benefit rate shall be 55% of the individual's average weekly wage rounded to the next lowest multiple of \$1.

(5) Throughout the fifth four-week period of benefits paid, the weekly benefit rate shall be 50% of the individual's average weekly wage rounded to the next lowest multiple of \$1.

(6) Throughout the sixth four-week period of benefits paid, the weekly benefit rate shall be 45% of the individual's average weekly wage rounded to the next lowest multiple of \$1.

(c) The maximum benefit shall be total potential benefits payable as determined by 21A-6-10(b).

(d) An individual who is totally unemployed but earns in excess of \$60 as a result of odd job or subsidiary work or is paid a bonus in any benefit week shall be paid benefits for such week in accordance with the provisions of this chapter pertaining to benefits for partial unemployment.

(e) If a balance of benefits remains after an individual receives 24 weeks of unemployment benefits, due to partial unemployment as defined in §21A-6-11, the individual may receive benefit payments at the same weekly benefit rate as the most recent week, until the maximum benefit balance is exhausted.

(f) The right of an employee to receive benefits shall not be prejudiced nor the amount thereof be diminished by reason of failure by an employer to pay either the wages earned by the employee or the contribution due on such wages.

## **ARTICLE 6A. EXTENDED BENEFITS PROGRAM.**

### **§21A-6A-4. Weekly extended benefit amount.**

The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit payable to ~~him~~ the eligible individual during ~~his~~ the first four weeks of the applicable benefit year: *Provided*, That for any week during a period in which federal payments to states under section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 are reduced under an order issued under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, the weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be reduced by a percentage equivalent to the percentage of the reduction in the federal payment. Such reduced weekly extended benefit amount, if not a full dollar amount, shall be rounded to the nearest lower full dollar amount.

### **§21A-6A-5. Total extended benefit amount.**

The total extended benefit amount payable to an eligible individual with respect to his or her applicable benefit year shall be the least of the following amounts:

(1) Fifty percent of the total amount of regular benefits which were payable to him or her under this chapter in his or her applicable benefit year;

(2) Thirteen times his or her weekly benefit amount which was payable to him or her under this chapter ~~for a week~~ during the first four weeks of total unemployment in the applicable benefit year: Provided, That an individual filing for extended benefits through the interstate benefit payment plan and residing in a state where an extended benefit period is not in effect shall be limited to payment for only the first two weeks of such extended benefits: *Provided, however,* That during any fiscal year in which federal payments to states under section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 are reduced under an order issued under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, the total extended benefit amount payable to an individual with respect to his or her applicable benefit year shall be reduced by an amount equal to the aggregate of the reductions under section four, article six-a of this chapter in the weekly amounts paid to the individual.

(3)(A) For weeks beginning in a high unemployment period, subdivision (1) of this section shall be applied by substituting "eighty percent" for "fifty percent" and subdivision (2) of this section shall be applied by substituting "twenty" for "thirteen."

(B) For the purposes of this article, the term "high unemployment period" means any period during which the provisions of subdivision (3), section one of this article would result in a "state >on' indicator" if subdivision (3), section one of this article were applied by substituting "eight percent" for "six and one-half percent."

## **ARTICLE 6B. SHORT TIME COMPENSATION PROGRAM.**

### **§21A-6B-6. Benefits**

(a) The short-time compensation weekly benefit amount shall be the product of the regular weekly unemployment compensation

amount for ~~a week~~ the first four weeks of total unemployment as defined in §21A-6-10 multiplied by the percentage of reduction in the individual's usual weekly hours of work.

Following discussion,

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

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

Engrossed Senate Bill 841 was then put upon its passage.

Pending discussion,

The question being "Shall Engrossed Senate Bill 841 pass?"

On the passage of the bill, the yeas were: Azinger, Barrett, Clements, Deeds, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Swope, Takubo, Tarr, Taylor, Trump, Woodrum, and Blair (Mr. President)—24.

The nays were: Caputo, Chapman, Grady, Hamilton, Stover, Stuart, and Weld—7.

Absent: Boley, Maroney, and Woelfel—3.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 841) passed.

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

**Eng. Com. Sub. for Senate Bill 841**—A Bill to amend and reenact §21A-1A-28 of the Code of West Virginia, 1931, as amended; to amend and reenact §21A-6-1d and §21A-6-10 of said code; to amend and reenact §21A-6A-4 and §21A-6A-5 of said code; and to amend §21A-6B-6 of said code; all relating to the amount of unemployment taxes and benefits; removing definitions; modifying the calculation of the taxable wage base; modifying



methodology for calculating the maximum benefit rate; requiring work search activities to qualify for unemployment benefits; defining what constitutes work search activities; mandating submittal of proof of work search activities; providing for verification of work search activities; granting commissioner of Workforce West Virginia discretion in verification of work search activities; mandating establishment of process to refer individuals seeking unemployment benefits to job opportunities; requiring individuals receiving referrals to suitable work to apply for and accept that work; mandating employers to report refusal of offer of employment to commissioner; allowing individuals who accept part-time non-suitable employment to receive unemployment benefits without reduction for wages under certain circumstances; making certain individuals applying for or receiving unemployment benefits exempt from work search requirements; establishing process for notification of work search activity requirements; requiring rulemaking; setting internal effective date; modifying the total extended benefit amount; and modifying the short-time compensation weekly benefit amount.

Senator Takubo moved that the bill take effect January 1, 2025.

On this question, the yeas were: Azinger, Barrett, Clements, Deeds, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Swope, Takubo, Tarr, Taylor, Trump, Woodrum, and Blair (Mr. President)—24.

The nays were: Caputo, Chapman, Grady, Hamilton, Stover, Stuart, and Weld—7.

Absent: Boley, Maroney, and Woelfel—3.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 841) takes effect January 1, 2025.

*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**, Creating WV Women's Bill of Rights.

On third reading, coming up out of regular order, with the right having been granted on yesterday, Tuesday, February 27, 2024, for amendments to be received on third reading, was read a third time.

On motions of Senators Rucker and Trump, the following amendment to the bill was reported by the Clerk:

On page 6, section 2, line 25, by striking out all of paragraph (B) and relettering the remaining paragraphs.

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

The question being on the adoption of the amendment offered by Senators Rucker and Trump to the bill, the same was put and prevailed.

On motion of Senator Chapman, the following amendment to the bill (Eng. Com. Sub. for S. B. 601) was reported by the Clerk:

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

## **CHAPTER 16. PUBLIC HEALTH.**

### **ARTICLE 67. WEST VIRGINIA WOMEN'S BILL OF RIGHTS ACT.**

#### **§16-67-1. Short title; purposes; general application.**

(a) This act shall be known and may be cited as the "West Virginia Women's Bill of Rights."

(b) The purpose of the West Virginia Women's Bill of Rights is to bring clarity, certainty, and uniformity to the laws of the state regarding sex discrimination, equality of the sexes, and benefits or services specifically provided to males and to females.

(c) The West Virginia Women's Bill of Rights applies wherever West Virginia, or an instrumentality of the state, classifies people on the basis of sex or otherwise defines people as being female or

male, women or men, girls or boys; the definitions contained in §16-67-2 of this code apply.

**§16-67-2. Definitions of terms used in statutory construction.**

(a) Notwithstanding any provision of law to the contrary, with respect to the application of an individual's biological sex pursuant to any state laws, rules, regulations, or official public policies, the following shall apply:

(1) An individual's "sex" means such individual's biological sex, either male or female, at birth;

(2) A "female", when used in reference to a natural person, is an individual who has, had, will have, or would have (but for a developmental anomaly, genetic anomaly, or accident) the reproductive system that at some point produces ova;

(3) A "male" when used in reference to a natural person, means an individual who has, had, will have, or would have (but for a developmental anomaly, genetic anomaly, or accident) the reproductive system that at some point produces sperm;

(4) A "woman" is an adult human of the female sex, and a "man" is an adult human of the male sex;

(5) A "girl" is a human female who has not yet reached adulthood, and a "boy" is a human male who has not yet reached adulthood;

(6) A "mother" is a female parent of a child or children as those terms are defined in this code; a "father" is a male parent of a child or children as those terms are defined in this code;

(7) "Equal" does not mean "same" or "identical" with respect to equality of the sexes;

(8) A person's "sex" is his or her biological sex (either male or female) at birth.

(A) There are only two sexes, and every individual is either male or female;

(B) "Sex" is objective and fixed; and

(C) "Sex" does not include "gender identity" or any other terms intended to convey a person's subjective sense of self; "gender identity" and other subjective terms may not be used as synonyms or substitutes for "sex".

(b) Individuals with "differences in sex development" (also known as "DSD" or "intersex conditions") are not a third sex. Individuals with a congenital and medically verifiable DSD diagnosis must be accommodated consistent with state and federal law.

### **§16-67-3. Sex discrimination; single-sex environments.**

(a) Any state policy, program, or statute that prohibits sex discrimination shall be construed to pertain to females or males.

(b) Because the state has an important interest in preventing unjust discrimination and in maintaining safety, privacy, and fairness, West Virginia and its political subdivisions and instrumentalities may provide separate single-sex environments.

(c) Wherever West Virginia or its political subdivisions or instrumentalities, in fact, provide separate single-sex environments for males and females, the definitions established in §16-67-2 of this code must apply.

### **§16-67-4. Data collection.**

(a) Any public school, public school district, agency, department, or instrumentality of the state that collects vital statistics related to sex for the purpose of complying with state or federal anti-discrimination laws or for the purpose of gathering accurate public health, crime, economic, or other data shall identify each natural person who is part of the collected data set as either male or female as defined in this article.

(b) Compliance with this section shall not require the collection of data regarding sex unless otherwise required by law, and it shall

not prevent the collection of additional data points other than biological sex.

**§16-67-5. Severability.**

If any provision of this article, an amendment made by this article, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this article, the amendments made by this article, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

Following extended discussion,

The question being on the adoption of Senator Chapman's amendment to the bill, and on this question, Senator Grady demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Chapman, Clements, Grady, Hunt, Jeffries, Karnes, Martin, Maynard, Phillips, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Tarr, and Taylor—19.

The nays were: Barrett, Caputo, Deeds, Hamilton, Nelson, Oliverio, Plymale, Takubo, Trump, Weld, Woodrum, and Blair (Mr. President)—12.

Absent: Boley, Maroney, and Woelfel—3.

So, a majority of those present and voting having voted in the affirmative, the President declared Senator Chapman's amendment to the bill adopted.

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

Engrossed Committee Substitute for Senate Bill 601 was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Queen,

Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—29.

The nays were: Caputo and Plymale—2.

Absent: Boley, Maroney, and Woelfel—3.

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.

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

**Eng. Com. Sub. for Senate Bill 601**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-67-1, §16-67-2, §16-67-3, §16-67-4, and §16-67-5, relating only to statutory construction creating the Women's Bill of Rights; providing a short title and statement of purpose; defining terms; establishing rules of construction for statutes and ordinances addressing sex discrimination, sex equality and sex specific benefits or services; declaring state interest in single sex environments; establishing rules of construction in statutes and ordinances related to the sex of a person or persons; and creating protocols for data collection.

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

Without objection, the Senate returned to the third order of business.

### **Executive Communications**

The Clerk presented the following communication from His Excellency, the Governor, regarding bills approved by him:



*Jim Justice*  
*Governor of West Virginia*

February 28, 2024

The Honorable Lee Cassis, Clerk  
West Virginia Senate  
State Capitol  
Charleston, West Virginia 25305

Dear Mr. Clerk:

Enclosed for filing in your office, pursuant to the provisions of law, are the following bills:

Senate Bill No. Six Hundred Five (605), which was presented to me on February 22, 2024.

Senate Bill No. Six Hundred Six (606), which was presented to me on February 22, 2024.

Senate Bill No. Six Hundred Seven (607), which was presented to me on February 22,  
2024.

Senate Bill No. Seven Hundred Ninety (790), which was presented to me on February 22,  
2024.

You will note that I have approved these bills on February 28, 2024.

Sincerely,

A handwritten signature in blue ink, reading "Jim Justice".

Jim Justice  
Governor

JJ/mh

cc: The Honorable Stephen J. Harrison, Clerk

The Senate proceeded to the thirteenth order of business.

At the request of Senator Phillips, unanimous consent being granted, it was ordered that the Journal show had Senator Phillips been present in the chamber on yesterday, Tuesday, February 27, 2024, he would have voted "yea" on the passage of Eng. Com. Sub. for Com. Sub. for Senate Bill 468, Eng. Com. Sub. for Com. Sub. for Senate Bill 470, Eng. Com. Sub. for Com. Sub. for Senate Bill 482, Eng. Com. Sub. for Senate Bill 503, Eng. Com. Sub. for Com. Sub. for Senate Bill 679, Eng. Senate Bill 686, Eng. Senate Bill 732, Eng. Com. Sub. for Senate Bill 769, Eng. Senate Bill 803, Eng. Senate Bill 813, and Eng. Senate Bill 858 and "nay" on the passage of Eng. Com. Sub. for Senate Bill 717.

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were added as co-sponsors to the following bills and resolution on February 27, 2024:

**Senate Bill 194:** Senator Karnes;

**Senate Bill 199:** Senator Karnes;

**Com. Sub. for Senate Bill 601:** Senator Deeds;

**Senate Bill 726:** Senator Nelson;

**Com. Sub. for Senate Bill 805:** Senator Plymale;

**Com. Sub. for Senate Bill 820:** Senator Plymale;

And,

**Senate Resolution 54:** Senator Hamilton.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Takubo, at 7:09 p.m., the Senate adjourned until tomorrow, Thursday, February 29, 2024, at 11 a.m.

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## THURSDAY, FEBRUARY 29, 2024

The Senate met at 11:09 a.m.

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

Prayer was offered by Dr. D. W. Cummings, Senior Pastor, Bethlehem Apostolic Temple, Wheeling, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Randy E. Smith, a senator from the fourteenth district.

Appalachian Children's Chorus from Charleston, West Virginia, accompanied by Daniel Bellamy on the keyboard, proceeded in the singing of "Dream Keeper" and "Country Roads".

Pending the reading of the Journal of Wednesday, February 28, 2024,

At the request of Senator Plymale, 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 Takubo, and by unanimous consent, the provisions of Rule 54 of the Rules of the Senate, relating to persons entitled to the privileges of the floor, were suspended in order to grant family members of the Honorable Warren Randolph McGraw, former President of the West Virginia Senate and former Chief Justice of the West Virginia Supreme Court of Appeals, and representatives from Taiwan, privileges of the floor for the day.

At the request of Senator Takubo, unanimous consent being granted, the Senate proceeded to the seventh order of business.

**Senate Concurrent Resolution 33**, Requesting Division of Highways to erect signs in Marion County for "Home of Legendary Coach, Nick Saban".

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 34**, Feasibility study of ballot identification and verification measures in statewide elections.

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

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

**Senate Resolution 56**, Memorializing life of Honorable Warren Randolph McGraw Sr.

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

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

The question being on the adoption of the resolution, and on this question, Senator Caputo demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of those present and voting having voted in the affirmative, the President declared the resolution (S. R. 56) adopted.

Thereafter, at the request of Senator Takubo, and by unanimous consent, the remarks by Senators Oliverio, Stover, Caputo, and Trump regarding the adoption of Senate Resolution 56 were ordered printed in the Appendix to the Journal.

At the request of Senator Takubo, unanimous consent being granted, at 11:49 a.m., the Senate recessed to present Senate Resolution 56.

The Senate reconvened at 11:59 a.m. and resumed business under the seventh order.

**Senate Resolution 57**, Recognizing accomplishments of Hurricane High School Red Hot Show Choir.

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

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

**Senate Resolution 58**, Designating February 29, 2024, as WV Arts Day.

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

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

**Senate Resolution 59**, Reaffirming longstanding sisterhood partnership between WV and Taiwan.

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

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

The question being on the adoption of the resolution, and on this question, Senator Takubo demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of those present and voting having voted in the affirmative, the President declared the resolution (S. R. 59) adopted.

Thereafter, at the request of Senator Takubo, and by unanimous consent, the remarks by Senators Plymale and Weld regarding the adoption of Senate Resolution 59 were ordered printed in the Appendix to the Journal.

At the request of Senator Takubo, unanimous consent being granted, at 12:10 p.m., the Senate recessed to present Senate Resolution 59.

The Senate reconvened at 12:13 p.m. and proceeded to the eighth order of business.

**Eng. Com. Sub. for House Bill 4086**, Authorizing certain agencies of the Department of Commerce to promulgate legislative rules.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith,

Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 4086) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 4086) 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 4233**, Non-binary not permitted on birth certificates.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart,

Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: Caputo—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. 4233) passed with its title.

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

**Eng. House Bill 4814**, Relating to extending the reporting and sunset dates of the State Advisory Council on Postsecondary Attainment Goals.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 4814) passed with its title.

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

**Eng. House Bill 4838**, Require county boards of education to provide long-term substitute teachers, upon hiring, with certain information.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 4838) passed.

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

**Eng. House Bill 4838**—A Bill to amend and reenact §18A-2-3 if the Code of West Virginia, 1931, as amended, relating to requiring county boards of education to inform persons, who are hired as long-term substitute teachers, about IEP and 504 plans, detailing their uses and what those long-term substitute teachers should do to implement these plans upon their hiring.

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

**Eng. House Bill 5117**, Relating generally to waiver of initial licensing fees for certain 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: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith,

Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5117) 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 5122**, Relating to civil service for deputy sheriffs.

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 5122 pass?"

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5122) 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 5122**—A Bill to amend and reenact §7-14-8 and §8-14-12 of the Code of West Virginia, 1931, as amended, all relating to civil service for certain law enforcement officers; renumbering certain subsections; removing upper age restrictions for original appointment as deputy sheriff and reappointment of former deputy sheriff; clarifying requirements for reappointment of former deputy sheriff; and removing upper age restrictions for original appointment as municipal police officer and reappointment of former municipal police officer.

*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 5175**, Eliminate funding for the Center for Nursing and transfer its duties and authorities to the Higher Education Policy Commission.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5175) 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 5395**, Relating to judicial review of Board decisions.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5395) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5395) takes effect from passage.

*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 4376**, Relating to surgical smoke evacuation.

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:

### **ARTICLE 3. HOSPITALS AND SIMILAR INSTITUTIONS.**

#### **§16B-3-21. Smoke evacuation system required for certain surgical procedures.**

(a) As used in this section:

(1) "Energy generating device" means any tool that performs a surgical function using heat, laser, electricity, or another form of energy;

(2) "Smoke evacuation system" means smoke evacuators, laser plume evacuators, or local exhaust ventilators that effectively capture and neutralize surgical smoke at the site of origin and before the smoke can make ocular contact or contact with the respiratory tract of the occupants of the room; and

(3) "Surgical smoke" means the by-product, including surgical plume, smoke plume, bio-aerosols, laser-generated airborne contaminants, and other lung-damaging dust, that results from contact with tissue by an energy generating device.

(b) On or before January 1, 2025, in order to protect operating room nurses, operating room personnel, and patients from the hazards of surgical smoke, the Office of the Inspector General shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code requiring a health care facility licensed under this chapter that utilizes energy generating

devices to use a smoke evacuation system during any surgical procedure that is likely to produce surgical smoke.

(c) Any health facility acting by or through its agents or employees that violates subsection (b) of this section shall be punished by a fine of not less than \$1,000 nor more than \$5,000 for each violation.

The bill (Eng. Com. Sub. for H. B. 4376), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4431**, Permitting the cremation of unidentified remains.

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

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

On page 1, section 15, line 7, after the word "data" by inserting the words "or biological sample";

And,

On page 1, section 15, line 8, after the word "remains" by inserting the words "including but not limited to teeth, bone, tissue, or blood samples".

The bill (Eng. Com. Sub. for H. B. 4431), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 5017**, Relating to mobile food establishment reciprocity.

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 16. PUBLIC HEALTH.

### ARTICLE 2. LOCAL BOARDS OF HEALTH.

#### **§16-2-18. In-state food service permit reciprocity. In-state food service statewide permit.**

~~(a) A local or county health department shall issue a mobile food establishment reciprocity permit to a mobile food service establishment that is operating within the State of West Virginia and holds a valid mobile food establishment permit from the vendor's county of residence. The mobile food establishment reciprocity permit shall be valid for the length of time for which the first permit is issued and regardless of the number of days for which the vendor requires the mobile food establishment reciprocity permit.~~

~~(b) No A local or county health department within the state may not charge an additional a fee to any an in state vendor that has received a mobile food establishment reciprocity permit. but may place conditions upon an issued permit to assure compliance with that health department's rules and standards for the type of permit being issued. Each vendor must provide notice to the local health department with jurisdiction at least 14 days prior to operating within the jurisdiction A mobile food establishment in compliance with rules of the issuing local or county health department is deemed in compliance in all other counties. The permit must shall be visibly posted while the mobile food establishment is operational.~~

~~(c) The secretary shall review and modernize legislative rules regarding local boards of health fees located in 64 CSR 30 in the next filing period~~

(a) A local or county health department shall issue a mobile food establishment statewide permit to a mobile food service establishment that is operating within the State of West Virginia. The permit will be issued from the vendor's county of residence

local or county health department. The mobile food establishment statewide permit shall be valid for the fiscal year in which the permit is issued and regardless of the number of days for which the vendor requires the mobile food establishment.

(b) No local or county health department within the state may charge an additional fee to any in-state vendor that has received a mobile food establishment statewide permit but may place conditions upon an issued permit to assure compliance with that health department's rules and standards for the type of permit being issued. Each vendor must provide notice to the local health department with jurisdiction at least 72 hours prior to operating within the jurisdiction. A mobile food establishment, in compliance with rules of the issuing local or county health department, is deemed in compliance in all other counties. The permit shall be visibly posted while the mobile food establishment is operational.

The bill (Eng. Com. Sub. for H. B. 5017), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 5178**, Requiring car dealerships in this state to utilize a search engine to determine if buyers of vehicles have valid motor vehicle insurance.

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

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

**Eng. House Bill 5237**, Prohibiting driving slow in left lane except under certain circumstances.

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

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

**Eng. Com. Sub. for House Bill 5317**, Making it permissive for commercial motor vehicles registered in this state to pass an annual inspection of all safety equipment to be consistent with the federal motor carrier safety regulations.

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 article heading and inserting in lieu thereof the following:

**§17C-16-4. Superintendent of the West Virginia State Police to require periodic inspection; acceptance of certificate of inspection from another state; suspension of registration of unsafe vehicles.**

(a) The Superintendent of the West Virginia State Police shall require that every motor vehicle, trailer, semitrailer, and pole trailer registered in this state be inspected once every two years and that an official certificate of inspection and approval be obtained for each vehicle: *Provided*, That ~~the amendments made to this subsection during the 2023 regular session of the Legislature shall become effective on January 1, 2024.~~ commercial motor vehicles, as defined in 49 U.S.C. § 31132, which are registered in this state, shall be inspected once each year.

The inspections shall be made and the certificates obtained with respect to the mechanism, brakes, and equipment of every vehicle designated by the superintendent.

The superintendent may make necessary rules for the administration and enforcement of this section and may designate any period or periods during which owners of any vehicles, subject to this section, shall display upon the vehicles certificates of inspection and approval or shall produce the certificates upon demand of any officer or employee of the State Police designated

by the superintendent or any police or peace officer when authorized by the superintendent.

(b) The superintendent may authorize the acceptance in this state of a certificate of inspection and approval issued in another state having an inspection law similar to this chapter and may extend the time within which the resident owner of a vehicle which was not in this state during the time an inspection was required must obtain a certificate.

(c) At the request of the superintendent, the Commissioner of the Division of Motor Vehicles may suspend the registration of any vehicle which the superintendent determines is in such an unsafe condition that it constitutes a menace to safety, or which after notice and demand is not equipped as required in this chapter, or for which the vehicle's owner has not obtained the required certificate.

(d) If requested by the owner of the vehicle, the superintendent shall also cause to be inspected a Class A farm use motor vehicle exempt from annual registration certificate and licensing as provided in §17A-3-2 of this code. If the Class A farm use motor vehicle passes the inspection, the superintendent shall cause a certificate of inspection to be issued for that vehicle.

The bill (Eng. Com. Sub. for H. B. 5317), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 5347**, Relating to establishing a program for emergency medical services personnel to become certified paramedics.

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:



**ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.****§16-4C-6. Powers and duties of ~~commissioner~~ secretary.**

The ~~commissioner~~ secretary has the following powers and duties:

(a) To propose rules for legislative approval, in consultation with the state health officer, in accordance with the provisions of §29A-3-1 *et seq.* of this code: *Provided*, That the rules have been submitted at least 30 days in advance for review by the Emergency Medical Services Advisory Council, who may act only in the presence of a quorum. The rules may include:

(1) Standards and requirements for certification and recertification of emergency medical service personnel, including, but not limited to:

(A) Age, training, testing, and continuing education;

(B) Procedures for certification and recertification, and for denying, suspending, revoking, reinstating, and limiting a certification or recertification;

(C) Levels of certification and the scopes of practice for each level;

(D) Standards of conduct; and

(E) Causes for disciplinary action and sanctions which may be imposed.

(2) Standards and requirements for licensure and licensure renewals of emergency medical service agencies, including:

(A) Operational standards, levels of service, personnel qualifications and training, communications, public access, records management, reporting requirements, medical direction, quality assurance and review, and other requirements necessary for safe and efficient operation;

(B) Inspection standards and establishment of improvement periods to ensure maintenance of the standards;

(C) Fee schedules for licensure, renewal of licensure, and other necessary costs;

(D) Procedures for denying, suspending, revoking, reinstating, or limiting an agency licensure;

(E) Causes for disciplinary action against agencies; and

(F) Administrative penalties, fines, and other disciplinary sanctions which may be imposed on agencies;

(3) Standards and requirements for emergency medical services vehicles, including classifications and specifications;

(4) Standards and requirements for training institutions, including approval or accreditation of sponsors of continuing education, course curricula, and personnel;

(5) Standards and requirements for a State Medical Direction System, including qualifications for a state emergency medical services medical director and regional medical directors, the establishment of a State Medical Policy and Care Committee, and the designation of regional medical command centers;

(6) Provision of services by emergency medical services personnel in hospital emergency rooms;

(7) Authorization to temporarily suspend the certification of an individual emergency medical services provider prior to a hearing or notice if ~~the commissioner~~ secretary finds there is probable cause that the conduct or continued service or practice of any individual certificate holder has or may create a danger to public health or safety: *Provided*, That ~~the commissioner~~ secretary may rely on information received from a physician that serves as a medical director in finding that probable cause exists to temporarily suspend the certification; and

(8) Any other rules necessary to carry out the provisions of this article;

(b) To apply for, receive, and expend advances, grants, contributions, and other forms of assistance from the state or federal government or from any private or public agencies or foundations to carry out the provisions of this article;

(c) To design, develop, and review, in consultation with the state health officer, a Statewide Emergency Medical Services Implementation Plan. The plan shall recommend aid and assistance and all other acts necessary to carry out the purposes of this article:

(1) To encourage local participation by area, county, and community officials, and regional emergency medical services boards of directors; and

(2) To develop a system for monitoring and evaluating emergency medical services programs throughout the state;

(d) To provide professional and technical assistance and to make information available to regional emergency medical services boards of directors and other potential applicants or program sponsors of emergency medical services for purposes of developing and maintaining a statewide system of services;

(e) To assist local government agencies, regional emergency medical services boards of directors, and other public or private entities in obtaining federal, state, or other available funds and services;

(f) To cooperate and work with federal, state, and local governmental agencies, private organizations, and other entities as may be necessary to carry out the purposes of this article;

(g) To acquire in the name of the state by grant, purchase, gift, devise, or any other methods appropriate, real and personal property as may be reasonable and necessary to carry out the purposes of this article;

(h) To make grants and allocations of funds and property so acquired or which may have been appropriated to the agency to other agencies of state and local government as may be appropriate to carry out the purposes of this article;

(i) To expend and distribute by grant or bailment funds and property to all state and local agencies for the purpose of performing the duties and responsibilities of the agency all funds which it may have so acquired or which may have been appropriated by the Legislature of this state;

(j) To develop, in consultation with the state health officer, a program to inform the public concerning emergency medical services;

(k) To review and disseminate information regarding federal grant assistance relating to emergency medical services;

(l) To prepare and submit to the Governor and Legislature recommendations for legislation in the area of emergency medical services;

(m) To review, make recommendations for, and assist, in consultation with the state health officer, in all projects and programs that provide for emergency medical services whether or not the projects or programs are funded through the Office of Emergency Medical Services. A review and approval shall be required for all emergency medical services projects, programs, or services for which application is made to receive state or federal funds for their operation after the effective date of this act;

(n) To cooperate with the Department of Administration, Purchasing Division to establish one or more statewide contracts for equipment and supplies utilized by emergency medical services agencies in accordance with §5A-3-1 *et seq.* of this code:

(1) Any statewide contract established hereunder shall be made available to any emergency medical services agency licensed under §16-4C-6a of this code that is designated to provide emergency response by one or more county emergency dispatch centers.

(2) The office may develop uniform standards for equipment and supplies used by emergency medical services agencies in accordance with §5A-3-1 *et seq.* of this code.

(3) The office shall propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to effectuate the provisions of this subsection; ~~and~~

(o) To take all necessary and appropriate action to encourage and foster the cooperation of all emergency medical service providers and facilities within this state; and

(p) To establish a program for emergency medical technicians, who, after three years of serving as an emergency medical technician, are eligible for state assistance through the fund established in §16-4C-24 of this code to become a certified paramedic.

**§16-4C-10. Procedures for hearing.; ~~right of appeal; judicial review.~~**

~~(a) Hearings are governed by the provisions of article five, chapter twenty nine a of this code §29A-5-1 et seq. of this code.~~

~~(b) The commissioner or director may conduct the hearing or elect to have an Administrative Law Judge conduct the hearing.~~

~~(c) If the hearing is conducted by an Administrative Law Judge, the Administrative Law Judge shall prepare a proposed written order at the conclusion of a hearing containing findings of fact and conclusions of law. The proposed order may contain proposed disciplinary actions if the commissioner or director so directs. The commissioner may accept, reject or modify the decision of the Administrative Law Judge.~~

~~(d) The commissioner or director has the authority to administer oaths, examine any person under oath and issue subpoenas and subpoenas duces tecum.~~

~~(e) If, after a hearing, the commissioner or director determines the licensee or holder of a certificate has violated any provision of~~

~~this article or the legislative rules promulgated pursuant to this article, a formal written decision shall be prepared which contains findings of fact, conclusions of law and a specific description of the disciplinary actions imposed.~~

~~(f) The order of the Commissioner or director is final unless vacated or modified upon judicial review.~~

~~(g) Any licensee or certificate holder adversely affected by a final order made and entered by the commissioner or director is entitled to judicial review. All of the pertinent provisions of section four, article five, chapter twenty nine a of this code apply to and govern the review with like effect as if the provisions of the section were set forth herein.~~

~~(h) The judgment of the circuit court is final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of section one, article six, chapter twenty nine a of this code.~~

**§16-4C-24. Emergency Medical Services Equipment and Training Fund; establishment of a grant program for equipment and training of emergency medical service providers and personnel.**

(a) There is ~~hereby created~~ continued in the State Treasury a special revenue fund to be known as the Emergency Medical Services Equipment and Training Fund. Expenditures from the fund by the Office of Emergency Medical Services and Bureau for Public Health, are authorized from collections. The fund may only be used for the purpose of providing grants to equip emergency medical services providers and train emergency medical services personnel, as defined in §16-4C-3 of this code, and for the program established in §16-4C-6(p). Any balance remaining in the fund at the end of any fiscal year does not revert to the General Revenue Fund but remains in the special revenue fund.

(b) ~~The Commissioner of the Bureau for Public Health~~ secretary shall establish a grant program for equipment, ~~and~~ training of emergency medical services providers and personnel,

and for the program established in §16-4C-6(p). Such grant program shall be open to all emergency medical services personnel and providers, but priority shall be given to rural and volunteer emergency medical services providers.

(c) ~~The Commissioner of the Bureau for Public Health~~ secretary shall propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement the grant program established pursuant to this section and for the program established in §16-4C-6(p).

The bill (Eng. Com. Sub. for H. B. 5347), as amended, was then ordered to third reading.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senator Stuart.

At the request of Senator Stuart, unanimous consent being granted, the Senate stood in observance of a moment of silence in recognition of a Kanawha County Sheriff's deputy who was shot during an overnight pursuit.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Takubo, at 12:48 p.m., the Senate recessed until 2:30 p.m. today.

The Senate reconvened at 3:52 p.m. and, at the request of Senator Takubo, unanimous consent being granted, returned to the third order of business.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the adoption of the following resolutions:

**Com. Sub. for Senate Concurrent Resolution 1**, US Army PFC Leon Charles Trader Memorial Bridge.

**Senate Concurrent Resolution 2**, US Army PFC John Henry Trail Memorial Bridge.

**Com. Sub. for Senate Concurrent Resolution 4**, US Army 2LT Eston Kuhn Memorial Bridge.

**Com. Sub. for Senate Concurrent Resolution 5**, US Army 1LT Herschel Jarrell Memorial Road.

**Com. Sub. for Senate Concurrent Resolution 6**, US Army SSG Orland Jackson "Tom" Meikles Memorial Road.

**Senate Concurrent Resolution 8**, US Army Corporal Clemon Knapp Memorial Bridge.

**Com. Sub. for Senate Concurrent Resolution 11**, US Marine Corps PFC Noel Harper Fields Memorial Bridge.

**Com. Sub. for Senate Concurrent Resolution 12**, US Army Private Raymond Lee Perkins Memorial Bridge.

**Com. Sub. for Senate Concurrent Resolution 14**, US Army PFC William Gorman Memorial Bridge.

**Senate Concurrent Resolution 15**, Chief Edward "Eddie" Keesecker Memorial Bridge.

**Senate Concurrent Resolution 18**, Stanley W. and Evelyn C. See Memorial Bridge.

**Senate Concurrent Resolution 19**, US Army PFC Henry W. Baldwin Memorial Bridge.

**Com. Sub. for Senate Concurrent Resolution 22**, USMC Major Cornelius Burdette Memorial Road.

**Senate Concurrent Resolution 23**, US Navy LT Lewis Joseph D'Antoni Memorial Road.

**Senate Concurrent Resolution 25**, US Army SGT Wyatt K. Hinton Memorial Bridge.

And,



**Com. Sub. for Senate Concurrent Resolution 26**, US Army Private Clarence William "Buck" Holliday Memorial Road.

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 4010**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2-22, relating to providing notification of utility service disruption to its' customers; requiring utilities to have an outage communication plan; and authorizing the Public Service Commission to receive each utility's notification plan.

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 4258**—A Bill to amend and reenact §17-4-8 and §31-2A-2 of the Code of West Virginia, 1931, as amended, relating to use of state road for rail crossing; requiring cooperation between the rail company and the Division of Highways when construction or maintenance activities are conducted by the company; and requiring railroad companies to provide alternative entry and exit ways in certain circumstances.

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 4305**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18B-10-1d, relating to granting in-state resident status to economic development participants for the purpose of determining the rate of tuition to be charged for attendance at state

institutions of higher education; establishing criteria that must be met to meet the definition of economic development participant; and setting forth time frame for recognition of resident status.

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 4313**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §49-12-1, §49-12-2, §49-12-3, §49-12-4, and §49-12-5 all relating to the Parents' Bill of Rights; creating a short title; providing legislative findings; creating definitions; creating a standard of review; clarifying parental rights; creating a right of action; creating a defense; and providing applicability.

Referred to the Committee on Education; 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 4408**—A Bill to amend and reenact §16-2D-8 of the Code of West Virginia, 1931, as amended, relating to providing that if an existing intermediate care facility for individuals with intellectual or developmental disabilities voluntarily or involuntarily closes or reduces bed capacity for six continuous months, the certificate of need shall cease and the beds for the facility shall revert to the authority to be redistributed in the same geographic location to a certain other providers; and removing obsolete provisions.

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 January 1, 2025, and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4591**—A Bill to amend and reenact §3-5-7 of the Code of West Virginia, 1931, as amended, relating to requiring immediate verification of partisan election candidates' party affiliation; providing that the Secretary of State shall, upon receipt of certificates of announcements, also verify the residency and correct district of each prospective candidate; and giving individuals seeking to run for public office a 10-day right to appeal to the Supreme Court of Appeals the decisions of the Secretary of State not to verify the potential candidates' certificates of announcements.

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. Rev. Com. Sub. for House Bill 4621**—A Bill to amend and reenact §62-1-5 of the Code of West Virginia, 1931, as amended, relating to criminal procedure; preliminary procedure; providing a definition for booking photograph; providing a definition for news-gathering organization; providing a definition for remove-for-pay publication or website; and when a booking photograph of an accused person may be made public or published by the West Virginia Division of Corrections and Rehabilitation and amends to provide that booking photographs are not public records; and amends to provide that law enforcement agencies and the Division of Corrections and Rehabilitation shall not be held liable for release of booking photographs; and amends to provide that a defendant is entitled to a copy of their booking photograph; and amends to provide that any booking photograph that is published, released, or disseminated before a conviction shall include a disclaimer; and amends to provide that law enforcement agencies and the Division of Corrections and Rehabilitation nor any law enforcement agency shall be held liable for good faith inadvertent release of booking photographs; and amends to require

"remove for pay publications or websites" to remove a booking photograph and establishes civil liability for remove for pay publications or websites" when they do not remove; and amends that the Division of Corrections and Rehabilitation may disclose a booking photograph to appropriate law enforcement agency or prosecuting attorney's office for investigation, prevention, or prosecution of a crime, or to safeguard the orderly operation of the correctional institution; and amends that a booking photograph may also be disclosed between law enforcement agencies for investigation, public safety, prevention, or prosecution of a crime, or to safeguard the orderly operation of a correctional institution.

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 4700**—A Bill to amend and reenact §29-22D-4 and §29-22D-15 of the Code of West Virginia, 1931, as amended, all relating to giving the lottery commission rule making authority to promulgate rules relating to banning certain persons from sports wagering.

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 4709**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-21A-1, §18-21A-2 and §18-21A-3, all relating to establishing a four-year pilot program to provide participating middle schools with an elective course to better prepare fifth through eighth grade students to take advantage of West Virginia's career and technical education programs and to improve students' college and career readiness prior to high school; requiring the state board of education to promulgate a legislative rule, and, if necessary, an emergency rule, to implement the

provisions of the pilot program; setting forth what is to be included within the provisions of the rule; and requiring by July 1, 2025, and annually thereafter for the duration of the pilot program, a report from the State Superintendent of Schools to the Legislative Oversight Commission on Education Accountability.

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. House Bill 4721**—A Bill to amend and reenact §30-13A-10 of the Code of West Virginia, 1931, as amended, relating to requiring land surveyors to offer to record maps or plats of measured parcels of land made by the surveyor.

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 4722**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-13NN-1, §11-13NN-2, §11-13NN-3, §11-13NN-4, §11-13NN-5, §11-13NN-6, §11-13NN-7, §11-13NN-8, §11-13NN-9 and §11-13NN-10, all relating to establishing a road or highway infrastructure improvement projects tax credit for taxpayers subject to the tax imposed by West Virginia code §11-13A-3; specifying a short title; specifying legislative findings and purpose for new credit; defining terms; specifying the amount of the credit, application of credit, and carry forward of unused credit; excluding application of any credits against any portion of severance taxes dedicated to counties and municipalities; requiring filing of application for road or highway infrastructure improvement project credit as condition precedent to claiming credit, specifying procedure for application for certification, contents of application and limitation on maximum amount of

credits which can be approved; allowing transfer of credits to successors; providing for forfeiture of unused tax credits and redetermination of credit allowed; providing penalties for failure to maintain records of qualified property; and establishing an effective date.

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 4734**—A Bill amend and reenact §5-5-4b of the Code of West Virginia, 1931, as amended, relating to providing a pay equity salary adjustment and increase to certain employees of the Division of Corrections and Rehabilitation.

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 4784**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2-11e, relating to establishing requirements for the commission to approve a siting certificate; defining terms; mandating a minimum setback for the siting of a wind turbine from a property line, residence, paved public road or overhead transmission line of 115kV capacity or greater; and providing methodology for calculation.

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 4812**—A Bill to amend and reenact §8-13-5 of the Code of West Virginia, 1931, as amended, relating to business and occupation or privilege tax imposed by municipalities; and setting a limit on the amount of fees that may be collected by third party vendors or contractors who collect business and occupation taxes on behalf of a municipality.

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 4822**—A Bill to amend and reenact §5B-2-19 of the Code of West Virginia, 1931, as amended, relating to modifying the monetary amount of grants issued under the Certified Sites and Development Readiness Program under the Department of Economic Development.

Referred to the Committee on Economic Development; 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 4883**—A Bill to amend and reenact §15-2-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §18A-4-2 of said code; and to amend and reenact §18A-4-8a of said code, all relating to increasing annual salaries of certain employees of the state; increasing the salaries of members of the West Virginia State Police and certain personnel thereof; increasing annual salaries of public school teachers; increasing annual salaries of school service personnel; and providing an effective date for these increases.

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 4919**—A Bill to amend and reenact §18C-7-6 of the Code of West Virginia, 1931, as amended, relating to requiring the reinstatement of a Promise Scholarship Award upon meeting certain criteria; and deleting obsolete language.

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 4945**—A Bill to amend and reenact §18-9A-25 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-31-2, §18-31-3, §18-31-5, §18-31-6, §18-31-7, §18-31-8, §18-31-10, and §18-31-11 of said code; and to amend said code by adding thereto a new section, designated §18-31-2a, all relating generally to the Hope Scholarship Program; providing that the annual Hope Scholarship Program appropriation calculation will be based on the estimated number of participating students instead of the number of participating students in the prior year; providing that Hope Scholarship students have certain educational privileges made available to other nonpublic school students; clarifying that Hope Scholarship funds may only be utilized for expenses incurred in a Kindergarten through secondary school education; specifying that a microschool can be a participating school; permitting the State Treasurer to appear by designee at Hope Scholarship Board meetings; requiring parental agreement to include provisions requiring parents to notify the Board if a student reenrolls in public school or graduates from a secondary school program; clarifying that all records and personally identifying information of a Hope Scholarship student, applicant, or parent is confidential and not subject to disclosure pursuant to the West Virginia Freedom of Information Act; clarifying that a kindergarten-level applicant's Hope Scholarship participation does not commence if the student does not begin kindergarten-level education that school year; clarifying that a public charter school may invoice a Hope Scholarship student for educational services; requiring education service providers conducting background screenings of employees and other persons in contact with students



to certify screening results to the board; and clarifying that providers may not assess increased or additional fees against Hope Scholarship students based on participation in the program.

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 4952**—A Bill to amend and reenact § 11A-3-55 and §11A-3-59 of the Code of West Virginia, 1931, as amended, relating to providing 120 days to persons who are served notice by purchaser of tax lien to redeem subject property.

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 4956**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-16-8b; to amend said code by adding thereto a new section, designated §9-5-34; to amend said code by adding thereto a new section, designated §33-15-24; to amend said code by adding thereto a new section, designated §33-16-20; to amend said code by adding thereto a new section, designated §33-24-15; and to amend said code by adding thereto a new section designated §33-25-23 and to amend said code by adding thereto a new section designated §33-25A-37, all relating to requiring health benefit plan coverage; requiring coverage for medically necessary dental procedures that result from cancer treatment; and explaining scope of procedures covered as a result of certain cancer treatments.

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 4975**—A Bill to amend and reenact §49-2-111c of the Code of West Virginia, 1931, as amended, relating to establishing a foster parent information system; setting forth the requirements of the system; requiring the Department of Human Services to provide analysis, evaluation and reports regarding the system; and deleting obsolete language.

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. House Bill 5039**—A Bill to amend and reenact §17C-5-7 and §17C-5-7a of the Code of West Virginia, 1931, as amended, all relating to the procedures for revocation of license relating to refusing a secondary chemical test; providing an arresting officer shall submit certain information to the Commissioner of the Division of Motor Vehicles and the court; providing that at the person's first pre-trial conference or initial preliminary hearing the Court shall conduct a refusal review hearing; providing form for refusal review hearing; providing for entry of a revocation order; and altering obsolete language.

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 and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 5043**—A Bill to amend §6B-3-1, §6B-3-2, §6B-3-4, §6B-3-6, and §6B-3-7 of the Code of West Virginia, 1931, as amended, and by adding thereto a new article, designated §6B-3A-1, §6B-3A-2, §6B-3A-3, §6B-3A-4, §6B-3A-5, §6B-3A-6, §6B-3A-7, §6B-3A-8, §6B-3A-9, §6B-3A-10, and §6B-3A-11, all relating to the requirements, prohibitions, and regulation of foreign principals or agents of foreign principals, lobbying by or on behalf of such foreign principals or their agents;

providing definitions; amending provisions relating to the registration and reporting duties of lobbyists; amending provisions relating to the employment of unregistered lobbyists and the duties of lobbyists; establishing criminal liabilities and fines for violations of the requirements applicable to such foreign principals or their agents.

Referred to the Committee on Economic Development; 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 January 1, 2025, and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 5077**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §3-5-5; and to amend and reenact §3-5-13 of the Code of West Virginia, 1931, as amended, relating to the nomination and election of candidates for U.S. Congress; setting forth legislative findings and purpose; defining terms; setting forth residency requirements for candidacy; providing for legal standing to enforce and defend statute; establishing penalties; and clarifying the form and content of the ballot for an election to represent a Congressional district.

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 5137**—A Bill to amend and reenact §12-4A-2 of the Code of West Virginia, 1931, as amended, relating to county board of education finances; authorizing the State Auditor to conduct financial assessments of all county boards of education; requiring each county board of education to be audited at least once every six years; providing for assessment requirements; requiring submission of certain reports to the Joint Committee on Government and Finance; requiring use of the Local

Government Purchasing Card Program; authorizing the State Auditor to charge certain fees; and providing an effective date.

Referred to the Committee on Education; 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 5180**—A Bill to amend and reenact §18-8-1 of the Code of West Virginia, 1931, as amended, relating to home-schooled children; removing requirements to submit certain evidence on behalf of home-schooled children; and allowing a delay of transfer to home school from public schools in certain circumstances.

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 5188**—A Bill to amend §8-22A-17 of the Code of West Virginia, 1931, as amended, relating to providing certain partial disability benefits for members in the WV Municipal Police Officers and Firefighters Retirement System.

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 5192**—A Bill to amend and reenact §30-5-7 of the Code of West Virginia, 1931, as amended, relating to requiring the Board of Pharmacy to promulgate rules; permitting the practice of test and treat.

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 5194**—A Bill to amend and reenact §5A-3-10 of the West Virginia Code, 1931, as amended, relating to requiring certain purchases of commodities and services; requiring the Director of Purchasing to purchase certain goods and services produced and offered for sale by nonprofit workshops; requiring the director to consult with the Committee for the Purchase of Commodities and Services from the Handicapped in making purchasing decisions; and providing that the amendments to this section amended during the 2024 legislative session shall apply to all applicable purchases made on or after July 1, 2025.

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 5213**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17-3-14j, relating to providing for one free Gold Star Family license plate to a Gold Star spouse.

Referred to the Committee on Military.

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 5241**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-16-33, relating to requiring the Insurance Commissioner to audit claims under the Public Employees Insurance Act related to post-traumatic stress disorder claims for first responders; and requiring annual reviews and reports to the Interim Joint Health Committee, Interim Committee on PEIA and

Insurance, and the Interim Committee on Volunteer Fire Departments and Emergency Medical Services.

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 and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 5289**—A Bill to amend said code by adding thereto a new article, designated §21A-12-1, relating to establishing a partnership between Workforce West Virginia through its Division of Workforce Development and the West Virginia State Board of Education for the implementation of an educational, interactive platform designed to help students with instruction in the science technology engineering and math (STEM) field with a focus on chemistry and related careers to high schools and technical schools in the state; providing funding; and establishing an implementation plan and reporting.

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 5297**—A Bill to amend and reenact §30-3-20 of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-14-17 of said code, all relating to prohibiting pubertal modulation and hormonal therapy when provided to assist in a gender transition; and removing an expired internal effective date.

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 5305**—A Bill to amend and reenact §61-11-22a of the Code of West Virginia, 1931, as amended, relating to impaired driving not eligible for deferred adjudication under this code section.

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, to take effect January 1, 2025, and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 5338**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §31A-8H-1, §31A-8H-2, §31A-8H-3, §31A-8H-4, and §31A-8H-5, all relating to providing an affirmative legal defense to certain types of businesses against certain types of lawsuits claiming that the business failed to implement reasonable cybersecurity protections and that as a result, a data breach of personal information or restricted information occurred if the business creates, maintains, and complies with a written cybersecurity program that contains administrative, technical, operational, and physical safeguards for the protection of personal information as set forth in this act; describing the requirements of the cybersecurity program; construction of article; and providing immunity in certain circumstances to certain institutions of higher education in this state that offer a cybersecurity assessment program as part of an undergraduate or graduate program relating to cybersecurity to any business in the state.

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 5340**—A Bill to amend and reenact §16-54-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated

§16-54-10, all relating to require insurance coverage of a nonopioid drug for a person diagnosed with substance use disorder.

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 and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 5344**—A Bill to amend and reenact §61-8B-5 of the Code of West Virginia, 1931, as amended, relating to creating an offense of relating to sexual assault in the third degree relating to a mentally defective or mentally incapacitated victim and creating criminal penalties and fines relating to said offense; relating to sexual assault in the third degree; relating to creating criminal penalties and fines; and clarifying when a mentally defective victim may be allowed to testify using two-way videoconferencing, or two-way closed circuit television.

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 5349**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §19-39-1, §19-39-2, and §19-39-3, all relating to establishing requirements of food labels; defining terms; determining what constitutes mislabeling; providing exceptions; and permitting the commissioner to promulgate legislative rules.

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 5355**—A Bill to amend the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §15A-11-12, relating to the Fire Protection Fund and its use by volunteer and part-volunteer fire companies and departments; making a legislative finding; defining a term; providing that volunteer and part-volunteer fire companies and departments may use monies from the Fire Protection Fund to pay expenses associated with the required implementation of the State Auditor's West Virginia Checkbook fiscal reporting system.

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 5358**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §15A-14-1, §15A-14-2, §15A-14-3, §15A-14-4, §15A-14-5, §15A-14-6, §15A-14-7, §15A-14-8, and §15A-14-9, all relating to the Corrections and Rehabilitation Ombudsman; authorizing an ombudsman position within the Office of the Inspector General; authorizing review of complaints; providing access to complainants, facilities, agencies, and records to assist in review; providing cooperation among government departments and agencies; clarifying confidentiality; providing limitations on liability; requiring an annual report; including penalties for noncompliance and retaliation; and providing funding for the program.

Referred to the Committee on the Judiciary; 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 July 1, 2024, and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 5373**—A Bill to amend and reenact §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, all relating to prohibiting the appointment of an individual to fill a vacant partisan office if that person has not been a member of that party for one year and requiring appointments be made from the political party with which the individual vacating the office was affiliated with at the time of his or her most recent election.

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 5379**—A Bill to amend and reenact §33-15-4t of the Code of West Virginia, 1931, as amended; to amend and reenact §33-16-3ee of said code; to amend and reenact §33-24-7t of said code; to amend and reenact §33-25-8q of said code; and to amend and reenact §33-25A-8t of said code, all relating to cost sharing under health plans; requiring pharmacy benefits managers to include any cost sharing amounts paid by insured or by another person when calculating insured's contribution to any applicable cost sharing requirement; applying certain annual limitation on cost sharing to all health plans issued in this state; preventing insurers, pharmacy benefits managers, and third-party administrators from changing the terms of health plan coverage based on the availability or amount of financial assistance available for a prescription drug; defining terms; providing civil penalties and authorizing restitution; and providing effective date.

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 5399**—A Bill to repeal §12-4-14a of the Code of West Virginia, 1931, as amended, and to amend and reenact §12-4-14 and §12-4-14b of said code; and to amend and reenact §33-3-33 of said code, all relating to duties of the State Auditor; repealing section creating terminated program; directing

state audit functions of volunteer and part-volunteer fire departments to the State Auditor; requiring certain periodic audits; prohibiting distributing state funds to volunteer and part-volunteer fire departments that fail to comply with audit requirements; providing for restitution be paid to volunteer and part-volunteer fire departments double the amount of property unlawfully taken; requiring posting a notice of penalty in volunteer and part-volunteer fire departments; establishing a pilot project of volunteer and part-volunteer fire departments to evaluate implementation of the State Auditor's Checkbook accounting system; clarifying what grants are subject to reporting requirements of the Grant Transparency and Accountability Act; defining terms; and making other technical clarifications.

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 5405**—A Bill to amend and reenact §18-9A-10 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18A-3C-3 of said code, all relating to increasing support and professional development for educators; including numbers of full-time equivalent teachers less than fully certified for teaching an academic core subject for which they are employed; utilizing state aid funding formula allocations to support teacher and leader induction and professional growth; authorizing retention of additional funding beginning with the 2024 – 2025 school year by Department of Education for continued support and expansion of the regional professional cadres program; and adding additional requirements to county boards of education plan for comprehensive system of support for improving professional practice.

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 5432**—A Bill to amend and reenact §5A-6-1, §5A-6-3, and §5A-6-4 of the Code of West Virginia, 1931, as amended; and to repeal §5A-7-1, §5A-7-2, §5A-7-3, §5A-7-4, §5A-7-4a, §5A-7-5, §5A-7-6, §5A-7-7, §5A-7-8, §5A-7-9, §5A-7-10, and §5A-7-11 of said code, all relating to combining Information Services and Communications Division with the West Virginia Office of Technology; transferring funds from the Information Systems and Communications Division to the Office of Technology; renaming special revenue fund and providing purposes for expenditures; closing funds and transferring unexpended balances; authorizing the Chief Information Officer to conduct requisition reviews; authorizing the Chief Information Officer to collect a fee for services provided to other public bodies; Provide guidance and services to support data retention and electronic discovery of executive agency data in compliance with agency data retention policies and directives; and requiring the Chief Information Officer to provide mail service for state spending units.

At the request of Senator Takubo, and by unanimous consent, reference of the bill to a committee was dispensed with.

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 5437**—A Bill to amend and reenact §17-16-6 of the Code of West Virginia, 1931, as amended, relating to imposing a time limit for the Department of Highways to grant an entrance permit for work on a highway; describing the time limit for requested changes; and describing when a permit shall be considered approved.

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 5510**—A Bill to amend and reenact §61-5-27 of the Code of West Virginia, 1931, as amended, relating to removing the requirement for the likelihood of imminent lawless action of a violent nature that could cause bodily harm 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. Com. Sub. for House Bill 5514**—A Bill to amend and reenact §18-5-1a and §18-5-4 of the Code of West Virginia, 1931, as amended, relating to county boards of education members; increasing the number of annual training hours for county board members; modifying the subjects on which county board members must be trained; authorizing the State Board to require board members to complete additional training upon request from the State Superintendent; adding ex officio members to the county board member training standards review committee; requiring the State Superintendent to make an annual report to the Legislative Oversight Commission on Education Accountability relating to county board member training; increasing compensation for attending meetings; reducing the number of meetings board members may be compensated to attend; and prohibiting county board members from receiving compensation if training requirements are not met.

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 5539**—A Bill to amend and reenact §46A-2-122 and §55-7-8a of the Code of West Virginia, 1931, as amended, all relating to consumer credit and protection actions; amending definitions; and clarifying that any action for a

violation of Chapter 46A of this code shall survive the death of the person entitled to recover or the death of the person liable.

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 and requested the concurrence of the Senate in the passage of

**Eng. House Bill 5548**—A Bill to amend and reenact §5B-1-9 of the Code of West Virginia, 1931, as amended, relating to modifying requirements imposed on any owner, operator, or manager, as applicable, and all concessions and licensees thereof, within a tourism development project or tourism development expansion project within a tourism development project; conforming provisions to existing law redesignating name of public office; and removing redundant provisions relating to severability.

Referred to the Committee on Economic Development; 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 5551**—A Bill to amend and reenact §30-1-7a of the Code of West Virginia, 1931, as amended, relating to requiring social workers, psychologists, and professional counselors to complete continuing education requirement on domestic violence or abuse.

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 5583**—A Bill to amend and reenact §17C-17-11 of the Code of West Virginia, 1931, as

amended, relating to permitting the Commissioner of the Division of Highways to issue a special permit to operate or move a vehicle or combination of vehicles of a size or weight of vehicles or nondivisible load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter over routes designated by the Commissioner of the Division of Highways at night, and during holidays, holiday weekends, Saturdays, and Sundays; and relating to the types of highways that this special permit may be issued.

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. House Bill 5594**—A Bill to amend and reenact §5A-3-1 of the Code of West Virginia, 1931, as amended, relating to exempting the West Virginia School of Osteopathic Medicine, West Virginia University and Marshall University from contracts, agreements, or memorandums of understanding with spending units in state government with exceptions.

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 5595**—A Bill to amend and reenact §14-2-17a of the Code of West Virginia, as amended, all relating to the shortened procedure for road condition claims; establishing process by which the Clerk of the Claims Commission, the Claims Commission, and the Division of Highways expedite certain road condition claims; and requiring the Division of Highways create a line item in the budget to expediate payment for certain road condition claims.

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 5604**—A Bill to amend and reenact §5A-3-10 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section designated §5A-3-10f, and to amend and reenact §5A-6-2 of said code; and to amend said code by adding thereto a new section, designated §5A-6-4f, all relating generally to procurement by state spending units.

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 5609**—A Bill to amend and reenact §49-5-101 of the Code of West Virginia, 1931, as amended, relating to the confidentiality of records; and providing that the Department of Human Services shall provide information related to child abuse or neglect proceedings, including information relating to the identity of the person reporting or making a complaint of child abuse or neglect, to the Foster Care Ombudsman, or its designee, upon request and acting in the course of their official duties; and providing that the Department of Human Services in cases of a child fatality, or near fatality, due to child abuse or neglect shall release information that includes the identity of a person making a complaint of child abuse or neglect relating to the child fatality, or near fatality, to the Foster Care Ombudsman, or its designee, acting in the course of their official duties.

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 5617**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new



section designated §24-2-1r, relating to authorizing the Public Service Commission to promulgate rules for maintenance, flushing, flow testing, and marking of fire hydrants owned by water utilities; providing for resolution by Public Service Commission whenever portions of standards may conflict; providing a public water utility may use its cash working capital reserve for inspection, testing, maintenance, or replacement of fire hydrants to comply with the standards and rules adopted in this section.

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 5623**—A Bill to amend and reenact §3-3-12 of the Code of West Virginia, 1931, as amended, relating to codifying existing policy of the Secretary of State regarding the verification of absentee ballots; requiring the creation of an electronic absentee by mail ballot tracking system; and requiring certain content to be provided on the electronic absentee by mail ballot tracking system.

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 5632**—A Bill to amend and reenact §30-40-4, §30-40-12, and §30-40-17 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Real Estate License Act; adding a definition for "property management"; qualifications for broker's license; and obligations of nonresident brokers.

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 5639**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §12-10-1 and §12-10-2, all relating to prompt payment of legitimate, uncontested invoices by state agencies providing that registered and qualified vendors shall be entitled to prompt payment upon presentation to a state agency of a legitimate, uncontested invoice; providing the rate of interest and manner of calculation; determining the date an invoice is considered received by a state agency; outlining rights of state agencies to receive updated invoices with interest prior to payment; requiring state agencies to explain and calculate interest on the payment claim at the time it is submitted to the State Auditor; providing the timeline in which state agencies shall process payments; providing the timeline in which state agencies shall process payments for other agencies; providing for the definition of a "state agency"; and providing for exceptions.

Referred to the Committee on the Judiciary; 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 5668**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-22-30, relating to the creation of the Responsible Gaming and Research Act; creating a short title; providing for gaming data collection and sharing for scholarly purposes, and providing for preparation of the report.

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 5676**—A Bill to amend and reenact §44-2-1 of the Code of West Virginia, 1931, as amended, relating to providing guidance for estates not classified as a small

estate for proof and determination of debts and claims, establishment of priority, determination of the amount of respective shares of legatees and distributes, and other matters; relating to claims of an unpaid creditors for estates not classified as a small estate and the process to determine the validity of a claim and when a fiduciary commissioner is required to take up the matter of the validity of the claim and when no referral to a fiduciary commissioner may be made; and relating to estates with a value of \$200,000 or less, exclusive of real estate and nonprobate assets, or if it appears to the clerk that there is only one beneficiary and providing that these estates shall not be referred to a fiduciary commissioner after delivery of an appraisal of the assets by the personal representative; relating to claims of an unpaid creditors for estates and the process to determine the validity of a claim and when a fiduciary commissioner is required to take up the matter of the validity of the claim and when no referral to a fiduciary commissioner may be made for estates with a value of \$200,000 or less, exclusive of real estate and nonprobate assets, or if it appears to the clerk that there is only one beneficiary; relating to changing the fee that a fiduciary commissioner may charge an estate for services related to settlement of the estate to \$500, with outlined exceptions; and relating to counties where there are two or more fiduciary commissioners, then referral to these commissioners shall be in rotation, for equal division of work; and providing that for any estate referred to a fiduciary commissioner any fees and costs provided under this section shall be assessed as costs against any requestor or objector who does not substantially prevail on its claim proportionately according to the number of claimants not substantially prevailing.

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 5685**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-5-34, relating to the state Medicaid program; adding requirement that the Bureau for Medical Services

submit certain waivers and plan amendments that grow total program expenditures \$3 million or more beyond current expenses of the most recent available fiscal year through the legislative rulemaking process; authorizing emergency rules; and requiring the Bureau for Medical Services to study and provide reports to the Legislature, including reports regarding the costs of the program and recommendations to contain costs.

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. House Bill 5697**—A Bill to amend and reenact §18-5G-3 and §18-5G-7 of the Code of West Virginia, 1931, as amended, all relating to providing for technical cleanup of certain provisions of the public charter school code provisions.

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 5698**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §46A-6O-1, §46A-6O-2, §46A-6O-3, §46A-6O-4, §46A-6O-5, §46A-6O-6, §46A-6O-7, §46A-6O-8, §46A-6O-9, §46A-6O-10, §46A-6O-11, §46A-6O-12 and §46A-6O-13, all relating to the Consumer Data Protection Act; inserting establishing a framework for controlling and processing personal data in the state; creating definitions; limiting application to all persons that conduct business in the state and either control or process personal data of at least 100,000 consumers or derive over 50 percent of gross revenue from the sale of personal data and control or process personal data of at least 25,000 consumers; providing exemptions; delineating responsibilities and privacy protection standards for data controllers and processors; clarifying

standards do not apply to state or local governmental entities; providing exceptions for certain types of data and information governed by federal law; providing that consumers have rights to access, correct, delete, obtain a copy of personal data, and to opt out of the processing of personal data for the purposes of targeted advertising; providing that the Attorney General has exclusive authority to enforce violations of the law; providing for assistance of the Attorney General in obtaining relief; establishing the Consumer Privacy Fund to support this effort; and providing for construction and an effective date.

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 amendments to, and the adoption, as amended, of the following resolutions:

**House Concurrent Resolution 2**, U.S. Army SPC Steven W. Herron Memorial Bridge.

**Com. Sub. for House Concurrent Resolution 3**, Legg Brothers WWII Veterans Memorial Bridge.

**Com. Sub. for House Concurrent Resolution 7**, U. S. Navy Radarman 3rd Class Craig W. Haines Memorial Bridge.

**House Concurrent Resolution 8**, Judy Brothers Memorial Bridge.

**Com. Sub. for House Concurrent Resolution 9**, Private Jefferson Howell Memorial Road.

**House Concurrent Resolution 18**, Caldwell Brothers Memorial Bridge.

**Com. Sub. for House Concurrent Resolution 19**, CPL Thomas Lowell Wines Memorial Bridge.

**House Concurrent Resolution 20**, SP4 Donnie Lee Hackney Memorial Bridge.

**Com. Sub. for House Concurrent Resolution 26**, PFC Jerry Lee Bassett Memorial Bridge.

**House Concurrent Resolution 30**, Jack L. Hart Memorial Bridge.

**House Concurrent Resolution 32**, Sloan Brothers Memorial Bridge.

**House Concurrent Resolution 36**, Chief Master Sgt. Dan Chandler Bridge.

**Com. Sub. for House Concurrent Resolution 39**, US Army SP3 Delbert Sherdan "Buck" Huffman Sr. Memorial Bridge.

**Com. Sub. for House Concurrent Resolution 40**, USMC MSG Edward P. & MP Carl A. McCray Memorial Bridge.

**House Concurrent Resolution 44**, Frank Walker Mosley Memorial Bridge.

**House Concurrent Resolution 53**, U. S. Navy Quartermaster Third Class Lawrence Earl Boggs Memorial Bridge.

**House Concurrent Resolution 60**, Terra Dawn Lewis Memorial Road and Bridge.

**House Concurrent Resolution 61**, Mollohan Brothers Memorial Bridge.

And,

**House Concurrent Resolution 68**, U. S. Army Air Force, Major (Ret.) Willis "Scottie" Adams Memorial Bridge.

The Senate proceeded to the fourth order of business.

Senator Maroney, 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 4667**, Prohibiting syringe services programs from distributing listed smoking devices.

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

Respectfully submitted,

Michael J. Maroney,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4667) 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 Grady, 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 4830**, To address the professional development of teachers.

And has amended same.

And,

**Eng. Com. Sub. for House Bill 5650**, Allow suspended school personnel to enter school property functions open to the public.

And has amended same.

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

Respectfully submitted,

Amy N. Grady,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 4830 and 5650) 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 Weld, 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 4845**, To prohibit swatting.

And has amended same.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4845) 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 Grady, 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 4986**, Relating to computer science and cybersecurity instruction for adult learners.

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,

Amy N. Grady,  
*Chair.*

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

Senator Weld, 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 5091**, West Virginia Critical Infrastructure Protection Act.

And has amended same.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5091) 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 Maroney, 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 5151**, Relating to defining term fictive kin.

And has amended same.

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

Respectfully submitted,

Michael J. Maroney,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5151) 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 Woodrum, 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 5161**, To create a "digital wallet" to keep all certifications/licensure accrued by the person in one place.

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,

Jack David Woodrum,  
*Chair.*

The bill, 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 Weld, 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 5298**, Relating to prohibiting a candidate who failed to secure the nomination of a political party in a primary election from seeking the same elected office as an affiliate with a different political party in the subsequent general election.

And has amended same.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 5298) 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 Woodrum, 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 5348**, Changing the name of the "Raleigh County Recreation Authority" to the "Raleigh County Parks and Recreation Authority".

And has amended same.

And,

**Eng. House Bill 5582**, Modifying exceptions for real estate appraisal licensure.

And has amended same.

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

Respectfully submitted,

Jack David Woodrum,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bills (Eng. H. B. 5348 and 5582) 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 Woodrum, 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 5569**, Requiring an appraiser to pay for a background check required by the AMC as a condition of being added to the AMCs panel of appraisers.

And,

**Eng. House Bill 5690**, Creating a West Virginia Task Force on Artificial Intelligence.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Jack David Woodrum,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bills (Eng. H. B. 5569 and 5690) 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.

The Senate proceeded to the sixth order of business.

Senators Caputo and Woelfel offered the following resolution:

**Senate Resolution 60**—Recognizing May 1, 2024, as Purebred Dog Day in West Virginia.

Which, under the rules, lies over one day.

Senator Weld offered the following resolution:

**Senate Resolution 61**—Encouraging military veterans across the State of West Virginia to volunteer as election workers in the 2024 statewide elections.

Which, under the rules, lies over one day.

The Senate proceeded to the thirteenth order of business.

The following communications were reported by the Clerk:

The Senate of West Virginia  
Charleston

LEE CASSIS  
CLERK OF THE SENATE



STATE CAPITOL, ROOM M-211  
1900 KANAWHA BOULEVARD, EAST  
CHARLESTON, WV 25305-0800  
304-357-7800

February 29, 2024

The Honorable Jim Justice, II  
Governor, State of West Virginia  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305

Dear Governor Justice,

The following bills, authenticated by the signature of the Clerk of each House, and signed by the President of the Senate and the Speaker of the House of Delegates, have been examined and found truly enrolled:

**S. B. 658**, Supplementing and amending appropriations to Department of Administration, Public Defender Services;

**And,**

**Com. Sub. for S. B. 668**, Increasing amount of certain controlled substances persons may purchase annually.

These bills are presented to you on this day, February 29, 2024.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Lee Cassis".

Lee Cassis  
Clerk of the Senate

C: The Honorable Stephen J. Harrison  
Clerk of the House of Delegates

LEE.CASSIS@WVSENATE.GOV



STEPHEN J. HARRISON  
CLERK OF THE HOUSE

West Virginia House of Delegates  
OFFICE OF THE CLERK  
BUILDING 1, SUITE 212  
1900 KANAWHA BLVD., EAST  
CHARLESTON 25305

(304) 340-3200  
STEVE.HARRISON@WVHOUSE.GOV

February 29, 2024

The Honorable Jim Justice, II  
Governor, State of West Virginia  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305

Dear Governor Justice,

The following bills, authenticated by the signature of the Clerk of each House, and signed by the Speaker of the House of Delegates and the President of the Senate, have been examined and found truly enrolled:

**H. B. 5006**, Relating to the administration of the A. James Manchin Rehabilitation Environmental Action Plan;

**H. B. 5261**, Relating to the definition of small arms for purposes of taxation;

**Com. Sub. for H. B. 5267**, Relating to the Deputy Sheriff Retirement System;

And,

**Com. Sub. for H. B. 5273**, Relating to the Emergency Medical Services Retirement System and clarifying payment upon death of member with less than 10 years of contributory service.

These bills are presented to you on this day, February 29, 2024.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Steve Harrison".

Stephen J. Harrison  
Clerk of the House of Delegates

C: The Honorable Lee Cassis  
Clerk of the Senate

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were added as co-sponsors to the following resolutions on February 28, 2024:

**Com. Sub. for Senate Joint Resolution 5:** Senator Barrett;

**Senate Joint Resolution 7:** Senator Barrett;

**Senate Concurrent Resolution 33:** Senators Taylor and Hamilton;

**Senate Resolution 57:** Senator Grady;

**Senate Resolution 58:** Senators Chapman, Rucker, and Queen;

And,

**Senate Resolution 59:** Senators Rucker, Barrett, and Queen.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Takubo, at 4:16 p.m., the Senate adjourned until tomorrow, Friday, March 1, 2024, at 11 a.m.

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## FRIDAY, MARCH 1, 2024

The Senate met at 11:06 a.m.

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

Prayer was offered by Pastor Deborah Thomas, Nondenominational Fellowship Pentecostal Ministries, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Mark R. Maynard, a senator from the sixth district.



Pending the reading of the Journal of Thursday, February 29, 2024,

At the request of Senator Caputo, 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 Takubo, and by unanimous consent, the Senate proceeded to the sixth order of business.

Senator Chapman offered the following resolution:

**Senate Resolution 62**—Memorializing the life of Betty Burkett, guardian through nursing and lifelong dedication to animal welfare throughout the State of West Virginia.

Which, under the rules, lies over one day.

Senator Chapman offered the following resolution:

**Senate Resolution 63**—Memorializing the life of Sylvia Shafer, animal welfare advocate and beloved wife.

Which, under the rules, lies over one day.

The Senate proceeded to the seventh order of business.

**Senate Resolution 60**, Recognizing May 1, 2024, as Purebred Dog Day.

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

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

**Senate Resolution 61**, Encouraging WV military veterans to volunteer as election workers in 2024 statewide elections.

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

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

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for House Bill 4376**, Relating to surgical smoke evacuation.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 4376) 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 4376**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16B-3-21, relating to requirements for smoke evacuation systems for health care facilities; defining terms; providing rule-making authority; and creating penalties for violation of requirement.

*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 4431**, Permitting the cremation of unidentified remains.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: Chapman, Karnes, and Rucker—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 H. B. 4431) 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 4431**—A Bill to amend and reenact §61-12-15 of the Code of West Virginia, 1931, as amended, relating to the Office of the Chief Medical Examiner; and permitting the cremation of unidentified remains.

*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 5017**, Relating to mobile food establishment reciprocity.

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 5017 pass?"

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5017) 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 5017**—A Bill to amend and reenact §16-2-18 of the Code of West Virginia, 1931, as amended, relating to statewide permits for mobile food service establishment.

*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 5178**, Requiring car dealerships in this state to utilize a search engine to determine if buyers of vehicles have valid motor vehicle insurance.

On third reading, coming up in regular order, with the right having been granted on yesterday, Thursday, February 29, 2024, for amendments to be received on third reading, was read a third time.

On motion of Senator Clements, 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:

**ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.**

**§17D-2A-6a. Determining if required security is in effect.**

(a) The commissioner may make a determination that the required security on a motor vehicle is not in effect based upon crash reports required under the provisions of §17C-4-1 *et seq.* of this code, reports or citations from law-enforcement agencies, citations or abstracts of conviction from courts, or from information from an ~~on-line~~ online electronic insurance verification program.

(b) The commissioner is authorized to develop and implement an electronic insurance verification program based upon a model established by the Insurance Industry Committee on Motor Vehicle Administration (IICMVA) to electronically verify evidence of insurance coverage with insurance companies.

(c) The commissioner may contract with a third-party vendor to act as his or her agent to develop the program, conduct the electronic verification process with insurance companies, and to operate the program.

(d) If developed and implemented by the commissioner, the ~~on-line~~ online insurance verification program shall:

(1) Be able to verify, on an on-demand basis minus reasonable down time for system maintenance as agreed upon by the division or its agent and the insurance carrier, the liability insurance status as of the time of the inquiry or at other times not exceeding six months prior unless otherwise agreed upon by the division or its agent and the insurance carrier or via other similar electronic system that is consistent with insurance industry and IICMVA recommendations and the specifications and standards of the IICMVA model;

(2) Be able to make insurance verification inquiries to insurers by using multiple data elements for greater matching accuracy

including: National Association of Insurance ~~Commissioner's~~ Commissioners' (NAIC) code specific to each licensed insurance company, vehicle identification numbers, and policy number or other data elements as otherwise agreed to by the division or its agent and the insurer;

(3) Provide sufficient measures for the security and integrity of data including a requirement that the information obtained through the operation of the program be only used for the sole use of the Division of Motor Vehicles or its agent, law enforcement, new and used motor vehicle dealerships, and the judiciary to effectuate the provisions of this article; and

(4) Utilize open and agreed upon data and data transmission standards and standard SML extensible markup language schema.

(e) If the commissioner develops and implements an ~~on-line~~ online insurance verification program, each insurer shall:

(1) Cooperate with the Division of Motor Vehicles or its agent in establishing and operating the program;

(2) Maintain the data necessary to verify the existence of mandatory liability insurance coverage provided to its customers pursuant to the required time period established for the ~~on-line~~ online insurance verification program;

(3) Maintain the internet web service, pursuant to the requirements established under the online insurance verification program, through which online insurance verification can take place that includes the ability to respond to authorized inquiries on whether the vehicle is insured or the policy in effect on the requested date through the insurer's ~~national—insurance commissioners—association~~ NAIC code, vehicle identification number, insurance policy number, or other data key or keys as otherwise agreed to by the division or its agent and the insurer;

(4) Provide security consistent with accepted insurance industry and United States motor vehicle agency standards pertinent to the transmission of personal data;

(5) Be immune from civil and administrative liability for good faith efforts to comply with the terms of the verification program; and

(6) As a condition of writing motor vehicle liability insurance in this state, insurance carriers shall cooperate with the division or its agent and the insurance commission in establishing and maintaining an insurance verification system. Nothing prohibits an insurer from using the services of a third-party vendor for facilitating the insurance verification program required by this section.

(f) If the commissioner develops and implements an ~~on-line~~ online insurance verification program, the Division of Motor Vehicles or its agent, as applicable, shall:

(1) Consult and cooperate with insurers in establishing and operating the ~~on-line~~ online insurance verification system;

(2) Designate and maintain a contact person for insurers during the establishment and implementation of the ~~on-line~~ online insurance verification system;

(3) Conduct a pilot project to test the insurance verification system no less than 18 months prior to final implementation;

(4) Establish and maintain the systems necessary to make verification requests to insurers using the data elements that the Division of Motor Vehicles or its agent and the insurer have agreed upon and are necessary to receive accurate responses from insurers;

(5) For all information transmitted and received, implement and maintain strict system and data security measures consistent with applicable standards. Data secured via the ~~reporting~~ verification system by either the division or its agent may not be shared by any person who accesses the verification system with any party other than those permitted by state or federal privacy laws;

(6) Be responsible for keeping all interested state agencies informed on the implementation status, functionality, and planned or unplanned service interruptions; and

(7) Provide alternative methods of reporting for small insurers writing less than 500 non-commercial motor vehicle policies in the state as determined by the Division of Motor Vehicles or its agent.

(g) Any information obtained by the division or its agent under the provisions of an electronic insurance system is for the sole use of the Division of Motor Vehicles or its agent, law enforcement, new and used motor vehicle dealerships, and the judiciary to effectuate the provisions of this article and is exempt from disclosure under the provisions of §29B-1-1 *et seq.* of this code and may not be considered a public record as defined in §29B-1-2 of this code.

(h) Not more than two years after the establishment of an ~~on-line~~ online insurance verification program, the Division of Motor Vehicles, after consultation with insurers, shall report to the Legislature as to the costs of the program incurred by the division, insurers, and the public and the effectiveness of the program in reducing the number of uninsured motor vehicles.

(i) The online insurance verification system authorized in this section may be accessed by new and used motor vehicle dealerships in this state to verify if a prospective purchaser has valid motor vehicle insurance.

Engrossed Committee Substitute for House Bill 5178, as just amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5178) passed.

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

**Eng. Com. Sub. for House Bill 5178**—A Bill to amend and reenact §17D-2A-6a of the Code of West Virginia, 1931, as amended, relating to allowing new and used motor vehicle dealerships in this state to access an online electronic insurance verification system to verify if prospective buyers have valid motor vehicle insurance; and correcting terminology and an incorrect reference to a national insurance commissioners association to the National Association of Insurance Commissioners.

*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 5317**, Making it permissive for commercial motor vehicles registered in this state to pass an annual inspection of all safety equipment to be consistent with the federal motor carrier safety regulations.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5317) 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 5317**—A Bill to amend and reenact §17C-16-4 of the Code of West Virginia, 1931, as amended, relating to requiring commercial motor vehicles registered in this state to pass an annual inspection.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5317) 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 5347**, Relating to establishing a program for emergency medical services personnel to become certified paramedics.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton,

Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5347) 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 5347**—A Bill to amend and reenact §16-4C-6, §16-4C-10, and §16-4C-24 of the Code of West Virginia, 1931, as amended, all relating to emergency medical services; establishing a program for emergency medical technicians to become certified paramedics; revising procedures for hearing; and providing for funding of the program for emergency medical technicians to become certified technicians.

Senator Takubo moved that the bill take effect July 1, 2024.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5347) takes effect July 1, 2024.

*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 4667**, Prohibiting syringe services programs from distributing listed smoking devices.

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

**Eng. Com. Sub. for House Bill 4830**, To address the professional development of teachers.

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 6, section 6, line 2, by striking out the words "Health and Human Resources" and inserting in lieu thereof the words "Human Services".

The bill (Eng. Com. Sub. for H. B. 4830), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4845**, To prohibit swatting.

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

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

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

## **ARTICLE 6. CRIMES AGAINST THE PEACE.**

### **§61-6-20. Falsely reporting an emergency incident.**

(a) A person is guilty of reporting a false emergency incident when knowing the information reported, conveyed, or circulated is false or baseless, he or she:

(1) Initiates or circulates a false report or warning of or impending occurrence of a fire, explosion, crime, catastrophe, accident, illness, or other emergency under circumstances in which it is likely that public alarm or inconvenience will result or that firefighting apparatus, ambulance apparatus, one or more rescue vehicles or other emergency apparatus might be summoned; or

(2) Reports, by word or action, to any official or quasi-official agency or organization having the function of dealing with emergencies involving danger to life or property, an alleged occurrence or impending occurrence of a fire, explosion, crime, catastrophe, accident, illness, or other emergency in which it is likely that public alarm or inconvenience will result or that firefighting apparatus, ambulance apparatus, one or more rescue vehicles or other emergency apparatus might be summoned, which did not occur, does not in fact exist; or

(3) Reports to a law-enforcement officer or agency the alleged occurrence of any offense or incident which did not in fact occur, or an allegedly impending occurrence of an offense or incident which is not in fact about to occur, or false information relating to an actual offense or incident or to the alleged implication of some person ~~therein~~; or

(4) Without just cause, calls or summons by telephone, fire alarm system, or otherwise, any firefighting apparatus, ambulance apparatus, rescue vehicles, or other emergency vehicles.

(b) Any person who violates the provisions of subsection(a) of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$500 or confined in ~~the county~~ jail not more than six months, or both fined and confined.

(c) Notwithstanding the provisions of subsection (a) of this section, any person convicted of a second or subsequent violation of the provisions of this section or, of a violation of this section which

results in bodily injury to another person is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$10,000, or imprisoned in a state correctional facility for a term of not less than one year nor more than five years, or both fined and imprisoned.

(d) Prior to the sentencing of a person who has been convicted of a violation of this section, the court may enter an order directing any law enforcement agency or emergency service provider involved in the emergency response that wishes to be reimbursed for the costs incurred by the agency or provider during the emergency response, to file with the court within a specified time an itemized statement of those costs. The court may then order the offender to reimburse the agency for all or a portion of those costs.

(e) This section does not apply to any person conducting an authorized emergency drill.

The bill (Eng. Com. Sub. for H. B. 4845), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 5091**, West Virginia Critical Infrastructure Protection Act.

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

At the request of Senator Takubo, 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 5151**, Relating to defining term fictive kin.

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:

On page 7, section 206, line 163, after the word "custody." by inserting the following:

"Restorative justice program" means a voluntary, community based program which utilizes evidence-based practices that provide an opportunity for a juvenile to accept responsibility for and participate in setting consequences to repair harm caused by the juvenile against the victim and the community by means of facilitated communication including, but not limited to, mediation, dialogues, or family group conferencing, attended voluntarily by the victim, the juvenile, a facilitator, a victim advocate, community members, or supporters of the victim or the juvenile.

The bill (Eng. Com. Sub. for H. B. 5151), as amended, was then ordered to third reading.

**Eng. House Bill 5237**, Prohibiting driving slow in left lane except under certain circumstances.

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

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

**Eng. House Bill 5298**, Relating to prohibiting a candidate who failed to secure the nomination of a political party in a primary election from seeking the same elected office as an affiliate with a different political party in the subsequent general election.

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

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

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

## **ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.**

### **§3-5-4. Nomination of candidates in primary elections.**

(a) At each primary election, the candidate or candidates of each political party for all offices to be filled at the ensuing general election by the voters of the entire state, of each congressional district, of each state senatorial district, of each delegate district, and of each county in the state shall be nominated by the voters of the different political parties, except that no presidential elector shall be nominated at a primary election.

(b) In primary elections a plurality of the votes cast shall be sufficient for the nomination of candidates for office. Where only one candidate of a political party for any office in a political division, including party committeemen and delegates to national conventions, is to be chosen the candidate receiving the highest number of votes therefor in the primary election shall be declared the party nominee for such office. Where two or more such candidates are to be chosen in the primary election, the candidates constituting the proper number to be so chosen who shall receive the highest number of votes cast in the political division in which they are candidates shall be declared the party nominees and choices for such offices, except that:

(1) Candidates for the office of commissioner of the county commission shall be nominated and elected in accordance with the provisions of section ten, article nine of the Constitution of the State of West Virginia and the requirements of §7-1-1b of this code;

(2) Members of county boards of education shall be elected at primary elections in accordance with ~~the provisions of~~ §3-5-5 and §3-5-6 of this code;

(3) Candidates for the House of Delegates shall be nominated and elected in accordance with the residence restrictions provided in §1-2-2 of this code.



(c) In case of tie votes between candidates for party nominations or elections in primary elections, the choice of the political party shall be determined by the executive committee of the party for the political division in which such persons are candidates.

(d) A person who was a candidate for nomination by a recognized political party as defined in §3-1-8 of this code may not, after failing to win the nomination of that political party at a primary election, become a candidate of any other recognized political party for the same political office in the next succeeding general election.

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

The bill (Eng. H. B. 5298), as amended, was then ordered to third reading.

**Eng. House Bill 5348**, Changing the name of the "Raleigh County Recreation Authority" to the "Raleigh County Parks and Recreation Authority".

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

**Eng. House Bill 5569**, Requiring an appraiser to pay for a background check required by the AMC as a condition of being added to the AMCs panel of appraisers.

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

**Eng. House Bill 5582**, Modifying exceptions for real estate appraisal licensure.

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:

**ARTICLE 38. THE REAL ESTATE APPRAISER  
LICENSING AND CERTIFICATION ACT.**

**§30-38-1. Real estate appraiser license required; exceptions.**

(a) It is unlawful for any person, for compensation or valuable consideration, to prepare a valuation appraisal or a valuation appraisal report relating to real estate or real property in this state without first being licensed or certified as provided in this article. This section shall not be construed to apply to persons who do not render significant professional assistance in arriving at a real estate appraisal analysis, opinion or conclusion. Nothing in this article may be construed to prohibit any person who is licensed to practice in this state under any other law from engaging in the practice for which he or she is licensed.

(b) No person other than a person licensed or certified under this article may use the title of licensed appraiser or certified appraiser or any title, designation or abbreviation likely to create the impression that the person is licensed or certified by the state.

(c) This article does not apply to:

(1) A real estate broker or salesperson licensed by this state who, in the ordinary course of his or her business, gives an opinion to a potential seller or third party as to the recommended listing price of real estate or an opinion to a potential purchaser or third party as to the recommended purchase price of real estate, when this opinion as to the listing price or the purchase price is not to be referred to as an appraisal, no opinion is rendered as to the value of the real estate and no fee is charged;

(2) A casual or drive-by inspection of real estate in connection with a consumer loan secured by the real estate, when the inspection is not referred to as an appraisal, no opinion is rendered as to the value of the real estate and no fee is charged for the inspection;

(3) An employee who renders an opinion as to the value of real estate for his or her full-time employer, for the employer's internal use only and performed in the regular course of the employee's position, when the opinion is not referred to as an appraisal and no fee is charged;

(4) Appraisals of personal property, including, but not limited to, jewelry, household furnishings, vehicles and manufactured homes not attached to real estate;

(5) Any officer or employee of the United States, or of the State of West Virginia or a political subdivision thereof, when the employee or officer is performing his or her official duties: *Provided*, That such individual does not furnish advisory service for compensation to the public or act as an independent contracting party in West Virginia or any subdivision thereof in connection with the appraisal of real estate or real property: *Provided, however*, That this exception shall not apply with respect to federally related transactions as defined in Title XI of the United States Code, entitled "Financial Institutions Reform, Recovery, and Enforcement Act of 1989"; or

(6) ~~Any evaluation~~ An individual not licensed in accordance with §30-38-1, et seq. of this code who completes an evaluation of the value of real estate serving as collateral for a loan made by a financial institution insured by the federal deposit insurance corporation: *Provided*, That the evaluation is in a format that includes the following statements in a conspicuous location and in bold print: "This evaluation has been prepared in compliance with §30-38-1(c)(6) and the following conditions are satisfied, (A) The amount of the loan is equal to or less than \$250,000 the federal de minimus threshold; (B) the evaluation is used solely by the lender in its records to document the collateral value; (C) the evaluation clearly indicates on its face that it is for the lender's internal use only; (D) the evaluation is not labeled an appraisal and explicitly states that the evaluation was performed by an individual that is not licensed as an appraiser in accordance with §30-38-1, et seq. and (E) the evaluation is on a form approved by the board. Individuals performing these evaluations may be compensated for their services. ~~The lender shall notify its customer if it intends to use an~~

~~unlicensed evaluator and give the customer the opportunity to elect an evaluation, by a certified or licensed appraiser, the cost of which will be paid as agreed between the lender and the customer~~

### **§30-38-3. Definitions.**

As used in this article, the following terms have the following meanings:

(a) "Appraisal" means an analysis, opinion, or conclusion prepared by a real estate appraiser relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate or identified real property. An appraisal may be classified by the nature of the assignment as a valuation appraisal, an analysis assignment, or a review assignment.

(b) "Analysis assignment" means an analysis, opinion, or conclusion prepared by a real estate appraiser that relates to the nature, quality, or utility of identified real estate or identified real property.

(c) "Appraisal foundation" means the appraisal foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois.

(d) "Appraisal report" means any communication, written or oral, of an appraisal. An appraisal report may be classified by the nature of the assignment as a "valuation report", "analysis report", or "review report". For purposes of this article, the testimony of an appraiser dealing with the appraiser's analyses, conclusions, or opinions concerning identified real estate or identified real property is considered an oral appraisal report.

(e) "Board" means the real estate appraiser licensing and certification board established by the provisions of this article.

(f) "Certified appraisal report" means a written appraisal report that is certified by a state licensed or certified real estate appraiser. When a real estate appraiser identifies an appraisal report as "certified", the real estate appraiser must indicate the type of licensure or certification he or she holds. By certifying an appraisal

report, a state licensed residential real estate appraiser, a state certified general real estate appraiser, or a state certified residential real estate appraiser represents to the public that the report meets the appraisal standards established by this article.

(g) "Certified real estate appraiser" means a person who holds a current, valid certification as a state certified residential real estate appraiser or a state certified general real estate appraiser issued to him or her under the provisions of this article.

(h) "Complex appraisal" means an appraisal that: (1) For nonresidential property, relies on all three approaches to value, being the cost approach, the income approach, and the sales comparison approach, or does not have the characteristics of a noncomplex appraisal; and (2) for residential property, relies to any significant degree on at least two of the three approaches to value, with one approach being the sales comparison approach, or one in which the property to be appraised, the form of ownership, or the market conditions are atypical.

(i) "Cost approach" means an approach to valuing real estate that requires an appraiser to: (1) Develop an opinion of site value by an appropriate appraisal method or technique; (2) analyze comparable cost data as are available to estimate the cost new of the improvements if any; and (3) analyze comparable data as are available to estimate the difference between the cost new and the present worth of the improvements, also called accrued depreciation.

(j) "Evaluation" means an opinion about the market value of real estate that is:

(1) Made in accordance with the 2010 "Interagency Appraisal and Evaluation Guidelines" developed by the following federal agencies that regulate financial institutions: The Federal Reserve Board; The Office of the Comptroller of the Currency; The Federal Deposit Insurance Corporation; The Office of Thrift Supervision; and the National Credit Union Administration.

(2) Provided to a financial institution for use in a real estate related transaction for which an appraisal is not required by the federal agencies listed in subsection (j)(1) of this section.

~~(j)~~ (k) "Income approach" means an approach to valuing real estate that requires an appraiser to: (1) Analyze comparable rental data as are available to estimate the market rental of the property; (2) analyze comparable operating expense data as are available to estimate the operating expenses of the property; (3) analyze comparable data as are available to estimate rates of capitalization or rates of discount; and (4) base projections of future rent and expenses on reasonably clear and appropriate evidence.

~~(k)~~ (l) "Licensed real estate appraiser" means a person who holds a current, valid license as a state licensed residential real estate appraiser issued to him or her under the provisions of this article.

~~(l)~~ (m) "Noncomplex appraisal" means an appraisal for which: (1) There is an active market of essentially identical properties; (2) adequate data is available to the appraiser; (3) adjustments to comparable sales are not large in the aggregate, specifically not exceeding the trading range found in the market of essentially identical properties; and (4) for residential properties, the contract sales price falls within the market norm or median sales price for homes or lots within the same area.

~~(m)~~ (n) "Real estate" means an identified parcel or tract of land, including improvements, if any.

~~(n)~~ (o) "Real estate appraisal activity" means the act or process of making an appraisal of real estate or real property and preparing an appraisal report.

~~(o)~~ (p) "Real estate appraiser" means a person who engages in real estate appraisal activity for a fee or other valuable consideration.

~~(p)~~ (q) "Real property interests" means one or more defined interests, benefits, or rights inherent in the ownership of real estate.

~~(e)~~ (r) "Review assignment" means an analysis, opinion, or conclusion prepared by a real estate appraiser that forms an opinion as to the adequacy and appropriateness of a valuation appraisal or an analysis assignment.

~~(f)~~ (s) "Sales comparison approach" means an approach to valuing real estate that requires an appraiser to analyze such comparable sales data as are available to indicate a value conclusion.

~~(g)~~ (t) "Valuation appraisal" means an analysis, opinion, or conclusion prepared by a real estate appraiser that estimates the value of an identified parcel of real estate or identified real property at a particular point in time.

**§30-38-6. Board created; appointments, qualifications, terms, oath, removal of members; quorum; meetings; disqualification from participation; compensation; records; employing staff.**

(a) The West Virginia Real Estate Appraiser Licensing and Certification Board, which consists of nine members appointed by the Governor with the advice and consent of the Senate, is continued.

(1) Each member shall be a resident of the State of West Virginia, except the appraisal management company representative is not required to be a resident of West Virginia.

(2) Four members shall be certified real estate appraisers having at least five years' experience in appraisal as a principal line of work immediately preceding their appointment, and shall remain certified real estate appraisers throughout their terms.

(3) Two members shall have at least five years' experience in real estate lending as employees of financial institutions.

(4) Two members may not be engaged in the practice of real estate appraisal, real estate brokerage or sales, or have any financial interest in these practices.

(5) One member shall be a representative from an appraisal management company registered under the provisions of §30-38A-1, *et seq.* of this code.

(6) No member of the board may concurrently be a member of the West Virginia Real Estate Commission.

(7) Not more than three appraiser members may be appointed from a congressional district.

(b) Members will be appointed for three-year terms, which are staggered in accordance with the initial appointments under prior enactment of this act.

(1) No member may serve for more than three consecutive terms.

(2) Before entering upon the performance of his or her duties, each member shall subscribe to the oath required by section five, article IV of the constitution of this state.

(3) The Governor shall, within 60 days following the occurrence of a vacancy on the board, fill the vacancy by appointing a person who meets the requirements of this section for the unexpired term.

(4) Any member may be removed by the Governor in case of incompetency, neglect of duty, gross immorality, or malfeasance in office.

(c) The board shall elect a chairman.

(d) A majority of the members of the board constitutes a quorum.

(e) The board shall meet at least once in each calendar quarter on a date fixed by the board.

(1) The board may, upon its own motion, or shall upon the written request of three members of the board, call additional meetings of the board upon at least 24 hours' notice.



(2) No member may participate in a proceeding before the board to which a corporation, partnership, or unincorporated association is a party, and of which he or she is or was at any time in the preceding 12 months a director, officer, owner, partner, employee, member, or stockholder.

(3) A member may disqualify himself or herself from participation in a proceeding for any other cause the member considers sufficient.

(f) The appointed members will receive compensation and expense reimbursement in accordance with the provisions of §30-1-11 of this code.

(g) The board may employ and authorize staff as necessary to perform the functions of the board, to be paid out of the board fund created by the provisions of this article. Persons employed by any real estate agent, broker, appraiser, or lender, or by any partnership, corporation, association, or group engaged in any real estate business, may not be employed by the board. The board may hire a licensed or certified appraiser whose license status is inactive or who is not employed by any of the prohibited employers listed.

### **§30-38-7. General powers and duties.**

The board shall:

(a) Define by rule the type of educational experience, appraisal experience and equivalent experience that will meet the statutory requirements of this article;

(b) Establish examination specifications as prescribed herein and provide for appropriate examinations;

(c) Establish registration requirements and procedures for appraisal management companies under the provisions of §30-38a-1, *et seq.*;

(d) Approve or disapprove applications for certification and licensure;

(e) Approve or disapprove applications for registration under the provisions of §30-38a-1, *et seq.*;

(f) Define by rule continuing education requirements for the renewal of certifications and licenses;

(g) Censure, suspend or revoke licenses and certification as provided in this article;

(h) Suspend or revoke registrations under the provisions of §30-38a-1, *et seq.*;

(i) Hold meetings, hearings and examinations;

(j) Establish procedures for submitting, approving and disapproving applications;

(k) Maintain an accurate registry of the names, addresses and contact information of all persons certified or issued a license to practice under this article;

(l) Maintain an accurate registry of the names, addresses and contact information of all persons and firms registered under the provisions of article thirty-eight-a of this chapter;

(m) Maintain accurate records on applicants and licensed or certified real estate appraisers;

(n) Maintain accurate records on applicants under the provisions of article thirty-eight-a of this chapter;

(o) Issue to each licensed or certified real estate appraiser a ~~pocket card with the appraiser's name and license or certification number. Pocket cards are the property of the State of West Virginia and, upon suspension or revocation of the license to practice pursuant to this article, will be returned immediately to the board a~~ copy of their current active license credential via an electronic format of the board's choosing;

(p) Issue registration numbers to registrants under the provisions of article thirty-eight-a of this chapter;

(q) Deposit all fees collected by the board to the credit of the West Virginia appraiser licensing and certification board fund established in the office of the State Treasurer. The board shall disburse moneys from the account to pay the cost of board operation. Disbursements from the account may not exceed the moneys credited to it;

(r) Keep records and make reports as required by article one of this chapter; and

(s) Perform any other functions and duties necessary to carry out the provisions of this article and article thirty-eight-a of this chapter.

### **§30-38-11. Applications for license or certification; renewals.**

(a) An individual who desires to engage in real estate appraisal activity in this state shall make application for a license, in writing, on a form as the board may prescribe.

(b) To assist the board in determining whether grounds exist to deny the issuance of a license to an applicant, the board may require the fingerprinting of every applicant for an original license.

(c) The payment of the appropriate fee must accompany all applications for original certification and renewal of certification and all applications to take an examination.

(d) At the time of filing an application for original certification or for renewal of certification, each applicant shall sign a pledge to comply with the standards of professional appraisal practice and the ethical rules to be observed by an appraiser. Each applicant shall also certify that he or she understands the types of misconduct, as set forth in this article, for which disciplinary proceedings may be initiated.

(e) To obtain a renewal of license or certification under this article, the holder of a current license or certification shall make application and pay the prescribed fee to the board no earlier than 120 days nor later than 30 days prior to the expiration date of the current license or certification. Each application for renewal must

be accompanied by evidence in the form prescribed by the board that the applicant has completed the continuing education requirements for renewal specified in this article and the board's rules.

(f) If the board determines that an applicant for renewal has failed to meet the requirements for renewal of license or certification through mistake, misunderstanding, or circumstances beyond the control of the applicant, the board may extend the term of the applicant's license or certification for a period not to exceed six months upon payment by the applicant of a prescribed fee for the extension. If the applicant for renewal of license or certification satisfies the requirements for renewal during the extension period, the beginning date of his or her renewal license or certificate shall be the day following the expiration of the certificate previously held by the applicant.

(g) If a state-licensed or certified real estate appraiser under this article fails to renew his or her license or certification prior to its expiration or within any period of extension granted by the board pursuant to this article, the applicant may obtain a renewal of his or her license or certification by satisfying all of the requirements for renewal and filing an application for renewal, accompanied by a late renewal fee: ~~within two years of the date that his or her license or certification expired~~ Provided, That the applicant can demonstrate they could resume practicing with reasonable skill and safety in accordance with §30-1-8a of this code.

(h) The board may deny the issuance or renewal of a license or certification for any reason enumerated in this article or in the rules of the board, or for any reason for which it may refuse an initial license or certification.

(i)(1) If the board denies issuance of a renewal of a license or certification, or denies an initial license or certification application, the board shall provide a written statement to the applicant for an initial license or certification, or applicant for a renewal of a license or certification, clearly describing the deficiencies of the application for his or her license or certificate.

(2) The board shall provide this statement to an initial applicant or a renewal applicant within 15 calendar days of its decision to deny licensure or certification. The board may send its statement through the United States mail, electronic mail service, or both, to ensure it reaches the applicant or renewal applicant.

(3) If the basis for the denial is due to submitted appraisals failing to conform to the Uniform Standards of Professional Appraisal Practice (USPAP), the board shall provide written guidance to the applicant describing, in detail, each aspect of each submitted appraisal that does not conform to USPAP and the corrective action necessary to remedy nonconformity. The board shall provide 60 days to the applicant to remedy any nonconformity. The applicant shall resubmit any corrected appraisals on or before the 60th day and the board shall reevaluate the appraisals only pertaining to any nonconformity. If the nonconformity or nonconformities are remedied and resubmitted on or before the 60th day, the board shall accept the appraisal for purposes of issuing a license.

The bill (Eng. H. B. 5582), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 5650**, Allow suspended school personnel to enter school property functions open to the public.

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 3, section 8, lines 46 through 51, by striking out all of subsection (g) and inserting in lieu thereof a new subsection (g) to read as follows:

(g) Notwithstanding any other provisions of law, a suspended employee may not be barred from attending public events on school property while serving the suspension, nor may a suspended

employee who has a dependent child, grandchild, foster child, or other family member be barred from entering the school to exercise normal functions of a parent or guardian while suspended: *Provided*, That the suspended employ's presence does not jeopardize the health, safety, or welfare of students, employees, or visitors; impact the learning environment or the school-sponsored activity; prejudice an investigation or disciplinary proceedings involving the employee; violate an order of a court or any law; or threaten damage to property.

The bill (Eng. Com. Sub. for H. B. 5650), as amended, was then ordered to third reading.

**Eng. House Bill 5690**, Creating a West Virginia Task Force on Artificial Intelligence.

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.

**Eng. Com. Sub. for House Bill 5432**, To move the essential functions of the Information Services and Communications Division into the Office of Technology.

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

At the request of Senator Takubo, unanimous consent being granted, the Senate returned 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. Senate Bill 240**, Increasing fees charged by sheriff.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Senate Bill 752**, Authorizing Department of Agriculture to complete certain land transfers.

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 5105**—A Bill to amend and reenact §16-3-4 of the Code of West Virginia, 1931, as amended, relating to eliminating the vaccine requirements for students of public virtual schools, private schools, or parochial schools unless the student participates in sanctioned athletic events, and creating a religious exemption from vaccine requirements.

Referred to the Committee on Health and Human Resources.

### **Executive Communications**

The Clerk presented the following communications from His Excellency, the Governor, regarding bills approved by him:



*Jim Justice*  
*Governor of West Virginia*

February 29, 2024

The Honorable Lee Cassis, Clerk  
West Virginia Senate  
State Capitol  
Charleston, West Virginia 25305

Dear Mr. Clerk:

Enclosed for filing in your office, pursuant to the provisions of law, is the following bill:

Senate Bill No. Five Hundred Seven (507), which was presented to me on February 23, 2024.

You will note that I have approved this bill on February 29, 2024.

Sincerely,

A handwritten signature in blue ink, reading "Jim Justice".

Jim Justice  
Governor

JJ/mc

cc: The Honorable Stephen J. Harrison, Clerk





*Jim Justice*  
*Governor of West Virginia*  
February 29, 2024

The Honorable Stephen J. Harrison, Clerk  
West Virginia House of Delegates  
State Capitol  
Charleston, West Virginia 25305

Dear Mr. Clerk:

Enclosed for filing in your office, pursuant to the provisions of law, are the following bills:  
House Bill No. Four Thousand Five Hundred Ninety-Four (4594), which was presented to me on February 23, 2024.

House Bill No. Four Thousand Nine Hundred Seventy-Six (4976), which was presented to me on February 23, 2024.

House Bill No. Five Thousand Nineteen (5019), which was presented to me on February 23, 2024.

Committee Substitute for House Bill No. Five Thousand Forty-Five (5045), which was presented to me on February 23, 2024.

House Bill No. Five Thousand One Hundred Fifty-Three (5153), which was presented to me on February 23, 2024.

Committee Substitute for House Bill No. Five Thousand One Hundred Fifty-Seven (5157), which was presented to me on February 23, 2024.

You will note that I have approved these bills on February 29, 2024.

Sincerely,

A handwritten signature of Jim Justice in black ink.

Jim Justice  
Governor

JJ/mc

cc: The Honorable Lee Cassis

The Senate proceeded to the fourth order of business.

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

Your Committee on Finance has had under consideration

**Senate Bill 643**, Supplementing and amending appropriations to Department of Education, School Building Authority.

**Senate Bill 661**, Expiring funds from Lottery Net Profits to General Revenue Surplus.

**Senate Bill 663**, Supplementing and amending appropriations to Division of Administrative Services, Criminal Justice Fund.

**Senate Bill 697**, Supplementing and amending appropriations to DHHR, Consolidated Medical Service Fund.

**Senate Bill 698**, Supplementing and amending appropriations to DHHR, Division of Human Services.

**Senate Bill 699**, Supplementing and amending appropriations to DHHR, Child Support Enforcement Fund.

**Senate Bill 702**, Supplementing and amending appropriations to DHHR, Laboratory Services Fund.

**Senate Bill 704**, Supplementing and amending appropriations to PSC, Motor Carrier Division.

**Senate Bill 705**, Supplementing and amending appropriations to PSC.

**Senate Bill 868**, Supplementary appropriation to Department of Commerce, Geological and Economic Survey.

And,

**Senate Bill 871**, Supplementary appropriation to Department of Veterans' Assistance, Veterans' Facilities.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bills (S. B. 643, 661, 663, 697, 698, 699, 702, 704, 705, 868, and 871) 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 Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Senate Bill 652**, Supplementing and amending appropriations to DHHR, Health Facilities.

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

**Com. Sub. for Senate Bill 652** (originating in the Committee on Finance)—A Bill supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Health and Human Resources, Health Facilities – William R. Sharpe, Jr. Hospital, fund 0413, fiscal year 2024, organization 0512, and the Department of Health and Human Resources, Health Facilities – Mildred Mitchell-Bateman Hospital, fund 0414, fiscal year 2024, organization 0512, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024, by adding new items of appropriation.

And,

**Senate Bill 695**, Supplementing and amending appropriations to Division of Human Services, Child Care and Development.

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

**Com. Sub. for Senate Bill 695** (originating in the Committee on Finance)—A Bill making a supplementary appropriation of federal funds out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2024, to the Division of Human Services – Energy Assistance, fund 8755, fiscal year 2024, organization 0511, to the Division of Human Services – Temporary Assistance for Needy Families, fund 8816, fiscal year 2024, organization 0511, and to the Division of Human Services – Child Care and Development, fund 8817, fiscal year 2024, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

With the recommendation that the two committee substitutes do pass.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bills (Com. Sub. for S. B. 652 and 695) 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 Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Senate Bill 876** (originating in the Committee on Finance)—A Bill supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue,

to Department of Health and Human Resources, – Health Facilities – Mildred Mitchell-Bateman Hospital, fund 0414, fiscal year 2024, organization 0512, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

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

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (S. B. 876) 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 Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Senate Bill 877** (originating in the Committee on Finance)—A Bill supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to Higher Education Policy Commission, – Administration – Control Account, fund 0589, fiscal year 2024, organization 0441, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

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

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (S. B. 877) 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 Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. House Bill 4768**, Relating to increasing the number of out-of-state medical students receiving in-state tuition rates who agree to practice for a specific time within West Virginia.

**Eng. House Bill 4984**, Relating to repealing tax credit for employing former employees of Colin Anderson Center.

And,

**Eng. House Bill 5128**, Directing transfer of moneys into fire protection funds at the end of each year.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bills (Eng. H. B. 4768, 4984, and 5128) 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 Weld, 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 4940**, A squatter cannot be considered a tenant in WV.

And has amended same.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4940) 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 Weld, 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 4998**, Modifying penalties for third offense shoplifting.

And has amended same.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 4998) 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 Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. House Bill 5002**, To require at least 1 baby changing station to existing and future rest areas in this state for both male and female restrooms.

And has amended same.

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

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 5002) 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 Weld, 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 5294**, Revising state law regulating farm wineries.

And has amended same.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5294) 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 Weld, 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 5326**, Relating to prohibition of unfair real estate service agreements.

And has amended same.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5326) 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 Weld, 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 5520**, Relating to juvenile competency.

And has amended same.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 5520) 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 Weld, 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 5662**, Relating to adding "person in a position of trust" to certain crimes.

And has amended same.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5662) 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 Clements, 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 6**, U. S. Army Staff Sgt. James Ira "Junior" Spurrier Memorial Bridge.

**House Concurrent Resolution 47**, U. S. Army SGT John Claude Roby Memorial Bridge.

**House Concurrent Resolution 49**, U. S. Air Force Airman 1st Class "Willis "Arnold" Karickhoff Memorial Bridge.

And,

**House Concurrent Resolution 67**, Kenneth R. Lucas Memorial Bridge.

And reports the same back with the recommendation that they each be adopted.

Respectfully submitted,

Charles H. Clements,  
*Chair.*

At the request of Senator Clements, unanimous consent being granted, the provisions of Joint Rule 31 were suspended in order to allow the consideration of naming resolutions after the fiftieth day.

At the further request of Senator Clements, and by unanimous consent, the resolutions (Com. Sub. for H. C. R. 6, H. C. R. 47, H. C. R. 49, and H. C. R. 67) 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 Clements, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**House Concurrent Resolution 21**, Louie Patton Memorial Bridge.

And has amended same.

And reports the same back with the recommendation that it be adopted, as amended.

Respectfully submitted,

Charles H. Clements,  
*Chair.*

At the request of Senator Clements, unanimous consent being granted, the provisions of Joint Rule 31 were suspended in order to allow the consideration of a naming resolution after the fiftieth day.

At the further request of Senator Clements, and by unanimous consent, the resolution (H. C. R. 21) contained in the preceding report from the Committee on Transportation and Infrastructure was taken up for immediate consideration.

The following amendments to the resolution, from the Committee on Transportation and Infrastructure, were reported by the Clerk, considered simultaneously, and adopted:

On page 2, in the Resolved clause, line 34, by striking out the word "Louie" and inserting in lieu thereof the words "U.S. Army SP5 Louie";

On page 2, in the first Further Resolved clause, line 37, by striking out the word "Louie" and inserting in lieu thereof the words "U.S. Army SP5 Louie";

And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

**House Concurrent Resolution 21**—Requesting the Division of Highways name Bridge Numbers: 20-079/00-015.97 (NB & SB) (20A512, 25A213), (38.50709, -81.40960) locally known as I-79 GABES CR BR 2675 NB & SB, carrying IS 79 over CR 53 & GABES CREEK in Kanawha County, West Virginia, as the " U.S. Army SP5 Louie Patton Memorial Bridge".

The question being on the adoption of the resolution, 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 thirteenth order of business.

The following communication was reported by the Clerk:

*The Senate of West Virginia*  
Charleston

LEE CASSIS  
CLERK OF THE SENATE



STATE CAPITOL ROOM M-211  
1900 KANAWHA BLVD. EAST  
CHARLESTON, WV 25305-0800  
304-357-7800

March 1, 2024

The Honorable Jim Justice, II  
Governor, State of West Virginia  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305

Dear Governor Justice,

The following bills, authenticated by the signature of the Clerk of each House, and signed by the President of the Senate and the Speaker of the House of Delegates, have been examined and found truly enrolled:

**S. B. 172**, Revising requirements of local school improvement councils;

**Com. Sub. for S. B. 544**, Raising threshold for bid requirement of municipal public works projects;

**And,**

**S. B. 600**, Revising criteria for receiving reenlistment or retention bonus .

These bills are presented to you on this day, March 1, 2024.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Lee Cassis".

Lee Cassis  
Clerk of the Senate

C: The Honorable Stephen J. Harrison  
Clerk of the House of Delegates

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were added as co-sponsors to the following resolutions on February 29, 2024:

**Senate Concurrent Resolution 33:** Senator Grady;

**Senate Resolution 60:** Senator Plymale;

And,

**Senate Resolution 61:** Senators Plymale and Rucker.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Takubo, at 12:05 p.m., the Senate adjourned until Monday, March 4, 2024, at 11 a.m.

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## MONDAY, MARCH 4, 2024

The Senate met at 11:19 a.m.

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

Prayer was offered by the Reverend Matt Friend, Staff Chaplain, St. Mary's Medical Center, Huntington, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Patrick S. Martin, a senator from the twelfth district.

Pending the reading of the Journal of Friday, March 1, 2024,

At the request of Senator Nelson, 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. Com. Sub. for Senate Bill 370**, Updating Public Employees Grievance Board procedure that certain decisions be appealed to Intermediate Court of Appeals.

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 House of Delegates amended title, of

**Eng. Senate Bill 602**, Cardiac Emergency Response Plan Act.

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 603**, Solid Waste Management Act.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

On further motion of Senator Takubo, 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 Takubo moved that the bill take effect from passage.

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

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart,

Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 603) 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, to take effect from passage, of

**Eng. Senate Bill 712**, Reducing minimum age for State Police cadet.

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 4782**, Preventing municipalities from targeting protected businesses with planning and zoning ordinances more restrictive than those placed upon other businesses.

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 4838**, Require county boards of education to provide long-term substitute teachers, upon hiring, with certain information.

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, to take effect from passage, of



**Eng. Com. Sub. for House Bill 4874**, Relating to fatality and mortality review team.

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, to take effect July 1, 2024, of

**Eng. Com. Sub. for House Bill 4933**, Relating to Medicaid dental coverage.

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 5122**, Relating to civil service for deputy sheriffs.

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

**Eng. Com. Sub. for House Bill 5395**, Relating to judicial review of Board decisions.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendment to, and the passage as amended, of

**Eng. Com. Sub. for House Bill 5540**, Relating to fentanyl prevention and awareness Education (Laken's Law).

The Senate proceeded to the fourth order of business.

Senator Weld, 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 4882**, Extending in-state tuition rates to all members and veterans of the National Guard, reserves, and armed forces as well as their spouses and dependents.

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 W. Weld,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4882) contained in the preceding report from the Committee on Military 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 Weld, 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 5134**, Deceased Disabled Veteran Real Property Exemption for Widowed Spouses.

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 W. Weld,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5134) contained in the preceding report from the Committee on Military 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 Military pending.

Senator Roberts, from the Committee on the Workforce, submitted the following report, which was received:

Your Committee on the Workforce has had under consideration

**Eng. Com. Sub. for House Bill 5159**, Relating generally to child labor.

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,

Rollan A. Roberts,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5159) contained in the preceding report from the Committee on the Workforce 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, with amendments from the Committee on the Workforce pending.

Senator Jeffries, from the Committee on Economic Development, submitted the following report, which was received:

Your Committee on Economic Development has had under consideration

**Eng. House Bill 5170**, Increasing the size of matching grants for local economic development from \$30,000 to \$50,000.

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,

Glenn D. Jeffries,  
*Chair.*

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

At the request of Senator Takubo, and by unanimous consent, the bill (Eng. H. B. 5170) was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Weld, from the Committee on Military, submitted the following report, which was received:

Your Committee on Military has had under consideration

**Eng. House Bill 5213**, To allow Gold Star spouses to receive one free Gold Star vehicle registration for personal use.

And has amended same.

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

Respectfully submitted,

Ryan W. Weld,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 5213) contained in the preceding report from the Committee on Military was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Jeffries, 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 5223**, To create the Southern Coalfield Resiliency and Revitalization Program.

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,

Glenn D. Jeffries,  
*Chair.*

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

At the request of Senator Takubo, and by unanimous consent, the bill (Eng. Com. Sub. for H. B. 5223) was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Maynard, from the Committee on Outdoor Recreation, submitted the following report, which was received:

Your Committee on Outdoor Recreation has had under consideration

**Eng. House Bill 5696**, Relating to the upper Ohio Valley Trail Network.

And has amended same.

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

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 5696) contained in the preceding report from the Committee on Outdoor Recreation was taken up for immediate consideration, read a first time, and ordered to second reading.

The Senate proceeded to the sixth order of business.

[CLERK'S NOTE: The designation "Senate Resolution 64" was inadvertently omitted during the 2024 Regular Session. Senate Resolution 63, which was introduced March 1, 2024, is followed by the introduction of Senate Resolution 65 on March 4, 2024.]

Senator Takubo offered the following resolution:

**Senate Resolution 65**—Recognizing March as American Red Cross month.

Which, under the rules, lies over one day.

Senator Rucker offered the following resolution:

**Senate Resolution 66**—Designating March 5, 2024, as Women and Girls' Day at the Legislature.

Which, under the rules, lies over one day.

The Senate proceeded to the seventh order of business.

**Senate Resolution 62**, Memorializing life of Betty Burkett.

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

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

**Senate Resolution 63**, Memorializing life of Sylvia Shafer.

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

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

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for House Bill 4667**, Prohibiting syringe services programs from distributing listed smoking devices.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 4667) 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 4830**, To address the professional development of teachers.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 4830) 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 4845**, To prohibit swatting.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 4845) 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 4845**—A Bill to amend and reenact §61-6-20 of the Code of West Virginia, 1931, as amended, relating to increasing the penalties for certain instances of false reporting of an emergency incident, clarifying the applicability of this section; and establishing a protocol for restitution.



*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 5091**, West Virginia Critical Infrastructure Protection Act.

On third reading, coming up in regular order, with the unreported Judiciary committee amendment pending, and with the right having been granted on March 1, 2024, for further amendments to be received on third reading, was read a third 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 Plymale, the following amendment to the bill was reported by the Clerk:

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

## **ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.**

### **§61-10-34. CRITICAL INFRASTRUCTURE PROTECTION ACT; PROHIBITING CERTAIN ACTS, INCLUDING TRESPASS AND CONSPIRACY TO TRESPASS AGAINST PROPERTY DESIGNATED A CRITICAL INFRASTRUCTURE FACILITY; CRIMINAL PENALTIES; AND CIVIL ACTION.**

(a) This section may be referred to as the "West Virginia Critical Infrastructure Protection Act".

(b) For purposes of this section:

"Critical Infrastructure" means systems and assets, whether physical or virtual, so vital to the United States of America or the State of West Virginia that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, state economic security, national public health or safety, state public health or safety, or any

combination of those matters, whether such systems or assets are in operation or are under any state of construction.

"Critical infrastructure facility" means one of the following: ~~if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or if clearly marked with a sign or signs that are posted on the property that are reasonably likely to come to the attention of intruders and indicate that entry is forbidden without site authorization:~~

- (1) A petroleum or alumina refinery;
- (2) An electrical power generating facility, substation, switching station, electrical control center or electric power lines, and associated equipment infrastructure;
- (3) A chemical, polymer, or rubber manufacturing facility;
- (4) A water intake structure, water treatment facility, wastewater treatment plant, or pump station;
- (5) A natural gas compressor station;
- (6) A liquid natural gas terminal or storage facility;
- (7) Wireline and wireless telecommunications infrastructure;
- (8) A port, railroad switching yard, trucking terminal, or other freight transportation facility;
- (9) A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas or natural gas liquids;
- (10) A transmission facility used by a federally licensed radio or television station;
- (11) A steelmaking facility that uses an electric arc furnace to make steel;

(12) A facility identified and regulated by the United States Department of Homeland Security Chemical Facility Anti-Terrorism Standards (CFATS) program;

(13) A dam that is regulated by the state or federal government;

(14) A natural gas distribution utility facility including, but not limited to, pipeline interconnections, a city gate or town border station, metering station, below- or above-ground pipeline or piping and truck loading or offloading facility, a natural gas storage facility, a natural gas transmission facility, or a natural gas utility distribution facility;

(15) A crude oil or refined products storage and distribution facility including, but not limited to, valve sites, pipeline interconnections, pump station, metering station, below- or above-ground pipeline or piping, and truck loading or offloading facility;

(16) Military facilities, including national guard facilities and equipment storage areas where non-military personnel are prohibited;

(17) Department of Highways facilities and locations near or on roads or highways where the public is prohibited;

(18) Health care facilities;

(19) Any above-ground portion of an oil, gas, hazardous liquid, or chemical pipeline, tank, or other storage facility that is enclosed by a fence, other physical barrier, or is clearly marked with signs prohibiting trespassing that are obviously designed to exclude intruders; ~~or~~

(20) A commercial service airport as defined by the Federal Aviation Administration;

(21) Any nuclear reactor and its associated components including, but not limited to, components related to modular or microreactors, cooling technologies, sensors, instrumentation, or storage involved in training or research opportunities; or

(22) The hardware, software, or other digital property of any critical infrastructure facility listed in this subsection.

(c)(1) Any person who willfully and knowingly trespasses or enters property containing a critical infrastructure facility without permission by the owner of the property or lawful occupant thereof is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$250 nor more than \$1,000, or confined in jail not less than 30 days nor more than one year, or both fined and confined. If the intent of the trespasser is to willfully damage, destroy, vandalize, deface, tamper with the physical or digital equipment, or impede or inhibit operations of the critical infrastructure facility, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000, or confined in a jail for not more than one year, or both fined and confined.

(2) (A) Any person who willfully damages, destroys, vandalizes, defaces, or tampers with the physical or digital equipment in a critical infrastructure facility causing damage, including damage inflicted by cyber-attack or digital interference in excess of \$2,500 is guilty of a felony and, upon conviction thereof, shall be fined not less than ~~\$1,000~~ \$3,000 nor more than ~~\$5,000~~ \$10,000, or imprisoned in a state correctional facility for a term of not less than one year nor more than five years, or both fined and imprisoned.

(B) Any person convicted of a second offense under the provisions of this subdivision is guilty of a felony and, upon conviction thereof, shall be fined not less than \$10,000 nor more than \$15,000, or imprisoned in a state correctional facility for a term of not less than two years nor more than 10 years, or both fined and imprisoned.

(3) Any person who conspires with any person to commit the offense of trespass against a critical infrastructure facility in violation of subdivision (1) of subsection (c) of this section and the trespass actually occurs is guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount of not less than ~~\$2,500~~ \$250 nor more than ~~\$10,000~~ \$1,000. Any person who

conspires with any person to willfully damage, destroy, vandalize, deface, or tamper with equipment in a critical infrastructure facility and the damage, destruction, vandalization, defacing, or tampering causes damage, including damage inflicted by cyber-attack or digital interference in excess of \$2,500 is guilty of a felony and, shall, upon conviction thereof, be fined not less than ~~\$5,000~~ \$3,000 nor more than ~~\$20,000~~ \$10,000.

(d)(1) Any person who is arrested for or convicted of an offense under this section may be held civilly liable for any damages to personal or real property while trespassing, in addition to the penalties imposed by this section.

(2) Any person or entity that compensates, provides consideration to, or remunerates a person for trespassing as described in subdivision (1) of subsection (c) of this section may also be held liable for damages to personal or real property committed by the person compensated or remunerated for trespassing.

(e) A person who buys or receives from another person, aids in concealing, transfers to a person other than the owner thereof, or possesses any stolen goods or other thing of value from a critical infrastructure facility, which he or she knows or has reason to believe has been stolen from a critical infrastructure facility, is guilty of larceny, and may be prosecuted although the principal offender has not been convicted: *Provided*, That possession of stolen goods from a critical infrastructure facility while acting at the request of law enforcement or in cooperation with law enforcement does not constitute a violation of this section. Any person convicted of an offense under this subsection, in addition the criminal penalties imposed for larceny, is liable to the critical infrastructure facility owner for compensatory damages and, in addition, for punitive damages in an amount not less than three times the amount of the compensatory damages.

(e) (f) The provisions of ~~this section~~ §61-10-34(c)(1) of this code do not apply to: (1) ~~Any~~ any person or organization:

(i) (1) Monitoring or attentive to compliance with public or worker safety laws, or, wage and hour requirements;

(ii) (2) Picketing at the workplace that is otherwise lawful and arises out of a bona fide labor dispute, including any controversy concerning wages, salaries, hours, working conditions, or benefits, including health and welfare, sick leave, insurance, and pension or retirement provisions, the managing or maintenance of collective bargaining agreements, and the terms to be included in those agreements; or

(iii) (3) Engaging in union organizing or recruitment activities, including attempting to reach workers verbally, in writing with pamphlets, and investigation of non-union working conditions, or both.

(2) (g) The provisions of this section do not apply to:

(1) The right to free speech or assembly including, but not limited to, protesting and picketing; or

(3) (2) A contractor who has a contractual relationship with a critical infrastructure facility and the contractor's employees are acting within their scope of employment performing work at a critical infrastructure facility.

(h)(1) All items of personal property which are used, have been used, or are intended for use in perpetration of theft or damage to infrastructure are subject to forfeiture.

(2) The items of personal property subject to forfeiture include all conveyances, including aircraft, vehicles, or vessels, except that:

(A) A conveyance used by any person as a common carrier in the transaction of business as a common carrier may not be forfeited under this section unless it appears that the person owning the conveyance is a consenting party or privy to a violation of this section;

(B) A conveyance may not be forfeited under the provisions of this article, unless the state proves by a preponderance of the

evidence that the person owning the conveyance knew, or had reason to know, that the conveyance was being employed or was likely to be employed in a violation of this section; and

(C) A bona fide security interest or other valid lien in any conveyance may not be forfeited under the provisions of this article, unless the state proves by a preponderance of the evidence that the holder of the security interest or lien either knew, or had reason to know, that the conveyance was being used or was likely to be used in a violation of this section.

(3) All procedures relating to the seizure and disposition of property subject to forfeiture under the authority of this section are governed by the applicable provisions of the West Virginia Contraband Forfeiture Act, §60A-7-701 *et seq.* of this code.

Following discussion,

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

Engrossed Committee Substitute for House Bill 5091, as just amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5091) 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 Plymale, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 5091**—A Bill to amend and reenact §61-10-34 of the Code of West Virginia, 1931, as amended, relating to the "West Virginia Critical Infrastructure Protection Act"; defining terms; removing the requirement that a critical infrastructure facility be enclosed; including hardware, software, digital property, nuclear reactors, and nuclear components in definition of critical infrastructure facility; clarifying that digital and physical equipment is protected; including damage inflicted by cyber-attack or digital interference as punishable conduct; increasing criminal penalties; creating second offense penalties for a person who willfully damages, destroys, vandalizes, defaces, or tampers with equipment in a critical infrastructure facility causing damage in excess of \$2,500; providing person who buys or receives certain property stolen from a critical infrastructure facility is guilty of larceny; providing exception to larceny for persons acting at the request of law enforcement or in cooperation with law enforcement; providing liability for compensatory and punitive damages in certain circumstances; providing for forfeiture of items of personal property in certain circumstances; and providing that forfeiture be governed by the applicable provisions of the West Virginia Contraband Forfeiture Act.

*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 5151**, Relating to defining term fictive kin.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton,



Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5151) 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 5237**, Prohibiting driving slow in left lane except under certain circumstances.

On third reading, coming up in regular order, with the right having been granted on March 1, 2024, for amendments to be received on third reading, was read a third time.

On motion of Senator Clements, 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:

**ARTICLE 7. DRIVING ON RIGHT SIDE OF ROADWAY,  
OVERTAKING AND PASSING, ETC.**

**§17C-7-1. Driving on right side of roadway; vehicles not to be driven on left side of roadway; exceptions; penalty.**

(a) Upon all roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway, except as follows:

(1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(2) When an obstruction exists that makes it necessary to drive to the left of the center of the highway: *Provided*, That any person doing so shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;

~~(2)~~(3) When the right half of a roadway is closed to traffic while under construction or repair;

~~(3)~~(4) Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or

~~(4)~~(5) Upon a roadway designated and signposted for one-way traffic.

(b) Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

(c) Upon all roadways having two or more lanes for traffic moving in the same direction, a vehicle shall not be driven in the left-most lane except:

(1) When passing another vehicle;

(2) When traffic conditions and congestion make it impractical to drive in the right lane; *Provided*, That driving in the left lane does not impede the normal and reasonable movement of traffic in the left lane;

(3) When snow or other inclement weather conditions make it unsafe to drive in the right half of the roadway;

(4) When obstructions or hazards exist in the right lane;

(5) When all other lanes for traveling in the same direction are in disrepair or are in an otherwise undrivable or unsafe condition;

(6) When compliance with a law, rule, ordinance, or traffic control device makes it necessary to operate a vehicle in the leftmost lane;

(7) When a driver of a vehicle requiring a commercial motor vehicle license to operate is unable to move into the right lane safely due to a highway grade or another vehicle overtaking or passing such commercial motor vehicle on the right;

(8) When paying a toll or user fee at a toll collection facility;  
or

(9) When moving left to allow traffic to merge.

(10) When, because of highway design, a vehicle must be driven in the left lane when preparing to exit;

(11) When approaching a stationary authorized emergency vehicle as provided in §17C-14-9a of this code.

(d) The provisions of section shall not apply to law-enforcement vehicles, ambulances, or other emergency vehicles engaged in official duties, and vehicles engaged in highway maintenance and construction operations.

(e) Nothing in this section limits the Department of Transportation's ability to establish and delineate lane restrictions for certain types of vehicles or prohibit operation of the specified vehicles in the designated lanes.

~~(e)~~(f) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than ~~\$100~~ \$25; upon a second conviction within one year thereafter, shall be fined not more than \$200; and upon a third or subsequent conviction, shall be fined not more than \$500.

Engrossed House Bill 5237, as just amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton,

Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5237) passed.

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

**Eng. House Bill 5237**—A Bill to amend and reenact §17C-7-1 of the Code of West Virginia, 1931, as amended, relating to requiring operators of vehicles to drive in rightmost portion or lane of roads or highways and exceptions thereto; clarifying authority of Department of Transportation to establish further lane restrictions; and modifying criminal penalties.

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

**Eng. House Bill 5298**, Relating to prohibiting a candidate who failed to secure the nomination of a political party in a primary election from seeking the same elected office as an affiliate with a different political party in the subsequent general election.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5298) 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 5298**—A Bill to amend and reenact §3-5-4 of the Code of West Virginia, 1931, as amended, relating to prohibiting a candidate who failed to secure the nomination of a recognized political party in a primary election from seeking the same elected office as candidate of any other recognized political party for the same political office in the next succeeding general election; and providing an internal effective date.

Senator Takubo moved that the bill take effect January 1, 2025.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5298) takes effect January 1, 2025.

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

**Eng. House Bill 5348**, Changing the name of the "Raleigh County Recreation Authority" to the "Raleigh County Parks and Recreation Authority".

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5348) 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 5348**—A Bill to amend and reenact section two, chapter 136, Acts of the Legislature, regular session, 1982, as last amended and reenacted by section two, chapter 154, Acts of the Legislature, regular session, 1987, relating to renaming the Raleigh County Recreation Authority to the Raleigh County Parks and Recreation Authority.

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

**Eng. House Bill 5569**, Requiring an appraiser to pay for a background check required by the AMC as a condition of being added to the AMCs panel of appraisers.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5569) passed with its title.

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

**Eng. House Bill 5582**, Modifying exceptions for real estate appraisal licensure.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5582) 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 5650**, Allow suspended school personnel to enter school property functions 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: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5650) 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 5650**—A Bill to amend and reenact §18A-2-8 of the Code of West Virginia, 1931, as amended, relating to prohibiting a suspended employee from being barred from attending public events on school property while serving the suspension; prohibiting a suspended employee who has a dependent family member from being barred from entering the school to exercise normal functions of a parent or guardian while suspended; and providing exceptions.

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

**Eng. House Bill 5690**, Creating a West Virginia Task Force on Artificial Intelligence.



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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5690) 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.

**Senate Bill 643**, Supplementing and amending appropriations to Department of Education, School Building Authority.

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 652**, Supplementing and amending appropriations to DHHR, Health Facilities.

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

**Senate Bill 661**, Expiring funds from Lottery Net Profits to General Revenue Surplus.

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

**Senate Bill 663**, Supplementing and amending appropriations to Division of Administrative Services, Criminal Justice Fund.

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 695**, Supplementing and amending appropriations to Energy Assistance, TANF, and Child Care and Development.

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

**Senate Bill 697**, Supplementing and amending appropriations to DHHR, Consolidated Medical Service Fund.

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

**Senate Bill 698**, Supplementing and amending appropriations to DHHR, Division of Human Services.

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

**Senate Bill 699**, Supplementing and amending appropriations to DHHR, Child Support Enforcement Fund.

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

**Senate Bill 702**, Supplementing and amending appropriations to DHHR, Laboratory Services Fund.

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

**Senate Bill 704**, Supplementing and amending appropriations to PSC, Motor Carrier Division.

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

**Senate Bill 705**, Supplementing and amending appropriations to PSC.

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

**Senate Bill 868**, Supplementary appropriation to Department of Commerce, Geological and Economic Survey.

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

**Senate Bill 871**, Supplementary appropriation to Department of Veterans' Assistance, Veterans' Facilities.

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

**Senate Bill 876**, Supplementing and amending appropriations to Department of Health and Human Resources, Health Facilities.

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

**Senate Bill 877**, Supplementing and amending appropriations to Higher Education Policy Commission.

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

**Eng. House Bill 4768**, Relating to increasing the number of out-of-state medical students receiving in-state tuition rates who agree to practice for a specific time within 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 4940**, A squatter cannot be considered a tenant in WV.

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

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

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

## **CHAPTER 37. REAL PROPERTY.**

### **ARTICLE 6. LANDLORD AND TENANT.**

#### **§37-6-31. Exclusions from application of this article.**

(a) For purposes of this Article, "squatter" means a person occupying a dwelling unit who is not so entitled under a rental agreement or who is not authorized by the tenant to occupy that dwelling unit. "Squatter" does not include a tenant who holds over in a periodic tenancy as described in §37-6-5 of this code.

(b) Occupancy by a squatter is not governed by the provisions of this article.

(c) No Court of this state shall require the utilization of eviction, or a similar procedure such as those found under the provisions of this chapter, by an owner in any instance involving the removal of a squatter from possession of a property, and such removal shall not be unduly hindered.

### **ARTICLE 3C. REMEDIES FOR SQUATTING.**

#### **§55-3C-1. Squatting defined; squatting synonymous with trespass.**

(a) "Squatter" means a person occupying a dwelling unit or other structure who is not so entitled under a rental agreement or who is not authorized by the tenant to occupy that dwelling unit or structure. "Squatter" does not include a tenant who holds over in a periodic tenancy as described in §37-6-5 of this code.

(b) "Squatting" means the act of being a squatter.

**§55-3C-2. Squatters not tenants; squatting constitutes criminal trespass; petition and eviction not appropriate remedies for squatters; remedy is arrest for trespass.**

(a) Squatters are not considered tenants for purposes of this code.

(b) Squatting is synonymous with trespass, and is a criminal act under §61-3B-2 or §61-3B-3 of this Code.

(c) No Court of this state shall require the utilization of eviction, or a similar procedure such as those found under §55-3A-1, et. seq. or §55-3B-1, et. seq. of this Code, by an owner in any instance involving the removal of a squatter from possession of a property.

The bill (Eng. Com. Sub. for H. B. 4940), as amended, was then ordered to third reading.

**Eng. House Bill 4984**, Relating to repealing tax credit for employing former employees of Colin Anderson Center.

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

**Eng. House Bill 4998**, Modifying penalties for third offense shoplifting.

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

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

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

**ARTICLE 3A. SHOPLIFTING.**

**§61-3A-3. Penalties.**

A person convicted of shoplifting shall be punished as follows:

(a) *First offense conviction.* — Upon a first shoplifting conviction:

(1) When the value of the merchandise is less than or equal to \$500, the person is guilty of a misdemeanor and, shall be fined not more than \$250.

(2) When the value of the merchandise exceeds \$500, the person is guilty of a misdemeanor and, shall be fined not less than \$100 nor more than \$500, and such fine shall not be suspended, or the person shall be confined in jail not more than ~~sixty~~ 60 days, or both.

(b) *Second offense conviction.* — Upon a second shoplifting conviction:

(1) When the value of the merchandise is less than or equal to \$500, the person is guilty of a misdemeanor and, shall be fined not less than \$100 nor more than \$500, and such fine shall not be suspended, or the person shall be confined in jail not more than six months or both.

(2) When the value of the merchandise exceeds \$500, the person is guilty of a misdemeanor and, shall be fined not less than \$500 and shall be confined in jail for not less than six months nor more than one year.

(c) *Third offense conviction.* — Upon a third or subsequent shoplifting conviction, regardless of the value of the merchandise, the person is guilty of a felony and, shall be fined not less than \$500 nor more than \$5000, and shall be imprisoned in ~~the penitentiary~~ a state correctional facility for not less than one year nor more than ~~ten~~ 10 years. ~~At least one year shall actually be spent in confinement and not subject to probation: Provided, That an order for home detention by the court pursuant to the provisions of §62-11B-1 et seq. of this code may be used as an alternative sentence to the incarceration required by this subsection~~ If the court finds that probable cause exists that a person convicted of third or subsequent offense was abusing drugs or alcohol at the time of his or her arrest, it shall order an evaluation of the defendant to

determine whether he or she has a substance use disorder. Upon a finding by the Court that the person convicted of a third or subsequent offense suffers from a substance use disorder, the Court may order that the defendant undergo treatment for the substance use disorder as part of his or her sentence.

(d) *Mandatory penalty.* — In addition to the fines and imprisonment imposed by this section, in all cases of conviction for the offense of shoplifting, the court shall order the defendant to pay a penalty to the mercantile establishment involved in the amount of \$50, or double the value of the merchandise involved, whichever is higher. The mercantile establishment shall be entitled to collect such mandatory penalty as in the case of a civil judgment. This penalty shall be in addition to the mercantile establishment's rights to recover the stolen merchandise.

~~(e) In determining the number of prior shoplifting convictions for purposes of imposing punishment under this section, the court shall disregard all such convictions occurring more than seven years prior to the shoplifting offense in question.~~

(e) In determining the number of prior shoplifting convictions a defendant has, the court shall count convictions in other jurisdictions if that jurisdiction's offense has the same essential elements of this section, disregarding the value of the property shoplifted: *Provided*, That regardless of the jurisdiction, the court shall not count prior convictions that occurred more than seven years prior to the date of the third or subsequent offense.

The bill (Eng. H. B. 4998), as amended, was then ordered to third reading.

**Eng. House Bill 5002**, To require at least 1 baby changing station to existing and future rest areas in this state for both male and female restrooms.

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

**Eng. House Bill 5128**, Directing transfer of moneys into fire protection funds at the end of each year.

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

**Eng. Com. Sub. for House Bill 5294**, Revising state law regulating farm wineries.

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:

## **CHAPTER 11. TAXATION.**

### **ARTICLE 16. NONINTOXICATING BEER.**

#### **§11-16-6a. Brewer and resident brewer license to manufacture, sell, and provide ~~complimentary~~ samples.**

(a) *Legislative findings.* — The Legislature hereby finds that it is in the public interest to regulate, control, and support the brewing, manufacturing, distribution, sale, consumption, transportation, and storage of nonintoxicating beer and nonintoxicating craft beer and its industry in this state in order to protect the public health, welfare, and safety of the citizens of this state, and promote hospitality and tourism. Therefore, this section authorizes a licensed brewer or resident brewer with its principal place of business and manufacture located in this state to have certain abilities in order to promote the sale of nonintoxicating beer and nonintoxicating craft beer manufactured in this state for the benefit of the citizens of this state, the state's growing brewing industry, and the state's hospitality and tourism industry, all of which are vital components for the state's economy.

(b) *Sales of nonintoxicating beer.* — A licensed brewer or resident brewer with its principal place of business and manufacture located in the State of West Virginia may offer only nonintoxicating beer or nonintoxicating craft beer manufactured by



the licensed brewer or resident brewer for retail sale to customers from the brewer's or resident brewer's licensed premises for consumption off of the licensed premises only in the form of kegs, bottles, cans, or growlers for personal consumption and not for resale. A licensed brewer or resident brewer may not sell, give, or furnish nonintoxicating beer for consumption on the premises of the principal place of business and manufacture located in the State of West Virginia, except for the limited purpose of ~~complimentary~~ samples as permitted in subsection (c) of this section.

(c) ~~Complimentary samples~~ Samples. — A licensed brewer or resident brewer with its principal place of business and manufacture located in the State of West Virginia may only offer ~~complimentary~~ samples of nonintoxicating beer or nonintoxicating craft beer brewed at the brewer's or resident brewer's principal place of business and manufacture located in the State of West Virginia. The ~~complimentary~~ samples may be no greater than two ounces per sample per patron, and a sampling shall not exceed 10 ~~complimentary~~ two-ounce samples per patron per day. A licensed brewer or resident brewer providing ~~complimentary~~ samples shall provide complimentary food items to the patron consuming the ~~complimentary~~ samples; and prior to any sampling, verify, using proper identification, that the patron sampling consuming the samples is 21 years of age or over and that the patron is not visibly intoxicated.

(d) *Retail sales*. — Every licensed brewer or resident brewer under this section shall comply with all the provisions of this article as applicable to nonintoxicating beer retailers when conducting sales of nonintoxicating beer or nonintoxicating craft beer and ~~shall be~~ is subject to all applicable requirements and penalties in this article. In the interest of promoting tourism throughout the state, every licensed brewer or resident brewer manufacturing nonintoxicating beer or nonintoxicating craft beer in this state is authorized, with a limited off-site retail privilege at private ~~fair~~ fairs and festivals, for on-premises consumption sales and off-premises consumption sales of only the brewer or resident brewer's ~~sealed~~ nonintoxicating beer or nonintoxicating craft beer. At least five days prior to an approved private fair and festival, an

authorized brewer or resident brewer shall provide a copy of a written agreement to sell only nonintoxicating beer or nonintoxicating craft beer manufactured by the brewer or resident brewer at the private fair and festival's licensed premises. If approved, an authorized brewer or resident brewer may conduct on-premises and off-premises consumption sales of their nonintoxicating beer or nonintoxicating craft beer from a designated booth at the private fair and festival as set forth in §60-7-8a of this code. All authorized and approved brewers or resident brewers conducting the on-premises and off-premises consumption sales shall comply with all retail requirements in §11-16-1 *et seq.* of this code, and specifically with respect to all markups, taxes, and fees. Additionally, an authorized brewer or resident brewer may provide, sell, and serve its nonintoxicating beer or nonintoxicating craft beer ~~complimentary~~ samples in the amount set forth in subsection (c) of this section and its nonintoxicating beer or nonintoxicating craft beer by the glass or drink, or by the bottle or can for on-premises consumption when licensed as set forth in this article to patrons who are 21 years of age or over and who are not intoxicated in the amounts set forth in subsection (c).

(e) *Payment of taxes and fees.* — A licensed brewer or resident brewer under this section shall pay all taxes and fees required of licensed nonintoxicating beer retailers, in addition to any other taxes and fees required, and meet applicable licensing provisions as required by this chapter and by rule of the commissioner.

(f) *Advertising.* — A licensed brewer or resident brewer under this section may advertise a particular brand or brands of nonintoxicating beer or nonintoxicating craft beer produced by the licensed brewer or resident brewer and the price of the nonintoxicating beer or nonintoxicating craft beer subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance.

(g) *Growler requirements.* — A licensed brewer or resident brewer under this section shall fill a growler and patrons are not permitted to access the secure area or fill a growler. A licensed brewer or resident brewer under this section shall sanitize, fill, securely seal, and label any growler prior to its sale. A licensed

brewer or resident brewer under this section may only offer for retail sale growlers no larger than 128 fluid ounces of nonintoxicating beer or nonintoxicating craft beer manufactured by the licensed brewer or resident brewer for personal consumption off of the licensed premises and not for resale. A licensed brewer or resident brewer under this section may refill a growler subject to the requirements of this section. A licensed brewer or resident brewer shall visually inspect any growler before filling or refilling it. A licensed brewer or resident brewer may not fill or refill any growler that appears to be cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container.

(h) *Growler labeling.* — A licensed brewer or resident brewer under this section selling growlers shall affix a conspicuous label on all sold and securely sealed growlers listing the name of the licensee selling the growler, the brand of the nonintoxicating beer or nonintoxicating craft beer in the growler, the alcohol content by volume of the nonintoxicating beer or nonintoxicating craft beer in the growler, and the date the growler was filled or refilled. ~~and, further, all~~ All labeling on the growler shall be consistent with all federal labeling and warning requirements.

(i) *Growler sanitation.* — A licensed brewer or resident brewer authorized under this section shall clean and sanitize all growlers he or she fills or refills in accordance with all state and county health requirements prior to its sealing. In addition, the licensed brewer or resident brewer shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipelines, barrel tubes, and any other related equipment used to fill or refill growlers. Failure to comply with this subsection may result in penalties under §11-16-23 of this code.

(j) *Fee.* — There is no additional fee for a licensed brewer or resident brewer authorized under this section to sell growlers.

(k) *Limitations on licensees.* — To be authorized under this section, a licensed brewer or resident brewer may not produce more than 25,000 barrels per calendar year at the brewer's or resident brewer's principal place of business and manufacture located in the State of West Virginia. No more than one brewer or resident brewer

license may be issued to a single person or entity and no person may hold both a brewer and a resident brewer license. A licensed brewer or resident brewer under this section may only conduct tours, give ~~complimentary~~ samples, and sell growlers during the hours of operation set forth in §11-16-18(a)(1) of this code. A licensed brewer or resident brewer authorized under this section ~~shall be~~ is subject to the applicable penalties under §11-16-23 of this code for violations of this section.

(l) (1) ~~Contract Brewing Services~~ Alternating Proprietorship Agreements. - A licensed brewer or resident brewer may enter into ~~contract brewing services~~ alternating proprietorship agreements with another licensed brewer or resident brewer with its principal place of business and manufacture located in the State of West Virginia for purposes of sharing brewing equipment or facilities as part of the manufacture of nonintoxicating beer or nonintoxicating craft beer. Any such ~~contract brewing services~~ alternating proprietorship agreement shall be provided to the West Virginia Alcohol Beverage and Control Administration and set forth the following terms and conditions:

(A) The licensed brewer or resident brewer serving as the brewer of record and retaining ownership, rights, title, and interest in the nonintoxicating beer or nonintoxicating craft beer recipe and brand;

(B) The licensed brewer or resident brewer who will be responsible for executing any brew of nonintoxicating beer or nonintoxicating craft beer;

(C) The location of the facilities to be ~~utilized~~ used for the manufacture of the nonintoxicating beer or nonintoxicating craft beer;

(D) Specifications regarding the packaging of all nonintoxicating beer or nonintoxicating craft beer manufactured under the contract brewing services agreement; and

(E) The manner of payment of any and all federal and state excise taxes associated with the manufactured nonintoxicating beer or nonintoxicating craft beer.

(2) The licensed brewer or resident brewer serving as the brewer of record is responsible for the transportation of the finished and packaged product to ~~their~~ its licensed facility, where it must come to rest ~~be~~ tax determined. Any nonintoxicating beer or nonintoxicating craft beer manufactured pursuant to ~~a contract brewing services~~ an alternating proprietorship agreement shall be credited to the specified brewer of record for purposes of the barrel limitations set forth in §11-16-6a(k) of this code, and not the licensed brewer or resident brewer responsible for executing any brew on behalf of the brewer of record.

(m) *Rules.* — The commissioner, in consultation with the Bureau for Public Health concerning sanitation, may propose rules for legislative approval, pursuant to §29A-3-1 *et seq.* of this code, to implement this section.

#### **§11-16-11a. Nonintoxicating beer sampling.**

(a) Notwithstanding any provision of this code to the contrary, a Class A retail licensee or Class B retail licensee may, with the written approval of the commissioner, conduct a nonintoxicating beer sampling event on a designated nonintoxicating beer sampling day.

(b) At least five business days prior to the nonintoxicating beer sampling, the Class A retail licensee or Class B retail licensee shall submit a written proposal to the commissioner requesting to hold a nonintoxicating beer sampling event, including:

- (1) The day of the event;
- (2) The location of the event;
- (3) The times for the event;

(4) The names of up to three specific brands, types, and flavors, if any, of the nonintoxicating beer to be sampled; and

(5) A statement indicating that all the nonintoxicating beer brands have been registered and approved for sale in the state by the commissioner.

(c) Upon approval by the commissioner, a Class A retail licensee or Class B retail licensee may serve the complimentary nonintoxicating beer samples of the approved brands, types, and flavors that are purchased by the Class A retail licensee or Class B retail licensee, with all taxes paid, from its inventory.

(d) The complimentary nonintoxicating beer sample on any nonintoxicating beer sampling day shall not exceed:

(1) ~~One~~ Three separate and individual sample servings per brand, type, and flavor per customer verified to be 21 years of age or older; and

(2) ~~Two~~ Four ounces in total volume per brand, type, and flavor.

(e) Servers at the nonintoxicating beer sampling event shall:

(1) Be employees of the Class A retail licensee or Class B retail licensee;

(2) Be at least 21 years of age or older; and

(3) Have specific knowledge of the nonintoxicating beer being sampled to convey to the customer.

(f) All servers at the nonintoxicating beer sampling event shall verify the age of the customer sampling nonintoxicating beer by requiring and reviewing proper forms of identification. Servers at the nonintoxicating beer event may not serve any person who is:

(1) Under the age of 21 years; or

(2) Intoxicated.

(g) A nonintoxicating beer sampling event shall:

(1) Occur only inside the Class A retail licensee's or Class B retail licensee's licensed premises; and

(2) Cease on or before 9:00 p.m. on any approved nonintoxicating beer sampling day.

(h) Any nonintoxicating beer bottle or can used for sampling must be from the inventory of the licensee, and clearly and conspicuously labeled "SAMPLE, NOT FOR RESALE". If the seal is broken on any nonintoxicating beer bottle or can, or if any nonintoxicating beer bottle or can is opened, then that nonintoxicating beer bottle or can must be removed from the licensed premises immediately following the event.

(i) Violations of this section are subject to the civil and criminal penalties set forth in §11-16-18, §11-16-19, §11-16-20, §11-16-22, §11-16-23, §11-16-24 and §11-16-25 of this code.

(j) To implement the provisions of this section, the commissioner may promulgate emergency rules pursuant to the provisions of §29a-3-1 of this code or propose rules for legislative approval in accordance with the provisions of §29a -3-1 *et seq.* of this code.

## **CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.**

### **ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES**

#### **§60-3A-3a. Liquor sampling.**

(a) Notwithstanding any provision of this code to the contrary, a Class A retail licensee or Class B retail licensee may conduct a liquor sampling event on a designated sampling day.

(b) At least five business days prior to the liquor sampling, the Class A retail licensee or Class B retail licensee shall submit a written proposal to the commissioner informing the Commissioner that the Class A licensee or Class B retail licensee will hold a liquor sampling event, including:

- (1) The day of the event;
- (2) The location of the event;
- (3) The times for the event; and

(4) The specific brand and flavor of the West Virginia product to be sampled.

(c) Upon approval by the commissioner, a Class A retail licensee or Class B retail licensee may serve a complimentary liquor sample of the approved brand and flavor of the West Virginia product that is purchased by the Class A retail licensee, Class B retail licensee, or from the commissioner. Alternatively, a licensed representative may purchase a sealed bottle of West Virginia product at retail in West Virginia from the Class A retail licensee or Class B retail licensee for use at the licensee's liquor sampling event on an approved sampling day. The licensed representative must submit a promotions form and receive approval prior to purchasing and furnishing a sealed bottle of West Virginia product at retail in West Virginia for a Class A retail licensee or Class B retail licensee. The licensed representative may, upon approval of the licensee, serve the complimentary samples subject to the requirements of this section. Any licensed representative that participates in purchasing sealed bottles of West Virginia product for licensees must make this same or equivalent sampling opportunity available to any Class A retail licensee or Class B retail licensee upon request by the licensee.

(d) The complimentary liquor samples on any sampling day shall not exceed:

(1) Three separate and individual samples ~~servicing~~ servings per customer verified to be 21 years of age or older; and

(2) ~~One and one-half~~ Six ounces in total volume. Samples may be mixed with each other or with non-alcoholic liquids as long as the total amount of the liquor sampled does not exceed ~~one and one-half~~ six ounces. Samples may be mixed with nonalcoholic liquids or ice as long as the total amount of liquor does not exceed six ounces.

(e) Servers at the liquor sampling event shall:



(1) Be employees of the Class A retail licensee, or Class B retail licensee; and

(2) Be at least 21 years of age or older.

(f) All servers at the liquor sampling event shall verify the age of the customer sampling liquor by requiring and reviewing proper forms of identification. Servers at the liquor sampling event may not serve any person who is:

(1) Under the age of 21 years;

(2) Intoxicated.

(g) A liquor sampling event shall:

(1) Occur only inside the Class A retail licensee's licensed premises or Class B retail licensee's restricted area on the licensed premises; and

(2) Cease on or before 9:00 p.m. on any approved sampling day.

(h) Any liquor bottle used for sampling must be from the inventory of the licensee, and clearly and conspicuously labeled "SAMPLE, NOT FOR RESALE". If the seal is broken on any liquor bottle or if any liquor bottle is opened, then that liquor bottle must be removed from the licensed premises immediately following the event.

(i) Violations of this section are subject to the civil and criminal penalties set forth in §60-3A-24, §60-3A-25a, §60-3A-26, and §60-3A-27 of this code;

#### **ARTICLE 4. LICENSES.**

##### **§60-4-3a. Distillery, mini-distillery, and micro-distillery license to manufacture and sell.**

(a) Sales of liquor. — An operator of a distillery, mini-distillery, or micro-distillery may offer liquor for retail sale to customers from the distillery, mini-distillery, or micro-distillery for consumption off-premises only. Except for ~~complimentary~~

samples offered pursuant to §60-6-1 of this code, customers may not consume any liquor on the premises of the distillery, mini-distillery, or micro-distillery, ~~and~~ except for a distillery, mini-distillery, or micro-distillery that obtains a private manufacturer club license set forth in §60-7-1 *et seq.* of this code, and a Class A retail dealer license set forth in §11-16-1 *et seq.* of the code: *Provided*, That a licensed distillery, mini-distillery, or micro-distillery may offer ~~complimentary~~ samples of alcoholic liquors as authorized by this subsection when alcoholic liquors are manufactured by that licensed distillery, mini-distillery, or micro-distillery for consumption on the licensed premises. Notwithstanding any other provision of law to the contrary, a licensed distillery, mini-distillery, or micro-distillery may sell, furnish, and serve alcoholic liquors when licensed accordingly beginning at 6:00 a.m. unless otherwise determined by the residents of the county pursuant to §7-1-3ss of this code.

(b) Retail on-premises and off-premises consumption sales. — Every licensed distillery, mini-distillery, or micro-distillery shall comply with the provisions of §60-3A-9, §60-3A-11, §60-3A-13, §60-3A-16, §60-3A-17, §60-3A-18, §60-3A-19, §60-3A-22, §60-3A-23, §60-3A-24, §60-3A-25, and §60-3A-26 of this code, and the provisions of §60-3-1 *et seq.*, ~~and~~ §60-4-1 *et seq.*, and §60-7-1 *et seq.* of this code, applicable to liquor retailers, private clubs, and distillers. In the interest of promoting tourism throughout the state, every licensed distillery, mini-distillery, or micro-distillery manufacturing liquor in this state is authorized, with a limited off-site retail privilege at private ~~fair~~ fairs and festivals, for on-premises consumption sales served by the drink or glass or served by the bottle but only when consumed by the glass or drink and off-premises consumption sales by the bottle of only the licensed distillery, mini-distillery, or micro-distillery's sealed liquor. At least five days prior to an approved private fair and festival, an authorized distillery, mini-distillery, or micro-distillery shall provide a copy of a written agreement to sell only liquor manufactured by the licensed distillery, mini-distillery, or micro-distillery at the private fair and festival's licensed premises. If approved, an authorized distillery, mini-distillery, or micro-distillery may conduct on-premises and off-premises consumption

sales of ~~their~~ its liquor from a designated booth at the private fair and festival as set forth in §60-7-8a of this code. All authorized and approved distilleries, mini-distilleries, and micro-distilleries' off-premises consumption sales shall comply with all retail requirements in §60-3A-1 *et seq.* of this code, and specifically §60-3A-17 of this code with respect to all markups, taxes, and fees and also all retail requirements of §60-7-1 *et seq.* of this code when applicable. Additionally, every authorized distillery, mini-distillery, and micro-distillery may provide ~~complimentary~~ samples to patrons who are 21 years of age and older and who are not intoxicated. The ~~complimentary~~ liquor samples of the licensed distillery, mini-distillery, or micro-distillery's product on any sampling day shall not exceed:

(1) Three separate and individual ~~samples~~ sample servings per customer verified to be 21 years of age or older; and

(2) ~~One and one-half~~ Six ounces in total volume. Samples may be mixed with each other or with non-alcoholic liquids as long as the total amount of the liquor sampled does not exceed ~~one and one-half~~ six ounces.

(c) Payment of taxes and fees. — The distillery, mini-distillery, or micro-distillery shall pay all taxes and fees required of licensed retailers and meet applicable licensing provisions as required by this chapter and by rule of the commissioner, except for payments of the wholesale markup percentage and the handling fee provided by rule of the commissioner: *Provided*, That all liquor for sale to customers from the distillery, mini-distillery, or micro-distillery for off-premises consumption is subject of a five percent wholesale markup fee and an 80 cents per case bailment fee to be paid to the commissioner: *Provided, however*, That liquor sold by the distillery, mini-distillery, or micro-distillery shall not be priced less than the price set by the commissioner pursuant §60-3A-17 of this code.

(d) Payments to market zone retailers. — Each distillery, mini-distillery, or micro-distillery shall submit to the commissioner two percent of the gross sales price of each retail liquor sale for the value of all sales at the distillery, mini-distillery, or micro-distillery

each month. Any sales by a distillery, mini-distillery, or micro-distillery at a private fair and festival are treated as occurring on their licensed premises for purposes of this market zone calculation. This collection shall be distributed by the commissioner, at least quarterly, to each market zone retailer located in the distillery, mini-distillery, or micro-distillery's market zone, proportionate to each market zone retailer's annual gross prior years pretax value sales. The maximum amount of market zone payments that a distillery, mini-distillery, or micro-distillery shall submit to the commissioner is \$15,000 per annum.

(e) Limitations on licensees. — A distillery, mini-distillery, or micro-distillery may not produce more than 50,000 gallons per calendar year. The commissioner may issue more than one distillery, mini-distillery, or micro-distillery license to a single person or entity and a person may hold both a distillery and a mini-distillery license. The owners of a licensed distillery, mini-distillery, or micro-distillery may operate a winery, farm winery, brewery, or as a resident brewer as otherwise specified in the code.

(f) Building code and tax classification. — Notwithstanding any provision of this code to the contrary, the mere addition of a distillery, mini-distillery, or micro-distillery licensed under this article on a property does not change the nature or use of the property which otherwise qualifies as agricultural use for building code and property tax classification purposes.

(g) A political subdivision of this state may not regulate any of the following activities of a distillery, mini-distillery, or micro-distillery licensed and operating in accordance with this section:

(1) The on-premises sale, tasting, or consumption of liquor during business hours set forth in §60-7-12 of this code;

(2) The storage, warehousing, and wholesaling of liquor in accordance with the rules of the commissioner and federal law or regulations; or

(3) The sale of liquor related items including but not limited to the sale of pre-packaged food not requiring kitchen preparation that are incidental to the sale of liquor and on-premises consumption.

**§60-4-3b. Winery and farm winery license to manufacture and sell.**

(a) An operator of a winery or farm winery may offer wine produced by the winery, farm winery, or a farm entity authorized by §60-1-5c of this code, for retail sale to customers from the winery or farm winery for consumption on-premises or off the off-premises only. Customers may consume wine ~~on the on-premises~~ when an operator of a winery or farm winery offers ~~complimentary~~ samples pursuant to this section and §60-6-1 of this code, and when the winery or farm winery is licensed as a private wine restaurant, or the winery or farm winery is licensed as a private manufacturer club. Customers may not consume any wine on the licensed premises of the winery, farm winery, or a farm entity authorized by §60-1-5c of this code, unless the winery, farm winery, or farm entity has obtained a multi-capacity winery or farm winery license: *Provided, That* under this subsection, a licensed winery or farm winery may offer ~~complimentary~~ samples of wine manufactured by that licensed winery or farm winery for consumption ~~on the on-premises only on Sundays beginning at 6:00 a.m. in any county in which the same has been approved as provided in §7-1-3ss during the hours of operation set forth in §60-8-34 of this code~~. Notwithstanding any other provision of law to the contrary, a licensed winery or farm winery may sell, serve, and furnish wine, for on-premises consumption when licensed accordingly, ~~beginning at 6:00 a.m., and for off-premises consumption beginning at 6:00 a.m. on any day of the week, during the hours of operation set forth in §60-8-34 of this code~~ unless otherwise determined by the residents of the county pursuant to §7-1-3ss of this code.

(b) A political subdivision may not regulate any of the following activities of a farm winery licensed and operating in accordance with this section:

(1) The production and harvesting of fruit and other agricultural products and the manufacturing of wine;

(2) The on-premises sale, tasting, or consumption of wine during business hours set forth in §60-8-34 of this code;

(3) The direct sale and shipment of wine by common carrier to consumers in accordance with the requirements of §60-8-6 and §60-8-6a of this code and the rules of the West Virginia Alcohol Beverage Control Commissioner;

(4) The storage, warehousing, and wholesaling of wine in accordance with the rules of the West Virginia and federal law or regulations; or

(5) The sale of wine-related items, including, but not limited, to the sale of pre-packaged food not requiring kitchen preparation, that are incidental to the sale of wine and on-premises consumption.

~~(b) Complimentary samples~~ (c) Samples allowed by the provisions of this section may not exceed ~~two~~ three fluid ounces and no more than ~~three~~ six samples may be given to a patron in any one day.

~~(c) Complimentary samples~~ (d) Samples may be provided only for on-premises consumption.

~~(d) (e)~~ (e) A winery, farm winery, or farm entity, pursuant to §60-1-5c of this code, may offer for retail sale from ~~their~~ its licensed premises sealed original container bottles of wine for off-premises consumption ~~only~~.

~~(e) (f)~~ (f) A winery, farm winery, or farm entity licensed pursuant to §60-1-5c of this code, holding a multi-capacity license and a private wine restaurant license or private manufacturer club license may offer for sale wine by the drink or glass ~~in a private wine restaurant located~~ or wine by the bottle when consumed by the glass on the property of the winery, farm winery, or farm entity licensed pursuant to §60-1-5c of this code.

~~(f) (g)~~ (g) Every licensed winery or farm winery shall comply with the provisions of §60-3-1 *et seq.*, §60-4-1 *et seq.*, and §60-8-1 *et seq.* of this code as applicable to wine retailers, wineries, and suppliers when properly licensed in such capacities.

~~(g)~~ (h) (1) The winery or farm winery shall pay all taxes and fees required of licensed wine retailers and meet applicable licensing provisions as required by this chapter and by rules promulgated by the commissioner.

(2) Each winery or farm winery acting as its own supplier shall submit to the Tax Commissioner the liter tax for all sales at the winery or farm winery each month, as provided in §60-8-1 *et seq.* of this code.

(3) The five percent wine excise tax, levied pursuant to §60-3-9d of this code, or pursuant to §8-13-7 of this code, may not be imposed or collected on purchases of wine in the original sealed package for the purpose of resale in the original sealed package, if the final purchase of the wine is subject to the excise tax or if the purchase is delivered outside this state.

(4) A liter tax shall not be collected on wine sold in the original sealed package for the purpose of resale in the original sealed package if a subsequent sale of the wine is subject to the liter tax.

(5) This section shall not be interpreted to authorize a purchase for resale exemption in contravention of §11-15-9a of this code.

~~(h)~~ (i) A winery or farm winery may advertise a particular brand or brands of wine produced by it. The price of the wine is subject to federal requirements or restrictions.

~~(i)~~ (j) A winery or farm winery shall maintain separate winery or farm winery supplier, retailer, and direct shipper licenses when acting in one or more of those capacities and shall pay all associated license fees, unless the winery or farm winery holds a license issued pursuant to the provisions of §60-8-3(b)(12) of this code. A winery or farm winery, if holding the appropriate licenses or a multi-capacity winery or farm winery license, may act as its own supplier; retailer for off-premises consumption of its wine as specified in §60-6-2 of this code; private wine restaurant; ~~and~~ or direct shipper for wine produced by the winery or farm winery. A winery or farm winery that has applied, paid all fees, and met all requirements may obtain a private manufacturer club license

subject to the requirements of §60-7-1 *et seq.* of this code, and a Class A retail dealer license subject to the requirements of §11-16-1 *et seq.* of this code. All wineries shall use a distributor to distribute and sell their wine in the state, except for farm wineries. Wineries or farm wineries may enter into alternating wine proprietorship agreements, pursuant to §60-1-5c of this code.

~~(j)~~ (k) The owners of a licensed winery or farm winery may operate a distillery, mini-distillery, or micro-distillery, brewery, or as a resident brewer, as otherwise specified in the code.

~~(k)~~ (l) For purposes of this section, terms have the same meaning as provided in §8-13-7 of this code.

~~(l)~~ (m) Building code and tax classification. — Notwithstanding any provision of this code to the contrary, the mere addition of a winery or farm winery licensed under this article on a property does not change the nature or use of the property which otherwise qualifies as agricultural use for building code and property tax classification purposes.

~~(m)~~ (n) In the interest of promoting tourism throughout the state, every licensed winery or farm winery manufacturing wine in this state is authorized, with a limited off-site retail privilege at private ~~fair~~ fairs and festivals, for on-premises consumption sales and off-premises consumption sales of only the winery or farm winery's ~~sealed~~ wine. At least five days prior to an approved private fair and festival, an authorized winery or farm winery shall provide a copy of a written agreement to sell only wine manufactured by the licensed winery or farm winery at the private fair and festival's licensed premises. If approved, an authorized licensed winery or farm winery may conduct on-premises and off-premises consumption sales of ~~their~~ its wine from a designated booth at the private fair and festival as set forth in §60-7-8a of this code. All authorized and approved wineries and farm wineries' on-premises and off-premises consumption sales shall comply with all retail requirements in §60-8-1 *et seq.* of this code, and specifically with respect to all markups, taxes, and fees. Additionally, an authorized winery, farm winery, or unlicensed winery, as referenced in §60-8-3 of this code ~~or may provide, sell, and serve complimentary wine~~



samples of its wine in the amounts set forth in subsection (b) of this section, wine by the glass or drink, or drinks wine by the bottle, or when consumed by the glass, for on-premises consumption to patrons who are 21 years of age and older and who are not intoxicated ~~in the amounts set forth in subsection (b).~~

## **ARTICLE 6. MISCELLANEOUS PROVISIONS.**

### **§60-6-1. When lawful to possess, use or serve alcoholic liquors.**

The provisions of this chapter may not prevent:

(1) A person from keeping and possessing alcoholic liquors in his or her residence for the personal use of himself or herself, his or her family, his or her employee, or his or her guests if the alcoholic liquors have been lawfully acquired by him or her;

(2) A person, his or her family, or employee from giving or serving such alcoholic liquors to guests in the residence, when the gift or service is not for the purpose of evading the provisions of this chapter;

(3) The holder of a winery or a farm winery license from serving ~~complimentary~~ samples of its wine ~~in moderate quantities for tasting~~ on the winery or the farm winery premises; and

(4) The holder of a distillery, mini-distillery, or a micro-distillery license from serving ~~complimentary~~ samples of its alcoholic liquor ~~in moderate quantities for tasting~~ on the distillery, mini-distillery, or micro-distillery premises.

## **ARTICLE 7. LICENSES TO PRIVATE CLUBS.**

### **§60-7-2. Definitions; authorizations; requirements for certain licenses.**

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

(1) "Applicant" means a private club applying for a license under the provisions of this article.

(2) "Code" means the official Code of West Virginia, 1931, as amended.

(3) "Commissioner" means the West Virginia Alcohol Beverage Control Commissioner.

(4) "Licensee" means the holder of a license to operate a private club granted under this article, which remains unexpired, unsuspended, and unrevoked.

(5) "Private club" means any corporation or unincorporated association which either:

(A) Belongs to or is affiliated with a nationally recognized fraternal or veterans' organization which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises to which ~~club~~ are admitted only duly-elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which maintains in the building or on the premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests;

(B) Is a nonprofit social club, which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises to which ~~club~~ are admitted only duly-elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which maintains in the building or on the premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests;

(C) Is organized and operated for legitimate purposes which has at least 100 duly- elected or approved dues-paying members in good standing, which owns or leases a building or other premises, including any vessel licensed or approved by any federal agency to

carry or accommodate passengers on navigable waters of this state, to which ~~club~~ are admitted only duly- elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which ~~club~~ the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment and employs a sufficient number of persons for serving meals to members and their guests; or

(D) Is organized for legitimate purposes and owns or leases a building or other delimited premises in any state, county, or municipal park, or at any airport, in which ~~building or premises~~ a club has been established, to which ~~club~~ are admitted only duly-elected and approved dues-paying members in good standing and their guests while in the company of a member and to which the general public is not admitted, and which maintains in connection with the club a suitable kitchen and dining facility and related equipment and employs a sufficient number of persons for serving meals in the club to the members and their guests.

(6) "Private bakery" means an applicant for a private club or licensed private club license that has a primary function of operating a food preparation business that produces baked goods, including brownies, cookies, cupcakes, confections, muffins, breads, cakes, wedding cakes, and other baked goods where the applicant or licensee desires to sell baked goods infused with liquor, wine, or nonintoxicating beer or nonintoxicating craft beer, ~~either:~~ included: (A) In the icing, syrup, drizzle, or some other topping; (B) as an infusion where the alcohol is not processed or cooked out of the baked goods; or (C) ~~the alcohol can be added by the purchaser~~ from an infusion packet containing alcohol no greater than 10 milliliters where the purchaser adds the alcohol. This applicant or licensee may not sell liquor, wine, or nonintoxicating beer or nonintoxicating craft beer for ~~on~~ on-premises or off-premises consumption. The applicant or licensee may sell the baked goods with alcohol added as authorized for on-premises and off-premises consumption. Further, the applicant or licensee shall:

(i) Have at least 50 members;

(ii) Operate a kitchen that produces baked goods, as specified in this subdivision, including at least: (I) A baking oven and a four-burner range or hot plate; (II) a sink with hot and cold running water; (III) a 17 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold storage; (IV) baking utensils and pans, kitchen utensils, and other food consumption apparatus as determined by the commissioner; and (V) food fit for human consumption available to be served during all hours of operation on the licensed premises;

(iii) Maintain, at any one time, a food inventory capable of being prepared in the private bakery's kitchen. In calculating the food inventory, the commissioner shall include television dinners, bags of chips or similar products, microwavable food or meals, frozen meals, pre-packaged foods, baking items such as flour, sugar, icing, and other confectionary items, or canned prepared foods;

(iv) Use an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 21 who are in the private bakery are not sold items containing alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, or wine. A person under 21 years of age may enter the shop and purchase other items not containing alcoholic liquors; and

(v) Meet and be subject to all other private club requirements.

(7) "Private cigar shop" means an applicant for a private club or licensed private club licensee that has a primary function of operating a cigar shop for sales of premium cigars for consumption on or off the licensed premises. Where permitted by law, indoor on-premises cigar consumption is permitted with a limited food menu, which may be met by using a private caterer, for members and guests while the private club applicant or licensee is selling and serving liquor, wine, or nonintoxicating beer or nonintoxicating craft beer for on-premises consumption. Further, the applicant or licensee ~~shall~~ shall:

(A) Have at least 50 members;

(B) Operate a cigar shop and bar with a kitchen, including at least: (i) A two-burner hot plate, air fryer, or microwave oven; (ii) a sink with hot and cold running water; (iii) a 17 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold storage; (iv) kitchen utensils and other food consumption apparatus as determined by the commissioner; and (v) food fit for human consumption available to be served during all hours of operation on the licensed premises;

(C) Maintain, at any one time, not less than a food inventory capable of being prepared in the private club bar's kitchen or have on hand at least \$150 in food provided by a private caterer. In calculating the food inventory, the commissioner shall include television dinners, bags of chips or similar products, microwavable food or meals, frozen meals, pre-packaged foods, or canned prepared foods;

(D) Use an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 21 who are in the private club bar are accompanied by a parent or legal guardian, and if a person under 21 years of age is not accompanied by a parent or legal guardian, that person may not be admitted as a guest; and

(E) Meet and is subject to all other private club requirements.

(8) "Private caterer" means a licensed private club restaurant, private hotel, or private resort hotel authorized by the commissioner to cater and serve food and sell and serve alcoholic liquors, or non-intoxicating beer or non-intoxicating craft beer. A private caterer shall purchase wine sold or served at a catering event from a wine distributor. A private caterer shall purchase nonintoxicating beer and nonintoxicating craft beer sold or served at the catering event from a licensed beer distributor. A private caterer shall purchase liquor from a retail liquor outlet authorized to sell in the market zone, where the catering event is held. The

private caterer or the persons or entity holding the catering event shall:

(A) Have at least 10 members and guests attending the catering event;

(B) Have obtained an open container waiver or have otherwise been approved by a municipality or county in which the event is being held;

(C) Operate a private club restaurant on a daily operating basis;

(D) Only use its employees, independent contractors, or volunteers to sell and serve alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer who have received certified training in verifying the legal identification, the age of a purchasing person, and the signs of visible, noticeable, and physical intoxication;

(E) Provide to the commissioner, at least seven days before the event is to take place:

(i) The name and business address of the unlicensed private venue where the private caterer is to provide food and alcohol for a catering event;

(ii) The name of the owner or operator of the unlicensed private venue;

(iii) A copy of the contract or contracts between the private caterer, the person contracting with the caterer, and the unlicensed private venue;

(iv) A floorplan of the unlicensed private venue to comprise the private catering premises, which shall only include spaces in buildings or rooms of an unlicensed private venue where the private caterer has control of the space for a set time period and where the space safely accounts for the ingress and egress of the stated members and guests who will be attending the private catering event at the catering premises. The unlicensed private venue's floorplan during the set time period as stated in the contract

shall comprise the private caterer's licensed premises, which is authorized for the lawful sale, service, and consumption of alcoholic liquors, nonintoxicating beer and nonintoxicating craft beer, and wine throughout the licensed private catering premises: *Provided*, That the unlicensed private venue shall: (I) Be inside a building or structure; (II) have other facilities to prepare and serve food and alcohol; (III) have adequate restrooms and sufficient building facilities for the number of members and guests expected to attend the private catering event; and (IV) otherwise be in compliance with health, fire, safety, and zoning requirements;

(F) Not hold more than 15 private catering events per calendar year. Upon reaching the 16th event, the unlicensed venue shall obtain its own private club license;

(G) Submit to the commissioner, evidence that any noncontiguous area of an unlicensed venue is within 150 feet of the private caterer's submitted floorplan and may submit a floorplan extension for authorization to permit alcohol and food at an outdoor event;

(H) Meet and be subject to all other private club requirements; and

(I) Use an age verification system approved by the commissioner.

(9) "Private club bar" means an applicant for a private club or licensed private club licensee that has a primary function for the use of the licensed premises as a bar for the sale and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer and wine when licensed for those sales, while providing a limited food menu for members and guests, and meeting the criteria set forth in this subdivision which:

(A) Has at least 100 members;

(B) Operates a bar with a kitchen, including at least: (i) A two-burner hot plate, air fryer, or microwave oven; (ii) a sink with hot and cold running water; (iii) a 17 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used

for alcohol cold storage; (iv) kitchen utensils and other food consumption apparatus as determined by the commissioner; and (v) food fit for human consumption available to be served during all hours of operation on the licensed premises;

(C) Maintains, at any one time, a food inventory capable of being prepared in the private club bar's kitchen. In calculating the food inventory, the commissioner shall include television dinners, bags of chips or similar products, microwavable food or meals, frozen meals, prepackaged foods, or canned prepared foods;

(D) Uses an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 18 who are in the private club bar are accompanied by a parent or legal guardian. If a person under 18 years of age is not accompanied by a parent or legal guardian that person may not be admitted as a guest; and

(E) Meets and is subject to all other private club requirements.

(10) "Private food truck" means an applicant for a private club, licensed private club licensee, or licensed private manufacturer's club licensee that has a primary function of operating a food preparation business using an industrial truck, van, or trailer to prepare food and meals for sale at various locations within the state while using a propane or electric generator powered kitchen. The private food truck applicant shall obtain county or municipal approval to operate for food and liquor, wine, hard cider, and nonintoxicating beer or nonintoxicating craft beer sales and service, while providing a food menu for members and guests. The private food truck applicant shall:

(A) Have at least 10 members;

(B) Operate with a kitchen, including at least: (i) A two-burner hot plate, air fryer, or microwave oven; (ii) a sink with hot and cold running water; (iii) at least a 10 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold storage; and (iv) plastic or metal kitchen utensils



and other food consumption apparatus as determined by the commissioner;

(C) Maintain, at any one time, not less than \$200 of food inventory that is fit for human consumption and capable of being prepared and served from the private food truck's kitchen during all hours of operation;

(D) Is sponsored, endorsed, or approved by the governing body or its designee of the county or municipality in which the private food truck is to be located and operated. Each location shall have a bounded and defined area and set hours for private food truck operations, sales, and consumption of alcohol that are not greater than a private club's hours of operation;

(E) Provide the commissioner with a list of all locations, including a main business location, where the private food truck operates, and is approved for sales pursuant to ~~subsection~~ paragraph (D) of this section, and immediately update the commissioner when new locations are approved by a county or municipality;

(F) Require all nonintoxicating beer and nonintoxicating craft beer sold, furnished, tendered, or served pursuant to the license created by this section to be purchased from the licensed distributor where the private food truck has its home location or from a resident brewer acting in a limited capacity as a distributor, all in accordance with §11-16-1 *et seq.* of this code.

(G) Require wine or hard cider sold, furnished, tendered, or served pursuant to the license created by this section to be purchased from a licensed distributor, winery, or farm winery in accordance with §60-8-1 *et seq.* of this code.

(H) Require liquor sold, furnished, tendered, or served pursuant to the license created by this section shall be purchased from a licensed retail liquor outlet in the market zone or contiguous market zone where the private food truck has its main business location, all in accordance with §60-3A-1 *et seq.* of this code.

(I) A licensee authorized by this section shall use bona fide employees to sell, furnish, tender, or serve the nonintoxicating beer or nonintoxicating craft beer, wine, or liquor.

(J) A brewer, resident brewer, winery, farm winery, distillery, mini-distillery, or micro-distillery may obtain a private food truck license;

(K) Licensed representatives of a brewer, resident brewer, beer distributor, wine distributor, wine supplier, winery, farm winery, distillery, mini-distillery, micro-distillery, and liquor broker representatives may attend a location where a private food truck is located and discuss their respective products but may not engage in the selling, furnishing, tendering, or serving of any nonintoxicating beer or nonintoxicating craft beer, wine, or liquor.

(L) Use an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 21 who are in the private club bar are not permitted to be served any alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, or wine but may be permitted to purchase food or other items;

(M) Obtain all permits required by §60-6-12 of this code; and

(N) Meet and be subject to all other applicable private club requirements.

(11) "Private club restaurant" means an applicant for a private club or licensed private club licensee that has a primary function of using the licensed premises as a restaurant for serving freshly prepared meals and dining in the restaurant area. The private club restaurant may have a bar area separate from or commingled ~~with~~ within the restaurant where seating requirements for members and guests ~~shall be~~ are met by including the restaurant area. The applicant for a private club restaurant license is an applicant which:

(A) Has at least 100 members;

(B) Operate a restaurant and full kitchen with at least: (i) Ovens and four-burner ranges; (ii) refrigerators or freezers, or some

combination of refrigerators and freezers greater than 50 cubic feet, or a walk-in refrigerator or freezer; (iii) other kitchen utensils and apparatus as determined by the commissioner; and (iv) freshly prepared food fit for human consumption available to be served during all hours of operation on the licensed premises;

(C) Maintains, at any one time, fresh food capable of being prepared in the private club restaurant's full kitchen. In calculating the food inventory, the commissioner may not include television dinners, bags of chips or similar products, microwavable meals, frozen meals, pre-packaged foods, or canned prepared foods;

(D) Uses an age verification system approved by the commissioner for the purpose of verifying that persons under 18 years of age who are in the bar area of a private club restaurant are accompanied by a parent or legal guardian. The licensee may not seat a person in the bar area who is under the age of 18 years and who is not accompanied by a parent or legal guardian, but may allow that person, as a guest, to dine for food and nonalcoholic beverage purposes in the restaurant area of a private club restaurant:

(E) May uncork and serve members and guests up to two bottles of wine that a member purchased from a wine retailer, wine specialty shop, an applicable winery or farm winery when licensed for retail sales, or a licensed wine direct shipper when the purchase is for personal use and, not for resale. The licensee may charge a corkage fee of up to \$10 dollars per bottle. In no event may a member or a group of members and guests exceed two sealed bottles or containers of wine to carry onto the licensed premises for uncorking and serving by the private club restaurant and for personal consumption by the member and guests. A member or guest may cork and reseal any unconsumed wine bottles as provided in §60-8-3 (j) of this code and the legislative rules for carrying unconsumed wine off the licensed premises;

(F) Has at least two restrooms for members and their guests: *Provided*, That this requirement may be waived by the local health department upon supplying a written waiver of the requirement to the commissioner: *Provided, however*, That the requirement may

also be waived for a historic building by written waiver supplied to commissioner of the requirement from the historic association or district with jurisdiction over a historic building: *Provided, further* That in no event may a private club restaurant have less than one restroom; and

(G) Meets and is subject to all other private club requirements.

(12) "Private manufacturer club" means an applicant for a private club or licensed private club licensee which is also licensed as a distillery, mini-distillery, micro-distillery, winery, farm winery, brewery, or resident brewery that manufactures liquor, wine, nonintoxicating beer or nonintoxicating craft beer, which may be sold, served, and furnished to members and guests for on-premises consumption at the licensee's licensed premises and in the area or areas denoted on the licensee's floorplan, and which:

(A) Has at least 100 members;

(B) Offers tours, may offer ~~complimentary~~ samples, and may offer space as a conference center or for meetings;

(C) Operates a restaurant and full kitchen with ovens, four-burner ranges, a refrigerator, or freezer, or some combination of a refrigerator and freezer, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves ~~freshly prepared food at least 15 hours per week~~: *Provided*, That a licensee required by the provisions of this code to serve food on premises in order to lawfully serve alcoholic liquors, ~~beer~~ nonintoxicating beer or nonintoxicating craft beer, wine, or hard cider may meet the requirement of having on-premises food preparation facilities by, during all hours alcoholic liquors, beer, wine, and hard cider are offered for sale or sampling, having on-site an operating food truck or other portable kitchen: *Provided, however*, That the approval of the commissioner and the appropriate health department is required to operate as allowed by subsection (a) of this section;

(D) Maintains, at any one time fresh food capable of being prepared in the private manufacturer club's full kitchen. In

calculating the food inventory, the commissioner may ~~not~~ include television dinners, bags of chips or similar products, microwavable meals, frozen meals, pre-packaged foods, or canned prepared foods;

(E) Owns or leases, controls, operates, and uses space which is contiguous, bounded, or fenced real property sufficient to safely operate the licensed premises that would be listed on the licensee's floorplan and may be used for large events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(F) Lists the entire property from paragraph (E) of this subdivision and all adjoining buildings and structures on the private manufacturer club's floorplan that would comprise the licensed premises, which would be authorized for the lawful sale, service, and consumption of alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, and wine throughout the licensed premises, whether these activities were conducted in a building or structure or outdoors while on the private manufacturer club's licensed premises, and as noted on the private manufacturer club's floorplan;

(G) Identifies a person, persons, an entity, or entities who or which have the right, title, and ownership or lease interest in the real property, buildings, and structures located on the proposed licensed premises;

(H) Uses an age verification system approved by the commissioner; and

(I) Meets and is subject to all other private club requirements.

(13) "Private fair and festival" means an applicant for a private club or a licensed private club licensee meeting the requirements of §60-7-8a of this code for a temporary event, and the criteria set forth in this subdivision which:

(A) Has at least 100 members;

(B) Has been sponsored, endorsed, or approved, in writing, by the governing body, or its duly elected or appointed officers, of either the municipality or of the county in which the festival, fair, or other event is to be conducted;

(C) Prepares, provides, or engages a food vendor to provide adequate freshly prepared food or meals to serve its stated members and guests who will be attending the temporary festival, fair, or other event, and further shall provide any documentation or agreements to the commissioner prior to approval;

(D) Does not use third-party entities or individuals to purchase, sell, furnish, or serve alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer;

(E) Provides adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the festival, fair, or other event;

(F) Provides a floorplan for the proposed premises with a defined and bounded area to safely account for the ingress and egress of stated members and guests who will be attending the festival, fair, or other event;

(G) Uses an age verification system approved by the commissioner; and

(H) Meets and is subject to all other private club requirements.

(14) "Private hotel" means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(A) Has at least 2,000 members;

(B) Offers short-term, daily rate accommodations or lodging for members and their guests amounting to at least 30 separate bedrooms, and also offers a conference center for meetings;

(C) Operates a restaurant and full kitchen with ovens, four-burner ranges, walk-in freezers, and other kitchen utensils and

apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 20 hours per week;

(D) Maintains, at any one time, fresh food capable of being prepared in the private hotel's full kitchen. In calculating the food inventory, the commissioner may not include microwavable, frozen, or canned foods;

(E) Owns or leases, controls, operates, and uses acreage amounting to more than one acre but fewer than three acres, which are contiguous acres of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for hotel and conferences and large contracted-for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(F) Lists the entire property from paragraph (E) of this subdivision and all adjoining buildings and structures on the private hotel's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private hotel's licensed premises and as noted on the private hotel's floorplan;

(G) Has an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property buildings and structures located on the proposed licensed premises;

(H) Uses an age verification system approved by the commissioner;

(I) Meets and is subject to all other private club requirements; and

(J) May provide members and guests who are verified by proper form of identification to be 21 years of age or older to have secure access via key or key card to an in-room mini-bar in their rented short-term accommodation; the mini-bar may be a small

refrigerator not in excess of 1.6 cubic feet for the sale of nonintoxicating beer or nonintoxicating craft beer, wine, hard cider, and liquor sold from the original sealed container, and the refrigerator may contain: (i) Any combination of 12 fluid ounce cans or bottles not exceeding 72 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; (ii) any combination of cans or bottles of wine or hard cider not exceeding 750 ml of wine or hard cider; (iii) liquor in bottles sized from 50 ml, 100 ml, and 200 ml, with any combination of those liquor bottles not exceeding 750 ml; and (iv) any combination of canned or packaged food valued at least \$50. All markups, fees, and taxes shall be charged on the sale of nonintoxicating beer, nonintoxicating craft beer, wine, liquor, and hard cider. All nonintoxicating beer or nonintoxicating craft beer available for sale shall be purchased from the licensed distributor in the area where licensed. All wine or hard cider available for sale shall be purchased from a licensed wine distributor or authorized farm winery. All liquor available for sale shall be purchased from the licensed retail liquor outlet in the market zone of the licensed premises. The mini-bar shall be checked daily and replenished as needed to benefit the member and guest.

(15) "Private resort hotel" means an applicant for a private club or licensed private club licensee which:

(A) Has at least 5,000 members;

(B) Offers short term, daily rate accommodations or lodging for members and their guests amounting to at least 50 separate bedrooms;

(C) Operates a restaurant and full kitchen with ovens, six-burner ranges, walk-in freezers, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 25 hours per week;

(D) Maintains, at any one time, fresh food capable of being prepared in the private resort hotel's full kitchen. In calculating the



food inventory, the commissioner may not include microwavable, frozen, or canned foods;

(E) Owns or leases, controls, operates, and uses acreage amounting to at least 10 contiguous acres of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for destination, resort, and large contracted-for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(F) Lists the entire property from paragraph (E) of this subdivision and all adjoining buildings and structures on the private resort hotel's floorplan comprising the licensed premises which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private resort hotel's licensed premises;

(G) Has an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property, buildings, and structures located on the proposed licensed premises;

(H) Uses an age verification system approved by the commissioner;

(I) Meets and is subject to all other private club requirements;

(J) May have a separately licensed resident brewer with a brewpub license inner-connected via a walkway, doorway, or entryway, all as determined and approved by the commissioner, for limited access during permitted hours of operation for tours and ~~complimentary~~ samples at the resident brewery; and

(K) May provide members and guests who are verified by proper form of identification to be 21 years of age or older to have access via key or key card to an in-room mini-bar in their rented short-term accommodation. The mini-bar may be a small refrigerator not in excess of 3.2 cubic feet for the sale of nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, and liquor sold from the original sealed container, and the

refrigerator may contain: (i) Any combination of 12 fluid ounce cans or bottles not exceeding 144 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; (ii) any combination of cans or bottles of wine or hard cider not exceeding one and a half liters of wine or hard cider; (iii) liquor in bottles sized from 50 ml, 100 ml, 200 ml, and 375 ml with any combination of such liquor bottles not exceeding one and a half liters; and (iv) any combination of canned or packaged food valued at least \$100. All markups, fees, and taxes shall be charged on the sale of nonintoxicating beer, nonintoxicating craft beer, hard cider, wine, and liquor. All nonintoxicating beer or nonintoxicating craft beer available for sale shall be purchased from the licensed distributor in the area where licensed. All wine or hard cider available for sale shall be purchased from a licensed wine distributor or authorized farm winery. All liquor available for sale shall be purchased from the licensed retail liquor outlet in the market zone of the licensed premises. The mini-bar shall be checked daily and replenished as needed to benefit the member and guest.

(16) "Private golf club" means an applicant for a private club or licensed private club licensee which:

(A) Has at least 100 members;

(B) Maintains at least one 18-hole golf course with separate and distinct golf playing holes, not reusing nine golf playing holes to comprise the 18 golf playing holes, and a clubhouse;

(C) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and serves freshly prepared food at least 15 hours per week;

(D) Owns or leases, controls, operates, and uses acreage amounting to at least 80 contiguous acres of bounded or fenced real property which would be listed on the private golf club's floorplan and could be used for golfing events and large contracted-for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(E) Lists the entire property from paragraph (D) of this subsection and all adjoining buildings and structures on the private golf club's floorplan comprising the licensed premises which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private golf club's licensed premises;

(F) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property, buildings, and structures located on the proposed licensed premises;

(G) Uses an age verification system approved by the commissioner; and

(H) Meets and is subject to all other private club requirements.

(17) "Private nine-hole golf course" means an applicant for a private club or licensed private club licensee which:

(A) Has at least 50 members;

(B) Maintains at least one nine-hole golf course with separate and distinct golf playing holes;

(C) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and serves freshly prepared food at least 15 hours per week;

(D) Owns or leases, controls, operates, and uses acreage amounting to at least 30 contiguous acres of bounded or fenced real property which would be listed on the private nine-hole golf course's floorplan and could be used for golfing events and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(E) Lists the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private nine-hole golf course's floorplan comprising the licensed premises which would be authorized for the lawful sales, service,

and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private nine-hole golf course's licensed premises;

(F) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(G) Uses an age verification system approved by the commissioner; and

(H) Meets and is subject to all other private club requirements.

(18) "Private tennis club" means an applicant for a private club or licensed private club licensee which:

(A) Has at least 100 members;

(B) Maintains at least four separate and distinct tennis courts, either indoor or outdoor, and a clubhouse or similar facility;

(C) Has a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises which is capable of serving freshly prepared food;

(D) Owns or leases, controls, operates, and uses acreage amounting to at least two contiguous acres of bounded or fenced real property which would be listed on the private tennis club's floorplan and could be used for tennis events and large events such as weddings, reunions, conferences, tournaments, meetings, and sporting or recreational events;

(E) Lists the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private tennis club's floorplan comprising the licensed premises which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private tennis club's licensed premises;

(F) Has identified a person, persons, an entity, or entities who or which has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(G) Meets and is subject to all other private club requirements; and

(H) Uses an age verification system approved by the commissioner.

(19) "Private college sports stadium" means an applicant for a private club or licensed private club licensee that operates a college or university stadium or coliseum for Division I, II, or III sports and ~~what that~~ involves a college public or private or university that is a member of the National Collegiate Athletic Association, or its successor, and uses the facility for football, basketball, baseball, soccer, or other Division I, II, or III sports, reserved weddings, reunions, conferences, meetings, or other special events and does not maintain daily or regular operating hours as a bar or restaurant. The licensee may sell alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer when conducting or temporarily hosting non-collegiate sporting events. This license may be issued in the name of the National Collegiate Athletic Association Division I, II, or III college or university or the name of the primary food and beverage vendor under contract with that college or university. All alcohol sales shall take place within the confines of the college or university stadium: *Provided*, That any outside area approved for alcohol sales and nonintoxicating beer or nonintoxicating craft beer shall be surrounded by a fence or other barrier prohibiting entry except upon the college or university's express permission, and under the conditions and restrictions established by the college or university, so that the alcohol sales area is closed in order to prevent entry and access by the general public. Further the applicant shall:

(A) Have at least 100 members;

(B) Maintain an open-air or enclosed stadium or coliseum venue primarily used for sporting events, such as football, basketball, baseball, soccer, or other Division I, II, or III sports, and also weddings, reunions, conferences, meetings, or other events

where parties shall reserve the college stadium venue in advance of the event;

(C) Operate a restaurant and full kitchen with ovens and equipment that is equivalent or greater than a private club restaurant, as determined by the commissioner, on the licensed premises that is capable of serving freshly prepared food or meals to its stated members, guests, and patrons who will be attending the event at the private college sports stadium;

(D) Own or lease, control, operate, and use acreage amounting to at least two contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the private college stadium's floorplan and could be used for contracted-for temporary non-collegiate sporting events, group-type weddings, reunions, conferences, meetings, or other events;

(E) List the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private college sports stadium's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private college sports stadium's licensed premises and as noted on the private college sports stadium's floorplan;

(F) Have an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(G) Meet and be subject to all other private club requirements; and

(H) Use an age verification system approved by the commissioner.

(20) "Private professional sports stadium" means an applicant for a private club or licensed private club licensee that is only open for professional sporting events when the events are affiliated with

or sponsored by a professional sporting association, reserved weddings, reunions, conferences, meetings, or other special events and does not maintain daily or regular operating hours as a bar or restaurant. The licensee may not sell alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer when conducting or hosting non-professional sporting events, and further the applicant shall:

(A) Have at least 1,000 members;

(B) Maintain an open-air or enclosed stadium venue primarily used for sporting events, such as football, baseball, soccer, auto racing, or other professional sports, and also weddings, reunions, conferences, meetings, or other events where parties reserve the stadium venue in advance of the event;

(C) Operate a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises which is capable of serving freshly prepared food or meals to serve its stated members, guests, and patrons who will be attending the event at the private professional sports stadium;

(D) Own or lease, control, operate, and use acreage amounting to at least three contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the professional sports stadium's floorplan and could be used for contracted- for professional sporting events, group-type weddings, reunions, conferences, meetings, or other events;

(E) List the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private professional sports stadium's floorplan comprising the licensed premises which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private professional sports stadium's licensed premises;

(F) Have an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(G) Meet and be subject to all other private club requirements; and

(H) Use an age verification system approved by the commissioner.

(21) "Private farmers market" means an applicant for a private club or licensed private club licensee that operates as an association of bars, restaurants, and retailers who sell West Virginia- made products among other products, and other stores who open primarily during daytime hours of 6:00 a.m. to 6:00 p.m., but may operate in the day or evenings for special events where the sale of food and alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer may occur for on-premises consumption, such as reserved weddings, reserved dinners, pairing events, tasting events, reunions, conferences, meetings, or other special events and does not maintain daily or regular operating hours as a bar or restaurant. All businesses that are members of the association shall agree in writing to be liable and responsible for all sales, service, furnishing, tendering, and consumption of alcoholic liquors, nonintoxicating beer, nonintoxicating craft beer, wine, and hard cider occurring on the entire licensed premises of the private farmer's market, including indoor and outdoor bounded areas, and further the applicant shall:

(A) Have at least 100 members;

(B) Have one or more members operating a private club restaurant and full kitchen with ovens, four-burner ranges, a refrigerator or freezer or some combination of a refrigerator and freezer, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serve freshly prepared food at least 15 hours per week;

(C) Have one or more members operating a private club restaurant who maintain, at any one time, fresh food capable of



being prepared for events conducted at the private farmers market in the private club restaurant's full kitchen. In calculating the food inventory, the commissioner may not include television dinners, bags of chips or similar products, microwavable meals, frozen meals, pre-packaged foods, or canned prepared foods;

(D) Have an association that owns or leases, controls, operates, and uses acreage amounting to more than one acre, which is contiguous acreage of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for large contracted-for reserved weddings, reserved dinners, pairing events, tasting events, reunions, conferences, meetings, or other special events;

(E) Have an association that lists in the application for licensure the entire property and all adjoining buildings and structures on the private farmers market's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private farmers market's licensed premises and as noted on the private farmers market's floorplan;

(F) Have an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property buildings and structures located on the proposed licensed premises;

(G) Have at least two separate and unrelated vendors applying for the license and certifying that all vendors in the association have agreed to the liability responsibility associated with a private farmers market license;

(H) Only use its employees, independent contractors, or volunteers to purchase, sell, furnish, or serve liquor, wine, nonintoxicating beer or nonintoxicating craft beer;

(I) Provide adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the private farmers market;

(J) Provide a copy of a written agreement between all the vendors of the association that is executed by all vendors stating that each vendor is jointly and severally liable for any violations of this chapter committed during the event;

(K) Provide a security plan indicating all vendor points of service, entrances, and exits in order to verify members', patrons', and guests' ages, to verify whether a member, patron, or guest is intoxicated, and to provide for the public health and safety of members, patrons, and guests;

(L) Use an age verification system approved by the commissioner; and

(M) Meet and be subject to all other private club requirements.

(22) "Private wedding venue or barn" means an applicant for a private club or licensed private club licensee that is only open for reserved weddings, reunions, conferences, meetings, or other events and does not maintain daily or regular operating hours, and which:

(A) Has at least 25 members;

(B) Maintains a venue, facility, barn, or pavilion primarily used for weddings, reunions, conferences, meetings, or other events where parties reserve or contract for the venue, facility, barn, or pavilion in advance of the event;

(C) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises that is capable of serving freshly prepared food, or engages a food caterer to provide adequate freshly prepared food or meals to serve its stated members, guests, and patrons who will be attending the event at the private wedding venue or barn. The applicant or licensee shall provide written documentation including a list of food caterers or written agreements regarding any food catering operations to the commissioner prior to approval of a food catering event;

(D) Owns or leases, controls, operates, and uses space sufficient to safely operate the licensed premises. The applicant or licensee shall verify that, the property is not less than two acres and is remotely located, subject to the commissioner's approval. The bounded or fenced real property may be listed on the private wedding venue's or barn's floorplan and may be used for large events such as weddings, reunions, conferences, meetings, or other events;

(E) Lists the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private wedding venue or barn's floorplan that would comprise the licensed premises which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private wedding venue or barn's licensed premises;

(F) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(G) Meets and is subject to all other private club requirements; and

(H) Uses an age verification system approved by the commissioner.

(23) "Private multi-sport complex" means an applicant for a private club or licensed private club licensee that is open for multiple sports events to be played at the complex facilities, reserved weddings, concerts, reunions, conferences, meetings, or other special events, and which:

(A) Has at least 100 members;

(B) Maintains an open-air multi-sport complex primarily for use for sporting events, such as baseball, soccer, basketball, tennis, frisbee, or other sports, but may also conduct weddings, concerts, reunions, conferences, meetings, or other events where parties

reserve the parts of the sports complex in advance of the sporting or other event;

(C) Operates a restaurant and full kitchen with ovens in the licensee's main facility, as determined by the commissioner, on the licensed premises which is capable of serving freshly prepared food, or meals to serve its stated members, guests, and patrons who will be attending the event at the private multi-sport complex. A licensee may contract with temporary food vendors or food trucks for food sales only, but not on a permanent basis, in areas of the multi-sport complex not readily accessible by the main facility;

(D) Maintains, at any one time, fresh food capable of being prepared in the private multi-sport complex's full kitchen. In calculating the food inventory, the commissioner may not include television dinners, bags of chips or similar products, microwavable meals, frozen meals, prepackaged foods, or canned prepared foods;

(E) Owns or leases, controls, operates, and uses acreage amounting to at least 50 contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the private multi-sport complex's floorplan and could be used for contracted-for sporting events, group-type weddings, concerts, reunions, conferences, meetings, or other events;

(F) Lists the entire property from paragraph (E) of this subdivision and all adjoining buildings and structures on the private multi-sport complex's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors, nonintoxicating beer, nonintoxicating craft beer, and hard cider throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private multi-sport complex's licensed premises and as noted on the private multi-sport complex's floorplan. The licensee may sell alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer from a golf cart or food truck owned or leased by the licensee and also operated by the licensee when the golf cart or food truck is located on the private multi-sport complex's licensed premises;

(G) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(H) Meets and is subject to all other private club requirements; and

(I) Uses an age verification system approved by the commissioner.

(24) "Private coliseum or center" means an applicant for a private club or licensed private club licensee that is open for various events including, but not limited to, musical concerts, bands, sporting events, monster trucks, sports entertainment events, circuses, expos, hobby events, tradeshow, health events, reserved weddings, reunions, retreats, conventions, conferences, meetings, or other special events. The licensee may not sell alcoholic liquors, nonintoxicating beer or wine when conducting or hosting events focused on patrons who are less than 21 years of age, and further the applicant shall:

(A) Have at least 5,000 members;

(B) Maintain an enclosed coliseum or center venue with at least 80,000 square feet of event space primarily used for events ~~as noted above~~, where parties reserve the coliseum or center venue in advance of the event;

(C) Operate a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and be capable of serving freshly prepared food or meals to its stated members, guests, and patrons who will be attending events at the private coliseum or center;

(D) Own or lease, control, operate, and use acreage amounting to at least two contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the private coliseum or center's floorplan and could be used for contracted-for events, ~~as noted above~~, or a private fair and festival, as authorized by the commissioner per dual licensing requirements as set forth in §60-7-2a of this code;

(E) List the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private coliseum or center's floorplan comprising the licensed premises which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on private coliseum or center's licensed premises;

(F) Have an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(G) Meet and be subject to all other private club requirements; and

(H) Use an age verification system approved by the commissioner.

(25) "Private food court" means an applicant who qualifies for a private club restaurant or licensed private club restaurant licensee that operates in a facility within a licensed premises with one licensed floorplan that includes an association of other interconnected licensed private club restaurants or unlicensed restaurants that operate legally without alcohol sales, where all businesses that are licensed members of the association have agreed in writing to be liable and responsible for all sales, service, furnishing, tendering, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer occurring on the entire licensed premises of the private food court, and further the applicant shall:

(A) Have at least 100 members;

(B) Have at least one member of its association who qualifies for a private club restaurant containing a full kitchen with ovens, four-burner ranges, a refrigerator or freezer or some combination of a refrigerator and freezer, and other kitchen utensils and apparatus as determined by the commissioner on the licensed

premises and be capable of serving freshly prepared food at least 15 hours per week in the private food court;

(C) Have at least one member of its association who qualifies for a private club restaurant who maintains, at any one time, fresh food capable of being prepared in the private club restaurant's full kitchen, and in calculating the food inventory the commissioner may not include television dinners, bags of chips or similar products, microwavable meals, frozen meals, pre-packaged foods, or canned prepared foods;

(D) Have an association that owns or leases, controls, operates, and uses a facility that meets requirements of this article, and the entire facility is listed on the licensee's floorplan as its licensed premises;

(E) Have an association that lists in the application for licensure the entire facility and any inter-connected and adjoining structures on the private food court's floorplan which would compromise the licensed premises, and which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure while on the private food court's licensed premises and as noted on the private food court's licensed floorplan;

(F) Have an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property buildings and structures located on the proposed licensed premises;

(G) Have at least one separate and unrelated business applying for the license and certifying that all licensed businesses in the association have agreed to the liability responsibility associated with a private food court license;

(H) Only use its employees, independent contractors, or volunteers to purchase, sell, furnish, or serve liquor, wine, nonintoxicating beer or nonintoxicating craft beer;

(I) Provide adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the private food court;

(J) Provide a copy of a written agreement between all the vendors of the association that is executed by all businesses stating that each licensed vendor is jointly and severally liable for any violations of this chapter committed on the licensed premises;

(K) Provide a security plan indicating all businesses who will be selling and serving alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer, list non-licensees who will be selling and serving food, list all entrances, and list all exits, provide a plan to verify the ages of members, patrons, and guests, a plan to verify whether a member, patron, or guest is intoxicated, and a plan to provide for the public health and safety of members, patrons, and guests;

(L) Use an age verification system approved by the commissioner; and

(M) Meet and be subject to all other private club requirements.

The ~~Department~~ Division of Natural Resources, the authority governing any county or municipal park, or any county commission, municipality, other governmental entity, public corporation, or public authority operating any park or airport may lease, as lessor, a building or portion thereof or other limited premises in any park or airport to any corporation or unincorporated association for the establishment of a private club pursuant to this article.

**§60-7-8a. Special license for a private fair and festival; licensee fee and application; license fee; license subject to provisions of article; exception.**

(a) There is hereby created a special license designated Class S2 private fair and festival license for the retail sale of alcoholic liquors and nonintoxicating beer, and nonintoxicating craft beer for on-premises consumption.



(b) To be eligible for the license authorized by subsection (a) of this section, the private fair and festival or other event shall:

(1) Be sponsored, endorsed, or approved by the governing body or its designee of the county or municipality in which the private fair and festival or other event is located;

(2) Make application with the commissioner at least 15 days prior to the private fair, festival, or other event;

(3) Pay a nonrefundable non-prorated license fee of \$500; and

(4) Be approved by the commissioner to operate the private fair, festival, or other event.

(c) A private fair and festival license under this section shall be for a duration of no more than 10 consecutive days.

(d) Nonintoxicating beer and nonintoxicating craft beer sold, furnished, tendered, or served for on-premises consumption by the private fair and festival pursuant to the license created by this section shall be purchased from licensed distributors that service the area in which the private fair and festival is held or from a resident brewer acting in a limited capacity as a distributor, all in accordance with §11-16-1 *et seq.* of this code. ~~Sealed containers of nonintoxicating~~ Nonintoxicating beer or nonintoxicating craft beer may be sold and served for by the drink or glass, or by the bottle or can on-premises consumption and in sealed bottles or cans for off-premises consumption if the nonintoxicating beer and nonintoxicating craft beer is being sold by an authorized brewer or resident brewer, as set forth in §11-16-6a(4) of this code, who manufactures the nonintoxicating beer or nonintoxicating craft beer in this state. The on-premises and off-premises consumption sales shall be made pursuant to a written agreement between the private fair and festival and an authorized brewer or resident brewer. Prior to the start of the private fair or festival, an authorized brewer or resident brewer who agrees to offer on-premises and off-premises consumption sales of ~~their~~ nonintoxicating beer or nonintoxicating craft beer from a booth or other facility on the private fair and festival's licensed premises must meet the

requirements of §11-16-6a(d) of this code. The written agreement with each authorized brewer or resident brewer shall account for lawful sales of nonintoxicating beer and nonintoxicating craft beer sold for off-premises consumption as set forth in §11-16-1 *et seq.* of this code. The authorized and approved brewer, resident brewer, or its licensed representatives may give or sell approved promotional items to private fair and festival members and guests, but not to the private fair and festival's volunteers, independent contractors, or employees.

(e) Wine or hard cider sold, furnished, tendered, or served for on-premises consumption by the private fair and festival pursuant to the license created by this section shall be purchased from a licensed wine or hard cider distributor or farm winery in accordance with §60-8-1 *et seq.* of this code and §60-8A-1 *et seq.* of this code, as applicable. ~~Sealed containers of wine~~ Wine or hard cider may be sold and served for on-premises consumption by the drink or glass, or by the bottle when consumed by the glass and by the sealed bottle for off-premises consumption by the sealed bottle if the wine or hard cider is being sold by an authorized winery or farm winery, as set forth in §60-4-3b(~~m~~) and §60-8A-5(e) of this code, who manufactures that wine or hard cider in this state. The on-premises and off-premises consumption sales shall be made pursuant to a written agreement between the private fair and festival and an authorized winery or farm winery. An authorized winery or farm winery ~~who~~ which agrees to offer for sale and service their its wine or hard cider for on-premises consumption by the drink or glass, or by the bottle when consumed by the glass pursuant to §60-7-1 et seq. of this code and for off-premises consumption sealed bottle sales from a booth or other facility on the private fair and festival's licensed premises prior to the start of the private fair or festival shall meet the requirements of §60-4-3b(~~m~~) and §60-8A-5(e) of this code, as applicable. The written agreement with each authorized winery or farm winery shall account for lawful sales of wine or hard cider sold for on premises or off-premises consumption as set forth in §60-8-1 *et seq.* of this code and §60-8A-1 *et seq.* of this code, as applicable. The authorized and approved winery, farm winery or its licensed representatives may give or sell approved promotional items to

private fair and festival members and guests, but not to the private fair and festival's volunteers, independent contractors, or employees.

(f) Liquor sold, furnished, tendered, or served for on-premises consumption by the private fair and festival pursuant to the license created by this section shall be purchased from a licensed retail liquor outlet in the market zone or contiguous market zone where the private fair or festival is occurring, all in accordance with §60-3A-1 *et seq.* of this code. ~~Sealed containers of liquor~~ Liquor may be sold and served for on-premises consumption by the drink or glass or by the bottle when consumed by the glass and for off-premises consumption by the sealed bottle if the liquor is being sold by an authorized distillery, mini-distillery, or micro-distillery, as set forth in §60-4-3a of this code, who manufactures ~~their~~ its liquor in this state. Off-premises consumption sales shall comply with §60-3A-17 of this code and §60-4-3a(c) of this code shall not apply to these sales. The on-premises and off-premises consumption sales shall be made pursuant to a written agreement between the private fair and festival and an authorized distillery, mini-distillery, or micro-distillery. An authorized licensed distillery, mini-distillery, or micro-distillery who agrees to offer off-premises consumption sales of their manufactured liquor by the bottle from a booth or other facility on the private fair and festival's licensed premises prior to the start of the private fair, festival, or other event must meet the requirements as set forth in §60-4-3a of this code. An authorized licensed distillery, mini-distillery, or micro-distillery which agrees to offer on-premises consumption sales of its manufactured liquor by the drink or glass or by the bottle when consumed by the glass from a booth or other facility on the premises of the licensed fair and festival must meet the requirements set forth and in §60-7-1 et seq. of this code. The written agreement with each authorized distillery, mini-distillery, or micro-distillery shall account for lawful sales of liquor sold for off-premises consumption as set forth in §60-3A-1 *et seq.* of this code. An authorized and approved distillery, mini-distillery, micro-distillery or its licensed representatives may give or sell approved promotional items to private fair and festival members and guests,

but not to the private fair and festival's volunteers, independent contractors, or employees.

(g) A licensee authorized by this section may use bona fide employees, volunteers, or in limited circumstances licensed representatives to sell, furnish, tender, or serve the nonintoxicating beer, nonintoxicating craft beer, wine, liquor, or hard cider.

(h) Licensed representatives of an authorized and approved brewer, resident brewer, beer distributor, wine distributor, wine supplier, winery, farm winery, distillery, mini-distillery, micro-distillery, and liquor broker representatives may attend a private fair and festival and discuss their respective products ~~but shall not and may engage~~ in the selling, furnishing, tendering, or serving of any nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, or liquor. However, licensed representatives of a brewer, resident brewer, winery, farm winery, distillery, mini-distillery, or micro-distillery that has agreed in writing to conduct sampling, ~~and on-premises consumption sales, and~~ off-premises consumption sales of their respective licensee's products at the private fair and festival, may discuss their respective products and engage in ~~the limited giving of complimentary samples~~ sampling in accordance with §11-16-6a (c) ~~and (d)~~, §60-4-3a (a) ~~and (b)~~, and §60-4-3b (b) ~~and (m)~~ of this code; and the selling of ~~sealed bottles or cans of~~ their respective nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, or liquor products for on-premises consumption or off-premises consumption as specified in this section. All taxes and fees must be paid on lawful sales.

(i) A license issued under this section and the licensee are subject to all other provisions of this article and the rules and orders of the commissioner: *Provided*, That the commissioner may by rule or order allow certain waivers or exceptions with respect to those provisions, rules, or orders as the circumstances of each private fair and festival require, including without limitation, the right to revoke or suspend immediately any license issued under this section prior to any notice or hearing, notwithstanding §60-7-13a of this code: *Provided, however*, That under no circumstances may the provisions of §60-7-12 of this code be waived or an exception granted with respect thereto;

(j) Dual licensing is permitted for private fairs and festivals pursuant to §60-7-2a of this code, including but not limited to a dual licensing simultaneous to any other qualified permit holders as defined in §60-7-1, et seq. of this code.

(k) A private fair and festival licensee who executes a written agreement with a licensed brewer, resident brewer, winery, farm winery, distillery, mini-distillery, micro-distillery, or ~~their~~ its licensed representatives is jointly liable and responsible for any violations of this article.

(l) A private fair and festival licensee who executes a written agreement with a licensed brewer, resident brewer, winery, farm winery, distillery, mini-distillery, or micro-distillery to conduct limited on-premises and off-premises consumption sales shall not have any pecuniary interest, share, or percentage in any sales of sealed nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, or liquor.

(m) A private fair and festival licensee who executes a written agreement with a licensed brewer, resident brewer, winery, farm winery, distillery, mini-distillery, or micro-distillery to conduct limited on-premises and off-premises consumption sales may charge them a flat booth rental fee.

(n) A private fair and festival licensee, licensed brewer, resident brewer, winery, farm winery, distillery, mini-distillery, micro-distillery, or ~~their~~ licensed representatives who ~~permits~~ permit members or guests to consume, on the private fair and festival's licensed premises, any nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, or liquor, that was purchased as an off-premises consumption sale, shall have ~~their~~ its respective license immediately suspended, and that conduct is grounds for revocation of ~~their~~ license.

**§60-7-8d. Where private clubs may sell and serve alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer.**

(a) With prior approval of the commissioner a private club licensee may sell, serve, and furnish alcoholic liquor and, if also licensed to sell, serve, and furnish nonintoxicating beer or

nonintoxicating craft beer to be consumed on premises in a legally demarcated area which may include a temporary private outdoor dining area or temporary private outdoor street dining area. A temporary private outdoor street dining area shall be approved by the municipal government or county commission in which the licensee operates. The commissioner shall develop and make available an application form to facilitate the purposes of this subsection.

(b) The private club licensee shall submit to the commissioner: (1) the municipal or county approval of the private outdoor dining area or private outdoor street dining area; and, (2) a revised floorplan requesting to sell alcoholic liquors, and when licensed for nonintoxicating beer or nonintoxicating craft beer, then nonintoxicating beer or nonintoxicating craft beer, subject to the commissioner's requirements, in an approved and bounded outdoor area. The approved and bounded area need not be adjacent to the licensee's licensed premises, but in close proximity, for private outdoor street dining or private outdoor dining. For purposes of this subsection, "close proximity" means an available area within ~~150~~ 300 feet of a licensee's licensed premises and under the licensee's control and with right of ingress and egress.

(c) This private outdoor dining or private outdoor street dining may be operated in conjunction with a private wine outdoor dining or private wine outdoor street dining area set forth in §60-8-32a of this code and nonintoxicating beer or nonintoxicating craft beer outdoor dining or outdoor street dining set forth in §11-16-9 of this code.

(d) For purposes of this section, private outdoor dining and private outdoor street dining include dining areas that are:

(1) Outside and not served by an HVAC system for air handling services and use outside air;

(2) Open to the air; and

(3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally approve a partial enclosure with up to three temporary or fixed walls.

Any area where seating is incorporated inside a permanent building with ambient air through HVAC is not considered outdoor dining pursuant to this subsection.

(e) A private club restaurant or a private manufacturer club licensed for craft cocktail growler sales must provide food or a meal along with sealed craft cocktail growler sales as set forth in this article to a patron who is in-person or in-vehicle while picking up food or a meal, and a sealed craft cocktail growler order-to-go, subject to verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

## **ARTICLE 8. SALE OF WINES.**

### **§60-8-2. Definitions.**

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

"Commissioner" or "commission" means the West Virginia Alcohol Beverage Control Commissioner.

"Distributor" means any person whose principal place of business is within the State of West Virginia who makes purchases from a supplier to sell or distribute wine to retailers, grocery stores, private wine bed and breakfasts, private wine restaurants, private wine spas, private clubs, or wine specialty shops and that sells or distributes nonfortified dessert wine, port, sherry, and Madeira wines to wine specialty shops, private wine restaurants, private clubs, or retailers under authority of this article and maintains a warehouse in this state for the distribution of wine. For the purpose of a distributor only, the term "person" means and includes an individual, firm, trust, partnership, limited partnership, limited liability company, association, or corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee or other persons in active control of the activities of

the trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or violations of this article, notwithstanding the liability of trustees in §44D-10-1 *et seq.* of this code.

"Fortified wine" means any wine to which brandy or other alcohol has been added where the alcohol content by volume does not exceed 24 percent, and includes nonfortified dessert wines where the alcohol content by volume is greater than 17 percent and does not exceed 24 percent.

"Grocery store" means any retail establishment, commonly known as a grocery store, supermarket, delicatessen, caterer, or party supply store, where food, food products, and supplies for the table are sold for consumption off the premises with average monthly sales (exclusive of sales of wine) of not less than \$500 and an average monthly inventory (exclusive of inventory of wine) of not less than \$500. The term "grocery store" also includes and means a separate and segregated portion of any other retail store which is dedicated solely to the sale of food, food products, and supplies for the table for consumption off the premises with average monthly sales with respect to the separate or segregated portion, exclusive of sales of wine, of not less than \$500 and an average monthly inventory, exclusive of inventory of wine, of not less than \$500.

"Hard Cider" means a type of wine that is derived primarily from the fermentation of apples, pears, peaches, honey, or another fruit, or from apple, pear, peach, or another fruit juice concentrate and water; contains no more than 0.64 grams of carbon dioxide per 100 milliliters; contains at least one half of one percent and less than 12 and one-half percent alcohol by volume; and is advertised, labeled, offered for sale, or sold, as hard cider or cider containing alcohol, and not as wine, wine product, or as a substitute for wine.

"Hard Cider Distributor" means any person whose principal place of business is within the State of West Virginia who makes purchases from a supplier to sell or distribute hard cider, but not other types of wine, to retailers, grocery stores, private wine bed and breakfasts, private wine restaurants, private wine spas, private



clubs, or wine specialty shops under authority of this code and maintains a warehouse in this state for the distribution of hard cider, but not other types of wine. For the purpose of a hard cider distributor, the term "person" means and includes an individual, firm, trust, partnership, limited partnership, limited liability company, association, or corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee, or any other person or persons in active control of the activities of the trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or violations of this article, notwithstanding the liability of trustees in §44D-10-1 *et seq.* of this code.

"Licensee" means the holder of a license granted under the provisions of this article.

"Nonfortified dessert wine" means a wine that is a dessert wine to which brandy or other alcohol has not been added, and which has an alcohol content by volume of at least 15.6 percent and less than or equal to 17 percent.

"Person" means and includes an individual, firm, partnership, limited partnership, limited liability company, association, or corporation.

"Private wine bed and breakfast" means any business with the sole purpose of providing, in a residential or country setting, a hotel, motel, inn, or other such establishment properly zoned as to its municipality or local ordinances, lodging and meals to its customers in the course of their stay at the establishment, which business also: (1) Is a partnership, limited partnership, corporation, unincorporated association, or other business entity which as part of its general business purpose provides meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve wine to its members and their guests when the sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and

their guests while in the company of a member and does not admit the general public.

"Private wine restaurant" means a restaurant which: (1) Is a partnership, limited partnership, corporation, unincorporated association, or other business entity which has, as its principal purpose, the business of serving meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve wine to its members and their guests when the sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member and does not admit the general public. Private clubs that meet the private wine restaurant requirements ~~numbered (1), (2), and (3)~~ in this definition shall be considered private wine restaurants: *Provided*, That, a private wine restaurant shall have at least two restrooms: *Provided, however*, That the two restroom requirement may be waived by a written waiver provided from a local health department to the commissioner: *Provided further*, That a private wine restaurant located in an historic building may also be relieved of the two restroom requirement if a historic association or district with jurisdiction over a historic building provides a written waiver of the requirement to the commissioner: *And provided further*, That in no event shall a private wine restaurant have less than one restroom. *And provided further*, That a winery or farm winery holding a private wine restaurant license or a multi-capacity winery or farm winery license is not subject to the food service requirements of this subdivision.

"Private wine spa" means any business with the sole purpose of providing commercial facilities devoted especially to health, fitness, weight loss, beauty, therapeutic services, and relaxation, and may also be a licensed massage parlor or a salon with licensed beauticians or stylists, which business also: (1) Is a partnership, limited partnership, corporation, unincorporated association, or other business entity which as part of its general business purpose provides meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its

premises or as to a separate segregated portion of its premises to serve up to two glasses of wine to its members and their guests when the sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member, and does not admit the general public.

"Retailer" means any person licensed to sell wine at retail to the public at his or her established place of business for off-premises consumption and who is licensed to do so under authority of this article.

"Supplier" means any manufacturer, producer, processor, winery, farm winery, national distributor, or other supplier of wine who sells or offers to sell or solicits or negotiates the sale of wine to any licensed West Virginia distributor.

"Table wine" means a wine with an alcohol content by volume between 0.5 percent and 15.5 percent.

"Tax" includes within its meaning interest, additions to tax, and penalties.

"Taxpayer" means any person liable for any tax, interest, additions to tax, or penalty under the provisions of this article, and any person claiming a refund of tax.

"Varietal wine" means any wine labeled according to the grape variety from which the wine is made.

"Vintage wine" or "vintage-dated wine" means wines from which the grapes used to produce the wine are harvested during a particular year, or wines produced from the grapes of a particular harvest in a particular region of production.

"Wine" means any alcoholic beverage obtained by the natural fermentation of the natural content of grapes, other fruits, or honey or other agricultural products containing sugar to which no alcohol has been added and includes table wine, hard cider, nonfortified dessert wine, wine coolers, and other similar wine-based beverages. Fortified wine and any product defined as or contained

within the definition of nonintoxicating beer under the provisions of §11-16-1 *et seq.*, of this code are excluded from this definition of wine.

"Wine specialty shop" means a retailer who deals principally in the sale of table wine, nonfortified dessert wines, wine accessories, and food or foodstuffs normally associated with wine and: (1) Who maintains a representative number of wines for sale in his or her inventory which are designated by label as varietal wine, vintage, generic, and/or according to region of production and the inventory shall contain not less than 15 percent vintage or vintage-dated wine by actual bottle count; and (2) who, any other provisions of this code to the contrary notwithstanding, may maintain an inventory of port, sherry, and Madeira wines having an alcoholic content of not more than 22 percent alcohol by volume and which have been matured in wooden barrels or casks. All wine available for sale shall be for off-premises consumption except where wine tasting or wine sampling is separately authorized by this code.

### **§60-8-3. Licenses; fees; general restrictions.**

(a) No person may engage in business in the capacity of a winery, farm winery, supplier, distributor, retailer, private wine bed and breakfast, private wine restaurant, private wine spa, or wine specialty shop without first obtaining a license from the commissioner, nor shall a person continue to engage in any activity after his or her license has expired, been suspended, or revoked. No person may be licensed simultaneously as a distributor and a retailer. No person, except for a winery or farm winery, may be licensed simultaneously as a supplier and a retailer. No person except for a winery or farm winery holding a multi-capacity winery or farm winery license may be licensed simultaneously as a supplier and a private wine bed and breakfast, private wine restaurant, or a private wine spa. No person may be licensed simultaneously as a distributor and a private wine bed and breakfast, a private wine restaurant, or a private wine spa. No person except for a winery or farm winery or holding a multi-capacity winery or farm winery license may be licensed simultaneously as a retailer and a private wine bed and breakfast, a

private wine restaurant, or a private wine spa. Any person who is licensed to engage in any business concerning the manufacture, sale, or distribution of wine may also engage in the manufacture, sale, or distribution of hard cider without obtaining a separate hard cider license.

(b) The commissioner shall collect an annual fee for licenses issued under this article as follows:

(1) One hundred fifty dollars per year for a supplier's license;

(2) Two thousand five hundred dollars per year for a distributor's license and each separate warehouse or other facility from which a distributor sells, transfers, or delivers wine shall be separately licensed and there shall be collected with respect to each location, the annual license fee of \$2,500 as provided in this subdivision;

(3) One hundred fifty dollars per year for a retailer's license;

(4) Two hundred fifty dollars per year for a wine specialty shop license, in addition to any other licensing fees paid by a winery or retailer holding a license. Except for the amount of the license fee and the restriction to sales of winery or farm winery wines, a winery, or farm winery acting as a wine specialty shop retailer is subject to all other provisions of this article which are applicable to a wine specialty shop retailer as defined in §60-8-2 of this code;

(5) One hundred fifty dollars per year for a wine tasting license;

(6) One hundred fifty dollars per year for a private wine bed and breakfast license. Each separate bed and breakfast from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of \$150 as provided in this subdivision;

(7) Two hundred fifty dollars per year for a private wine restaurant license. Each separate restaurant from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of \$250 as provided in this subdivision;

(8) One hundred fifty dollars per year for a private wine spa license. Each separate private wine spa from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of \$150 as provided in this subdivision;

(9) One hundred fifty dollars per year for a wine sampling license issued for a wine specialty shop under subsection (n) of this section;

(10) No fee for a special one-day license under subsection (p) of this section or for a heritage fair and festival license under subsection (q) of this section;

(11) One hundred fifty dollars per year for a direct shipper's license for a licensee who sells and ships only wine and \$250 per year for a direct shipper's license who ships and sells wine, nonfortified dessert wine, port, sherry, or Madeira wines;

(12) Three hundred fifty dollars per year for a multi-capacity winery or farm winery license which enables the holder to operate as a retailer, wine specialty shop, supplier, and direct shipper without obtaining an individual license for each capacity; and

(13) Two hundred fifty dollars per year for a hard cider distributor's license. Each separate warehouse or other facility from which a distributor sells, transfers, or delivers hard cider shall be separately licensed and there shall be collected with respect to each location the annual license fee of \$250 as provided in this subdivision: *Provided*, That if a licensee is licensed as a nonintoxicating beer or nonintoxicating beer distributor, then there is no additional license fee to distribute hard cider.

(c) The license period begins on July 1 of each year and ends on June 30 of the following year and if granted for a less period, the ~~same~~ fee shall be computed semiannually in proportion to the remainder of the fiscal year.

(d) No retailer may be licensed as a private club as provided by §60-7-1 *et seq.* of this code, except as provided by subsection (k) of this section.

(e) No retailer may be licensed as a Class A retail dealer in nonintoxicating beer as provided by §11-16-1 *et seq.* of this code: *Provided*, That a delicatessen, a caterer, or party supply store, which is a grocery store as defined in §60-8-2 of this code, and which is licensed as a Class A retail dealer in nonintoxicating beer may be a retailer under this article: *Provided, however*, That any delicatessen, caterer, or party supply store licensed in both capacities shall maintain average monthly sales exclusive of sales of wine and nonintoxicating beer which exceed the average monthly sales of nonintoxicating beer.

(f) A wine specialty shop under this article may also hold a wine tasting license authorizing the retailer to serve complimentary samples of wine in moderate quantities for tasting. The wine specialty shop shall organize a wine taster's club, which has at least 50 duly elected or approved dues-paying members in good standing. The club shall meet on the wine specialty shop's premises not more than one time per week and shall either meet at a time when the premises are closed to the general public, or meet in a separate segregated facility on the premises to which the general public is not admitted. Attendance at tastings shall be limited to duly elected or approved dues-paying members and their guests.

(g) A retailer who has more than one place of retail business shall obtain a license for each separate retail establishment. A retailer's license may be issued only to the proprietor or owner of a bona fide grocery store or wine specialty shop.

(h)(1) The commissioner may issue a license for the retail sale of wine at any ~~festival or fair~~ fair or festival which is endorsed or sponsored by the governing body of a municipality or a county commission. The license shall be issued for a term of no longer than 10 consecutive days and the fee for the license is \$250 regardless of the term of the license. The application for the license shall contain information required by the commissioner and shall be submitted to the commissioner at least 30 days prior to the first day when wine is to be sold at the any ~~festival or fair~~ fair or festival.

(2) Notwithstanding subdivision (1) of this subsection, if the applicant for the ~~festival or fair~~ fair or festival license is the

manufacturer of the wine, a winery, or a farm winery as defined in §60-1-5a of this code, and the event is located on the premises of a winery or a farm winery, then the license fee is \$50 per ~~festival or fair~~ fair or festival.

(3) A licensed winery or a farm winery, which has the ~~festival or fair~~ fair or festival licensee's written authorization and approval from the commissioner, may, in addition to, or in conjunction with the ~~festival and fair~~ fair and festival licensee, exhibit, conduct complimentary tastings, or sell samples not to exceed ~~three six, two~~ three-fluid ounce, tastings or samples per patron, or serve wine by the glass for consumption on the premises during the operation of a ~~festival or fair~~ fair or festival only; and may sell wine by the bottle for on-premises consumption, when consumed by the glass, and sealed bottles of wine for off-premises consumption ~~only~~: *Provided*, That for licensed wineries or farm wineries at a licensed ~~festival or fair~~ fair or festival; tastings, samples, on-premises sales, and off-premises sales shall occur under the hours of operation as required in this article, except on Sunday, tastings, samples, and off-premises sales are unlawful between the hours of 2:00 a.m. and 6:00 a.m.

(4) A ~~festival or fair~~ fair or festival license may be issued to a "wine club" as defined in this subdivision for a license fee of \$250. The festival or fair committee or the governing body shall designate a person to organize a club under a name which includes the name of the ~~festival or fair~~ fair or festival and the words "wine club". The license shall be issued in the name of the wine club. A licensee may not sell wine as provided in this subdivision until the wine club has at least 50 dues-paying members who have been enrolled, and to whom membership cards have been issued. Thereafter, new members may be enrolled and issued membership cards at any time during the period for which the license is issued. A wine club licensed under the provisions of this subdivision may sell wine only to its members, and in portions not to exceed eight ounces per serving. The sales shall take place on-premises or in an area cordoned or segregated so as to be closed to the general public, and the general public shall not be admitted to the premises or area. A wine club licensee under the provisions of this subdivision may



serve complimentary samples of wine in moderate quantities for tasting. A wine club may not make wine purchases from a direct shipper where the wine may be consumed on the licensed premises of any Class A private wine retail ~~license~~ licensee or private club licensee. A wine club which violates the provisions of this subdivision is subject to the penalties in this article.

(5) A licensed winery or farm winery approved to participate in a ~~festival or fair~~ fair or festival under the provisions of this section and the licensee holding the license, or the licensed winery or farm winery approved to attend a licensed ~~festival or fair~~ fair or festival, is subject to all other provisions of this article and the rules and orders of the commissioner relating to the license: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders required by the circumstances of each ~~festival or fair~~ fair or festival, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions §60-8-27 and §60-8-28 of this code: *Provided, however*, That under no circumstances shall the provisions of §60-8-20(c) or §60-8-20(d) of this code, be waived nor shall any exception be granted with respect to those subsections.

(6) A license issued under the provisions of this section and the licensee holding the license are not subject to the provisions of subsection (g) of this section.

(7) An unlicensed winery temporarily licensed and meeting the requirements set forth in subsection (q) of this section may conduct the same sampling and sales set forth in subsection (q) of this section at a licensed fair and festival upon approval of the licensee holding the fair and festival license and temporary and limited licensure by the commissioner. An unlicensed winery is subject to the same limits, fees, requirements, restrictions, and penalties set forth in subsection (q) of this section: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders required by the circumstances of each ~~festival or fair~~ fair or festival. The commissioner may revoke or suspend any license issued pursuant

to this section prior to any notice or hearing notwithstanding the provisions §60-8-27 and §60-8-28 of this code: *Provided, however,* That under no circumstances shall the provisions of §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception be granted with respect to those subsections.

(i)(1) The commissioner may issue a special license for the retail sale of wine in a professional baseball stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and serve wine for consumption in a professional baseball stadium. For the purpose of this subsection, "professional baseball stadium" means a facility constructed primarily for the use of a major or minor league baseball franchisee affiliated with the National Association of Professional Baseball Leagues, Inc., or its successor, and used as a major or minor league baseball park. Any special license issued pursuant to this subsection shall be for a term beginning on the date of issuance and ending on the next following June 30, and its fee is \$250 regardless of the length of the term of the license. The application for the special license shall contain information required by the commissioner and must be submitted to the commissioner at least 30 days prior to the first day when wine is to be sold at the professional baseball stadium. The special license may be issued in the name of the baseball franchisee or the name of the primary food and beverage vendor under contract with the baseball franchisee. These sales must take place within the confines of the professional baseball stadium. The exterior of the area where wine sales may occur shall be surrounded by a fence or other barrier prohibiting entry except upon the franchisee's express permission, and under the conditions and restrictions established by the franchisee, so that the wine sales area is closed to free and unrestricted entry by the general public.

(2) A license issued under this subsection and the licensee holding the license are subject to all other provisions of this article and the rules and orders of the commissioner relating to the special license: *Provided,* That the commissioner may by rule or order grant certain waivers or exceptions to those rules or orders required by the circumstances of each professional baseball stadium. The commissioner may revoke or suspend any license issued pursuant

to this section prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of this code: *Provided, however,* That under no circumstances may §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception be granted concerning those subsections.

(3) The commissioner may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement this subsection.

(j) A license to sell wine granted to a private wine bed and breakfast, private wine restaurant, private wine spa, or a private club under the provisions of this article entitles the operator to sell and serve wine, for consumption on the premises of the licensee, when the sale accompanies the serving of food or a meal to its members and their guests in accordance with the provisions of this article: *Provided,* That a licensed private wine bed and breakfast, private wine restaurant, private wine spa, or a private club may permit a person over 21 years of age to purchase wine, consume wine, and recork or reseal, using a tamper resistant cork or seal, up to two separate bottles of unconsumed wine in conjunction with the serving of food or a meal to its members and their guests in accordance with the provisions of this article and in accordance with rules promulgated by the commissioner for the purpose of consumption of the wine off premises: *Provided, however,* That a licensed private wine restaurant or a private club may offer for sale, for consumption ~~off the~~ off-premises, sealed bottles of wine to its customers provided that no more than one bottle is sold per each person over 21 years of age, as verified by the private wine restaurant or private club, for consumption ~~off the~~ off-premises. The licensees may keep and maintain on ~~their~~ its premises a supply of wine in quantities appropriate for the conduct of operations thereof. Any sale of wine is subject to all restrictions set forth in §60-8-20 of this code. A private wine restaurant may also be licensed as a Class A retail dealer in nonintoxicating beer as provided by §11-16-1 *et seq.* of this code.

(k) With respect to subsections (h), (i), (j), (o), and (p) of this section, the commissioner shall propose legislative rules for promulgation in accordance with §29A-1-1 *et seq.* of this code,

including, but not limited to, the form of the applications and the suitability of both the applicant and location of the licensed premises.

(l) The commissioner shall propose legislative rules for promulgation in accordance with the provisions of §29A-1-1 *et seq.* of this code to allow restaurants to serve wine with meals and to sell wine by the bottle for off-premises consumption as provided in subsection (j) of this section. Each licensed restaurant shall be charged an additional \$100 per year fee.

(m) The commissioner shall establish guidelines to permit wines to be sold in all stores licensed for retail sales.

(n) Wineries and farm wineries may advertise off premises as provided in §17-22-7 of this code.

(o) A licensed wine specialty shop under this article may also hold a wine sampling license authorizing the wine specialty shop to conduct special wine sampling events ~~at a licensed wine specialty shop~~ at its location during regular hours of business. The wine specialty shop may serve up to ~~three~~ six complimentary samples of wine, consisting of no more than ~~two~~ three fluid ounces each, to any one consumer ~~in one~~ per day. Persons serving the ~~complimentary~~ samples shall be 21 years of age or older and an authorized representative of the licensed wine specialty shop, winery, farm winery, or a representative of a distributor or registered supplier. Distributor and supplier representatives attending wine sampling events shall register with the commissioner. No licensee, employee, or representative may furnish, give, sell, or serve ~~complimentary~~ samples of wine to any person less than 21 years of age or to a person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs. The wine specialty shop shall notify and secure permission from the commissioner for all wine sampling events 30 days prior to the event. Wine sampling events may not exceed six hours per calendar day. Licensees shall purchase all wines used during these events from a licensed farm winery or a licensed distributor.

(p) The commissioner may issue special one-day licenses to duly organized, nonprofit corporations and associations allowing the sale and serving of wine, and may, if applicable, also allow the charitable auctioning of certain sealed bottles of wine for off-premises consumption only, when raising money for athletic, charitable, educational, or religious purposes. "Auction or auctioning", for the purposes of this subsection, means any silent, physical act, or verbal bid auction, whether or not the auction requires in-presence bidding or online Internet-based electronic bidding through a secure application or website, but shall not include any action in violation of §47-20-10, §47-20-11, or §61-10-1 *et seq.* of this code. The license application shall contain information required by the commissioner and shall be submitted to the commissioner at least 30 days prior to the event. Accompanying the license application, the applicant shall submit a signed and notarized statement that at least 80 percent of the net proceeds from the charitable event will be donated directly to the nonprofit corporation or organization. Wines used during these events may be donated by, or purchased from, a licensed retailer, a distributor, winery, or a farm winery. A licensed winery or farm winery which is authorized in writing by a representative of the duly organized, nonprofit corporation or association which has obtained the one-day license; is in good standing with the state; and obtains the commissioner's approval prior to the one-day license event may, in conjunction with the one-day licensee, exhibit, conduct complimentary tastings, ~~or~~ sell samples not to exceed ~~three~~ six, ~~two~~ three-fluid ounce tastings or samples per patron, sell wine by the glass or by the bottle, when consumed by the glass, for consumption on the on-premises during the operation of the one-day license event; and may sell certain sealed wine bottles manufactured by the licensed winery or farm winery for off-premises consumption: *Provided*, That for a licensed winery or farm winery at a licensed one-day event, the tastings, samples, on-premises sales, and off-premises sales of its wine shall occur under the hours of operation permitted by this article, except on Sunday, tastings, samples, on-premises sales, and off-premises sales of its wine are unlawful between the hours of 2:00 a.m. and 6:00 a.m., from the one-day licensee's submitted floor plan for the event subject to the requirements in the code and rules. Under no

circumstances may the provisions of §60-8-20(c) or §60-8-20(f) of this code be waived nor may any exception be granted with respect to those subsections.

(q)(1) In addition to the authorization granted to licensed wineries and farm wineries in subsections (h) and (p) of this section, an unlicensed winery, regardless of its designation in another state, ~~but~~ that is duly licensed in its domicile state, may pay a \$150 nonrefundable and ~~nonprorated~~ non-prorated fee and submit an application for temporary licensure on a one-day basis for temporary sampling and sale of wine in sealed containers for off-premises consumption at a special one-day license nonprofit event.

(2) The application shall include, but is not limited to, the person or entity's name, address, taxpayer identification number, and location; a copy of its licensure in its domicile state; a signed and notarized verification that it produces 50,000 gallons or less of wine per year; a signed and notarized verification that it is in good standing with its domicile state; copies of its federal certificate of label approvals and certified lab alcohol analysis for the wines it desires to temporarily provide samples and temporarily sell wine in sealed containers for off-premises consumption at a special one-day license for a nonprofit event issued under subsection (p) of this section; and any other information as the commissioner may reasonably require; Provided, That the background investigation requirement set forth in §60-8-16 of this code is inapplicable to licenses authorized by this subdivision.

(3) The applicant winery shall include a list of all wines proposed to be temporarily sampled and temporarily sold by the glass or bottle, when consumed by the glass, for on-premises consumption or in sealed containers for off-premises consumption at a special one-day license for a nonprofit event so that the wines may be reviewed in the interest of public health and safety. Once approved, the submitted wine list creates a temporary wine brand registration for up to two special one-day licenses for a nonprofit event for no additional fee.

(4) An applicant winery that receives this temporary special one-day license for a nonprofit event shall provide the

commissioner a signed and notarized written agreement acknowledging that the applicant winery understands its responsibility to pay all municipal, local, and sales taxes applicable to the sale of wine in West Virginia.

(5) An application must be submitted ~~per~~ for each special one-day license for a nonprofit event the applicant winery desires to attend, and the license fee shall cover up to two special one-day ~~license~~ licenses for nonprofit events before an additional fee ~~would be~~ is required. In no circumstance would the winery be permitted to attend more than four special one-day licensed events. Any applicant or unlicensed winery desiring to attend more than four special one-day license for nonprofit events per year or otherwise operate in West Virginia would need to seek appropriate licensure as a winery or a farm winery in this state.

(6) Notwithstanding the provisions of this article and requirements for licensure, wine brand registration, payment of wine liter tax, and the winery's appointment of suppliers and distributors, this temporary special one-day license for a nonprofit event, once granted, permits a winery to operate in this limited capacity only at the approved specific, special one-day license for a nonprofit event subject to the limitations contained in this section.

(7) The applicant winery shall also apply for and receive a transportation permit to legally transport wine in the state per §60-6-12 of this code.

(8) The applicant winery is subject to all applicable violations and/or penalties under this article and the legislative rules that are not otherwise excepted by this subsection: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders required by the circumstances of each ~~festival or fair~~ fair or festival. The commissioner may revoke or suspend any license issued pursuant to this article, prior to any notice or hearing.

(r) The commissioner may issue special licenses to heritage fairs and festivals allowing the sale, serving, and sampling of wine from a licensed farm winery. The license application shall contain

information required by the commissioner and shall be submitted to the commissioner at least 30 days prior to the event. Wines used during these events may be donated by or purchased from a licensed farm winery. Under no circumstances may the provision of §60-8-20(c) of this code be waived nor may any exception be granted with respect thereto. The commissioner shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to implement the provisions of this subsection.

(s)(1) The commissioner may issue a special license for the retail sale of wine in a college or university stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and serve wine for consumption in a college or university stadium. For the purpose of this subsection, "college stadium" means a facility constructed primarily for the use of a Division I, II, or III college or university that is a member of the National Collegiate Athletic Association, or its successor, and used as a football, basketball, baseball, soccer, or other Division I, II, or III sports stadium. A special license issued pursuant to this subsection shall be for a term beginning on the date of its issuance and ending on the next following June 30, and its fee is \$250 regardless of the length of the term of the license. The application for the special license shall contain information required by the commissioner and must be submitted to the commissioner at least 30 days prior to the first day when wine is to be sold. The special license may be issued in the name of the National Collegiate Athletic Association Division I, II, or III college or university or the name of the primary food and beverage vendor under contract with that college or university. All sales must take place within the confines of the college or university stadium: *Provided*, That the exterior of the area where wine sales may occur shall be surrounded by a fence or other barrier prohibiting entry except upon the college or university's express permission, and under the conditions and restrictions established by the college or university, so that the wine sales area is closed to free and unrestricted entry by the general public.

(2) A license issued under this subsection and the licensee are subject to the other requirements of this article and the rules and



orders of the commissioner relating to the special license: *Provided*, That the commissioner may by rule or order grant certain waivers or exceptions to those rules or orders as required by the circumstances of each the college or university stadium. The commissioner may revoke or immediately suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of this code: *Provided, however*, That §60-8-20(c) or §60-8-20(d) of this code may not be waived, nor shall any exception be granted concerning those subsections.

(3) The commissioner may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement this subsection.

**§60-8-6c. Winery and farm winery license to sell wine growers and provide ~~complimentary~~ samples prior to purchasing a wine growler.**

(a) *Legislative findings.* — The Legislature hereby finds that it is in the public interest to regulate, control, and support the brewing, manufacturing, distribution, sale, consumption, transportation, and storage of wine and its industry in this state to protect the public health, welfare, and safety of the citizens of this state, and promote hospitality and tourism. Therefore, this section authorizes a licensed winery or farm winery with its principal place of business and manufacture located in this state to have certain abilities to promote the sale of wine manufactured in this state for the benefit of the citizens of this state, the state's growing wine industry, and the state's hospitality and tourism industry, all of which are vital components for the state's economy.

(b) *Sales of wine.* — A licensed winery or farm winery with its principal place of business and manufacture located in the State of West Virginia may, when licensed under this section, offer only wine manufactured by the licensed winery or farm winery for retail sale to customers from the winery or farm winery's licensed premises for consumption ~~off of the licensed~~ off-premises only in the form of original container sealed wine kegs, wine bottles, or wine cans, or also a sealed wine growler for personal consumption,

and not for resale. A licensed winery or farm winery may not sell, give, or furnish its wine for consumption on the premises of the principal place of business and manufacture located in the State of West Virginia, except for the limited purpose of ~~complimentary~~ samples as permitted in subsection (c) of this section, ~~or unless separately licensed for on-premises sales in accordance with §60-4-3b of this code, or for on-premises sales when separately licensed~~ as a private wine restaurant or a private manufacturer club.

(c) ~~Complimentary s Samples.~~ — A licensed winery or farm winery with its principal place of business and manufacture located in the State of West Virginia may offer ~~complimentary~~ samples of wine as set forth in §60-4-3b of this code.

(d) *Retail sales.* — Every licensed winery or farm winery under this section shall comply with all the provisions of this article as applicable to wine retailers when conducting wine growler sales and is subject to all applicable requirements and penalties in this article.

(e) *Payment of taxes and fees.* — A winery or farm winery licensed under this section shall pay all taxes and fees required of licensed wine retailers, in addition to any other taxes and fees required, and shall meet applicable licensing provisions as required by this chapter and by rule of the commissioner.

(f) *Advertising.* — A licensed winery or farm winery under this section may advertise a particular brand or brands of wine produced by the licensed winery or farm winery and the price of the wine subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance or target minors.

(g) *Wine Growler defined.* — For purposes of this section and section §60-8-6d of the code, "wine growler" means a container or jug that is made of glass, ceramic, metal, or other material approved by the commissioner, that may be no larger than 128 fluid ounces in size and is capable of being securely sealed. The growler may be used by an authorized licensee for purposes of off-premises sales only of wine for personal consumption, and not for resale. The

wine served and sold in a sealed wine growler may include ice or water mixed with the wine to create a frozen alcoholic beverage. Any frozen alcoholic beverage machine used for filling wine growlers shall be sanitized daily and shall be under control and served by the licensee from the secure area. Notwithstanding any other provision of this code to the contrary, a securely sealed wine growler is not an open container under state and local law. A wine growler with a broken seal is an open container under state and local law unless it is located in an area of the motor vehicle physically separated from the passenger compartment. For purpose of this article, a secure seal means using a tamper evident seal, such as: (1) A plastic heat shrink wrap band, strip, or sleeve extending around the cap or lid of wine growler to form a seal that ~~shall be~~ is broken when the container is opened; or (2) A screw top cap or lid that breaks apart when the wine growler is opened.

(h) *Wine Growler requirements.* — A winery or farm winery licensed under this section shall prevent patrons from accessing the secure area where the winery or farm winery fills a wine growler and prevent patrons from filling a wine growler. A licensed winery or farm winery under this section shall sanitize, fill, securely seal, and label any wine growler prior to its sale. A licensed winery or farm winery under this section may refill a wine growler subject to the requirements of this section. A winery or farm winery shall visually inspect any wine growler before filling or refilling it. A winery or farm winery may not fill or refill any wine growler that appears to be cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container.

(i) *Wine Growler labeling.* — A winery or farm winery licensed under this section selling wine growlers shall affix a conspicuous label on all sold and securely sealed wine growlers listing the name of the licensee selling the wine growler, the brand of the wine in the wine growler, the alcohol content by volume of the wine in the wine growler, and the date the wine growler was filled or refilled. All labeling on the wine growler shall be consistent with all federal labeling and warning requirements.

(j) *Wine Growler sanitation.* — A licensed winery or farm winery authorized under this section shall clean and sanitize all

wine growlers it fills or refills in accordance with all state and county health requirements prior to its filling and sealing. In addition, the licensed winery or farm winery shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipelines, barrel tubes, and any other related equipment used to fill or refill growlers. Failure to comply with this subsection may result in penalties under this article.

(k) *Fee.* — There is no additional fee for a licensed winery or farm winery authorized under this section to sell wine growlers, but the licensee shall meet all other requirements of this section.

(l) *Limitations on licensees.* — To be authorized under this section, a licensed winery or farm winery may not produce more than 10,000 gallons of wine per calendar year at the winery or farm winery's principal place of business and manufacture located in the State of West Virginia. A licensed winery or farm winery authorized under this section is subject to the applicable penalties under this article for violations of this section.

(m) *Rules.* — The commissioner, in consultation with the Bureau for Public Health, may propose legislative rules concerning sanitation for legislative approval, pursuant to §29A-3-1 *et seq.* of this code, to implement this section.

**§60-8-32a. Where wine may be sold and consumed for on-premises consumption.**

(a) With prior approval of the commissioner, a Class A wine licensee may sell, serve, and furnish wine for on premises consumption in a legally demarcated area which may include a temporary private wine outdoor dining area or a temporary private wine outdoor street dining area. A temporary private wine outdoor street area shall be approved by the municipal government or county commission in which the licensee operates. The commissioner shall develop and make available an application form to facilitate the purposes of this subsection.

(b) The Class A wine licensee shall submit to a municipality or county commission for the approval of the private wine outdoor

dining area or private wine outdoor street dining area and submit to the municipality or county commission a revised floorplan requesting to sell wine, subject to the commissioner's requirements, in an approved and bounded outdoor area. For private wine outdoor street dining or private wine outdoor dining the approved and bounded outdoor area need not be adjacent to the licensee's licensed premises, but in close proximity and under the licensee's control and with right of ingress and egress. For purposes of this section, "close proximity," means an available area within ~~450~~ 300 feet of the licensee's licensed premises.

(c) This private wine outdoor dining or private wine outdoor street dining may be operated in conjunction with a private outdoor dining or private outdoor street dining area set forth in §60-7-8d of this code, and nonintoxicating beer or nonintoxicating craft beer outdoor dining or outdoor street dining set forth in §11-16-9 of this code.

(d) For purposes of this section, "private wine outdoor dining and private wine outdoor street dining" include dining areas that are:

(1) Outside and not served by an HVAC system for air handling services and use outside air;

(2) Open to the air; and

(3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally approve a partial enclosure with up to three temporary or fixed walls.

Any areas where seating is incorporated inside a permanent building with ambient air through HVAC is not considered outdoor dining pursuant to this subsection.

(e) Class A licensees licensed for on-premises sales shall provide food, which may be pre-packaged food not requiring kitchen preparation, or a meal along with sealed wine in the original container or a sealed wine growler sales and service as set forth in this section and in §60-8-3 of this code, to a patron who is in-person or in-vehicle while picking up food and sealed wine in

the original containers or sealed wine growlers ordered-to-go, subject to verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

(f) West Virginia farm wineries possessing a Class A license may serve and sell wine by the glass or by the bottle in accordance with §60-4-3b and §60-8-32a of this code.

## **ARTICLE 8A. MANUFACTURE AND SALE OF HARD CIDER.**

### **§60-8A-5. Winery or farm winery licensee's authority to manufacture, sell, and provide ~~complimentary~~ samples; growler sales; advertisements; taxes; fees; rulemaking.**

(a) Sales of hard cider. — A licensed winery or farm winery with its principal place of business or manufacturing facility located in the State of West Virginia may offer hard cider manufactured by the licensed winery or farm winery for retail sale to customers from the winery's or farm winery's licensed premises for consumption ~~off of the licensed~~ off-premises only in approved and registered hard cider kegs, bottles, or cans, or also sealed wine growlers for personal consumption and not for resale. A licensed winery or farm winery may not sell, give, or furnish hard cider for consumption on the premises of the principal place of business or manufacturing facility located in the State of West Virginia, except for the limited purpose of ~~complimentary~~ samples as permitted in subsection (b) of this section. "Wine Growler" has the meaning set forth in §60-8-6c(g) of this code. Customers may consume hard cider on-premises when an operator of a winery or farm winery is licensed as a private wine restaurant or a private manufacturer club.

(b) ~~Complimentary~~ Samples. — A licensed winery or farm winery with its principal place of business or manufacturing facility located in the State of West Virginia may offer ~~complimentary~~ samples of hard cider manufactured at the winery's or farm winery's principal place of business or manufacturing facility located in the State of West Virginia. The ~~complimentary~~ samples may be no greater than ~~two~~ three fluid ounces per sample

per patron, and a sampling shall not exceed six complimentary ~~two~~ three fluid ounce samples per patron per day. A licensed winery or farm winery providing ~~complimentary~~ samples shall provide ~~complimentary~~ food, which may be pre-packaged food not requiring kitchen preparation, items to the patron consuming the ~~complimentary~~ samples; and prior to any sampling, verify, using proper identification, that the patron sampling is 21 years of age or older and that the patron is not noticeably or visibly intoxicated. The winery or farm winery is subject to the hours of operation set forth in §60-8-34 of this code.

(c) Retail sales. — Every licensed winery or farm winery under this section shall comply with all the provisions applicable to wine retailers when conducting sales of hard cider and is subject to all applicable requirements and penalties. A winery or a farm winery holding a private wine restaurant license or private manufacturer club license may offer for sale and service hard cider by the drink or glass or cider by the bottle when consumed by the glass on the property of the winery or farm winery. In the interest of promoting tourism throughout the state, every licensed winery or farm winery manufacturing cider in this state is authorized, with a limited off-site retail privilege at private fair and festivals, for off-premises consumption sales of ~~only~~ the winery or farm winery's sealed hard cider. At least five days prior to an approved private fair and festival, an authorized winery or farm winery shall provide a copy of a written agreement to sell only hard cider manufactured by the licensed winery or farm winery at the private fair and festival's licensed premises. If approved, an authorized winery or farm winery may conduct on-premises and off-premises consumption sales of their hard cider from a designated booth at the private fair and festival as set forth in §60-7-8a of this code. All authorized and approved wineries and farm wineries' on-premises and off-premises consumption sales of hard cider shall comply with all retail requirements in §60-8-1 *et seq.* of this code and §60-8A-1 *et seq.* of this code, and specifically with respect to all markups, taxes, and fees. Additionally, an authorized winery or farm winery may provide, sell, and serve hard cider samples in the amounts set forth in subsection(b) of this section, hard cider by the glass or drink, or hard cider by the bottle when consumed by the glass of its hard

cider for on-premises consumption to patrons who are 21 years of age and older and who are not intoxicated.

(d) Payment of taxes and fees. — A licensed winery or farm winery under this section shall pay all taxes and fees required of licensed wine retailers, in addition to any other taxes and fees required, and meet applicable licensing provisions as required by law and by rule of the commissioner.

(e) Advertising. — A licensed winery or farm winery may advertise a particular brand or brands of hard cider produced by the licensed winery or farm winery and the price of the hard cider subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance or target minors.

(f) Growler requirements. — A licensed winery or farm winery, if offering wine growler filling services, shall meet the filling, labeling, sanitation, and all other wine growler requirements in §60-8-6c of this code.

(g) Fee. — There is no additional fee for a licensed winery or farm winery authorized under §60-8-6c of this code, to sell wine growlers, if a winery or farm winery only desires to sell hard cider in the wine growler, and no other wine, then the annual non-prorated and nonrefundable license fee is \$50.

At the request of Senator Trump, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5294) was advanced to third reading with the Judiciary committee amendment pending and the right reserved to consider other amendments to the bill on that reading.

**Eng. Com. Sub. for House Bill 5326**, Relating to prohibition of unfair real estate service agreements.

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

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



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

**ARTICLE 38B. UNFAIR REAL ESTATE SERVICES AGREEMENTS ACT.**

**§30-38B-1. Short title.**

This article shall be known and may be cited as the "Unfair Real Estate Services Agreements Act".

**§30-38B-2. Definitions.**

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Consumer" means a person who is the recipient or anticipated recipient of any real estate service.

"Person" means any individual, corporation, corporate fiduciary, partnership, limited partnership, limited liability company, joint venture or association as defined by §30-40-4 of this code.

"Real estate service" means an act or acts requiring a real estate license in accordance with §30-40-3 of this code.

"Real estate service agreement" means a contract under which a real estate service provider agrees to provide any real estate service to a consumer.

"Real estate service provider" means any person providing or who is anticipated to provide real estate services to a consumer pursuant to a real estate service agreement.

"Recording" means presenting a document to a county recorder of deeds for official placement in the public land records.

"Residential real estate" means any interest in real property located within the state of West Virginia that consists of not less than one nor more than four residential dwelling units.

"Unfair Real Estate Service Agreement" means any real estate service agreement that:

(1) Purports to run with the land or to be binding on future owners of interests in the real property; or

(2) Purports to create or allow a lien, encumbrance or other security interest in the property; or

(3) Allows for the contract to be assigned without timely notification to the owner of the property; or

(4) Creates a listing agreement for a residential property that lasts for more than 365 days from the listing date.

**§30-38B-3. Enforceability.**

Any unfair real estate service agreement entered after the effective date of this Act is void and unenforceable as a matter of law.

**§30-38B-4. Deceptive act.**

If a person enters into an unfair real estate service agreement with a consumer that agreement shall *per se* be deemed a deceptive act under §46A-6-104 of this code.

**§30-38B-5. Recording prohibited; notice.**

(a) No person shall record or cause to be recorded an unfair real estate service agreement or notice or memorandum thereof in this state.

(b) If an unfair real estate service agreement is recorded in this state, it shall not provide actual or constructive notice against an otherwise bona fide purchaser or creditor.

**§30-38B-6. Petition to circuit court; recording of court order; costs and attorney's fees.**

If an unfair real estate service agreement or a notice or memorandum thereof is recorded in this state, any party with an

interest in the real property that is the subject of that agreement may petition the circuit court, in the county where the recording exists, for a court order declaring the agreement unenforceable. This court order shall be recorded in the office of the county clerk and state that the agreement is unenforceable. Any person that files a petition pursuant to this subsection shall be entitled to reasonable attorney's fees and costs related to the petition. No provision of this section shall preclude an action for slander of title, and an action for slander of title and an action under this article may be brought in the same action.

### **§30-38B-7. Right of recovery.**

(a) Any consumer with an interest in real property that is the subject of an unfair real estate service agreement, whether or not any lien or other notice is filed against the property in the office of the county clerk, may bring a civil action against the real estate service provider for violations of this article and the court may award any of the following:

(1) Such preliminary and other equitable or declaratory relief as may be appropriate;

(2) An order that the consumer is not required to repay or reimburse any moneys paid to the consumer by the real estate service provider;

(3) Actual damages suffered by the consumer, with a minimum amount of \$5,000, unless the consumer is 60 years or older, in which case the minimum damages shall be \$15,000.

(4) Reasonable attorneys' fees and other litigation costs reasonably incurred.

(b) This section does not replace or supersede any other remedy at law or equity that the consumer may have.

### **§30-38B-8. Relationship to other laws.**

Nothing in this law shall alter or amend any part of §30-40-1 et seq. of this code.

The bill (Eng. Com. Sub. for H. B. 5326), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 5432**, To move the essential functions of the Information Services and Communications Division into the Office of Technology.

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

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

**Eng. House Bill 5520**, Relating to juvenile competency.

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

At the request of Senator Takubo, 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 5662**, Relating to adding "person in a position of trust" to certain crimes.

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

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

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

#### **ARTICLE 8D. CHILD ABUSE.**

##### **§61-8D-1. Definitions.**

In this article, unless a different meaning is plainly required:

(1) "Abuse" means the infliction upon a minor of physical injury by other than accidental means.

(2) "Child" means any person under eighteen years of age not otherwise emancipated by law.

(3) "Controlled substance" means controlled substance as that term is defined in ~~subsection (d), section one hundred one, article one, chapter sixty a of this code~~ §60A-1-101(d) of this code.

(4) "Custodian" means a person over the age of ~~fourteen~~ 14 years who has or shares actual physical possession or care and custody of a child on a full-time or temporary basis, regardless of whether ~~such~~ that person has been granted custody of the child by any contract, agreement, or legal proceeding. "Custodian" shall also include, but not be limited to, the spouse of a parent, guardian or custodian, or a person cohabiting with a parent, guardian or custodian in the relationship of husband and wife, where ~~such~~ the spouse or other person shares actual physical possession or care and custody of a child with the parent, guardian or custodian.

(5) "Guardian" means a person who has care and custody of a child as the result of any contract, agreement or legal proceeding.

(6) "Gross neglect" means reckless or intentional conduct, behavior, or inaction by a parent, guardian or custodian, or person in a position of trust in relation to a child, that evidences a clear disregard for a minor child's health, safety, or welfare.

(7) "Neglect" means the unreasonable failure by a parent, guardian or custodian, or person in a position of trust in relation to a child, ~~of a minor child~~ to exercise a minimum degree of care to assure the minor child's physical safety or health. For purposes of this article, the following do not constitute "neglect" by a parent, guardian or custodian, or person in a position of trust in relation to a child:

(A) Permitting a minor child to participate in athletic activities or other similar activities that if done properly are not inherently dangerous, regardless of whether that participation creates a risk of bodily injury;

(B) Exercising discretion in choosing a lawful method of educating a minor child; or

(C) Exercising discretion in making decisions regarding the nutrition and medical care provided to a minor child based upon religious conviction or reasonable personal belief.

(8) "Parent" means the biological father or mother of a child, or the adoptive mother or father of a child.

(9) "Sexual contact" means sexual contact as that term is defined in ~~section one, article eight b, chapter sixty one of this code~~ §61-8B-1 of this code.

(10) "Sexual exploitation" means an act whereby:

(A) A parent, custodian, guardian or other person in a position of trust to a child, whether for financial gain or not, persuades, induces, entices or coerces the child to engage in sexually explicit conduct as that term is defined in ~~section one, article eight c, chapter sixty one of this code~~ §61-8C-1 of this code; or

(B) A parent, guardian, custodian or other person in a position of trust in relation to a child persuades, induces, entices, or coerces the child to display his or her sex organs for the sexual gratification of the parent, guardian, custodian, person in a position of trust or a third person, or to display his or her sex organs under circumstances in which the parent, guardian, custodian or other person in a position of trust knows ~~such~~ the display is likely to be observed by others who would be affronted or alarmed.

(11) "Sexual intercourse" means sexual intercourse as that term is defined in ~~section one, article eight b, chapter sixty one of this code~~ §61-8B-1 of this code.

(12) "Sexual intrusion" means sexual intrusion as that term is defined in ~~section one, article eight b, chapter sixty one of this code~~ §61-8B-1 of this code.

(13) A "person in a position of trust in relation to a child" refers to any person who, under law or agreement, is acting in the place

of a parent and charged with any of a parent's rights, duties, or responsibilities concerning a child or someone responsible for the general supervision of a child's welfare, or any person who by virtue of ~~their~~ his or her occupation or position is charged with any duty or responsibility for the health, education, welfare, or supervision of the child.

**61-8D-2. Murder of a child by a parent, guardian or custodian or other person, or person in a position of trust in relation to a child, by refusal or failure to supply necessities, or by delivery, administration or ingestion of a controlled substance; penalties.**

(a) If any parent, guardian or custodian, or person in a position of trust in relation to a child, shall maliciously and intentionally cause the death of a child under his or her care, custody or control by his or her failure or refusal to supply ~~such~~ the child with necessary food, clothing, shelter, or medical care, then ~~such~~ the parent, guardian or custodian, or person in a position of trust in relation to a child shall be is guilty of murder in the first degree.

(b) If any parent, guardian or custodian, or person in a position of trust in relation to a child, shall cause the death of a child under his or her care, custody, or control by knowingly allowing any other person to maliciously and intentionally fail or refuse to supply ~~such~~ the child with necessary food, clothing, shelter, or medical care, then ~~such~~ the other person and ~~such~~ the parent, guardian or custodian, or person in a position of trust in relation to a child ~~shall~~ are each be guilty of murder in the first degree.

(c) The penalty for offenses defined by this section shall be that which is prescribed for murder in the first degree under the provisions of ~~section two article, two of this chapter~~ §61-2-2 of this code.

(d) The provisions of this section shall not apply to any parent, guardian or custodian, or person in a position of trust in relation to a child who fails or refuses, or allows another person to fail or refuse, to supply a child under the care, custody, or control of such parent, guardian or custodian, or person in a position of trust in

relation to a child with necessary medical care, when such medical care conflicts with the tenets and practices of a recognized religious denomination or order of which ~~such~~ the parent, guardian or custodian, or person in a position of trust in relation to a child is an adherent or member: *Provided, That the provisions of this subsection do not apply to a person in a position of trust in relation to a child who, by virtue of his or her occupation or position, is charged with any duty or responsibility for the health, education, welfare, or supervision of a child.*

**§61-8D-2a. Death of a child by a parent, guardian or custodian or other person or person in a position of trust in relation to a child, by child abuse; criminal penalties.**

(a) If any parent, guardian or custodian, or person in a position of trust in relation to a child maliciously and intentionally inflicts upon a child under his or her care, custody, or control substantial physical pain, illness, or any impairment of physical condition by other than accidental means, thereby causing the death of ~~such~~ the child, then ~~such~~ the parent, guardian or custodian, or person in a position of trust in relation to a child is guilty of a felony.

(b) If any parent, guardian or custodian, or person in a position of trust in relation to a child knowingly allows any other person to maliciously and intentionally inflict upon a child under the care, custody or control of such parent, guardian or custodian, or person in a position of trust in relation to a child substantial physical pain, illness or any impairment of physical condition by other than accidental means, which thereby causes the death of such child, then such other person and such parent, guardian or custodian, or person in a position of trust in relation to a child are each guilty of a felony.

(c) Any person convicted of a felony described in subsection (a) or (b) of this section shall be imprisoned in a state correctional facility for a period of ~~fifteen~~ 15 years to life. A person imprisoned pursuant to the provisions of this section is not eligible for parole prior to having served a minimum of ~~fifteen~~ 15 years of his or her sentence.



(d) The provisions of this section are not applicable to any parent, guardian or custodian, ~~or other person~~ who, without malice, fails or refuses, or allows another person to, without malice, fail or refuse, to supply a child under the care, custody or control of ~~such~~ the parent, guardian or custodian with necessary medical care, when such medical care conflicts with the tenets and practices of a recognized religious denomination or order of which ~~such~~ the parent, guardian or custodian is an adherent or member. The provisions of this section are not applicable to any health care provider who fails or refuses, or allows another person to fail or refuse, to supply a child with necessary medical care when ~~such~~ the medical care conflicts with the tenets and practices of a recognized religious denomination or order of which the parent, guardian or custodian of the child is an adherent or member, or where such failure or refusal is pursuant to a properly executed do not resuscitate form.

**§61-8D-3. Child abuse resulting in injury; child abuse creating risk of injury; criminal penalties.**

(a) If any parent, guardian or custodian, or person in a position of trust in relation to a child shall abuse a child and by ~~such~~ the abuse cause ~~such~~ the child bodily injury as ~~such~~ the term is defined in ~~section one, article eight b of this chapter~~ §61-8B-1 of this code, then such parent, guardian or custodian, or person in a position of trust in relation to a child ~~shall be~~ is guilty of a felony and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 and imprisoned in a state correctional facility for not less than one nor more than five years, or in the discretion of the court, be confined in jail for not more than one year.

(b) If any parent, guardian or custodian, or person in a position of trust in relation to a child shall abuse a child and by ~~such~~ the abuse cause ~~said~~ the child serious bodily injury as ~~such~~ that term is defined in ~~section one, article eight b of this chapter~~ §61-8B-1 of this code, then such parent, guardian or custodian shall be guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 and committed to the custody of the Division of Corrections not less than two nor more than 10 years.

(c) Any parent, guardian or custodian, or person in a position of trust in relation to a child who abuses a child and by the abuse creates a substantial risk of death or serious bodily injury, as serious bodily injury is defined in ~~section one, article eight b of this chapter~~ §61-8B-1 of this code, to the child is guilty of a felony and, upon conviction thereof, shall be fined not more than \$3,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both.

(d)(1) If a parent, guardian or custodian, or person in a position of trust in relation to a child who has not previously been convicted under this section, ~~section four of this article~~ §61-8D-4 of this code, or a law of another state or the federal government with the same essential elements abuses a child and by the abuse creates a substantial risk of bodily injury, as bodily injury is defined in §61-8B-1, to the child is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 or confined in jail not more than six months, or both.

(2) For a second offense under this subsection or for a person with one prior conviction under this section, ~~section four of this article~~ §61-8D-4 of this code, or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian, or person in a position of trust in relation to a child is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,500 and confined in jail not less than 30 days nor more than one year, or both.

(3) For a third or subsequent offense under this subsection or for a person with two or more prior convictions under this section, ~~section four of this article~~ §61-8D-4 of this code, or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian, or person in a position of trust in relation to a child is guilty of a felony and, upon conviction thereof, shall be fined not more than \$3,000 and imprisoned in a state correctional facility not less than one year nor more than three years, or both.

(e) Any person convicted of a misdemeanor offense under this section:

(1) May be required to complete parenting classes, substance abuse counseling, anger management counseling, or other appropriate services, or any combination thereof, as determined by ~~Department of Health and Human Resources, Bureau for Children and Families~~ Department of Human Services through its services assessment evaluation, which shall be submitted to the court of conviction upon written request;

(2) Shall not be required to register pursuant to ~~article thirteen, chapter fifteen of this code~~ §15-13-1, et seq. of this code; and

(3) Shall not, solely by virtue of the conviction, have ~~their~~ his or her custody, visitation, or parental rights automatically restricted.

(f) Nothing in this section shall preclude a parent, guardian or custodian from providing reasonable discipline to a child.

**§61-8D-3a. Female genital mutilation; penalties; definitions.**

(a) Except as otherwise provided in subsection (b) of this section, any person who circumcises, excises or infibulates, in whole or in part, the labia majora, labia minora, or clitoris of a female under the age of ~~eighteen~~ 18, or any parent, guardian or custodian, or person in a position of trust in relation to a child, of a female under the age of 18 who allows the circumcision, excision or infibulation, in whole or in part, of ~~such~~ the female's labia majora, labia minora, or clitoris, shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more than 10 years and fined not less than \$1,000 nor more than \$5,000.

(b) A surgical procedure is not a violation of this section if the procedure:

(1) Is necessary to preserve the health of the child on whom it is performed and is performed by a licensed medical professional authorized to practice medicine in this state; or

(2) The procedure is performed on a child who is in labor or has just given birth and is performed for legitimate medical

purposes connected with that labor or birth by a licensed medical professional authorized to practice medicine in this state.

(c) A person's belief that the conduct described in subsection (a) of this section: ~~(i)~~ (1) Is required as a matter of custom, ritual or standard practice; or ~~(ii)~~ (2) was consented to by the female on which the circumcision, excision, or infibulation was performed shall not constitute a defense to criminal prosecution under subsection (a) of this section.

**§61-8D-4. Child neglect resulting in injury; child neglect creating risk of injury; criminal penalties.**

(a) If a parent, guardian or custodian, or person in a position of trust in relation to a child neglects a child and by ~~such~~ the neglect causes the child bodily injury, as bodily injury is defined in ~~section one, article eight b of this chapter~~ §61-8B-1 of this code, then the parent, guardian or custodian, or person in a position of trust in relation to a child is guilty of a felony and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 dollars or imprisoned in a state correctional facility for not less than one nor more than three years, or in the discretion of the court, be confined in jail for not more than one year, or both.

(b) If a parent, guardian or custodian, or person in a position of trust in relation to a child neglects a child and by such neglect ~~cause~~ causes the child serious bodily injury, as serious bodily injury is defined in ~~section one, article eight b of this chapter~~ §61-8B-1 of this code, then the parent, guardian or custodian, or person in a position of trust in relation to a child is guilty of a felony and, upon conviction thereof, shall be fined not less than \$300 nor more than \$3,000 dollars or imprisoned in a state correctional facility for not less than one nor more than ~~ten~~ 10 years, or both.

(c) If a parent, guardian or custodian, or person in a position of trust in relation to a child grossly neglects a child and by that gross neglect creates a substantial risk of death or serious bodily injury, as serious bodily injury is defined in ~~section one, article eight b of this chapter~~ §61-8B-1 of this code, of the child then the parent, guardian or custodian, or person in a position of trust in relation to

a child is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$3,000 dollars or imprisoned in a state correctional facility for not less than one nor more than five years, or both.

(d)(1) If a parent, guardian or custodian, or person in a position of trust in relation to a child who has not been previously convicted under this section, ~~section three of this article §61-8D-3 of this code~~, or a law of another state or the federal government with the same essential elements neglects a child and by that neglect creates a substantial risk of bodily injury, as defined in ~~section one, article eight b of this chapter §61-8B-1 of this code~~, to the child, then the parent, guardian or custodian, or person in a position of trust in relation to a child is guilty of a misdemeanor and, upon conviction thereof, for a first offense, shall be fined not less than \$100 nor more than \$1,000 or confined in jail not more than six months, or both fined and confined.

(2) For a second offense under this subsection or for a person with one prior conviction under ~~section three of this article §61-8D-3 of this code~~ or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian, or person in a position of trust in relation to a child is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 and confined in jail not less than 30 days nor more than one year, or both.

(3) For a third or subsequent offense under this subsection or for a person with two or more prior convictions under this section, ~~section three of this article §61-8D-3 of this code~~, or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian, or person in a position of trust in relation to a child is guilty of a felony and, upon conviction thereof, shall be fined not more than \$2,000 and imprisoned in a state correctional facility not less than one year nor more than three years, or both fined and imprisoned.

(e) The provisions of this section shall not apply if the neglect by the parent, guardian or custodian or person in a position of trust in relation to a child is due primarily to a lack of financial means

on the part of ~~such~~ the parent, guardian or custodian or person in a position of trust in relation to a child.

(f) Any person convicted of a misdemeanor offense under this section:

(1) May be required to complete parenting classes, substance abuse counseling, anger management counseling, or other appropriate services, or any combination thereof, as determined by ~~Department of Health and Human Resources, Bureau for Children and Families~~ Department of Human Services through its services assessment evaluation, which shall be submitted to the court of conviction upon written request;

(2) Shall not be required to register pursuant to the requirements of ~~article thirteen, chapter fifteen of this code~~ §15-13-1 of this code; and

(3) Shall not, solely by virtue of the conviction, have ~~their~~ his or her custody, visitation or parental rights automatically restricted.

**§61-8D-4a. Child neglect resulting in death; criminal penalties.**

(a) If any parent, guardian or custodian, or person in a position of trust in relation to a child shall neglect a child under his or her care, custody or control and by such neglect cause the death of said child, then such parent, guardian or custodian, or person in a position of trust in relation to a child shall be guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 or committed to the custody of the Division of Corrections for not less than three nor more than 15 years, or both ~~such fine and imprisonment~~ fined and imprisoned.

(b) No child who in lieu of medical treatment was under treatment solely by spiritual means through prayer in accordance with a recognized method of religious healing with a reasonable proven record of success shall, for that reason alone, be considered to have been neglected within the provisions of this section. A method of religious healing shall be presumed to be a recognized method of religious healing if fees and expenses incurred in connection with ~~such~~ the treatment are permitted to be deducted

from taxable income as "medical expenses" pursuant to regulations or rules promulgated by the United States Internal Revenue Service; Provided, That the provisions of this subsection do not apply to a person in a position of trust in relation to a child who, by virtue of his or her occupation or position, is charged with any duty or responsibility for the health, education, welfare, or supervision of a child.

(c) A child whose parent, guardian or legal custodian, or person in a position of trust in relation to that child has inhibited or interfered with the provision of medical treatment in accordance with a court order may be considered to have been neglected for the purposes of this section.

The bill (Eng. Com. Sub. for H. B. 5662), as amended, was then ordered to third reading.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Takubo, at 12:33 p.m., the Senate recessed until 4 p.m. today.

The Senate reconvened at 4:51 p.m. and, at the request of Senator Takubo, unanimous consent being granted, 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, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Senate Bill 164**, Relating generally to trespassing.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

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

## **ARTICLE 3B. TRESPASS.**

### **§61-3B-2. Trespass in structure or conveyance.**

(a) Any person who knowingly enters in, upon, or under a structure or conveyance without being authorized, licensed, or invited, or having been authorized, licensed, or invited is requested to depart by the owner, tenant, or the agent of the owner or tenant, and refuses to do so, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$100.

(b) Notwithstanding the provisions of subsection (a) of this section, any person who, without permission, knowingly and willfully enters a structure which has a clear posting that the structure has been condemned by any municipal or county government as unfit for human habitation or use, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100, or confined in jail not more than six months, or both fined and confined: *Provided*, That for any first violation of this subsection offense of trespass on condemned property, a court may substitute community service or pretrial diversion in lieu of a fine or confinement for trespassing on condemned property.

(c) If the offender is armed with a firearm or other dangerous weapon while in the structure or conveyance, with the intent to do bodily injury to a human being in the structure or conveyance at the time the offender knowingly trespasses, the offender, notwithstanding the provisions of §61-7-1 of this code, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$100 ~~nor more than \$500~~, or be confined in jail for not more than one year, or both fined and confined.

### **§61-3B-3. Trespass on property other than structure or conveyance.**

(a) It is an unlawful trespass for any person to knowingly, and without being authorized, licensed, or invited, to enter or remain on any property, other than a structure or conveyance, as to which



notice against entering or remaining is either given by actual communication to such person or by posting, fencing, or cultivation.

(b) *First offense conviction.* — Upon a first trespassing conviction pursuant to subsection (a) of this section, the person is guilty of a misdemeanor and shall be fined not less than \$100 nor more than \$500.

(c) *Second offense conviction.* — Upon a second trespassing conviction pursuant to subsection (a) of this section, the person is guilty of a misdemeanor and shall be fined not less than \$500 nor more than \$1,000.

(d) *Third offense conviction.* — Upon a third and subsequent trespassing conviction pursuant to subsection (a) of this section, the person is guilty of a misdemeanor and shall be fined not less than \$1,000 nor more than \$1,500.

(e) If the offender defies an order to leave, personally communicated to him or her by the owner, tenant, or agent of ~~such~~ the owner or tenant, or if the offender opens any door, fence, or gate, and thereby exposes animals, crops, or other property to waste, destruction, or freedom, or causes any damage to property by such trespassing on property other than a structure or conveyance, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500, confined in jail for not more than six months, or both fined and confined.

(f) If the offender is armed with a firearm or other dangerous weapon with the unlawful and felonious intent to do bodily injury to a human being during his or her commission of the offense of trespass on property other than a structure or conveyance, ~~such~~ the offender, notwithstanding §61-7-1 of this code, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months, fined not ~~more~~ less than \$100, or both confined and fined.

~~(g) Notwithstanding and in addition to any other penalties provided by law, any person who performs or causes damage to property in the course of a willful trespass shall be liable to the property owner in the amount of twice the amount of such damage. However, this article shall not apply in a labor dispute~~

(g) Nothing in this section shall be construed to prevent lawful assembly and petition for the lawful redress of grievances, during any dispute, including, but not limited to, activities protected by the West Virginia Constitution, or the United States Constitution, or any statute of this state or the United States.

### **§61-3B-6. Mine trespass; penalties.**

(a) A person who willfully enters an underground coal mine, whether active workings, inactive workings, or abandoned workings, without permission, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility not less than one year and nor more than 10 years and shall be fined not less than \$5,000 nor more than \$10,000: *Provided*, That for any conviction pursuant to this subsection, any inactive or abandoned underground workings must be either: (1) Sealed; or (2) clearly identified by signage at some conspicuous place near the entrance of the mine that includes a notice that the unauthorized entry into the mine is a felony criminal offense.

(b) A person who willfully enters a surface coal mine, whether active workings, inactive workings, or abandoned workings, without permission, and with the intent to commit a felony or any larceny, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than one week and not more than one month and shall be fined not less than \$1,000 nor more than \$5,000. For a second conviction, pursuant to this subsection, the person shall be guilty of a felony and shall be ~~confined~~ imprisoned in a correctional facility not less than one year and not more than five years and shall be fined not less than \$5,000 nor more than \$10,000. For a third or subsequent conviction, pursuant to this subsection, the person shall be guilty of a felony and shall be imprisoned in a correctional facility not less than five years and not

more than 10 years and shall be fined not less than \$10,000 nor more than \$25,000.

(c) If a person violates subsections (a) or (b) of this section, and during any rescue efforts for ~~any such~~ that person there occurs an injury that causes substantial physical pain, illness, or any impairment of physical condition to any person other than himself or herself, then that person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one week and not more than one year and shall be fined not less than \$1,000 nor more than \$5,000: *Provided*, That ~~such~~ the jail term shall include actual confinement of not less than seven days.

(d) If a person violates subsections (a) or (b) of this section, and during any rescue efforts for ~~any such~~ that person there occurs an injury that creates a substantial risk of death, causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ to any person other than himself or herself, then that person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility for not less than two nor more than 10 years and shall be fined not less than \$5,000 nor more than \$10,000.

(e) If a person violates subsections (a) or (b) of this section, and during any rescue efforts of such person, the death of any other person occurs, then that person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility for not less than three nor more than 15 years and shall be fined not less than \$10,000 nor more than \$25,000.

~~(f) Notwithstanding and in addition to any other penalties provided by law, any person who performs or causes damage to property in the course of a willful trespass in violation of this section is liable to the property owner in the amount of twice the amount of such damage~~

~~(g)~~(f) The terms "mine", "active workings", "inactive workings", and "abandoned workings" have the same meaning ascribed to ~~such terms~~ them as set forth in §22A-1-2 of this code.

~~(h)~~(g) Nothing in this section shall be construed to prevent lawful assembly and petition for the lawful redress of grievances, during any dispute, including, but not limited to, activities protected by the West Virginia Constitution, or the United States Constitution, or any statute of this state or the United States.

**§61-3B-7. Animal or crop facilities trespass; penalties; injunctive relief.**

(a) As used in this section:

(1) "Animal" means poultry, livestock, domestic animals, and captive cervids owned and possessed by persons licensed pursuant to §19-2H-1 *et seq.* of this code. The term does not include an animal used for illegal gaming.

(2) "Animal or crop facility" means a facility that is used in the production, management, sale, or processing of animals or crops. The term includes, but is not limited to:

(A) A building, greenhouse, structure, laboratory, pasture, field, paddock, pond, impoundment, or premises where animals or crops are located;

(B) A managed bee colony;

(C) A livestock market;

(D) A facility used for the preparation of, or processing of, animals, crops, or value-added foods for sale; and

(E) A facility used to carry out any agritourism activity, as that term is defined and used in §19-36-1 *et seq.* of this code.

(3) "Crop" means a shrub, vine, tree, seedling, shoot, slip, or other plant capable of producing food, fiber, medicine, nursery stock, floral products, or aesthetic beauty.

(b) Any person who willfully trespasses on the property of another which constitutes an animal or crop facility with the intent to commit larceny, destroy property, or disrupt the operation of the facility is guilty of willful trespass upon an animal or crop facility.

(c) Any person who conspires with one or more persons to violate subsection (b) of this section and commits an overt act in furtherance thereof is guilty of conspiracy to willfully trespass upon an animal or crop facility.

(d) Any person who violates subsection (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000 or confined in jail not more than 30 days, or both fined and confined.

(e) Notwithstanding the provisions of subsection (d) of this section, any person convicted of a second or subsequent violation of subsection (b) or a violation of subsection (c) of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$10,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

~~(f) Notwithstanding and in addition to any other penalties provided by law, any person who performs, or causes damage to property in the course of, a willful trespass in violation of this section is liable to the owner or operator of the animal or crop facility in the amount of twice any damage caused~~

~~(g)~~(f) The owner or operator of an animal or crop facility may bring an action for injunctive relief against a person who engages in, or threatens to engage in, conduct that constitutes a violation of this section:

(1) The action may be brought in the circuit court of any county in which any part of the conduct or threatened conduct occurs or is threatened to occur.

(2) The circuit court may grant any appropriate injunctive relief to prevent or abate the conduct or threatened conduct, including a temporary restraining order, preliminary injunction, or permanent injunction.

(3) The circuit court may issue injunctive relief without the owner or operator of an animal or crop facility giving security for its issuance.

**§61-3B-8. Liability for damages; deferred judgment; dismissal.**

(a) As applicable to this article, notwithstanding and in addition to any other penalties provided by law, any person who performs or causes damage to property in the course of a willful trespass shall be liable to the property owner in the amount of twice the amount of such damage, including the cost of cleanup.

(b) Notwithstanding any provision of this code to the contrary, a court presiding over a misdemeanor violation of this article may defer entry of the judgment of conviction for a period not to exceed six months and if the damages authorized by subsection (a) of this section are paid within that time period, dismiss the charge.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Senate Bill 164**—A Bill to amend and reenact §61-3B-2, §61-3B-3, §61-3B-6, and §61-3B-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §61-3B-8, all relating generally to trespass; clarifying protected activities relating to trespass on property other than a structure or conveyance; making double damages applicable to all violations of the article including cleanup costs; authorizing courts presiding in cases for misdemeanor violations of the article to defer entry of judgment and dismiss the charges if payment of ordered damages is made within six months after conviction; and creating criminal penalties.

On motion of Senator Takubo, the following amendment to the House of Delegates amendments to the bill (Eng. S. B. 164) was reported by the Clerk and adopted:

On page 1, section 2, line 17, after "\$100" by inserting the words "nor more than \$1,000".

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendments, as amended.

Engrossed Senate Bill 164, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: None.

Absent: Boley, Jeffries, and Maroney—3.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 164) passed with its House of Delegates 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 331**, Eliminating cap on maximum amount of money in county's financial stabilization fund.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

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

## **ARTICLE 6. COUNTY DEPOSITORIES.**

**§7-6-5a. County treasurer authorized to make funds available to state ~~Board of Investments~~ investments; allocation of income.**

Notwithstanding any other provision of this code, when it appears to any of the various fiscal bodies of the county that funds on deposit in its demand deposit account exceed the current requirements or demands, and it further be determined by the county treasurer that the available interest rate offered by an acceptable depository in such treasurer's county be less than the interest rate, net of any administrative fees, ~~referred to in article six, chapter twelve of this code~~, offered it through the state ~~Board of Investments~~ investments, the county treasurer may, with the approval in writing of each fiscal body whose funds are involved, make such funds available ~~to the state Board of Investments for investment in accordance with the provisions of said article six, chapter twelve of the code~~ for investment by the West Virginia Investment Management Board in accordance with the provisions of §12-6-1 et seq. of this code or the West Virginia Board of Treasury Investments in accordance with the provisions of §12-6C-1 et seq. of this code.

Any income earned on such investment shall be allocated by such treasurer to the fiscal body whose funds were made available, such allocation to be made in accordance with the accounting and allocation principles established by the ~~Board of Investments~~ the West Virginia Investment Management Board or the West Virginia Board of Treasury Investments, as applicable.

**ARTICLE 21. COUNTY FINANCIAL STABILIZATION FUND ACT.**

**§7-21-3. Budget stabilization fund; creation; appropriation; ~~maximum~~ investments.**

(a) A county commission may create a financial stabilization fund by a majority vote of the members. The fund may receive appropriations, gifts, grants, and any other funds made available.



(b) The county commission may appropriate a sum to the fund from any surplus in the General Fund at the end of each fiscal year or from any other money available.

~~(c) The amount of money in the fund may not exceed 50 percent of the county's most recent General Fund budget, as originally adopted. When the fund exceeds the 50 percent, the county commission shall transfer the excess to any fund it considers appropriate.~~

(c) The county commission may, in the exercise of its discretion, make the moneys in the fund available for investment by the Board of Treasury Investments or the Investment Management Board in accordance with the provisions of §7-6-5a of this code: *Provided*, That if the amount of money in the fund exceeds 50 percent of the county's most recent General Fund budget, the county shall consider tax reduction measures.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 331**—A Bill to amend and reenact §7-6-5a of the Code of West Virginia, 1931, as amended, and to amend and reenact §7-21-3 of said code, all relating to eliminating the cap on the maximum amount of money a county may keep in its financial stabilization fund and allowing moneys in the fund to be invested with the West Virginia Investment Management Board or the West Virginia Board of Treasury Investments; striking language imposing a cap of 50% of the most recent county general fund budget; and establishing that a county commission may, subject to certain conditions, make moneys available for investment by the Board of Treasury Investments or the Investment Management Board, provided that if the amount of money in the fund exceeds 50 percent of the county's most recent general fund budget, the county shall consider tax reduction measures.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Senate Bill 331, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: None.

Absent: Boley, Jeffries, and Maroney—3.

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. 331) passed with its House of Delegates amended title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: None.

Absent: Boley, Jeffries, and Maroney—3.

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. 331) 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, 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 451**, Directing Prosecuting Attorneys Institute to make training available to certain new prosecuting attorneys.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

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

**ARTICLE 4. PROSECUTING ATTORNEY, REWARDS,  
AND LEGAL ADVICE.**

**§7-4-6. West Virginia Prosecuting Attorneys Institute.**

(a) There is continued the West Virginia Prosecuting Attorneys Institute, a public body whose membership shall consist of the 55 elected county prosecuting attorneys in the state. The Institute shall meet at least once each calendar year and the presence of 28 of the 55 prosecutors at any meeting constitutes a quorum for the conduct of the Institute's business.

(b) There is continued the executive council of the West Virginia Prosecuting Attorneys Institute, which shall consist of seven prosecuting attorneys elected by the membership of the West Virginia Prosecuting Attorneys Institute at its annual meeting and two persons appointed annually by the county commissioner's association of West Virginia. The executive council shall elect one member of the council to serve as chairman of the institute for a term of one year without compensation. The executive council shall serve as the regular executive body of the institute.

(c) There is continued the position of Executive Director of the West Virginia Prosecuting Attorneys Institute to be employed by the executive council of the institute. The executive director of the West Virginia Prosecuting Attorneys Institute shall serve at the will and pleasure of the executive council of the institute. The executive director shall be licensed to practice law in the State of West Virginia and shall devote full time to his or her official duties and may not engage in the private practice of law.

(d) The duties and responsibilities of the institute, as implemented by and through its executive council and its executive director, ~~shall~~ include the following:

(1) The provision for special prosecuting attorneys to pursue a criminal matter, a juvenile delinquency matter, or a matter involving child abuse neglect pursuant to Chapter 49 of this code, or in any matter ~~wherein in which~~ a special prosecutor previously appointed has failed to take any action ~~thereon on the matter~~ within such time as the executive director ~~deems~~ considers unreasonable, not to exceed three terms of court from the date on which the special prosecutor was appointed: *Provided*, That such replacement or original appointment may be any attorney with a license in good standing in this state in any county upon the request of a circuit court judge of that county and upon the approval of the executive council;

(2) The establishment and implementation of general and specialized training programs for prosecuting attorneys, their staffs and, where determined practical by the executive council and executive director, all statutorily authorized law-enforcement or investigative agencies of the state or its political subdivisions;

(3) The establishment of a training program for all newly appointed, newly elected, or newly hired prosecuting attorneys, or assistant prosecuting attorneys, which all newly appointed, newly elected, or newly hired prosecuting attorneys, or assistant prosecuting attorneys, shall be required to complete;

~~(3)~~ (4) The provision of materials for prosecuting attorneys and their staffs, including legal research, technical assistance, and technical and professional publications;

~~(4)~~ (5) The compilation and dissemination of information on behalf of prosecuting attorneys and their staffs on current developments and changes in the law and the administration of criminal justice;

~~(5)~~ (6) The establishment and implementation of uniform reporting procedures for prosecuting attorneys and their professional staffs in order to maintain and to provide accurate and timely data and information relative to criminal prosecutorial matters;

~~(6)~~ (7) The acceptance and expenditure of grants, moneys for reimbursement of expenses, gifts, and acceptance of services from any public or private source;

~~(7)~~ (8) The entering into of agreements and contracts with public or private agencies, groups, organizations, or educational institutions;

~~(8)~~ (9) The identification of experts and other resources for use by prosecutors in criminal matters;

~~(9)~~ (10) The recommendation to the Legislature or the Supreme Court of Appeals of the State of West Virginia on measures required, or procedural rules to be promulgated, to make uniform the processing of juvenile cases in the 55 counties of the state; and

~~(10)~~ (11) The development of a written handbook for prosecutors and their assistants to use which delineates relevant information concerning the elements of various crimes in West Virginia and other information the institute considers appropriate.

(e) Each prosecuting attorney is subject to appointment by the institute to serve as a special prosecuting attorney in any county where the prosecutor for that county or his or her office has been disqualified from participating in a particular criminal case, a juvenile delinquency matter, or a matter involving child abuse

neglect pursuant to Chapter 49 of this code, or in any matter ~~wherein~~ in which a special prosecutor previously appointed has failed to take any action ~~thereon~~ on the matter within such time as the executive director ~~deems~~ considers unreasonable, not to exceed three terms of court from the date on which the special prosecutor was appointed: *Provided*, That such replacement or original appointment may be any attorney with a license in good standing in this state. The circuit judge of any county of this state, who disqualifies the prosecutor or his or her office from participating in a particular criminal case, a juvenile delinquency matter, or a matter involving child abuse or neglect pursuant to chapter 49 of this code in that county, shall seek the appointment by the institute of a special prosecuting attorney to substitute for the disqualified prosecutor. The executive director of the institute shall, upon written request to the institute by any circuit judge as a result of disqualification of the prosecutor or for other good cause shown, and upon approval of the executive council, appoint a prosecuting attorney to serve as a special prosecuting attorney. The special prosecuting attorney appointed shall serve without any further compensation other than that paid to him or her by his or her county, except that he or she is entitled to be reimbursed for his or her legitimate expenses associated with travel, mileage, and room and board from the county to which he or she is appointed as a prosecutor. The county commission in which county he or she is special prosecutor is responsible for all expenses associated with the prosecution of the criminal action. ~~No~~ A person who is serving as a prosecuting attorney or an assistant prosecuting attorney of any county is not required to take an additional oath when appointed to serve as a special prosecuting attorney.

(f) The executive director of the institute shall maintain an appointment list that shall include the names of all 55 prosecuting attorneys and that shall also include the names of any assistant prosecuting attorney who wishes to serve as a special prosecuting attorney upon the same terms and conditions as set forth in this section. The executive director of the institute, with the approval of the executive council, shall appoint special prosecuting attorneys from the appointment list for any particular matter giving due consideration to the proximity of the proposed special

prosecuting attorney's home county to the county requesting a special prosecutor and giving due consideration to the expertise of the special prosecuting attorney.

(g) Each county commission shall pay, on a monthly basis, a special prosecution premium to the Treasurer of the state for the funding of the West Virginia Prosecuting Attorneys Institute. The monthly premiums shall be paid according to the following schedule:

**MONTHLY PREMIUMS**

Assessed Valuation of Property  
of All Classes in the County

Category	Minimum	Maximum	Premium
A	\$1,500,000,000	Unlimited	\$400
B	\$1,000,000,000	\$1,499,999,000	\$375
C	\$ 800,000,000	\$ 999,999,000	\$350
D	\$ 700,000,000	\$ 799,999,000	\$325
E	\$ 600,000,000	\$ 699,999,000	\$300
F	\$ 500,000,000	\$ 599,999,000	\$250
G	\$ 400,000,000	\$ 499,999,000	\$200
H	\$ 300,000,000	\$ 399,999,000	\$150
I	\$ 200,000,000	\$ 299,999,000	\$100
J	-0-	\$ 199,999,000	\$ 50

(h) Upon receipt of a premium, grant, reimbursement or other funding source, excluding federal funds as provided in ~~article two, chapter four~~ §4-2-1 *et seq.* of this code, the Treasurer shall deposit the funds into a special revenue fund to be known as the West Virginia Prosecuting Attorneys Institute Fund. All costs of

operating the West Virginia Prosecuting Attorneys Institute shall be paid from the West Virginia Prosecuting Attorneys Institute Fund upon proper authorization by the executive council or by the executive director of the institute and subject to annual appropriation by the Legislature of the amounts contained within the fund.

(i) The institute shall annually, by the first day of the regular Legislative session, provide the Joint Committee on Government and Finance with a report setting forth the activities of the institute and suggestions for legislative action.

(j) Neither the institute nor its employees acting in their employment capacity shall engage in activities before governmental bodies which advocate positions on issues other than those issues consistent with the duties of the institute set forth in subsection (d) of this section.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 451**—A Bill to amend and reenact §7-4-6 of the Code of West Virginia, 1931, as amended, relating to training of newly appointed, hired or elected prosecuting attorneys and assistant prosecuting attorneys; and directing the Prosecuting Attorneys Institute to conduct the training for all newly appointed, hired and newly elected prosecuting attorneys and assistant prosecuting attorneys; and providing that this training program is mandatory.

On motion of Senator Takubo, the Senate refused to concur in the foregoing House amendments to the bill (Eng. Com. Sub. for S. B. 451) 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, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Senate Bill 529**, Including Salem University in PROMISE Scholarship program.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

On page 1, after the enacting section, by striking out the remainder of the bill and inserting the following:

**§18C-7-3. Definitions.**

(a) General. — For the purposes of this article, terms have the meaning ascribed to them in §18C-1-2 of this code, unless the context in which the term is used clearly requires a different meaning or a specific definition is provided in this section.

(b) Definitions. — (1) "Eligible institution" means:

(A) A state institution of higher education as defined in §18B-1-2 of this code;

(B) ~~Alderson Broaddus University~~, Appalachian Bible College, Bethany College, Davis and Elkins College, the University of Charleston, West Virginia Wesleyan College and Wheeling University, all in West Virginia. Any institution listed in this subdivision ceases to be an eligible institution if it meets either of the following conditions:

(i) It loses regional accreditation; or

(ii) It changes its status as a private, not-for-profit institution;

(C) West Virginia Junior College and Salem University; and

(D) Any other public or private regionally accredited institution in this state approved by the commission.

(2) "Tuition" means the quarter, semester or term charges imposed by an eligible state institution of higher education and, additionally, all mandatory fees required as a condition of enrollment by all students. For the purposes of this article, the following conditions apply:

(A) West Virginia University, Potomac State College and West Virginia University Institute of Technology are considered separate institutions for purposes of determining tuition rates; and

(B) The tuition amount paid by undergraduate health sciences students at West Virginia University is considered to be the same as the amount of tuition paid by all other West Virginia University undergraduate students.

(3) "Enrolled" means either currently enrolled or in the process of enrolling in an eligible institution.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Senate Bill 529, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Boley and Maroney—2.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 529) 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 539**, Creating cold case database.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

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

## **ARTICLE 12. WEST VIRGINIA FUSION CENTER.**

### **§15A-12-9. Cold case database.**

(a) As used in this section:

"CODIS" means the Combined DNA Index System;

"Cold case" means any investigation into a qualifying crime, a missing person, or unidentified human remains where all investigative leads have been exhausted and the crime remains unsolved;

"Database" means the cold case database;

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

"NCIC" means the National Crime Information Center;

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

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

"ViCAP" means the Violent Crime Apprehension Program.

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

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

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

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

(1) The victim's:

(A) Name;

(B) Gender;

(C) Race;

(D) Ethnicity; and

(E) Date of birth;

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

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

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

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

(6) The Medical Examiner case number;

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

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

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

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

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

(12) The investigating agency's phone number;

(13) The agency case number;

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

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

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

(17) The date or approximate date of death;

(18) The cause or manner of death;

(19) The location where the body was found;

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

(21) Whether the following evidence is available:

(A) Fingerprints;

(B) Palm prints;

(C) Latent prints;

(D) Dental records;

(E) Shell casings; or

(F) Other physical evidence;

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

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

(24) A case narrative; and

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

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

(1) Vehicle information;

(2) Aliases;

(3) Associated case addresses;

(4) Associated phone numbers;

(5) Associated names;

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

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

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

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 539**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15A-12-9, relating to requiring the West Virginia Fusion Center to create the cold case database; defining terms; allowing law-enforcement agencies to provide information; explaining the types of cases to be included in the cold case database; explaining the state agency developing the cold case database; delineating the information that must be provided for inclusion in the cold case database for each investigation; and delineating the information that may be provided for inclusion in the cold case database for each investigation if applicable to either the victim of the crime or the suspect in the crime.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Senate Bill 539, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Boley and Maroney—2.

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. 539) 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 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 4756**, Creating a state Alzheimer's plan task force.

On motion of Senator Takubo, 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 1, after the word, "may" by striking the semi-colon inserting a period and striking the remainder of the amendment.

On motion of Senator Takubo, the Senate concurred in the foregoing House of Delegates amendment to the Senate amendments to the bill.

Engrossed Committee Substitute for House Bill 4756, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.



The nays were: None.

Absent: Boley and Maroney—2.

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. 4756) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Boley and Maroney—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. 4756) 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, as amended by the House of Delegates, passage as amended with its Senate amended title, and requested the concurrence of the Senate in the House of Delegates amendment to the Senate amendments, as to

**Eng. House Bill 4860**, Providing that a general education teacher may not be responsible for accommodation logs.

On motion of Senator Takubo, 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:

By striking out the proviso, and inserting in lieu thereof, the following:

*Provided, That the general education teacher shall not be responsible for daily accommodation logs. The general education teacher shall only be responsible for acknowledging, at the end of each grading period, that each accommodation as required by the IEP has been met. All accommodations of the students shall be discussed before placement and it is the responsibility of the special education instructor to monitor progress: Provided further, That parents and guardians may request daily accommodation logs.*

On motion of Senator Takubo, the Senate concurred in the foregoing House of Delegates amendment to the Senate amendments to the bill.

Engrossed House Bill 4860, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: Caputo—1.

Absent: Boley and Maroney—2.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4860) passed with its Senate 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 with its Senate amended title, to take effect from passage, and requested the concurrence of the Senate in the House of Delegates amendments to the Senate amendments, as to

**Eng. Com. Sub. for House Bill 5295**, Authorizing a private outdoor designated area to simultaneously host multiple qualified permit holders.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the Senate amendments to the bill were reported by the Clerk:

On page 9, section 60-7-8g, line 12, after the word "and" by striking out the word "that";

On page 9, section 60-7-8g, line 12, after the word "S4" by striking out the word "license" and inserting in lieu thereof the words "special permit";

On page 9, section 60-7-8g, line 14, after the words "eligible for the" by striking out the word "license" and inserting in lieu thereof the words "special permit";

On page 10, section 60-7-8g, line 21, after the word "annual" by striking out the word "license" and inserting in lieu thereof the words "special permit";

And,

On page 11, section 60-7-8g, line 48, after the word "other" by striking out the words "private club license type" and inserting in lieu thereof the words "applicable license".

On motion of Senator Takubo, the Senate concurred in the foregoing House of Delegates amendments to the Senate amendments to the bill.

Engrossed Committee Substitute for House Bill 5295, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Caputo, Clements, Hamilton, Hunt, Jeffries, Karnes, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Rucker, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—26.

The nays were: Chapman, Deeds, Grady, Martin, Roberts, and Smith—6.

Absent: Boley and Maroney—2.

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. 5295) passed with its Senate amended title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Caputo, Clements, Hamilton, Hunt, Jeffries, Karnes, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Rucker, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—26.

The nays were: Chapman, Deeds, Grady, Martin, Roberts, and Smith—6.

Absent: Boley and Maroney—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. 5295) takes effect from passage.

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

### **Executive Communications**

The Clerk presented the following communication from His Excellency, the Governor, regarding bills approved by him:



*Jim Justice*  
*Governor of West Virginia*

March 4, 2024

The Honorable Lee Cassis, Clerk  
West Virginia Senate  
State Capitol  
Charleston, West Virginia 25305

Dear Mr. Clerk:

Enclosed for filing in your office, pursuant to the provisions of law, is the following bill:

Committee Substitute for Senate Bill No. Four Hundred (400), which was presented to me on February 27, 2024.

You will note that I have approved this bill on March 4, 2024.

Sincerely,

A handwritten signature in blue ink, reading "Jim Justice".

Jim Justice  
Governor

JJ/mh

cc: The Honorable Stephen J. Harrison, Clerk

The Senate again proceeded to the fourth order of business.

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

Your Committee on Finance has had under consideration

**Senate Bill 644**, Supplementing and amending appropriations to Department of Commerce, Division of Forestry.

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

**Com. Sub. for Senate Bill 644** (originating in the Committee on Finance)—A Bill supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Commerce, Division of Forestry, fund 0250, fiscal year 2024, organization 0305, and the Department of Commerce, Geological and Economic Survey, fund 0253, fiscal year 2024, organization 0306, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

**Senate Bill 656**, Supplementing and amending appropriations to DHHR, Division of Human Services.

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

**Com. Sub. for Senate Bill 656** (originating in the Committee on Finance)—A Bill supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2024, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

And,

**Senate Bill 665**, Supplementing and amending appropriations to DHHR, Division of Health.

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

**Com. Sub. for Senate Bill 665** (originating in the Committee on Finance)—A Bill supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Health and Human Resources, Division of Health - Central Office, fund 0407, fiscal year 2024, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

With the recommendation that the three committee substitutes do pass.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bills (Com. Sub. for S. B. 644, 656, and 665) 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 Grady, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

**Eng. House Bill 4305**, Relating to granting in-state resident status to economic development participants.

**Eng. Com. Sub. for House Bill 4709**, Relating to vocational and technical education programs.

And,

**Eng. House Bill 5056**, Relating to substitute service personnel positions.

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 Finance.

Respectfully submitted,

Amy N. Grady,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, Engrossed House Bill 4305 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.

At the request of Senator Tarr, as chair of the Committee on Finance, unanimous consent was granted to dispense with the second committee references of Engrossed Committee Substitute for House Bill 4709 and Engrossed House Bill 5056 contained in the foregoing report from the Committee on Education.

At the request of Senator Takubo, and by unanimous consent, Engrossed Committee Substitute for House Bill 4709 and Engrossed House Bill 5056 were each taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Grady, 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 4313**, Creating the Parents' Bill of Rights.

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,

Amy N. Grady,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4313) 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 the Judiciary.

Senator Clements, 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 4434**, Relating to restrictions on use or sale of motor vehicles based on power source.

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,

Charles H. Clements,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 4434) 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 Clements, 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 4722**, Create a credit against the severance tax to encourage private companies to make infrastructure improvements to highways, roads and bridges in this state.

And has amended same.

And,

**Eng. Com. Sub. for House Bill 5083**, Create mechanism for towing companies in WV to quickly access owner information.

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,

Charles H. Clements,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 4722 and 5083) contained in the preceding report from the Committee on Transportation and Infrastructure were each taken up for immediate consideration, read a first time, ordered to second reading, and, under the original double committee references, were then referred to the Committee on Finance, with amendments from the Committee on Transportation and Infrastructure pending.

Senator Clements, 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 4885**, Relating to blocking roadways.

And,

**Eng. House Bill 5305**, Relating to impaired driving not eligible for deferred adjudication.

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,

Charles H. Clements,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 4885 and Eng. H. B. 5305) contained in the preceding report from the Committee on Transportation and Infrastructure were each taken up for immediate consideration, read a first time, ordered to second reading, and, under the original double committee references, were then referred to the Committee on the Judiciary.

Senator Tarr, 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 4971**, Relating to Critical Materials Manufacturing Tax.

And has amended same.

And,

**Eng. Com. Sub. for House Bill 5024**, Relating to exempting non-grantor trusts administered in this state from the personal income tax.

And has amended same.

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

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 4971 and 5024) 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 Tarr, 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 4986**, Relating to computer science and cybersecurity instruction for adult learners.

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

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4986) 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 Woodrum, 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 5013**, Relating to Timber Management.

And has amended same.

And,

**Eng. House Bill 5694**, Relating to the Firearms Industry Nondiscrimination Act.

And has amended same.

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

Respectfully submitted,

Jack David Woodrum,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 5013 and Eng. H. B. 5694) 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 Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. House Bill 5014**, Supplementing and amending appropriations to West Virginia University General Administration Fund.

And has amended same.

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

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (H. B. 5014) 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 Weld, 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 5065**, Regarding continuing education requirements and compensation of Guardians Ad Litem.

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 W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5065) 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 Azinger, 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 5082**, Exempt those with 25 years holding an insurance license from attaining additional CEUs.

And has amended same.

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

Respectfully submitted,

Michael T. Azinger,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5082) contained in the preceding report from the Committee on Banking and Insurance was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Grady, 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 5137**, Relating to requiring the State Auditor to conduct audits of all county boards of education.

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,

Amy N. Grady,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5137) 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 Government Organization, with amendments from the Committee on Education pending.

Senator Weld, 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 5254**, Relating generally to the creation of mental hygiene regions by the Supreme Court of Appeals.

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 W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5254) 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 Grady, 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 5262**, Relating generally to teacher's bill of rights.

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,

Amy N. Grady,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5262) 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 Clements, 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 5338**, Relating to Safe Harbor for Cybersecurity Programs.

And reports the same back without recommendation as to passage; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Charles H. Clements,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5338) 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.

Senator Clements, 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 5595**, Relating to shortened procedure for road condition claims.

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,

Charles H. Clements,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5595) 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.

Senator Woodrum, 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 5617**, Authorizing the Public Service Commission to promulgate rules for maintenance,

flushing, flow testing, and marking of fire hydrants owned by water utilities.

And,

**Eng. House Bill 5632**, Relating generally to West Virginia Real Estate License Act.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Jack David Woodrum,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 5617 and Eng. H. B. 5632) 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 Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. House Bill 5697**, Relating to public charter schools code provisions.

And has amended same.

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

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 5697) 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 Weld, 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 Joint Resolution 28**, Protection from medically-assisted suicide or euthanasia in West Virginia Amendment.

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 Finance.

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

The resolution, under the original double committee reference, was then referred to the Committee on Finance, with an amendment from the Committee on the Judiciary pending.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senator Grady.

At the request of Senator Grady, unanimous consent being granted, the Senate stood in observance of a moment of silence in recognition of the passing of Brielle Rimmey, a fourth grade student at Point Pleasant Intermediate School.

Thereafter, at the request of Senator Takubo, and by unanimous consent, the remarks by Senator Grady were ordered printed in the Appendix to the Journal.

The Senate proceeded to the thirteenth order of business.

The following communication was reported by the Clerk:

The Senate of West Virginia  
Charleston

LEE CASSIS  
CLERK OF THE SENATE



STATE CAPITOL, ROOM M-211  
1900 KANAWHA BLVD. EAST  
CHARLESTON, WV 25305-0800  
304-357-7800

March 4, 2024

The Honorable Jim Justice, II  
Governor, State of West Virginia  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305

Dear Governor Justice,

The following bill, authenticated by the signature of the Clerk of each House, and signed by the President of the Senate and the Speaker of the House of Delegates, has been examined and found truly enrolled:

**Com. Sub. for S. B. 603, Solid Waste Management Act.**

This bill is presented to you on this day, March 4, 2024.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Lee Cassis".

Lee Cassis  
Clerk of the Senate

C: The Honorable Stephen J. Harrison  
Clerk of the House of Delegates

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were added as co-sponsors to the following resolutions on March 1, 2024:

**Senate Concurrent Resolution 33:** Senator Phillips;

**Senate Resolution 62:** Senator Karnes;

And,

**Senate Resolution 63:** Senators Karnes and Hunt.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Takubo, at 5:28 p.m., the Senate adjourned until tomorrow, Tuesday, March 5, 2024, at 11 a.m.

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## TUESDAY, MARCH 5, 2024

The Senate met at 11:11 a.m.

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

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

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Chandler Swope, a senator from the sixth district.

Pending the reading of the Journal of Monday, March 4, 2024,

At the request of Senator Phillips, 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 574**, Supplemental appropriation to DOT, Division of Highways.

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 696**, Supplementing and amending appropriations to Department of Homeland Security, Division of Emergency Management.

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 700**, Supplementing and amending appropriations to Miscellaneous Boards and Commissions, Hospital Finance Authority.

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 703**, Supplementing and amending appropriations to Department of Homeland Security, WV State Police.

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 707**, Supplementing and amending appropriations to Department of Commerce, Division of Natural Resources.

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 708**, Supplementing and amending appropriations to Department of Agriculture, WV Spay Neuter Assistance Fund.

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 709**, Supplementing and amending appropriations to Department of Arts, Culture and History, National Coal Heritage Area Authority.

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 710**, Supplementing and amending appropriations to State Board of Education, Aid for Exceptional Children.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Senate Bill 782**, Defining deadlines for local permits and extensions for property development or improvement.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Senate Bill 802**, Updating consumer credit and protection laws on certain agricultural vehicles and equipment.

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 4376**, Relating to surgical smoke evacuation.



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 4431**, Permitting the cremation of unidentified remains.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendment to, and the passage as amended, of

**Eng. House Bill 4832**, Relating to state superintendent's reports regarding the finances of school districts.

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, to take effect July 1, 2024, of

**Eng. Com. Sub. for House Bill 5347**, Relating to establishing a program for emergency medical services personnel to become certified paramedics.

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 5549**, Relating to allowing license plates to be obtained from alternative sources when the Division of Corrections and Rehabilitation is unable to produce them.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the adoption as amended, of

**House Concurrent Resolution 21**, Louie Patton Memorial Bridge.

The Senate proceeded to the sixth order of business.

Senator Weld offered the following resolution:

**Senate Resolution 67**—Designating March 6, 2024, as Suicide Prevention Awareness Day at the Legislature.

Which, under the rules, lies over one day.

The Senate proceeded to the seventh order of business.

**Senate Resolution 65**, Recognizing March as American Red Cross month.

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

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

**Senate Resolution 66**, Designating March 5, 2024, as Women's and Girls' Day.

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

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

The Senate proceeded to the eighth order of business.

**Eng. Senate Bill 643**, Supplementing and amending appropriations to Department of Education, School Building Authority.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: Taylor—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. 643) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: Taylor—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. 643) 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 652**, Supplementing and amending appropriations to DHHR, Health Facilities.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 652) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 652) 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 661**, Expiring funds from Lottery Net Profits to General Revenue Surplus.

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: Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: Azinger—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. 661) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: Azinger—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. 661) 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 663**, Supplementing and amending appropriations to Division of Administrative Services, Criminal Justice 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: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 663) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 663) 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 695**, Supplementing and amending appropriations to Energy Assistance, TANF, and Child Care and Development.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 695) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 695) 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 697**, Supplementing and amending appropriations to DHHR, Consolidated Medical Service 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: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 697) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 697) 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 698**, Supplementing and amending appropriations to DHHR, Division of Human Services.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 698) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 698) 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 699**, Supplementing and amending appropriations to DHHR, Child Support Enforcement 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: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 699) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 699) 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 702**, Supplementing and amending appropriations to DHHR, Laboratory Services 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: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 702) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 702) 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 704**, Supplementing and amending appropriations to PSC, 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: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 704) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 704) 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 705**, Supplementing and amending appropriations to PSC.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 705) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 705) 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 868**, Supplementary appropriation to Department of Commerce, Geological and Economic Survey.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 868) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 868) 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 871**, Supplementary appropriation to Department of Veterans' Assistance, Veterans' Facilities.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 871) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 871) 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 876**, Supplementing and amending appropriations to Department of Health and Human Resources, Health Facilities.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 876) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 876) 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 877**, Supplementing and amending appropriations to Higher Education Policy Commission.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 877) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 877) takes effect from passage.

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

**Eng. House Bill 4768**, Relating to increasing the number of out-of-state medical students receiving in-state tuition rates who agree to practice for a specific time within 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: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

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

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

**Eng. Com. Sub. for House Bill 4940**, A squatter cannot be considered a tenant in WV.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 4940) 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 4940**—A Bill to amend the Code of West Virginia, 1931, as amended; by adding thereto a new section, designated as §37-6-31; and to amend said Code by adding thereto a new article, designated as §55-3C-1 and §55-3C-2; all relating to squatting and the remedies therefor; defining a term; clarifying that squatting is a wrongful occupation of property; excluding squatting from the provisions of certain sections of Code; providing that petition and eviction are not appropriate remedies to remove squatters from property; defining terms;

providing that squatters are not tenants; noting that squatting is the same as trespass; and providing that petition and eviction are not appropriate remedies to remove squatters from property.

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

**Eng. House Bill 4984**, Relating to repealing tax credit for employing former employees of Colin Anderson Center.

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 4984 pass?"

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 4984) passed with its title.

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

**Eng. House Bill 4998**, Modifying penalties for third offense shoplifting.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 4998) 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 4998**—A Bill to amend and reenact §61-3A-3 of the Code of West Virginia, 1931, as amended, relating to modifying the penalties for third offense conviction of shoplifting; eliminating requirement for third offense conviction that the person actually serve one year of confinement or in the alternative home confinement; directing courts to order substance abuse evaluation upon a finding that the defendant is a substance abuser; authorizing directed treatment; and specifying method to determine the number of convictions a defendant has.

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

**Eng. House Bill 5002**, To require at least 1 baby changing station to existing and future rest areas in this state for both male and female restrooms.

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

Pending discussion,

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

**Eng. House Bill 5128**, Directing transfer of moneys into fire protection funds at the end of each year.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5128) 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 5294**, Revising state law regulating farm wineries.

On third reading, coming up in regular order, with the Judiciary committee amendment to the bill (*shown in the Senate Journal of yesterday, Monday, March 4, 2024, pages 1526 to 1606, inclusive*) pending, and with the right having been granted on yesterday, Monday, March 4, 2024, for further amendments to be received on third reading, was reported by the Clerk.

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

**Eng. Com. Sub. for House Bill 5326**, Relating to prohibition of unfair real estate service agreements.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5326) 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 5326**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §30-38B-1, §30-38B-2, §30-38B-3, §30-38B-4, §30-38B-5, §30-38B-6, §30-38B-7, and §30-38B-8, all relating to providing for the prohibition of real estate service agreements that are unfair to an owner of residential real estate; prohibiting the recording of such agreements so that the public records will not be clouded by them; providing that recording unfair real estate service agreements is prohibited; and providing for remedies.

*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 5432**, To move the essential functions of the Information Services and Communications Division into the Office of Technology.

On third reading, coming up in regular order, with the right having been granted on yesterday, Monday, March 4, 2024, for amendments to be received on third reading, was read a third time.

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

On page 5, section 4, lines 57-64, by striking out all of paragraph (B) and inserting in lieu thereof a new paragraph (B) to read as follows:

(B) In furtherance of this goal, the Chief Information Officer, in conjunction with the appropriate authority of each executive agency, shall coordinate an effort to ensure that every executive branch agency establishes a written digital document retention and destruction policy to be posted on the agency's website accessible by the public and conducts an annual review of the components of such policy.

Engrossed Committee Substitute for House Bill 5432, as just amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5432) passed.

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

**Eng. Com. Sub. for House Bill 5432**—A Bill to amend and reenact §5A-6-1, §5A-6-3, and §5A-6-4 of the Code of West Virginia, 1931, as amended; and to repeal §5A-7-1, §5A-7-2, §5A-

7-3, §5A-7-4, §5A-7-4a, §5A-7-5, §5A-7-6, §5A-7-7, §5A-7-8, §5A-7-9, §5A-7-10, and §5A-7-11 of said code, all relating to combining Information Services and Communications Division with the West Virginia Office of Technology; transferring funds from the Information Systems and Communications Division to the Office of Technology; renaming special revenue fund and providing purposes for expenditures; closing funds and transferring unexpended balances; authorizing the Chief Information Officer to conduct requisition reviews; authorizing the Chief Information Officer to collect a fee for services provided to other public bodies; providing guidance and services to support data retention and electronic discovery of executive agency data in compliance with agency data retention policies and directives; and requiring the Chief Information Officer to provide mail service for state spending units.

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

**Eng. House Bill 5520**, Relating to juvenile competency.

On third reading, coming up in regular order, with the unreported Judiciary committee amendment pending, and with the right having been granted on yesterday, Monday, March 4, 2024, for further amendments to be received on third reading, was read a third time.

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

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

## **CHAPTER 49. CHILD WELFARE.**

### **ARTICLE 4. COURT ACTIONS.**

#### **§49-4-727. Juvenile competency proceedings.**

(a) Subject to the provisions of subsection (c) of this section, a juvenile's attorney, the prosecuting attorney, or the court may raise the issue of his or her competency to participate in the proceeding any time during proceedings under this article. Once competency



is raised, all proceedings unrelated to competency shall be stayed until the issue of competency is resolved. A juvenile presumed incompetent under subsection (c) of this section shall not be adjudicated unless the presumption of incompetency has been rebutted as provided in subsections (b) and (c) of this section.

(b) In any delinquency proceeding pursuant to this article, a juvenile ~~14~~ 13 years of age or older is presumed to be competent. A juvenile has the burden of proof to rebut this presumption by showing incompetency by a preponderance of the evidence.

(c) In any delinquency proceeding pursuant to this article, if the juvenile is under ~~14~~ 13 years of age, there exists a rebuttable presumption that he or she is incompetent ~~to proceed beyond the stage of the proceeding resolving the issue of competency to be adjudicated,~~ unless judicially determined to be competent pursuant to the procedures set forth in §49-4-728 through §49-4-734 of this code: Provided, That the juvenile's attorney, guardian ad litem, or prosecuting attorney may seek, or the court may order, any pre-adjudicatory procedures or case specific alternatives permitted by the Rules of Juvenile Procedure or any disposition alternatives set forth in §49-4-734 of this code for a juvenile presumed incompetent. The state has the burden of proof to rebut this presumption by showing competency by a preponderance of the evidence.

(d) Regardless of the age of the juvenile, the court may dismiss the petition without ordering a competency evaluation or competency hearing if the prosecuting attorney, the juvenile's attorney, and the guardian ad litem, if previously appointed, agree that there is compelling evidence that the juvenile is not competent to participate in the proceedings: *Provided*, That a court may not order services authorized by §49-4-733 of this code without a competency evaluation.

(e) If and when the issue of a juvenile's competency is raised under subsection (a) of this section or, a rebuttable presumption of incompetency exists under subsection (c) of this section, the court shall appoint a guardian ad litem for the juvenile. The Supreme Court of Appeals is requested to establish a training program for

persons acting as guardians ad litem in juvenile competency matters.

**§49-4-729. Motion for determination of competency, time frames, order for evaluation.**

(a) When the prosecuting attorney, the juvenile's attorney, or the guardian ad litem has reasonable basis to believe that:

(1) A juvenile age ~~14~~ 13 or older is incompetent to proceed in the delinquency action, that party shall file a motion for a determination of competency. The motion shall state any known facts to the movant of in support thereof. If the court raises the issue sua sponte, it shall, by written order, set forth the basis for ordering a competency evaluation.

(2) A juvenile under the age of ~~14~~ 13 is competent to proceed in the delinquency action, the prosecuting attorney shall file a motion for determination of competency. The motion shall state the basis to believe the juvenile is competent to proceed despite the presumption of incompetency due to age and shall state any known facts to the prosecuting attorney in support of the motion. If the court raises the issue sua sponte, the court by written order shall set forth the factual basis supporting the finding that the juvenile is competent to proceed.

(b) Within 10 judicial days after a motion is made, the court shall make one of the following determinations regardless of which presumption applies:

(1) Find that there is compelling evidence that the juvenile is not competent to participate in the proceedings and dismiss the case pursuant to §49-4-727(d) of this code;

(2) Without conducting a hearing, find that there exists a reasonable basis to conduct a competency evaluation; or

(3) Schedule a hearing to determine whether there exists a reasonable basis to conduct a competency evaluation. The hearing shall be held within 30 judicial days. The court's determination

shall be announced no later than three judicial days after the conclusion of the hearing.

(c) If the court determines there is a reasonable basis to order a competency evaluation pursuant to §49-4-731 of this code, or if the prosecutor and the juvenile's attorney agree to the evaluation, the court shall order a competency evaluation. If the court orders a competency evaluation, the court shall order that the competency evaluation be conducted in the least restrictive environment, taking into account the public safety and the best interests of the juvenile.

(1) Notwithstanding any other provisions of this code, the court shall provide in its order that the qualified forensic evaluator shall have access to all relevant confidential and public records related to the juvenile, including competency evaluations and reports conducted in prior delinquent proceedings. The court shall provide to the qualified forensic evaluator a copy of the petition and the names and contact information for the judge, prosecutor, juvenile's attorney, and parents or legal guardians.

(2) Within five judicial days after the court orders an evaluation, the prosecutor shall deliver to the evaluator copies of relevant police reports and other background information relevant to the juvenile that are in the prosecutor's possession.

(3) Within five judicial days after the court orders an evaluation, the juvenile's attorney shall deliver to the qualified forensic evaluator copies of police reports and other records including, but not limited to, educational, medical, psychological, and neurological records that are relevant to the evaluation and that are in the attorney's possession. Upon good cause shown, the court may extend the time frame to deliver these documents noting that time is of the essence.

On motion of Senator Trump, the following amendment to the Judiciary committee amendment to the bill (Eng. H. B. 5520) was reported by the Clerk and adopted:

On pages 1 and 2, by striking out all of section 727 and inserting in lieu thereof a new section 727, to read as follows:

**§49-4-727. Juvenile competency proceedings.**

(a) Subject to the provisions of subsection (c) of this section, a juvenile's attorney, the prosecuting attorney, or the court may raise the issue of his or her competency to participate in the proceeding any time during proceedings under this article. ~~Once competency is raised, all proceedings unrelated to competency shall be stayed until the issue of competency is resolved. A juvenile presumed incompetent under subsection (c) of this section shall not be adjudicated unless the presumption of incompetency has been rebutted as provided in subsections (b) and (c) of this section.~~

(b) In any delinquency proceeding pursuant to this article, a juvenile 14 13 years of age or older is presumed to be competent. If a juvenile's attorney, the prosecuting attorney, or the court raise the issue of competency, all adjudication or disposition proceedings shall be stayed until the issue of competency is resolved: *Provided*, That the juvenile's attorney, guardian ad litem, or prosecuting attorney may seek, or the court may order, any pre-adjudicatory procedures or case specific alternatives permitted by the Rules of Juvenile Procedure while the issue of competency is pending. A juvenile has the burden of proof to rebut this presumption by showing incompetency by a preponderance of the evidence.

(c) In any delinquency proceeding pursuant to this article, if the juvenile is under ~~14~~ 13 years of age, there exists a rebuttable presumption that he or she is incompetent ~~to proceed beyond the stage of the proceeding resolving the issue of competency to be adjudicated~~, unless judicially determined to be competent pursuant to the procedures set forth in §49-4-728 through §49-4-734 of this code: *Provided*, That the juvenile's attorney, guardian ad litem, or prosecuting attorney may seek, or the court may order, any pre-adjudicatory procedures or case specific alternatives permitted by the Rules of Juvenile Procedure or any disposition alternatives set forth in §49-4-734 of this code for a juvenile presumed incompetent. The state has the burden of proof to rebut this presumption by showing competency by a preponderance of the evidence.

(d) Regardless of the age of the juvenile, the court may dismiss the petition without ordering a competency evaluation or competency hearing if the prosecuting attorney, the juvenile's attorney, and the guardian ad litem, if previously appointed, agree that there is compelling evidence that the juvenile is not competent to participate in the proceedings: *Provided*, That a court may not order services authorized by §49-4-733 of this code without a competency evaluation.

(e) If and when the issue of a juvenile's competency is raised under subsection ~~(a)~~ (b) of this section or, a rebuttable presumption of incompetency exists under subsection (c) of this section, the court shall appoint a guardian ad litem for the juvenile. The Supreme Court of Appeals is requested to establish a training program for persons acting as guardians ad litem in juvenile competency matters.

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

Engrossed House Bill 5520, as just amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5520) 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 Trump, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. House Bill 5520**—A Bill to amend and reenact §49-4-727 and §49-4-729 of the Code of West Virginia, 1931, as amended, all relating to juvenile competency; modifying the presumption of competence of a child 13 and over; modifying the presumption of incompetence to age 12 and under; clarifying that the presumption applies to the adjudicatory phase of the case and authorizing pre-adjudicatory procedures; allowing cases where the juvenile is presumed to be competent to proceed up to adjudication but no further if his or her competency is at issue.

*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 5662**, Relating to adding "person in a position of trust" to certain crimes.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5662) 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 5662**—A Bill to amend and reenact §61-8D-1, §61-8D-2, §61-8D-2a, §61-8D-3, §61-8D-3a, §61-8D-4, and §61-8D-4a of the Code of West Virginia, 1931, as amended, all relating to defining terms; providing that a person in position of trust in relation to a child may be held criminally liable for murder of a child by refusal or failure to supply necessities, or by allowing another person to fail or refuse to supply necessities, or the delivery, administration or ingestion of a controlled substance, death of a child by child abuse, child abuse resulting in injury, child abuse creating risk of injury, female genital mutilation, child neglect resulting in injury, child neglect creating risk of injury, child neglect resulting in death; and limiting application of exceptions to criminal penalties in certain circumstances.

*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 644**, Supplementing and amending appropriations to Department of Commerce, Division of Forestry.

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 656**, Supplementing and amending appropriations to DHHR, Division of Human Services.

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 665**, Supplementing and amending appropriations to DHHR, Division of Health.

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 4709**, Relating to vocational and technical education programs.

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

**Eng. Com. Sub. for House Bill 4971**, Relating to Critical Materials Manufacturing Tax.

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

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

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

**ARTICLE 6M. CRITICAL MATERIALS MANUFACTURING  
PROPERTY TAX TREATMENT.**

**§11-6M-1. Property Tax Treatment of Silicon and Silicon Carbide Manufacturing Equipment.**

(a) Notwithstanding any other provision of this code to the contrary, for all assessments made on or after July 1, 2025, until July 1, 2035, the value of silicon and silicon carbide manufacturing equipment, for the purpose of ad valorem property taxation under this chapter, shall be its salvage value, being no more than five percent of its fair market value for which such equipment would sell in place if voluntarily offered for sale.

(b) As used in this article, "silicon and silicon carbide manufacturing equipment" means any personal or real property and fixtures thereon, which are designed, constructed, and installed primarily for the purpose of processing, concentrating, converting, transforming, or manufacturing silicon and silicon carbide into a raw material and directly and ancillary to the product process: *Provided, That the personal or real property and fixtures used are not silicon and silicon carbide manufacturing equipment when it turns raw materials into finished goods through the use of tools or*



machinery, such as, without limitation, machining, casting, molding, or fabricating.

**§11-6M-2. Rulemaking and Administration by Tax Commissioner.**

The State Tax Commissioner shall promulgate rules, including emergency rules, and create forms for the administration of this article. The Tax Commissioner shall have the authority to make inquiries and procure information necessary to establish the salvage valuation for such property. Such rules may provide, among other things, for the identification and certification of silicon and silicon carbide manufacturing equipment that is directly and ancillary to the product process, the determination of whether such equipment is real or personal property, the determination of methods for the allocation or separation of values where the silicon and silicon carbide manufacturing equipment produces non-critical materials as by-products with commercial value, and such other matters as may be related to the administration of this article.

**§11-6M-3. Effective Date and Sunset Date.**

This article shall be effective for all assessments made on and after July 1, 2025, and shall be effective until July 1, 2035.

The bill (Eng. Com. Sub. for H. B. 4971), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4986**, Relating to computer science and cybersecurity instruction for adult learners.

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

**Eng. Com. Sub. for House Bill 5013**, Relating to Timber Management.

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:

## **ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.**

### **§11-1C-2. Definitions.**

For the purposes of this article, the following words shall have the meanings hereafter ascribed to them unless the context clearly indicates otherwise:

(a) "Timberland" means any surface real property except farm woodlots of not less than ten contiguous acres which is primarily in forest and which, in consideration of their size, has sufficient numbers of commercially valuable species of trees to constitute at least forty percent normal stocking of forest trees which are well distributed over the growing site.

(b) "Managed timberland" means surface real property, except farm woodlots, of not less than ten contiguous acres which is devoted primarily to forest use and which, in consideration of their size, has sufficient numbers of commercially valuable species of trees to constitute at least forty percent normal stocking of forest trees which are well distributed over the growing site and that is managed pursuant to a plan provided for in section ten of this article: *Provided*, That ~~none of the following may be considered as managed timberland within the meaning of this article:~~

~~(1) Any tract or parcel of real estate, regardless of its size, which is part of any subdivision that is approved or exempted from approval pursuant to the provisions of a planning ordinance adopted under the provisions of article twenty-four, chapter eight of this code; or~~

~~(2) Any any tract or parcel of real estate, regardless of its size, which is subject to contract, agreement, a deed restriction, deed covenant, or zoning regulation which limits the use of that real estate in a way that precludes the commercial production and harvesting of timber upon it: may not be considered as managed timberland within the meaning of this article: *Provided, however,*~~

That a landowner whose land is subject to, or may become subject to, a conservation or preservation easement may not be prevented from entering into a timberland management plan with the West Virginia Division of Forestry.

(c) "Tax Commissioner," "commissioner" or "tax department" means the State Tax Commissioner or a designee of the State Tax Commissioner.

(d) "Valuation commission" or "commission" means the commission created in section three of this article.

(e) "County board of education" or "board" means the duly elected board of education of each county.

(f) "Farm woodlot" means that portion of a farm in timber but may not include land used primarily for the growing of timber for commercial purposes except that Christmas trees, or nursery stock and woodland products, such as nuts or fruits harvested for human consumption, shall be considered farm products and not timber products.

(g) "Owner" means the person who is possessed of the freehold, whether in fee or for life. A person seized or entitled in fee subject to a mortgage or deed of trust securing a debt or liability is deemed the owner until the mortgagee or trust takes possession, after which such mortgagee or trustee shall be deemed the owner. A person who has an equitable estate of freehold or is a purchaser of a freehold estate who is in possession before transfer of legal title is also deemed the owner.

(h) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

(i) "Paper" means a tax map or document that is not electronic.

The definitions in subdivisions (f) and (g) of this section shall apply to tax years beginning on or after January 1, 2001.

The bill (Eng. Com. Sub. for H. B. 5013), as amended, was then ordered to third reading.

**Eng. House Bill 5014**, Supplementing and amending appropriations to West Virginia University General Administration Fund.

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

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

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

That the total appropriation for the fiscal year ending June 30, 2024, to fund 0105, fiscal year 2024, organization 0100, be supplemented and amended to read as follows:

**TITLE II – APPROPRIATIONS.**

**Section 1. Appropriations from general revenue.**

**EXECUTIVE**

*7. – Governor's Office –*

*Civil Contingent Fund*

(W.V. Code Chapter 5)

Fund 0105 FY 2024 Org 0100

Milton Flood Wall (R) .....	75701	\$	3,500,000
Local Economic			
Development Assistance (R) ...	81900		5,000,000
Hospital Grants and			
Research Programs .....	xxxxx		<u>6,000,000</u>
Total.....		\$	14,500,000

Any unexpended balances remaining in the appropriations for Business and Economic Development Stimulus – Surplus (fund 0105, appropriation 08400), Civil Contingent Fund – Total (fund 0105, appropriation 11400), 2012 Natural Disasters – Surplus (fund 0105, appropriation 13500), Congressional Earmark Maintenance of Effort – Surplus (fund 0105, appropriation 22599), Civil Contingent Fund – Total – Surplus (fund 0105, appropriation 23800), Civil Contingent Fund – Surplus (fund 0105, appropriation 26300), Local Economic Development Assistance – Surplus (fund 0105, appropriation 26600), Business and Economic Development Stimulus (fund 0105, appropriation 58600), Civil Contingent Fund (fund 0105, appropriation 61400), Milton Flood Wall (fund 0105, appropriation 75701), Milton Flood Wall – Surplus (fund 0105, appropriation 75799), Natural Disasters – Surplus (fund 0105, appropriation 76400), Local Economic Development Assistance (fund 0105, appropriation 81900), and Federal Funds/Grant Match – Surplus (fund 0105, appropriation 85700) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

From this fund there may be expended, at the discretion of the Governor, an amount not to exceed \$1,000 as West Virginia's contribution to the Interstate Oil Compact Commission.

The above fund is intended to provide contingency funding for accidental, unanticipated, emergency, or unplanned events which may occur during the fiscal year and is not to be expended for the normal day-to-day operations of the Governor's Office.

From the above appropriation for Hospital Grants and Research Programs (fund 0105, appropriation xxxxx) \$2,000,000 shall be appropriated to the West Virginia University Health System Federal Food and Drug Administration Pilot Program.

The bill (Eng. H. B. 5014), as amended, was then ordered to third reading.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Takubo, at 12:32 p.m., the Senate recessed until 4:30 p.m. today.

The Senate reconvened at 5:51 p.m. and resumed consideration of the remainder of its second reading calendar, the next bill coming up in numerical sequence being

**Eng. Com. Sub. for House Bill 5024**, Relating to exempting non-grantor trusts administered in this state from the personal income tax.

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

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

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

## **ARTICLE 21. PERSONAL INCOME TAX.**

### **§11-21-3. Imposition of tax; persons subject to tax.**

(a) Imposition of tax. — A tax determined in accordance with the rates hereinafter set forth in this article is hereby imposed for each taxable year on the West Virginia taxable income of every individual, estate, electing pass-through entity, and trust: Provided, That, for tax years beginning on or after January 1, 2024, the income of a non-grantor trust administered by a licensed private trust company created pursuant to the provisions of §311-1-1 et seq. of this code shall have no tax imposed upon it by this section.

(b) Partners and partnerships. — A partnership or other pass-through entity as such shall not be subject to tax under this article, unless the partnership or other pass-through entity elects to be subject to the tax levied under this section for a taxable year pursuant to §11-21-3a of this code. Persons carrying on business as partners or owners of a pass-through entity shall be liable for tax under this article only in their separate or individual capacities, unless the partnership or other pass-through entity elects to be

subject to the tax levied under this section for a taxable year pursuant to §11-21-3a of this code. However, partnerships and other pass-through entities are subject to the tax imposed by this article to the extent they elect to pay additional West Virginia income taxes owed that are attributable to final federal partnership audit adjustments under §11-21A-3 of this code.

(c) Associations taxable as corporations. — An association, trust, or other unincorporated organization which is taxable as a corporation for federal income tax purposes, shall not be subject to tax under this article.

(d) Exempt trusts and organizations. — A trust or other unincorporated organization which by reason of its purposes or activities is exempt from federal income tax shall be exempt from tax under this article (regardless of whether subject to federal income tax on unrelated business taxable income).

(e) Cross references. — For definitions of West Virginia taxable income of:

- (1) Resident individual, see §11-21-11 of this code.
- (2) Resident estate or trust, see §11-21-18 of this code.
- (3) Nonresident individual, see §11-21-30 of this code.
- (4) Nonresident estate or trust, see §11-21-38 of this code.

(f) Effective date. — This section as amended in 2023 shall apply to taxable years beginning on and after January 1, 2022.

**§11-21-4g Rate of tax — Taxable years beginning on and after January 1, 2023.**

(a) Rate of tax on individuals (except married individuals filing separate returns), individuals filing joint returns, heads of households, and estates and trusts. — The tax imposed by §11-21-3 of this code on the West Virginia taxable income of every individual (except married individuals filing separate returns); every individual who is a head of a household in the determination

of his or her federal income tax for the taxable year; every husband and wife who file a joint return under this article; every individual who is entitled to file his or her federal income tax return for the taxable year as a surviving spouse; and every estate and trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 *et seq.* of this code) shall be determined in accordance with the following table:

If the West Virginia taxable

income is:	The tax is:
Not over \$10,000	2.36% of the taxable income
Over \$10,000 but not over \$25,000	\$236 plus 3.15% of excess over \$10,000
Over \$25,000 but not over \$40,000	\$708.50 plus 3.54% of excess over \$25,000
Over \$40,000 but not over \$60,000	\$1,239.50 plus 4.72% of excess over \$40,000
Over \$60,000	\$2,183.50 plus 5.12% of excess over \$60,000

(b) Rate of tax on married individuals filing separate returns. — In the case of husband and wife filing separate returns under this article for the taxable year, the tax imposed by §11-21-3 of this code on the West Virginia taxable income of each spouse shall be determined in accordance with the following table:

If the West Virginia taxable

income is:	The tax is:
Not over \$5,000	2.36% of the taxable income
Over \$5,000 but not over \$12,500	\$118 plus 3.15% of excess over \$5,000



Over \$12,500 but not over \$20,000	\$354.25 plus 3.54% of excess over \$12,500
Over \$20,000 but not over \$30,000	\$619.75 plus 4.72% of excess over \$20,000
Over \$30,000	\$1,091.75 plus 5.12% of excess over \$30,000

(c) Rate of tax on non-grantor trusts administered by licensed private trust companies. — In the case of non-grantor trusts administered by licensed private trust companies created pursuant to §31I-1-1 *et seq.* of this code, there is no tax imposed by §11-21-3 of this code.

(c) (d) Effect of rates on Nonresident Composite and Withholding Obligations — Notwithstanding any provision of this article to the contrary, for taxable years beginning on and after the retroactive date specific in §11-21-4g(d) of this code subsection (e) of this section, whenever the words "six and one-half percent" appear in §11-21-51a, §11-21-71a, §11-21-71b, or §11-21-77, of this article, with relation to a tax return of, or the tax rate imposed on income of individuals, individuals filing joint returns, heads of households, and estates and trusts (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 *et seq.* of this code), the stated percentage shall be changed to 5.12%.

(d) (e) Applicability of this section. — The provisions of this section shall be applicable in determining the rates of tax imposed by this article and shall apply retroactively for all taxable years beginning on and after January 1, 2023, and shall be in lieu of the rates of tax specified in §11-21-4e of this code.

**§11-21-18. West Virginia taxable income of resident estate or trust.**

The West Virginia taxable income of a resident estate or trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 *et seq.* of this code) means its federal taxable income for the taxable year as

defined in the laws of the United States and section nine of this article §11-21-9 of this code for the taxable year, with the following modifications:

(1) There shall be subtracted \$600 as the West Virginia personal exemption of the estate or trust, and there shall be added the amount of its federal deduction for a personal exemption.

(2) There shall be added or subtracted, as the case may be, the share of the estate or trust in the West Virginia fiduciary adjustment determined under section nineteen of this article §11-21-19 of this code.

(3) There shall be added to federal adjusted gross income, unless already included therein, the amount of a lump sum distribution for which the taxpayer has elected under Section 402(e) of the Internal Revenue Code of 1986, as amended, to be separately taxed for federal income tax purposes: *Provided*, That the provisions of this subdivision shall first be effective for taxable years beginning after December 31, 1990.

(4) There shall be added by an electing small business trust as defined in Section 1361(e) of the Internal Revenue Code of 1986, as amended, which is a shareholder in one or more electing small business corporations, the portion of the trust's income attributable to electing small business corporation stock held by the trust that is not included in the trust's federal taxable income pursuant to Section 641 of the Internal Revenue Code of 1986, as amended.

(b) The amendments to this section enacted in the 2005 regular session of the Legislature are effective for tax years beginning on or after January 1, 2005.

### PART III. NONRESIDENT AND PART-YEAR RESIDENTS.

#### **§11-21-30. Computation of tax on income of nonresidents and part-year residents.**

(a) *Computation of tax.* — For taxable years beginning after December 31, 1991, the tax due under this article on taxable income derived from sources in this state by a nonresident

individual, estate, or trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 et seq. of this code) or by a part-year resident individual shall be calculated as provided in this section.

(1) Taxpayer shall first calculate tax liability under this article as if taxpayer, whether an individual, estate or trust, were a resident of this state for the entire taxable year. When determining tentative tax liability under this subdivision, a nonresident shall be allowed the same deductions, exemptions and credits that would be allowable if taxpayer were a resident individual, estate or trust, as the case may be, for the entire taxable year, except that no credit shall be allowed under section twenty of this article §11-21-20 of this code.

(2) The amount of tentative tax determined under subdivision (1) of this subsection shall then be multiplied by a fraction the numerator of which is the taxpayer's West Virginia source income, determined in accordance with Part III of this article for the taxable year, and the denominator of which is such taxpayer's "federal adjusted gross income" for the taxable year as defined in section nine of this article §11-21-9 of this code; *Provided*, That if this computation produces a result that is out of all appropriate proportion to the amount of taxpayer's West Virginia source income, the Tax Commissioner may provide such equitable relief as the Tax Commissioner, in his or her discretion, considers to be appropriate under the circumstances.

(b) *Special rules for estates and trusts.* — For purposes of subdivision (1), subsection (a) of this section:

(1) The "federal adjusted gross income" of an estate or trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 et seq. of this code) shall be determined as if such estate or trust were an individual; and

(2) In the case of a trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 et seq. of this code), "federal adjusted gross

income" shall be its "federal adjusted gross income" for the taxable year increased by the amount of any includable gain, reduced by any deductions properly allocable thereto, upon which the tax is imposed for the taxable year pursuant to Section 644 of the Internal Revenue Code.

(3) When an electing small business trust as defined in Section 1361(e)(1) of the Internal Revenue Code of 1986, as amended, is a shareholder in one or more electing small business corporations, the portion of the trust's income attributable to electing small business corporation stock held by the trust that is not included in the trust's federal taxable income pursuant to Section 641(c) of that code the Internal Revenue Code of 1986 shall be included in West Virginia taxable income of the trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 et seq. of this code).

*(c) Special rules for part-year residents. —*

(1) For purposes of subdivision (1), subsection (a) of this section, the "federal adjusted gross income" of a part-year resident individual shall be taxpayer's federal adjusted gross income for the taxable year, as defined in section nine of this article §11-21-9 of this code, increased or decreased, as the case may be, by the items accrued under subdivision (1), subsection (b), section forty-four of this article §11-21-44(b)(1) of this code, to the extent such items are not otherwise included in federal adjusted gross income for the taxable year, and decreased or increased, as the case may be by the items accrued under subdivision (2) of said subsection §11-21-44(b)(2) of this code, to the extent such items are included in federal adjusted gross income for the taxable year; and

(2) In computing the tax due as if taxpayer were a resident of this state for the entire tax year, West Virginia adjusted gross income shall include the accruals specified in subdivision (1) of this subsection, with the applicable modifications described in section forty-four of this article §11-21-44 of this code.

*(d) Definitions. —*

(1) "Nonresident estate" means an estate of a decedent who was not a resident of this state at the time of his or her death.

(2) "Nonresident trust" means a trust which is not a resident trust, as defined in section seven of this article §11-21-7 of this code.

(3) "Part-year resident individual" means an individual who is not a resident or nonresident of this state for the entire taxable year.

(e) *Effective date.* — (1) The provisions of this section shall apply to taxable years beginning after December 31, 1991. As to taxable years beginning prior to that date, the provisions of this article as then in effect shall apply and be controlling, and for that purpose, prior law is fully and completely preserved.

(2) The amendments to this section enacted in the 2005 regular session of the Legislature are effective for tax years beginning on or after January 1, 2005.

#### **§11-21-40. Credit for income tax of state of residence.**

(a) General. — A nonresident shall be allowed a credit against the tax otherwise due under this article for any income tax imposed for the taxable year by another state of the United States or by the District of Columbia, of which the taxpayer is a resident.

(b) Limitation. — The credit under this section shall not exceed either:

(1) The percentage of the other tax determined by dividing the portion of the taxpayer's West Virginia income which is also subject to the other tax by the total amount of his or her income subject to such other tax, or

(2) The percentage of the tax otherwise due under this article, determined by dividing the portion of the taxpayer's West Virginia income which is also subject to the other tax by the total amount of the taxpayer's West Virginia income.

(c) Exceptions. — No credit may be allowed under this section for a taxable year beginning after December 31, 1987, except pursuant to a written agreement between this state and the nonresident individual's state of residence. The State Tax Commissioner is hereby authorized to enter into such agreements necessary to effectuate the purpose of this section when he or she determines that such agreements are in the best interest of this state and its residents.

(d) Definition. — For purposes of this section West Virginia income means:

(1) The West Virginia adjusted gross income of an individual, or

(2) The income derived from West Virginia sources by an estate or trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 et seq. of this code), determined in accordance with the applicable rules of section thirty-two §11-21-32 of this code as in the case of a nonresident individual.

### **§11-21-51. Returns and liabilities.**

(a) *General.* — On or before the fifteenth day of the fourth month following the close of a taxable year, an income tax return under this article shall be made and filed by or for:

(1) Every resident individual required to file a federal income tax return for the taxable year, or having West Virginia adjusted gross income for the taxable year, determined under section twelve of this article §11-21-12 of this code in excess of the sum of his or her West Virginia personal exemptions: *Provided*, That the Tax Commissioner shall by legislative rule specify circumstances when an individual is not required to file a return as a result of the application of section ten of this article §11-21-10 of this code;

(2) Every resident estate or trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 et seq. of this code) required to file a federal income tax return for the taxable year, or having any West

Virginia taxable income for the taxable year, determined under section eighteen of this article §11-21-18 of this code;

(3) Every nonresident individual having any West Virginia adjusted gross income for the taxable year, determined under section thirty-two of this article §11-21-32 of this code, in excess of the sum of his or her West Virginia personal exemptions, except when all of such nonresident individual's West Virginia source income is taxed on a composite return filed under this article for the taxable year; and

(4) Every nonresident estate or trust having items of income or gain derived from West Virginia sources, determined in accordance with the applicable rules of section thirty-two of this article §11-21-32 of this code as in the case of a nonresident individual, in excess of its West Virginia exemption.

(b) *Husband and wife.* —

(1) If the federal income tax liability of husband or wife is determined on a separate federal income tax return, their West Virginia income tax liabilities and returns shall be separate.

(2) If the federal income tax liabilities of husband and wife other than a husband and wife described in subdivision (3) of this subsection are determined on a joint federal return, or if neither files a federal return:

(A) They shall file a joint West Virginia income tax return, and their tax liabilities shall be joint and several; or

(B) They may elect to file separate West Virginia income tax returns on a single or separate form, as may be required by the Tax Commissioner, if they comply with the requirements of the Tax Commissioner in setting forth information, and in such event their tax liabilities shall be separate.

(3) If either husband and/or wife is a resident and the other is a nonresident, they shall file separate West Virginia income tax returns on such single or separate forms as may be required by the

Tax Commissioner, and in such event their tax liabilities shall be separate.

(c) *Decedents.* — The return of any deceased individual shall be made and filed by his or her executor, administrator or other person charged with his or her property.

(d) *Individuals under a disability.* — The return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by his or her guardian, committee, fiduciary or other person charged with the care of his or her person or property (other than a receiver in possession of only a part of his or her property), by his or her duly authorized agent.

(e) *Estates and trusts.* — The return for an estate or trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §311-1-1 et seq. of this code) shall be made and filed by the fiduciary.

(f) *Joint fiduciaries.* — If two or more fiduciaries are acting jointly, the return may be made by any one of them.

(g) *Tax a debt.* — Any tax under this article, and any increase, interest or penalty thereon, shall, from the time it is due and payable, be a personal debt of the person liable to pay the same, to the State of West Virginia.

(h) *Cross reference.* — For provisions as to information returns by partnerships, employers and other persons, see section fifty-eight of this article §11-21-58 of this code. For provisions as to composite returns of nonresidents, see section fifty-one-a of this article §11-21-51a of this code. For provisions as to information returns by electing small business corporations, see section thirteen-b, article twenty-four of this chapter.

(i) *Effective date.* — This section, as amended by this act in the year 1996, shall apply to all taxable years beginning after December 31, 1995.



**§11-21-71a. Withholding tax on West Virginia source income of nonresident partners, nonresident S corporation shareholders, and nonresident beneficiaries of estates and trusts.**

(a) General rule. — For the privilege of doing business in this state or deriving rents or royalties from real or tangible personal property located in this state, including, but not limited to, natural resources in place and standing timber, a partnership, S corporation, estate or trust, which is treated as a pass-through entity for federal income tax purposes and which has taxable income for the taxable year derived from or connected with West Virginia sources any portion of which is allocable to a nonresident partner, nonresident shareholder, or nonresident beneficiary, as the case may be, shall pay a withholding tax under this section, except as provided in subsections (c) and (k) of this section.

(b) Amount of withholding tax. —

(1) In general. — The amount of withholding tax payable by any partnership, S corporation, estate or trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 *et seq.* of this code), under subsection (a) of this section, shall be equal to four percent of the effectively connected taxable income of the partnership, S corporation, estate or trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 *et seq.* of this code), as the case may be, which may lawfully be taxed by this state and which is allocable to a nonresident partner, nonresident shareholder, or nonresident beneficiary of a trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 *et seq.* of this code) or estate: *Provided*, That for taxable years commencing on or after January 1, 2008, the amount of withholding tax payable by any partnership, S corporation, estate or trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 *et seq.* of this code), under subsection (a) of this section, shall be equal to six and one-half percent of the effectively connected taxable income of the partnership, S corporation, estate or trust

(except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §311-1-1 *et seq.* of this code), as the case may be, which may lawfully be taxed by this state and which is allocable to a nonresident partner, nonresident shareholder, or nonresident beneficiary of a trust or estate.

(2) Credits against tax. — When determining the amount of withholding tax due under this section, the pass-through entity may apply any tax credits allowable under this chapter to the pass-through entity which pass through to the nonresident distributees: *Provided*, That in no event may the application of any credit or credits reduce the tax liability of the distributee under this article to less than zero.

(c) When withholding is not required. — Withholding may not be required:

(1) On distribution to a person, other than a corporation, who is exempt from the tax imposed by this article. For purposes of this subdivision, a person is exempt from the tax imposed by this article only if such person is, by reason of that person's purpose or activities, exempt from paying federal income taxes on such person's West Virginia source income. The pass-through entity may rely on the written statement of the person claiming to be exempt from the tax imposed by this article provided the pass-through entity discloses the name and federal taxpayer identification number for all such persons in its return for the taxable year filed under this article or §11-24-1 *et seq.* of this code; or

(2) On distributions to a corporation which is exempt from the tax imposed by §11-24-1 *et seq.* of this code. For purposes of this subdivision, a corporation is exempt from the tax imposed by §11-24-1 *et seq.* of this code only if the corporation, by reason of its purpose or activities is exempt from paying federal income taxes on the corporation's West Virginia source income. The pass-through entity may rely on the written statement of the person claiming to be exempt from the tax imposed by §11-24-1 *et seq.* of this code provided the pass-through entity discloses the name and federal taxpayer identification number for all such corporations in

its return for the taxable year filed under this article or §11-24-1 *et seq.* of this code; or

(3) On distributions when compliance will cause undue hardship on the pass-through entity: *Provided*, That no pass-through entity shall be exempt under this subdivision from complying with the withholding requirements of this section unless the Tax Commissioner, in his or her discretion, approves in writing the pass-through entity's written petition for exemption from the withholding requirements of this section based on undue hardship. The Tax Commissioner may prescribe the form and contents of such a petition and specify standards for when a pass-through entity will not be required to comply with the withholding requirements of this section due to undue hardship. Such standards shall take into account (among other relevant factors) the ability of a pass-through entity to comply at reasonable cost with the withholding requirements of this section and the cost to this state of collecting the tax directly from a nonresident distributee who does not voluntarily file a return and pay the amount of tax due under this article with respect to such distributions; or

(4) On distributions by nonpartnership ventures. An unincorporated organization that has elected, under Section 761 of the Internal Revenue Code, to not be treated as a partnership for federal income tax is not treated as a partnership under this article and is not required to withhold under this section. However, such unincorporated organizations shall make and file with the Tax Commissioner a true and accurate return of information under §11-21-58(c) of this code, under such rules and in such form and manner as the Tax Commissioner may prescribe, setting forth: (A) The amount of fixed or determinable gains, profits, and income; and (B) the name, address and taxpayer identification number of persons receiving fixed or determinable gains, profits or income from the nonpartnership venture.

(5) Publicly traded partnerships. — A publicly traded partnership, as defined in §11-21A-1 of this code, that is treated as a partnership for federal income tax purposes for the taxable year, is exempt from the withholding requirements of §11-21-71a of this code of this section, if the following information is provided to the

Tax Commissioner: The name, address, taxpayer identification number, and West Virginia source income of each partner that had an interest in the publicly traded partnership during the taxable year. This information shall be provided in an electronic format approved by the Tax Commissioner.

(d) Payment of withheld tax. —

(1) General rule. — Each partnership, S corporation, estate or trust, required to withhold tax under this section, shall pay the amount required to be withheld to the Tax Commissioner no later than:

(A) S corporations. — The 15th day of the third month following the close of the taxable year of the S corporation along with the annual information return due under §11-24-1 *et seq.* of this code, unless paragraph (C) of this subdivision applies.

(B) Partnerships, estates, and trusts. — The 15th day of the fourth month following the close of the taxable year of the partnership, estate or trust, with the annual return of the partnership, estate or trust due under this article, unless paragraph (C) of this subdivision applies: *Provided*, That for tax years beginning after December 31, 2015, partnerships shall pay the amount required to be withheld to the Tax Commissioner, along with the annual return of the partnership due under this article, on the 15th day of the third month following the close of the taxable year of the partnership, unless paragraph (C) of this subdivision applies.

(C) Composite returns. — The 15th day of the fourth month of the taxable year with the composite return filed under §11-21-51a of this code: *Provided*, That for tax years beginning after December 31, 2015, partnerships or partners in a partnership filing composite returns under §11-21-51a of this code shall pay the amount required to be withheld to the Tax Commissioner, along with the annual return due under this article, on the 15th day of the third month following the close of the taxable year.

(2) Special rules. —

(A) Where there is extension of time to file return. — An extension of time for filing the returns referenced in subdivision (1) of this subsection does not extend the time for paying the amount of withholding tax due under this section. In this situation, the pass-through entity shall pay, by the date specified in subdivision (1) of this subsection, at least 90 percent of the withholding tax due for the taxable year, or 100 percent of the tax paid under this section for the prior taxable year, if such taxable year was a taxable year of 12 months and tax was paid under this section for that taxable year. The remaining portion of the tax due under this section, if any, shall be paid at the time the pass-through entity files the return specified in subdivision (1) of this subsection. If the balance due is paid by the last day of the extension period for filing the return and the amount of tax due with such return is 10 percent or less of the tax due under this section for the taxable year, no additions to tax may be imposed under §11-10-1 *et seq.* of this code with respect to balance so remitted. If the amount of withholding tax due under this section for the taxable year is less than the estimated withholding taxes paid for the taxable year by the pass-through entity, the excess shall be refunded to the pass-through entity or, at its election, established as a credit against withholding tax due under this section for the then current taxable year.

(B) Deposit in trust for Tax Commissioner. — The Tax Commissioner may, if the commissioner believes such action is necessary for the protection of trust fund moneys due this state, require any pass-through entity to pay over to the Tax Commissioner the tax deducted and withheld under this section, at any earlier time or times.

(e) Effectively connected taxable income. — For purposes of this section, the term "effectively connected taxable income" means the taxable income or portion thereof of a partnership, S corporation, estate or trust, as the case may be, which is derived from or attributable to West Virginia sources as determined under §11-21-32 of this code and such rules as the Tax Commissioner may prescribe, whether the amount is actually distributed or is determined to have been distributed for federal income tax purposes.

(f) Treatment of nonresident partners, S corporation shareholders, or beneficiaries of a trust or estate. —

(1) Allowance of credit. — Each nonresident partner, nonresident shareholder, or nonresident beneficiary shall be allowed a credit for such partner's or shareholder's or beneficiary's share of the tax withheld by the partnership, S corporation, estate or trust under this section: *Provided*, That when the distribution is to a corporation taxable under §11-24-1 *et seq.* of this code, the credit allowed by this section shall be applied against the distributee corporation's liability for tax under §11-24-1 *et seq.* of this code.

(2) Credit treated as distributed to partner, shareholder, or beneficiary. — Except as provided in rules, a nonresident partner's share, a nonresident shareholder's share, or a nonresident beneficiary's share of any withholding tax paid by the partnership, S corporation, estate or trust under this section shall be treated as distributed to the partner by the partnership, or to the shareholder by the S corporation, or to the beneficiary by the estate or trust on the earlier of:

(A) The day on which the tax was paid to the Tax Commissioner by the partnership, S corporation, estate, or trust; or

(B) The last day of the taxable year for which the tax was paid by the partnership, S corporation, estate, or trust.

(g) Regulations. — The Tax Commissioner shall prescribe such rules as may be necessary to carry out the purposes of this section.

(h) Information statement. —

(1) Every person required to deduct and withhold tax under this section shall furnish to each nonresident partner, or nonresident shareholder, or nonresident beneficiary, as the case may be, a written statement, as prescribed by the Tax Commissioner, showing the amount of West Virginia effectively connected taxable income, whether distributed or not distributed for federal income tax purposes by such partnership, S corporation, estate or trust, to

the nonresident partner, or nonresident shareholder, or nonresident beneficiary, the amount deducted and withheld as tax under this section; and such other information as the Tax Commissioner may require.

(2) A copy of the information statements required by this subsection shall be filed with the West Virginia return filed under this article (or §11-24-1 *et seq.* of this code for S corporations) by the pass-through entity for its taxable year to which the distribution relates. This information statement shall be furnished to each nonresident distributee on or before the due date of the pass-through entity's return under this article or §11-24-1 *et seq.* of this code for the taxable year, including extensions of time for filing such return, or such later date as may be allowed by the Tax Commissioner.

(i) Liability for withheld tax. — Every person required to deduct and withhold tax under this section is hereby made liable for the payment of the tax due under this section for taxable years (of such persons) beginning after December 31, 1991, except as otherwise provided in this section. The amount of tax required to be withheld and paid over to the Tax Commissioner shall be considered the tax of the partnership, estate, or trust, as the case may be, for purposes of §11-9-1 *et seq.* and §11-10-1 *et seq.* of this code. Any amount of tax withheld under this section shall be held in trust for the Tax Commissioner. No partner, S corporation shareholder, or beneficiary of a trust or estate, may have a right of action against the partnership, S corporation, estate, or trust, in respect to any moneys withheld from the person's distributive share and paid over to the Tax Commissioner in compliance with or in intended compliance with this section.

(j) Failure to withhold. — If any partnership, S corporation, estate or trust fails to deduct and withhold tax as required by this section and thereafter the tax against which the tax may be credited is paid, the tax so required to be deducted and withheld under this section may not be collected from the partnership, S corporation, estate, or trust, as the case may be, but the partnership, S corporation, estate, or trust may not be relieved from liability for

any penalties or interest on additions to tax otherwise applicable in respect of the failure to withhold.

(k) Distributee agreements. —

(1) The Tax Commissioner shall permit a nonresident distributee to file with a pass-through entity, on a form prescribed by the Tax Commissioner, the agreement of the nonresident distributee: (A) To timely file returns and make timely payment of all taxes imposed by this article or §11-24-1 *et seq.* of this code in the case of a C corporation, on the distributee with respect to the effectively connected taxable income of the pass-through entity; and (B) to be subject to personal jurisdiction in this state for purposes of the collection of any unpaid income tax under this article (or §11-24-1 *et seq.* of this code in the case of a C corporation), together with related interest, penalties, additional amounts and additions to tax, owed by the nonresident distributee.

(2) A nonresident distributee electing to execute an agreement under this subsection shall file a complete and properly executed agreement with each pass-through entity for which this election is made, on or before the last day of the first taxable year of the pass-through entity in respect of which the agreement applies. The pass-through entity shall file a copy of that agreement with the Tax Commissioner as provided in subdivision (5) of this subsection.

(3) After an agreement is filed with the pass-through entity, that agreement may be revoked by a distributee only in accordance with rules promulgated by the Tax Commissioner.

(4) Upon receipt of such an agreement properly executed by the nonresident distributee, the pass-through entity may not withhold tax under this section for the taxable year of the pass-through entity in which the agreement is received by the pass-through entity and for any taxable year subsequent thereto until either the nonresident distributee notifies the pass-through entity, in writing, to begin withholding tax under this section or the Tax Commissioner directs the pass-through entity, in writing, to begin withholding tax under this section because of the distributee's continuing failure to comply with the terms of the agreement.



(5) The pass-through entity shall file with the Tax Commissioner a copy of all distributee agreements received by the pass-through entity during any taxable year with this annual information return filed under this article, or §11-24-1 *et seq.* of this code if S corporations. If the pass-through entity fails to timely file with the Tax Commissioner a copy of an agreement executed by a distributee and furnished to the pass-through entity in accordance with this section, then the pass-through entity shall remit to the Tax Commissioner an amount equal to the amount that should have been withheld under this section from the nonresident distributee. The pass-through entity may recover payment made pursuant to the preceding sentence from the distributee on whose behalf the payment was made.

(l) Definitions. — For purposes of this section, the following terms mean:

(1) Corporation. — The term "corporation" includes associations, joint stock companies, and other entities which are taxed as corporations for federal income tax purposes.

(A) C corporation. — The term "C corporation" means a corporation which is not an S corporation for federal income tax purposes.

(B) S corporation. — The term "S corporation" means a corporation for which a valid election under Section 1362(a) of the Internal Revenue Code is in effect for the taxable period. All other corporations are C corporations.

(2) Distributee. — The term "distributee" includes any partner of a partnership, any shareholder of an S corporation and any beneficiary of an estate or trust that is treated as a pass-through entity for federal income tax purposes for the taxable year of the entity, with respect to all or a portion of its income.

(3) Internal Revenue Code. — The term "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, through the date specified in §11-21-9 of this code.

(4) Nonresident distributee. — The term "nonresident distributee" includes any individual who is treated as a nonresident of this state under this article; and any partnership, estate, trust, or corporation whose commercial domicile is located outside this state.

(5) Partner. — The term "partner" includes a member of a partnership as that term is defined in this section, and an equity owner of any other pass-through entity.

(6) Partnership. — The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on and which is not a trust or estate, a corporation or a sole proprietorship. "Partnership" does not include an unincorporated organization which, under Section 761 of the Internal Revenue Code, is not treated as a partnership for the taxable year for federal income tax purposes.

(7) "Pass-through entity" means any partnership or other business entity, that is not subject to tax under §11-24-1 *et seq.* of this code, imposing tax on C corporations or other entities taxable as a C corporation for federal income tax purposes.

(8) Taxable period. — The term "taxable period" means, if an S corporation, any taxable year or portion of a taxable year during which a corporation is an S corporation.

(9) Taxable year of the pass-through entity. — The term "taxable year of the pass-through entity" means the taxable year of the pass-through entity for federal income tax purposes. If a pass-through entity does not have a taxable year for federal tax purposes, its tax year for purposes of this article shall be the calendar year.

(m) Effective date. — The provisions of this section shall first apply to taxable years of pass-through entities beginning after December 31, 1991.

(n) This section as amended in the year 2019 shall apply, without regard to the taxable year, to taxes owed attributable to

federal determinations that become final on or after the effective date of this section enacted in the year 2019.

The bill (Eng. Com. Sub. for H. B. 5024), as amended, was then ordered to third reading.

**Eng. House Bill 5056**, Relating to substitute service personnel positions.

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

**Eng. Com. Sub. for House Bill 5082**, Exempt those with 25 years holding an insurance license from attaining additional CEUs.

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

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

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

## **ARTICLE 12. INSURANCE PRODUCERS AND SOLICITORS.**

### **§33-12-8. Continuing education required.**

The purpose of this section is to provide continuing education requirements under guidelines set up under the Insurance Commissioner's office in conjunction with the Board of Insurance Agent Education.

(a) This section applies to individual insurance producers licensed to engage in the sale of the following types of insurance:

(1) *Life*. — Life insurance coverage on human lives, including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income;

(2) *Accident and health or sickness.* — Insurance coverage for sickness, bodily injury, or accidental death and may include benefits for disability income;

(3) *Property.* — Property insurance coverage for the direct or consequential loss or damage to property of every kind;

(4) *Casualty.* — Insurance coverage against legal liability, including that for death, injury, or disability or damage to real or personal property;

(5) *Variable life and variable annuity products.* — Insurance coverage provided under variable life insurance contracts and variable annuities;

(6) *Personal lines.* — Property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes; and

(7) Any other line of insurance permitted under state laws or regulations.

(b) This section does not apply to:

(1) Individual insurance producers holding limited line credit insurance licenses for any kind or kinds of insurance offered in connection with loans or other credit transactions or insurance for which an examination is not required by the commissioner, nor does it apply to any limited or restricted license as the commissioner may exempt; and

(2) Individual insurance producers selling credit life or credit accident and health insurance.

(c)(1) The Board of Insurance Agent Education as established by §33-12-7 of this code shall develop a program of continuing insurance education and submit the proposal for the approval of the commissioner on or before December 31 of each year. No program may be approved by the commissioner that includes a requirement that any individual insurance producer complete more than 24 hours of continuing insurance education biennially. No program

may be approved by the commissioner that includes a requirement that any of the following individual insurance producers complete more than six hours of continuing insurance education biennially:

(A) Individual insurance producers who sell only preneed burial insurance contracts; and

(B) Individual insurance producers who engage solely in telemarketing insurance products by a scripted presentation which scripted presentation has been filed with and approved by the commissioner.

(C) The biennium mandatory continuing insurance education provisions of this section become effective on the reporting period beginning July 1, 2006.

(2) The commissioner and the board, under standards established by the board, may approve any course or program of instruction developed or sponsored by an authorized insurer, accredited college or university, agents' association, insurance trade association, or independent program of instruction that presents the criteria and the number of hours that the board and commissioner determine appropriate for the purpose of this section.

(d) Individual insurance producers licensed to sell insurance and who are not otherwise exempt shall satisfactorily complete the courses or programs of instructions the commissioner may prescribe.

(e) Every individual insurance producer subject to the continuing education requirements shall furnish, at intervals and on forms as may be prescribed by the commissioner, written certification listing the courses, programs, or seminars of instruction successfully completed by the person. The certification shall be executed by, or on behalf of, the organization sponsoring the courses, programs, or seminars of instruction.

(f) Subject to the approval by the commissioner, the active annual membership by an individual insurance producer in an organization or association recognized and approved by the

commissioner as a state, regional, or national professional insurance organization or association may be approved by the commissioner for up to two hours of continuing insurance education: *Provided*, That not more than two hours of continuing insurance education may be awarded to an individual insurance producer for membership in a professional insurance organization during a biennial reporting period. Credit for continuing insurance education pursuant to this subdivision may only be awarded to individual insurance producers who are required to complete more than six hours of continuing education biennially.

(g) Individual insurance producers who are required to complete more than six hours of continuing education biennially and who exceed the minimum continuing education requirement for the biennial reporting period may carry-over a maximum of six credit hours only into the next reporting period.

(h) Any individual insurance producer failing to meet the requirements mandated in this section and who has not been granted an extension of time, with respect to the requirements, or who has submitted to the commissioner a false or fraudulent certificate of compliance shall have his or her license automatically suspended and no further license may be issued to the person for any kind or kinds of insurance until the person demonstrates to the satisfaction of the commissioner that he or she has complied with all of the requirements mandated by this section and all other applicable laws or rules.

(i) The commissioner shall notify the individual insurance producer of his or her suspension pursuant to subsection (h) of this section by electronic mail or regular mail, if requested, to the last respective address on file with the commissioner pursuant to §33-12-9(f) of this code. Any individual insurance producer who has had a suspension notice entered against him or her pursuant to this section may, within 30 calendar days of receipt of the notice, file with the commissioner a request for a hearing for reconsideration of the matter.

(j) Any individual insurance producer who does not satisfactorily demonstrate compliance with this section and all

other laws applicable thereto as of the last day of the biennium following his or her suspension shall have his or her license automatically canceled and is subject to the education and examination requirements of §33-12-5 of this code.

(k) The commissioner is authorized to hire personnel and make reasonable expenditures considered necessary for purposes of establishing and maintaining a system of continuing education for insurers. The commissioner shall charge a fee of \$25 to continuing education providers for each continuing education course submitted for approval which shall be used to maintain the continuing education system. The commissioner may, at his or her discretion, designate an outside administrator to provide all of or part of the administrative duties of the continuing education system subject to direction and approval by the commissioner. The fees charged by the outside administrator shall be paid by the continuing education providers. In addition to fees charged by the outside administrator, the outside administrator shall collect and remit to the commissioner the \$25 course submission fee.

(l) No individual insurance producer who has been licensed as such for 25 years or more may be required to complete more than 12 hours of continuing insurance education biennially, including continuing insurance education requirements in ethics.

The bill (Eng. Com. Sub. for H. B. 5082), as amended, was then ordered to third reading.

**Eng. House Bill 5170**, Increasing the size of matching grants for local economic development from \$30,000 to \$50,000.

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

**Eng. House Bill 5213**, To allow Gold Star spouses to receive one free Gold Star vehicle registration for personal use.

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

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

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

**§17A-3-14b. Special registration plates for military personnel.**

(a) The division may continue to issue special plates for any plate class authorized by enactments of §17A-3-14 of this code prior to the year 2023 for active, retired, or honorably discharged military personnel, or the next of kin of a member of any branch of the armed services of the United States killed in combat. The division shall charge an initial application fee of \$10 for each special registration plate issued pursuant to this section, which is in addition to all other fees required by this chapter. A surviving spouse may continue to use his or her deceased spouse's military license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(b) The applicant shall present documentation as determined by the commissioner as evidence of qualification for any plate authorized in this section.

(c) The division may issue a special registration plate pursuant to this section to any number of vehicles titled in the name of the applicant.

(d) If a new special plate as authorized in this section recognizes members of a military organization chartered by the United States Congress, the division may produce such plate upon receipt of a guarantee from the organization of a minimum of 100 applicants.

(e) A Gold star spouse shall be exempt from all registration fees otherwise required by the provisions of this chapter for the registration of one Gold Star Family license plate for personal use. For purposes of this section, a "Gold star spouse" means a widow (remarried or not) or widower (remarried or not) of a veteran who is eligible to receive a gold star lapel pin under 10 U.S.C. § 1126 (or its successor).



The bill (Eng. H. B. 5213), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 5223**, To create the Southern Coalfield Resiliency and Revitalization Program.

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

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

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

## **ARTICLE 2Q. SOUTHERN COALFIELD RESILIENCY PROGRAM.**

### **§5B-2Q-1. Short Title.**

This article shall be known as cited as the "Southern Coalfield Resiliency Program Act".

### **§5B-2Q-2. Legislative purpose; findings; intent.**

The impact of excessive and economically biased federal regulations on the domestic coal-fired electricity market has led to a profound and significant injury to the coal industry in Boone, Logan, McDowell, Mingo, and Wyoming Counties, and has resulted in a dramatic negative economic impact on the southern coalfield area of West Virginia.

The purpose of this section is to establish the Southern Coalfield Resiliency and Revitalization Program. To further this purpose, this program creates a collaboration among local government, higher education, and private and nonprofit sectors to streamline and increase technical, agricultural, and economic assistance capacity, continue and increase existing services and other resources to facilitate community revitalization in the southern coalfield area.

It is the intent of the Legislature to identify resources that can be prioritized to support the counties of the southern coalfield area, generate thoughtful and responsible ideas to mitigate the negative effects of the currently injured coal industry, and help chart a new course and prosperous future for the southern coalfield.

**§5B-2Q-3. Definitions.**

The following terms have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition in this article:

"Contributing partners" means those entities or their representatives described in subsection (f) of this section.

"Program" means the Southern Coalfield Resiliency and Revitalization Program established in this section.

"Revitalization Council" means those entities or their representatives described in subsection (d) of this section.

"Technical assistance" means resources provided by local government, the revitalization council, contributing partners, or any other individuals or entities providing programming, funding, or other support to benefit the counties in the southern coalfield area of West Virginia under the program.

"Southern Coalfield" means an area that encompasses Boone, Logan, McDowell, Mingo, and Wyoming counties.

"Southern Coalfield Resiliency and Revitalization Program" means the entire process undertaken to further the goals of this section, including collaboration development and implementation between the members, contributors, and technical assistance resource providers.

**§5B-2Q-4. Southern Coalfield Resiliency and Revitalization Program established; duration.**

(a) The Southern Coalfield Resiliency and Revitalization Program is established in accordance with the provisions of this section, subject to the availability of funding necessary to support

the program. The program shall inventory existing assets and resources, prioritize planning and technical assistance, and determine such other assistance as might be available to revitalize communities in the counties in the Southern Coalfield.

(b) The program shall be established for an initial period of five years from the effective date of this legislation.

#### **§5B-2Q-5. Revitalization Council created.**

The Revitalization Council is hereby created as an independent body corporate to fulfill the purposes of this section. The county commissions of Boone County, Logan County, McDowell County, Mingo County, and Wyoming County shall choose a representative to serve as chairperson of the council, which shall coordinate the Revitalization Council's functions and operations, including, but not be limited to, providing administrative, clerical, and technical support from existing funding for the commissions. The following entities shall serve as members of the Revitalization Council:

- (1) A representative from the Boone County Commission;
- (2) A representative from the Logan County Commission;
- (3) A representative from the McDowell County Commission;
- (4) A representative from the Mingo County Commission;
- (5) A representative from the Wyoming County Commission;
- (6) A representative from Southern West Virginia Community and Technical College;
- (7) A representative from West Virginia University;
- (8) A representative from Marshall University;
- (9) The County Directors of Economic Development from Boone County, Logan County, McDowell County, Mingo County, and Wyoming County;

(10) The President of West Virginia University Technical College; and

(11) A representative from the Regional Planning and Development Councils encompassing the five participating counties.

**§5B-2Q-6. Duties of the revitalization council.**

(a) The council shall identify resources that can be prioritized to support economic development efforts in the Southern Coalfield counties.

(b) The council shall direct existing resources in a unified effort and in conjunction with contributing partners, as applicable, to support the Southern Coalfield counties.

(c) The council shall develop a rapid response strategy to attract or develop new enterprises and job creating opportunities in the Southern Coalfield counties.

(d) The council shall conduct or commission a comprehensive assessment of assets available at the reclaimed mine sites and abandoned industrial complexes and closed businesses and determine how those assets will be preserved and repurposed, or marketed to interested industrial parties.

(e) The council shall assist communities in the Southern Coalfield counties by developing economic policy recommendations to diversify and advance the communities.

(f) Members of the council shall support both the planning and implementation for the program and shall give priority wherever possible to programmatic activity and discretionary, noncompetitive funding during the period the program remains in effect.

(g) Members of the council shall work together to leverage funding or other agency resources to benefit efforts to revitalize the Southern Coalfield counties.

**§5B-2Q-7. Contributing partners.**

To the extent possible, the Revitalization Council shall incorporate the resources and expertise of additional providers of technical assistance to support the program, which shall include, but not be limited to:

(1) The West Virginia Small Business Development Center;

(2) The Center for Rural Health Development;

(3) The West Virginia University Encova Center for Innovation and Entrepreneurship;

(4) The West Virginia University Land Use and Sustainability Law Clinic;

(5) The West Virginia University Davis College Research, Education, and Outreach Centers;

(6) The West Virginia University County Extension Services;

(7) The Rahall Transportation Institute;

(8) The Marshall University Center for Business and Economic Research;

(9) West Virginia Small Business Association;

(10) The West Virginia Community Development Hub;

(11) The West Virginia Brownfields Assistance Center at Marshall University;

(12) West Virginia State University Extension Services; and

(13) West Virginia University Extension Services Agriculture, Community, Health, Economic, and Workforce Development Programs.

**§5B-2Q-8. Reporting and agency accountability.**

The Revitalization Council, in coordination with its contributing partners, as applicable, shall report annually to the Governor and the Joint Committee on Government and Finance detailing the progress of the technical assistance support provided by the program, the strategic plan for the Southern Coalfield counties, and the results of these efforts.

**§5B-2Q-9. Economic incentives for businesses investing in the Southern Coalfield counties.**

The Revitalization Council, as applicable, will work to educate businesses investing, or interested in investing, in the Southern Coalfield about the availability of, and access to, economic development assistance, including, but not limited to, the economic opportunity tax credit provided in §11-13Q-19 of this code; the manufacturing investment tax credit provided under §11-13S-1 *et seq.* of this code; and any other applicable tax credit or development assistance.

**§5B-2Q-10. Prioritization.**

The program shall prioritize and seek to leverage West Virginia's natural, native resources and industries, including the manufacture of value-added or finished products from raw materials or agriculture commodities sourced in West Virginia. The program shall prioritize and seek to assist existing industries to expand where possible and identify opportunities for synergistic relationships between native West Virginia businesses. The program shall prioritize and seek to leverage West Virginia's natural, self-sufficient, and reliable forms of energy such as coal, oil, and natural gas, to decrease the overall cost of manufacturing in the Southern Coalfield and enhance industrial efforts.

The bill (Eng. Com. Sub. for H. B. 5223), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 5617**, Authorizing the Public Service Commission to promulgate rules for maintenance, flushing, flow testing, and marking of fire hydrants owned by water utilities.

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

**Eng. House Bill 5632**, Relating generally to West Virginia Real Estate License Act.

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

**Eng. House Bill 5694**, Relating to the Firearms Industry Nondiscrimination Act.

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

At the request of Senator Takubo, unanimous consent being granted, the bill was referred to the Committee on Rules, with the unreported Government Organization committee amendment to the bill pending.

**Eng. House Bill 5696**, Relating to the upper Ohio Valley Trail Network.

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

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

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

## **CH. 20 NATURAL RESOURCES**

### **§20-17B-2. Creation of Upper Ohio Valley Trail Network Recreation Authority and establishment of recreation area.**

(a) There is hereby created the Upper Ohio Valley Trail Network Recreation Authority consisting of representatives from all counties in the northern panhandle – Hancock, Brooke, Ohio, and Marshall – and Ohio River valley counties to include Wetzel, Tyler, Pleasants, Wood, Jackson, Mason, and Cabell, organized

pursuant to the provisions of §20-17-1 *et seq.* of this code. This authority is authorized to establish an Upper Ohio Valley Trail Network Recreation Area within the jurisdictions of those counties and the authority shall be subject to the powers, duties, immunities, and restrictions provided in §20-17-1 *et seq.* of this code. Visitors and participants in recreational activities within the trail network shall, in similar respects, be subject to the user requirements and prohibitions of §20-17-7 of this code.

(b) Notwithstanding subsection (a) of this section, an adjacent county may join the Upper Ohio Valley Trail Network Recreation Authority pursuant to the procedures set forth in §20-17-3(b) of this code.

(c) Notwithstanding subsection (a) of this section, the Upper Ohio Valley Trail Network Recreation Authority may merge with another multicounty trail network authority, pursuant to the procedures set forth in §20-17-3(c) of this code.

(d) Notwithstanding §20-17A-4 of this code, Wood County ~~Monongalia County of the Mountaineer Trail Network Recreation~~ authority shall serve as the lead ~~an ex-officio~~ member of the Upper Ohio Valley Trail Network Recreation Authority for the purposes of establishing the Upper Ohio Valley Trail Network Recreation Authority trail network and coordinating ~~the two trail networks~~ with the Mountaineer Trail Network Recreation Authority. Upon completion of establishment of linkages with the Mountaineer Trail Network Recreation Authority, the Upper Ohio Valley Trail Network Recreation Authority shall continue to administer and manage its own trail system.

(e) The Upper Ohio Valley Trail Network Recreation Authority may set goals of connecting to the Mountaineer Trail Network and any other trails in adjacent neighboring states that can be feasibly connected.

The bill (Eng. H. B. 5696), as amended, was then ordered to third reading.



**Eng. House Bill 5697**, Relating to public charter schools code provisions.

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 2, section 3, lines 19-21, by striking out all of subdivision (7) and substituting a new subdivision (7), to read as follows:

(7) Do not charge full-time tuition and may only charge such tuition or fees as may be imposed by noncharter public schools in this state, such tuition or fees charged to Hope Scholarship students, pursuant to §18-31-8(f) of this code, or fees for participation in extracurricular activities.

The bill (Eng. H. B. 5697), as amended, was then ordered to third reading.

At the request of Senator Takubo, and by unanimous consent, the Senate returned to the third order of business.

### **Executive Communications**

The Clerk presented the following communication from His Excellency, the Governor, regarding bills approved by him:



*Jim Justice*  
*Governor of West Virginia*

March 5, 2024

The Honorable Lee Cassis, Clerk  
West Virginia Senate  
State Capitol  
Charleston, West Virginia 25305

Dear Mr. Clerk:

Enclosed for filing in your office, pursuant to the provisions of law, is the following bill:

Committee Substitute for Senate Bill No. Six Hundred Three (603), which was presented to me on March 4, 2024.

You will note that I approved this bill on March 5, 2024.

Sincerely,

A handwritten signature in blue ink, reading "Jim Justice".

Jim Justice  
Governor

JJ: mrp

cc: The Honorable Stephen J. Harrison

The Senate proceeded to the fourth order of business.

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

Your Committee on Education has had under consideration

**Senate Concurrent Resolution 35** (originating in the Committee on Education)—Requesting that the Joint Committee on Government and Finance study the efficiency and accountability of county boards of education.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Amy N. Grady,  
*Chair.*

Senator Weld, 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 4110**, Authorizing certain miscellaneous agencies and boards to promulgate legislative rules.

And reports the same back without recommendation as to passage; but with the recommendation that it first be rereferred to the Committee on the Judiciary.

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4110) 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.

At the further request of Senator Takubo, and by unanimous consent, the bill was rereferred to the Committee on the Judiciary.

Senator Weld, 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 4190**, Relating to the establishment of an alert system for missing cognitively impaired persons.

And has amended same.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4190) 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 Clements, 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 4258**, To require railroad companies to provide alternative entry and exit ways.

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,

Charles H. Clements,  
*Chair.*

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

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

Your Committee on Finance has had under consideration

**Eng. House Bill 4292**, Providing for enhanced damages for non-payment of royalties due from oil, natural gas, or natural gas liquids production.

With amendments from the Committee on Energy, Industry, and Mining pending;

And has also amended same.

And reports the same back with the recommendation that it do pass as last amended by the Committee on Finance.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 4292) 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 Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. House Bill 4305**, Relating to granting in-state resident status to economic development participants.

And has amended same.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 4, 2024;

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

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

Senator Weld, 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 4552**, To ensure party affiliation is consistent with candidate's voter registration.

And has amended same.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4552) 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 Woodrum, 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 4721**, Require Surveyors to offer to record surveys of property.

And has amended same.

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

Respectfully submitted,

Jack David Woodrum,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 4721) 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 Maroney, 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 4753**, Relating to providing health insurance coverage concerning biomarker testing.

And has amended same.

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

Respectfully submitted,

Michael J. Maroney,  
*Chair.*

Senator Woodrum, 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 4812**, Capping amount of moneys to third party vendors who collect business and occupation taxes on behalf of cities.

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

Respectfully submitted,

Jack David Woodrum,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4812) 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 Jeffries, from the Committee on Economic Development, submitted the following report, which was received:

Your Committee on Economic Development has had under consideration

**Eng. House Bill 4822**, Creating the Certified Sites and Development Readiness Program.

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,

Glenn D. Jeffries,  
*Chair.*



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

At the request of Senator Takubo, and by unanimous consent, the bill (Eng. H. B. 4822) was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Grady, 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 4829**, Relating to employment of service personnel and removing the requirement for a high school diploma or general education development certificate.

And has amended same.

**Eng. Com. Sub. for House Bill 5405**, Providing additional professional development and support to West Virginia educators through teacher and leader induction and professional growth.

And has amended same.

And,

**Eng. Com. Sub. for House Bill 5514**, Enhancing training requirements for county boards of education members.

And has amended same.

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

Respectfully submitted,

Amy N. Grady,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 4829, 5405, and 5514) 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 Weld, 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 4851**, To allow for public and private schools in West Virginia to employ security personnel.

And has amended same.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4851) 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 Weld, 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 4867**, Require pornography websites to utilize age verification methods to prevent minors from accessing content.

And has amended same.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4867) 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 Tarr, 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 4880**, Relating to personal income tax social security exemption.

And has amended same.

**Eng. House Bill 4945**, Relating generally to the Hope Scholarship Program.

And has amended same.

And,

**Eng. Com. Sub. for House Bill 5188**, Relating to awards and benefits for duty related disability in the municipal police officers and firefighters retirement system.

And has amended same.

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

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 4880, Eng. H. B. 4945, and Eng. Com. Sub. for H. B. 5188) 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 Tarr, 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 4882**, Extending in-state tuition rates to all members and veterans of the National Guard, reserves, and armed forces as well as their spouses and dependents.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 4, 2024;

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

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

Senator Grady, 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 4919**, Relating to the Promise Scholarship.

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

Respectfully submitted,

Amy N. Grady,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4919) 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 Maroney, 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 4956**, Creating the Oral Health and Cancer Rights Act.

And has amended same.

And,

**Eng. Com. Sub. for House Bill 5609**, Relating to confidentiality of child care records and the Foster Care Ombudsman.

And has amended same.

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

Respectfully submitted,

Michael J. Maroney,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, one of the bills (Eng. Com. Sub. for H. B. 4956) 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 Weld, 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 4967**, Relating to the administration of the Voluntary Remediation and Redevelopment Act to provide new liability protections for persons and companies who wish to purchase and redevelop former industrial properties.

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 W. Weld,  
*Vice Chair.*

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

At the request of Senator Takubo, and by unanimous consent, the bill (Eng. Com. Sub. for H. B. 4967) was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Maroney, 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 4975**, Relating to establishing a foster parent information 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,

Michael J. Maroney,  
*Chair.*

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

Senator Jeffries, 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 5127**, Including Potomac State College in the definition of community and technical college education program for participation in the "Learn and Earn Program".

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

Respectfully submitted,

Glenn D. Jeffries,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5127) contained in the preceding report from the Committee on Economic Development was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Woodrum, 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 5257**, Relating generally to allowing the Supreme Court of Appeals discretion to create uniform pay scales for all levels of judicial support staff.

And has amended same.

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

Respectfully submitted,

Jack David Woodrum,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 5257) 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 Tarr, 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 5338**, Relating to Safe Harbor for Cybersecurity Programs.

And has amended same.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 4, 2024;

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

Respectfully submitted,

Eric J. Tarr,  
*Chair.*



Senator Grady, 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 5435**, Establishing the registered apprenticeship to associate of applied science program to be administered by the Council for Community and Technical College Education.

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,

Amy N. Grady,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5435) 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 an amendment from the Committee on Education pending.

Senator Jeffries, from the Committee on Economic Development, submitted the following report, which was received:

Your Committee on Economic Development has had under consideration

**Eng. House Bill 5528**, Relating to the renewable energy facilities program.

And,

**Eng. Com. Sub. for House Bill 5544**, Relating to requiring certain reporting from the Mountaineer Trail Network Authority each year.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Glenn D. Jeffries,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bills (Eng. H. B. 5528 and Eng. Com. Sub. for H. B. 5544) contained in the preceding report from the Committee on Economic Development were each taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Jeffries, from the Committee on Economic Development, submitted the following report, which was received:

Your Committee on Economic Development has had under consideration

**Eng. House Bill 5548**, Relating to modifying requirements imposed on any owner, operator, or manager within a tourism development project.

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,

Glenn D. Jeffries,  
*Chair.*

At the request of Senator Woodrum, 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 Economic Development.

At the request of Senator Takubo, and by unanimous consent, the bill (Eng. H. B. 5548) was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Woodrum, 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 5594**, Exempting the West Virginia School of Osteopathic Medicine, West Virginia University and Marshall University from contracts, agreements, or memorandums of understanding with spending units in state government with exceptions.

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

Respectfully submitted,

Jack David Woodrum,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 5594) 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 Woodrum, 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 5604**, Relating to procurement by state spending units.

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

Respectfully submitted,

Jack David Woodrum,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5604) 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 Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. House Joint Resolution 21**, Amending the Constitution to prohibit persons not United States citizens from voting in any election held within this state.

With an amendment from the Committee on the Judiciary pending;

And reports the same back with the recommendation that it be adopted as amended by the Committee on the Judiciary to which the resolution was first referred.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the resolution (Eng. H. J. R. 21) 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 Tarr, 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 Joint Resolution 28**, Protection from medically-assisted suicide or euthanasia in West Virginia Amendment.

With an amendment from the Committee on the Judiciary pending;

And has also amended same.

And reports the same back with the recommendation that it be adopted as last amended by the Committee on Finance.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

The Senate proceeded to the thirteenth order of business.

The following communication was reported by the Clerk:

The Senate of West Virginia  
Charleston

LEE CASSIS  
CLERK OF THE SENATE



SENATE CHAMBER, ROOM M 211  
1900 KANAWHA BOULEVARD, EAST  
CHARLESTON, WV 25305-0800  
304-357-0800

March 5, 2024

The Honorable Jim Justice, II  
Governor, State of West Virginia  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305

Dear Governor Justice,

The following bills, authenticated by the signature of the Clerk of each House, and signed by the President of the Senate and the Speaker of the House of Delegates, have been examined and found truly enrolled:

**S. B. 240**, Increasing fees charged by sheriff;

And,

**S. B. 752**, Authorizing Department of Agriculture to complete certain land transfers.

These bills are presented to you on this day, March 5, 2024.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Lee Cassis".

Lee Cassis  
Clerk of the Senate

C: The Honorable Stephen J. Harrison  
Clerk of the House of Delegates

LEE.CASSIS@WVSENATE.GOV

Under the provisions of Rule 15 of the Rules of the Senate, the following senator was added as a co-sponsor to the following resolutions on March 4, 2024:

**Senate Resolution 65:** Senator Caputo;

And,

**Senate Resolution 66:** Senator Caputo.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Takubo, at 6:27 p.m., the Senate adjourned until tomorrow, Wednesday, March 6, 2024, at 11 a.m.

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## WEDNESDAY, MARCH 6, 2024

The Senate met at 11:19 a.m.

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

Prayer was offered by the Honorable Mark R. Maynard, a senator from the sixth district.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Rupie Phillips, a senator from the seventh district.

Pending the reading of the Journal of Tuesday, March 5, 2024,

At the request of Senator Swope, 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 504**, Relating to felony offense of sexual intercourse, intrusion, or contact with student.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

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

#### **ARTICLE 8B. SEXUAL OFFENSES.**

##### **§61-8B-11b. Prohibiting sexual intercourse, sexual intrusion, or sexual contact, ~~or intrusion~~ against students by school employees; exception; penalties.**

(a) Any teacher, principal, counselor, coach, other employee, volunteer, or school resource officer of any private or public elementary or secondary school who engages in sexual intercourse, sexual intrusion, or sexual contact, as those terms are defined in §61-8B-1 of this code, with any student enrolled in ~~the school~~ any private or public elementary or secondary school regardless of the age of the student is guilty of a felony and upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than five years or fined not more than \$5,000 or both imprisoned and fined. The fact that the student may have consented to ~~such an~~ the act or that the act did not occur on school property or during a school function is not a defense.

(b) For purposes of this section:

~~(1) A private elementary or secondary school means any school enrolling students who are exempt from compulsory school~~



~~attendance under either §18-8-1(b) of this code or §18-8-1(k) of this code; and~~

(1) A private elementary or secondary school means any private school or other entity authorized to provide an elementary or secondary education to students who are exempt from compulsory school attendance pursuant to §18-8-1 of this code; and

(2) A public elementary or secondary school means any school under the general supervision of the West Virginia Board of Education pursuant to section two, article XII of the West Virginia Constitution.

(c) Any student under the age of 18 years currently enrolled in a secondary school and engaged in a wage-earning registered youth apprenticeship program, as authorized under §18A-3-1 of this code or approved by the state board, may not be prosecuted for a violation of subsection (a) of this section, including those secondary school students under the age of 18 years participating in the Grow Your Own teacher pathway or any Career Technical Education school service personnel training programs.

~~(e)~~ (d) This is a separate and distinct criminal offense from any other applicable offense under this code. The penalties set forth in this section are in addition to any other penalties for any other applicable offense.

~~(d)~~ (e) A final conviction under this section shall cause the permanent forfeiture of any teaching or other certificate issued pursuant to §18A-3-2a of this code.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 504**—A Bill to amend and reenact §61-8B-11b of the Code of West Virginia, 1931, as amended, relating to felony offense involving sexual intercourse, intrusion, or contact with a student; clarifying that the offense

applies to a school resource officer; clarifying that the offense applies to a student of any private or public elementary or secondary school; clarifying the definition of private elementary or secondary school; providing an exception for certain secondary school students participating in wage-earning registered youth apprenticeship programs; and creating criminal penalties.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Senate Bill 504, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 504) 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 613**, WV Residential Mortgage Lender, Broker and Servicer Act.

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 623**, Requiring DMV to provide images of certain individuals to Secretary of State for voter identification purposes.

On motion of Senator Takubo, 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:

## **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 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 §17B-2-1 et seq.~~ of this code, when the division's regional offices are open for regular business, the following information from each qualified registrant:

(1) Full name, including first, middle, last, and any premarital names;

(2) Date of birth;

(3) Residence address and mailing address, if different;

(4) The applicant's electronic signature and photograph;

(5) Telephone number, if available;

(6) Email address, if available;

(7) Political party membership, if any;

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

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

(10) United States citizenship status;

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

(12) Date of application; and

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

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

~~(c) By no later than January 1, 2020, the Division of Motor Vehicles shall create a regular process that allows the Secretary of State to fulfill his or her duties as provided by §3-2-3 of this code to confirm that persons who are noncitizens of the United States have not and cannot register to vote via the Online Voter Registration portal.~~

(c) As soon as practicable, but no later than 90 days following the effective date of amendments made during the 2024 Regular

Legislative Session, the Division of Motor Vehicles shall create a regular process, including but not limited to the requirements of §3-2-11(p) of this code, that ensures the Secretary of State can fulfill his or her duties as provided by §3-2-3 of this code to confirm that any applicant to register to vote in West Virginia through the Division of Motor Vehicles is in fact a U.S. citizen eligible to vote in West Virginia and to ensure that persons who are noncitizens of the United States have not and cannot register to vote in West Virginia.

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

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

(f) A qualified voter, who submits, by mail or by delivery by a third party, an application for registration on the form used in conjunction with driver licensing, is required to make his or her first vote in person and present identification as required for other mail registration in accordance with ~~the provisions of~~ §3-2-10(g) of this code. If the applicant has been previously registered in the jurisdiction and the application is for a change of address, change of name, change of political party affiliation, or other correction, the presentation of identification and first vote in person is not required.

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

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

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

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

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

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

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

(n) Except for the changes made to subsection (b) of this section during the 2017 regular legislative session, the changes made to this section during the 2016 regular legislative session become effective on July 1, 2021, and any costs associated therewith shall be paid by the Division of Motor Vehicles. The

Commissioner of the Division of Motor Vehicles, the Secretary of the Department of Transportation, and the Secretary of State shall each appear before the Joint Committee on Government and Finance and the Joint Standing Committee on the Judiciary, during the first interim meetings of such committees occurring after September 1, 2019, to present written reports containing a full and complete list of any infrastructure each agency requires to achieve the purposes of this section. Along with the report required by this subsection, the Division of Motor Vehicles shall submit a written schedule to both committees outlining how the division will implement the requirements of this section by July 1, 2021.

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

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

(q) The amendments to this section enacted by the Legislature in the 2024 Regular Session are effective upon passage.

On motion of Senator Takubo, the following amendments to the House of Delegates amendment to the bill (Eng. Com. Sub. for S. B. 623) were reported by the Clerk, considered simultaneously, and adopted:

On page 4, subsection (q), by striking out the words "upon passage" and inserting in lieu thereof the words "January 1, 2025";

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 623**—A Bill to amend and reenact §3-2-11 of the Code of West Virginia, 1931, as amended, relating to requiring Division of Motor Vehicles to provide images of persons issued any identification or license to the Secretary of State for voter identification purposes; requiring Division of Motor Vehicles to create regular process; requiring Division of Motor Vehicles to release and forward certain information; and providing an internal effective date for the amendments to this section.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendment, as amended.

Engrossed Committee Substitute for Senate Bill 623, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: Caputo—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. 623) passed with its Senate amended title.

Senator Takubo moved that the bill take effect January 1, 2025.

On this question, the yeas were: Azinger, Barrett, Boley, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.



The nays were: Caputo—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. 623) takes effect January 1, 2025.

*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 650**, Supplementing and amending appropriations to Higher Education Policy Commission, Fairmont State University.

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 701**, Supplementing and amending appropriations to Department of Education, School Construction Fund.

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 714**, Transferring duties and licensing from Board of Osteopathic Medicine to Board of Medicine.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page 3, §30-3-4, line 3, after the words "Accredited osteopathic" by striking out the word "college" and inserting in lieu thereof the words "medical school".

On page 3, §30-3-4, line 3, after the words "college of" by striking out the word "osteopathy" and inserting in lieu thereof the words "osteopathic medicine".

On page 3, §30-3-4, line 5, after the words "or by the" by striking out the words "college accrediting agency of the American Osteopathic Association" and inserting in lieu thereof the words "Commission on Osteopathic College Accreditation (COCA)".

On page 3, §30-3-4, line 8, after the words "established by the" by striking out the words "American Osteopathic Association" and inserting in lieu thereof the word "COCA".

On page 5, §30-3-4, line 38, by striking out the words

""Osteopathy" means a system of healing arts which places the chief emphasis on the structural integrity of the body mechanism as being the most important single factor in maintaining the well-being of the organism in health and disease" and inserting in lieu thereof the words

""Osteopathic medicine and surgery" means a complete system of medical care with a philosophy that combines the needs of the patient with the current practice of medicine, surgery, and obstetrics; that emphasizes the concept of body unity, the interrelationship between structure and function; and that has an appreciation of the body's ability to heal itself".

On page 8, §30-3-5, line 64, after the words "at least" by striking out the remainder of the sentence and inserting in lieu thereof the words "five of which shall be allopathic physicians and at least five of which shall be osteopathic physicians".

On page 13, §30-3-7, line 28, after the words "§5A-3-1 *et seq.*" by striking out the words "and §5A-6-1 *et seq.*".

On page 24, §30-3-10b, line 4, after the word "allopathic" by inserting the words "or osteopathic".

On page 24, §30-3-10b, line 19, after the words "medical school" by inserting the words "or accredited osteopathic college".

On page 24, §30-3-10b, line 22, after the words "practice allopathic" by inserting the words "or osteopathic".

On page 24, §30-3-10b, line 23, after the words "medical school" by inserting the words "or accredited osteopathic college".

On page 36, §30-3-13, line 70, after the word "band" by striking out the words "member, cheerleader, mascot" and inserting in lieu thereof the words "members, cheerleaders, mascots".

On page 49, §30-3-16, line 43, after the word "allopathic" by inserting the words "and osteopathic".

On page 50, §30-3-22, line 1, after the word "funds" by striking out the words "as expended pursuant to the authority granted under" and inserting in lieu thereof the words "provided in".

On page 58, §30-3G-8, line 17, by striking out the word "provide" and inserting in lieu thereof the word "providing".

On page 63, §30-3G-11, line 10, by striking out the words "moral turpitude".;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 714**—A Bill to amend and reenact §30-1D-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §30-3-1, §30-3-2, §30-3-4, §30-3-5, §30-3-6, §30-3-7, §30-3-8, §30-3-9, §30-3-10, §30-3-11, §30-3-11a, §30-3-12, §30-3-13, §30-3-13a, §30-3-15, §30-3-16, §30-3-17, and §30-3-18 of said code; to amend said code by adding thereto three new sections, designated §30-3-10b, §30-3-21, and §30-3-22; to repeal §30-3-7a, §30-3-11b, and §30-3-11c of said code; to amend said code by adding thereto a new article, designated §30-3G-1, §30-3G-

2, §30-3G-3, §30-3G-4, §30-3G-5, §30-3G-6, §30-3G-7, §30-3G-8, §30-3G-9, §30-3G-10, §30-3G-11, and §30-3G-12; to amend and reenact §30-14-3 of said code; and to amend said code by adding thereto two new sections, designated §30-14-18 and §30-14-19, all relating to professionals to be licensed by the West Virginia Board of Medicine; requiring criminal background checks of any applicant for a license to engage in genetic counseling; making legislative findings; including osteopathic physicians within the purpose of a certain article; defining terms; providing that the West Virginia Board of Medicine (Board) will be reconstituted effective January 1, 2025; providing that the Board is to assume, carry on, and succeed to all of the duties, rights, powers, obligations, and liabilities previously belonging to, or exercised by, the West Virginia Board of Osteopathic Medicine effective January 1, 2025; stating the powers and duties of the Board; providing for Board membership; providing that the Board may call emergency meetings; exempting the Board from certain Purchasing Division requirements; repealing certain provisions pertaining to radiologist assistants; providing for certain use of electronic signatures; providing for the creation of a complaint file that is separate from and in addition to a licensee's historical record; providing requirements for licensure to practice medicine and surgery; providing for certain special license types; providing that certain endorsement and temporary-license requirements also apply to osteopathic physicians; providing for a license to practice administrative medicine; repealing certain provisions relating to the practice of medicine and surgery in certain nursing homes; repealing certain provisions pertaining to administrative medicine licenses; providing for the renewal of physician licenses; prohibiting certain practices; clarifying that osteopathic physicians may also practice telemedicine; providing that a medical corporation formed outside of this state for the purpose of engaging in medical acts through one or more licensed physician assistants may receive a certificate of authorization; providing for the issuance of educational permits; providing that certain provisions shall not apply to the practice of osteopathic medicine and surgery prior to January 1, 2025; requiring the development of a transition plan; providing for the transfer of certain special revenue funds; providing for the Board's special revenue fund; requiring persons to possess a valid license prior to practicing genetic counseling; providing licensure requirements for genetic counseling; stating the duties and powers of the Board with regard to genetic counseling; providing for the practice of ACS and

ABGC permittees; authorizing the Board to promulgate rules for legislative approval; providing for the expiration, renewal, and reinstatement of licenses to practice genetic counseling; setting certain continuing-education requirements; setting a genetic counselor's scope of practice; providing for disciplinary proceedings involving genetic counselors; authorizing the Board or the Attorney General to seek certain injunctive relief; requiring certain reports from health care facilities; prohibiting any genetic counselor or ACS permittee to represent that he or she is a licensed physician and providing that any person who violates that prohibition is guilty of a felony and, upon conviction, shall be imprisoned for not less than one nor more than two years, or be fined not more than \$2,000, or both find and imprisoned; allowing members of the current West Virginia Board of Osteopathic Medicine to serve three consecutive terms; terminating the West Virginia Board of Osteopathic Medicine effective December 31, 2024; providing that the West Virginia Board of Osteopathic Medicine shall transfer any and all of its remaining functions to the Board effective January 1, 2025; setting forth additional provisions pertaining to the transfer; and requiring the development and implementation of a transition plan.

Senator Takubo moved that the Senate concur in the House of Delegates amendments to the bill.

Following discussion,

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

Engrossed Committee Substitute for Senate Bill 714, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Barrett, Boley, Caputo, Clements, Deeds, Grady, Jeffries, Maroney, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Stuart, Swope, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—23.

The nays were: Azinger, Chapman, Hamilton, Hunt, Karnes, Martin, Maynard, Rucker, Smith, Stover, and Taylor—11.

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. 714) 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. Senate Bill 827**, Providing for regional distribution and dismantling centers.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page 2, section 2, beginning on line 20, after with word "defined" by inserting the words "in this section" and striking the remainder of the sentence;

And,

On page 6, section 4, on line 74, by striking the word "licensed" and inserting in lieu thereof the word "permitted".

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Senate Bill 827, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 827) 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 passage by that body, to take effect from passage, and requested the concurrence of the Senate in the passage of

**Eng. House Bill 5458**—A Bill supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Higher Education Policy Commission, Higher Education Policy Commission – Administration – Control Account, fund 0589, fiscal year 2024, organization 0441, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

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. House Bill 5699**—A Bill supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Arts, Culture, and History, Division of Culture and History, fund 0293, fiscal year 2024, organization 0432, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

Referred to the Committee on Finance.

## Executive Communications

The following communication from His Excellency, the Governor, was reported by the Clerk:



*Jim Justice*  
Governor of West Virginia

March 5, 2024

The Honorable Craig Blair  
President of the Senate  
State Capitol, Building 1, Room 229-M  
Charleston, West Virginia 25305

The Honorable Roger Hanshaw  
Speaker of the House of Delegates  
State Capitol, Building 1, Room 228-M  
Charleston, West Virginia 25305

Dear President Blair and Speaker Hanshaw:

After submission of my recommended FY 2025 Executive Budget on January 10, 2024, there are areas that require adjustment.

Therefore, pursuant to Section 51, Article VI of the Constitution of the State of West Virginia, I submit revisions to the FY 2025 Budget Bill for the following sections:

### TITLE II - APPROPRIATIONS.

#### Section 1. Appropriations from general revenue.

##### Department of Administration

*Office of Technology - WV Office of Technology, Fund 0204, Fiscal Year 2025, Org 0231*

(To add a new item of appropriation.)

30a - Office of Technology

(W.V. Code Chapter 5A)

Fund 0204 FY 2025 Org 0231

Directed Transfer..... 70000 \$ 5,000,000

The above appropriation for Directed Transfer (fund 0204, appropriation 70000) shall be transferred to the Information Services and Communication Fund (fund 2220).

*Committee for the Purchase of Commodities and Services from the Handicapped, Fund 0233, Fiscal Year 2025, Org 0224*

(To strike language.)

State Capitol | 1900 Kanawha Blvd., East, Charleston, WV 25305 | (304) 558-2000



The Honorable Craig Blair, President  
The Honorable Roger Hanshaw, Speaker  
March 5, 2024  
Page 2

- On page 27, line 1, strike in its entirety "The Division of Highways, Division of Motor Vehicles, Public Service Commission, and other departments, bureaus, divisions, or commissions operating from special revenue funds and/or federal funds shall pay their proportionate share of the public employees health insurance cost for their respective divisions."

#### **Department of Tourism**

*Department of Tourism – Office of the Secretary, Fund 0246, Fiscal Year 2025, Org 0304*

- (To increase Tourism - Brand Promotion (R) and decrease Tourism - Events and Sponsorships (R).)
- Decrease "Tourism-Events and Sponsorships" (fund 0246, appropriation 61805) by \$8,000,000.
  - Increase "Tourism-Brand Promotion" (fund 0246, appropriation 61803) by \$8,000,000.

#### **Department of Education**

*Department of Education - State Department of Education, Fund 0313, Fiscal Year 2025, Org 0402*

- (To decrease Teacher Retirement Savings Realized appropriation per CPRB actuary calculation and to correct language.)
- Decrease "Teachers Retirement Savings Realized" (fund 0313, appropriation 09500) by \$19,094,000.
  - On page 38, Line 50, after "Hope Scholarship Program (fund)", strike "313," and replace with "0313".

*Department of Education - State Aid to Schools Fund, Fund 0317, Fiscal Year 2025, Org 0402*

- (To adjust School Aid Formula based on the actuarial requirement from the CPRB.)
- Decrease "Teachers' Retirement System" (fund 0317, appropriation 01900) by \$3,415,958.
  - Increase "Retirement Systems-Unfunded Liability" (fund 0317, appropriation 77500) by \$779,958.

#### **Department of Health**

*Department of Health - Central Office, Fund 0407, Fiscal Year 2025, Org 0506*

- (To adjust appropriations.)
- Decrease "Office of Drug Control Policy" (fund 0407, appropriation 35401) by \$4,773.
  - Increase "Current Expenses" (fund 0407, appropriation 13000) by \$650,000.

#### **Department of Human Services**

*Division of Human Services, Fund 0403, Fiscal Year 2025, Org 0511*

- (To adjust appropriations.)
- Increase "Office of Drug Control Policy" (fund 0403, appropriation 35401) by \$4,773.

#### **Department of Health Facilities**

*Health Facilities - Hopemont Hospital, Fund 0408, Fiscal Year 2025, Org 0512*

- (To add clarifying language.)
- On page 53, line 16, after "BRIM Premium (fund 0408, appropriation 91300)," insert "at the close of the fiscal year 2024".

*Health Facilities - Lakin Hospital, Fund 0409, Fiscal Year 2025, Org 0512*

- (To add clarifying language.)
- On page 54, line 16, after "BRIM Premium (fund 0408, appropriation 91300)," insert "at the close of the fiscal year 2024".

*Health Facilities - John Manchin Senior Healthcare Center, Fund 0410, Fiscal Year 2025, Org 0512*

- (To add clarifying language.)
- On page 55, line 16, after "BRIM Premium (fund 0408, appropriation 91300)," insert "at the close of the fiscal year 2024".

The Honorable Craig Blair, President  
The Honorable Roger Hanshaw, Speaker  
March 5, 2024  
Page 3

*Health Facilities - Jackie Withrow Hospital, Fund 0411, Fiscal Year 2025, Org 0512*  
(To add clarifying language.)

- On page 55, line 16, after "BRIM Premium (fund 0408, appropriation 91300)," insert "at the close of the fiscal year 2024".

*Health Facilities - Health Facilities - Welch Community Hospital, Fund 0412, Fiscal Year 2025, Org 0512*  
(To add clarifying language.)

- On page 57, line 16, after "BRIM Premium (fund 0408, appropriation 91300)," insert "at the close of the fiscal year 2024".

*Health Facilities - William R. Sharpe Jr. Hospital, Fund 0413, Fiscal Year 2025, Org 0512*  
(To add clarifying language.)

- On page 58, line 16, after "BRIM Premium (fund 0408, appropriation 91300)," insert "at the close of the fiscal year 2024".

*Health Facilities - Mildred Mitchell-Bateman Hospital, Fund 0414, Fiscal Year 2025, Org 0512*  
(To add clarifying language.)

- On page 59, line 16, after "BRIM Premium (fund 0408, appropriation 91300)," insert "at the close of the fiscal year 2024".

*Health Facilities - William Sharpe - Transitional Living Facility, Fund 0415, Fiscal Year 2025, Org 0512*  
(To add clarifying language.)

- On page 60, line 16, after "BRIM Premium (fund 0408, appropriation 91300)," insert "at the close of the fiscal year 2024".

#### **Department of Homeland Security**

*Department of Homeland Security - Office of The Secretary, Fund 0430, Fiscal Year 2025, Org 0601*  
(To add reappropriation language.)

- After "Unclassified (fund 0430, appropriation 09900)," insert "Current Expenses - Surplus (fund 0430, appropriation 13099),".

*West Virginia State Police, Fund 0453, Fiscal Year 2025, Org 0612*

- (To increase pension contribution per CPRB actuary calculation.)
- Increase "Retirement Systems-Unfunded Liability" (fund 0453, appropriation 77500) by \$7,000.

*Division of Administrative Services - Criminal Justice Fund, Fund 0546, Fiscal Year 2025, Org 0623*  
(To add reappropriation language.)

- Before "Child Advocacy Centers (fund 0546, appropriation 45800)," insert "Victims of Crime Act (fund 0546, appropriation 21601),".

#### **Department of Transportation**

*Division of Multimodal Transportation Facilities - Public Transit General, Fund 0510, Fiscal Year 2025, Org 0810*  
(To add language.)

- On page 72, after line 9, insert a new paragraph with the text: "From the above appropriation for Current Expenses (fund 0510, appropriation 13000), \$30,000 shall be used to support the Sistersville Ferry."

#### **Department of Veterans' Assistance**

*Veterans' Home, Fund 0460, Fiscal Year 2025, Org 0618*  
(To add reappropriation language.)

The Honorable Craig Blair, President  
The Honorable Roger Hanshaw, Speaker  
March 5, 2024  
Page 4

- After "Current Expenses (fund 0460, appropriation 13000)" insert "and Capital Outlay, Repairs and Equipment - Surplus (fund 0460, appropriation 67700) are hereby reappropriated for expenditure during the fiscal year 2025.".

#### **Council for Community and Technical College Education**

*New River Community and Technical College, Fund 0600, Fiscal Year 2025, Org 0445*

(To correct an appropriation amount.)

- Decrease "New River Community and Technical College" (fund 0600, appropriation 35800) by \$50,000.

#### **Higher Education Policy Commission**

*Higher Education Policy Commission - Administration - Control Account, Fund 0589, Fiscal Year 2025, Org 0441*

(To add reappropriation language.)

- After "Dual Enrollment Program (fund 0589, appropriation 42201)," insert "Underwood-Smith Scholarship Program - Student Awards - Surplus (Fund 0589, appropriation 16799), Nursing Program Expansion Support (fund 0589, appropriation 42202), Nursing Program Expansion Support - Surplus (fund 0589, appropriation 42299)".

*Shepherd University, Fund 0366, Fiscal Year 2025, Org 0486*

(To correct an appropriation amount.)

- Increase "Shepherd University" (fund 0366, appropriation 43200) by \$348,730.

#### **Miscellaneous Boards and Commissions**

*Adjutant General - State Militia, Fund 0433, Fiscal Year 2025, Org 0603*

(To add reappropriation language.)

- After "Unclassified (fund 0433, appropriation 09900)," insert "Capital Outlay, Repairs and Equipment - Surplus (fund 0433, appropriation 67700).".

### **Sec. 3. Appropriations from other funds**

#### **Department of Administration**

*Office of the Secretary - Employee Pension and Health Care Benefit Fund, Fund 2044, Fiscal Year 2025, Org 0201*

(To align appropriation with amount transferred from fund 0313 appropriation 09500 for FY 2025.)

- Decrease "Current Expenses" (fund 2044, appropriation 13000) by \$19,094,000.

#### **Department of Environmental Protection**

*Division of Environmental Protection - Environmental Laboratory Certification Fund, Fund 3340, Fiscal Year 2025, Org 0313*

(To correct a transposed number.)

- On page 121, line 1, after appropriation 00100, strike and replace "389,641" with "389,614".

#### **Department of Revenue**

*Racing Commission - Advance Deposit Wagering Account, Fund 7309, Fiscal Year 2025, Org 0707*

(To correct the fund name.)

- On page 141, after item "270 - Racing Commission -", strike and replace the fund name with "Advance Deposit Wagering Account".

#### **Bureau of Senior Services**

*Bureau of Senior Services - Community Based Service Fund, Fund 5409, Fiscal Year 2025, Org 0508*

(To correct a foot total.)

- On page 145, line 5, after Total, strike and replace "\$14,529,966" with "\$14,589,966".

The Honorable Craig Blair, President  
 The Honorable Roger Hanshaw, Speaker  
 March 5, 2024  
 Page 5

**Sec. 4. Appropriations from lottery net profits.**

**Higher Education Policy Commission**

*Higher Education Policy Commission - Lottery Education - Higher Education Policy Commission - Control Account, Fund 4925, Fiscal Year 2025, Org 0441*

(To update appropriation name.)

- On page 160, line 6, change the name of "Minority Doctoral Fellowship (R)" to "State Doctoral Scholars Program (R)".
- On page 161, line 15, strike "Minority Doctoral Fellowship" and replace with "State Doctoral Scholars Program".

**Sec. 6. Appropriations of federal revenue.**

**Department of Human Services**

*Department of Human Services, Fund 8722, Fiscal Year 2025, Org 0511*

(To correct appropriation amounts.)

- On page 183, line 6, strike and replace "6,753,105" with "4,151,432,776".
- On page 183, line 8, strike and replace "4,570,485" with "6,753,105".

**Miscellaneous Boards and Commissions**

*Economic Development Authority, Fund 8893, Fiscal Year 2025, Org 0944*

(To correct a letter added to the section total.)

- On page 190, line 2, remove the "s" added to the section total for Federal Funds.

**Sec 9. Appropriations from general revenue fund surplus accrued.**

**Department of Environmental Protection**

*Division of Environmental Protection, Fund 0273, Fiscal Year 2025, Org 0313*

(To correct code section cited and add two new items of appropriation.)

407 - Division of Environmental Protection

(W.V. Code Chapter 22)

Fund 0273 FY 2025 Org 0313

Capital Outlay, Repairs and Equipment-Surplus.....	67700	\$	1,500,000
Directed Transfer - Surplus.....	70099	\$	2,268,230

The above appropriation for Directed Transfer - Surplus (fund 0273, appropriation 70099), \$2,268,230 shall be transferred to the Voluntary Remediation Administrative Fund (fund 3347).

**Department of Economic Development**

*Department of Economic Development - Office of the Secretary, Fund 0256, Fiscal Year 2025, Org 0307*

(To add a new item of appropriation for WV Jobs Investment Trust.)

408a - Department of Economic Development -

Office of the Secretary

(W.V. Code Chapter 5B)

Fund 0256 FY 2025 Org 0307

Directed Transfer - Surplus.....	70099	\$	10,000,000
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The above appropriation for Directed Transfer - Surplus (fund 0256, appropriation) shall be transferred to the Economic Development Authority, WV Jobs Investment Trust (fund 9071).

The Honorable Craig Blair, President  
 The Honorable Roger Hanshaw, Speaker  
 March 5, 2024  
 Page 6

#### Higher Education Policy Commission

*Higher Education Policy Commission - Administration - Control Account, Fund 0589, Fiscal Year 2025, Org 0441*

(To strike a surplus item that was incorrectly placed under HEPC.)

- Strike Item 408 in its entirety

#### Executive

*Governor's Office - Civil Contingent Fund, Fund 0105, Fiscal Year 2025, Org 0100*

(To insert a new surplus item under the Civil Contingent Fund.)

408a - Governor's Office -

Civil Contingent Fund

(W.V. Code Chapter 5)

Fund 0105 FY 2025 Org 0100

Fire and EMS Training Program Support - Surplus .....	XXXXX	\$	10,000,000
Fire and EMS Training Program Equipment - Surplus.....	XXXXX		<u>10,000,000</u>
Total .....		\$	20,000,000

#### Department of Transportation

*Division of Multimodal Transportation Facilities - State Rail Authority, Fund 0506, Fiscal Year 2025, Org 0810*

(To insert a surplus item of appropriation.)

412a - Division of Multimodal Transportation Facilities -

State Rail Authority

(W.V. Code Chapter 17)

Fund 0506 FY 2025 Org 0810

Other Assets-Surplus.....	23699	\$	1,100,000
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#### Executive

*West Virginia Conservation Agency, Fund 0132, Fiscal Year 2025, Org 1400*

(To add a new item of appropriation.)

412b - West Virginia Conservation Agency

(W.V. Code Chapter 19)

Fund 0132 FY 2025 Org 1400

Soil Conservation Projects - Surplus.....	26900	\$	1,549,450
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Thank you for your prompt attention to this matter. Your cooperation is always appreciated. Should you have any questions or require additional information, please call me at any time.

The Honorable Craig Blair, President  
The Honorable Roger Hanshaw, Speaker  
March 5, 2024  
Page 7

Sincerely,



Jim Justice  
Governor

The Honorable Eric Tarr, Senate Finance Chairman  
The Honorable Vernon Criss, House of Delegates Finance Chairman  
State Budget Office

cc:

In compliance with Article VI, Section 51 of the Constitution, the Senate consented to receive the foregoing amendments to the Budget Bill, which were referred to the Committee on Finance.

The Clerk then presented the following communication from His Excellency, the Governor, regarding bills approved by him:



*Jim Justice*  
*Governor of West Virginia*

March 6, 2024

The Honorable Lee Cassis, Clerk  
West Virginia Senate  
State Capitol  
Charleston, West Virginia 25305

Dear Mr. Clerk:

Enclosed for filing in your office, pursuant to the provisions of law, is the following bill:

Senate Bill No. Six Hundred Fifty-eight (658), which was presented to me on February 29, 2024.

You will note that I approved this bill on March 6, 2024.

Sincerely,

A handwritten signature in blue ink, reading "Jim Justice".

Jim Justice  
Governor

JJ: mrp

cc: The Honorable Stephen J. Harrison

The Senate proceeded to the fourth order of business.

Senator Weld, 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 4297**, Law Enforcement Officers Safety Act.

And has amended same.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 4297) 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 Woodrum, 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 4350**, Relating to appointment of candidates after filing period.

And has amended same.

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

Respectfully submitted,

Jack David Woodrum,  
*Chair.*



At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4350) 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 Weld, 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 4837**, Clarifying the duty of banks to retain and procure records.

With amendments from the Committee on Banking and Insurance pending;

And has also amended same.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4837) 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 Grady, 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 5158**, Relating to making technical corrections to the special education code.

And has amended same.

And,

**Eng. Com. Sub. for House Bill 5162**, Establish a program to promote creation and expansion of registered apprenticeship programs.

And has amended same.

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

Respectfully submitted,

Amy N. Grady,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 5158 and 5162) 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 Tarr, 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 5262**, Relating generally to teacher's bill of rights.

With amendments from the Committee on Education 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 4, 2024;

And reports the same back with the recommendation that it do pass as amended by the Committee on Education to which the bill

was first referred; and as last amended by the Committee on Finance.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

Senator Weld, 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 5430**, Relating to per diem compensation and expenses of newly elected or appointed judicial officers receiving education and training prior to taking the oath of office.

And has amended same.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 5430) 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 Weld, 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 5561**, Relating to permitting the electronic execution of trusts.

And has amended same.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5561) 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 Grady, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

**House Concurrent Resolution 24**, To create a study resolution to examine the school aid formula.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Amy N. Grady,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the resolution (H. C. R. 24) contained in the foregoing report from the Committee on Education was then referred to the Committee on Rules.

The Senate proceeded to the sixth order of business.

Senator Takubo offered the following resolution:

**Senate Resolution 68**—Designating March 7, 2024, as Recovery Community Day at the Legislature.

Which, under the rules, lies over one day.

Senator Rucker offered the following resolution:

**Senate Resolution 69**—Recognizing the month of March as National Social Work Awareness Month.

Which, under the rules, lies over one day.

The Senate proceeded to the seventh order of business.

**Senate Concurrent Resolution 35**, Requesting study on efficiency and accountability of county boards of education.

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

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

**Senate Resolution 67**, Designating March 6, 2024, as Suicide Prevention Awareness Day.

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

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

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for Senate Bill 644**, Supplementing and amending appropriations to Department of Commerce, Division of Forestry, and Geological and Economic Survey.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson,

Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 644) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 644) 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 656**, Supplementing and amending appropriations to DHHR, Division of Human Services.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith,

Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 656) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 656) 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 665**, Supplementing and amending appropriations to DHHR, Division of Health.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith,

Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 665) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 665) 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 4709**, Relating to vocational and technical education programs.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith,



Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 4709) 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 4971**, Relating to Critical Materials Manufacturing 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: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 4971) 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 4971**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-6M-1, §11-6M-2, and §11-6M-3 all relating to limiting property tax on silicon and silicon carbide

manufacturing property; providing for property tax treatment of silicon and silicon carbide manufacturing property as its salvage value; providing for rule making authority and administration by the Tax Commissioner; providing an effective date for assessments on or after July 1, 2025; and providing a sunset date.

Senator Takubo moved that the bill take effect July 1, 2025.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 4971) takes effect July 1, 2025.

*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 4986**, Relating to computer science and cybersecurity instruction for adult learners.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 4986) 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 5013**, Relating to Timber Management.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5013) passed.

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

**Eng. Com. Sub. for House Bill 5013**—A Bill to amend and reenact §11-1C-2 of the Code of West Virginia, 1931, as amended, relating to amending the definition of managed timberland to be more inclusive of certain real estate by removing an exception to the program concerning subdivisions and planning ordinances; clarifying the definition an exception to the program concerning property precluded from development; and allowing land subject to, or that may become subject, to a conservation or preservation easement to enter into a timberland management agreement.

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

**Eng. House Bill 5014**, Supplementing and amending appropriations to West Virginia University General Administration Fund.

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

Senator Takubo requested a ruling from the Chair as to whether he should be excused from voting under Rule 43 of the Rules of the Senate as he is an Executive Vice President for West Virginia University Medicine.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5014) passed.

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

**Eng. House Bill 5014**—A Bill supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Governor's Office – Civil

Contingent Fund, fund 0105, fiscal year 2024, organization 0100, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

Whereas, The Governor submitted an Executive Message to the Legislature on January 10, 2024, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended expirations to the unappropriated balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2024; therefore

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5014) 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 5024**, Relating to exempting non-grantor trusts administered in this state from the personal income 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: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5024) 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 5024**—A Bill to amend and reenact §11-21-3, §11-21-4g, §11-21-18, §11-21-30, §11-21-40, §11-21-51, and §11-21-71a of the Code of West Virginia, 1931, as amended, all relating to the personal income tax by exempting non-grantor trusts administered by licensed private trust companies in this state from the personal income tax.

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

**Eng. House Bill 5056**, Relating to substitute service personnel positions.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith,

Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5056) 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 5082**, Exempt those with 25 years holding an insurance license from attaining additional CEUs.

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

Senators Oliverio and Hamilton, respectively, requested rulings from the Chair as to whether they should be excused from voting under Rule 43 of the Rules of the Senate.

The Chair replied that any impact on Senators Oliverio and Hamilton would be as members of a class of persons and that they would be required to vote.

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: Oliverio and Queen—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. 5082) 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. Com. Sub. for House Bill 5082**—A Bill to amend and reenact §33-12-8 of the Code of West Virginia, 1931, as amended, relating to reducing the continuing education requirement for individual insurance producer who have been licensed as such for 25 years or more.

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

**Eng. House Bill 5170**, Increasing the size of matching grants for local economic development from \$30,000 to \$50,000.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5170) passed with its title.

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

**Eng. House Bill 5213**, To allow Gold Star spouses to receive one free Gold Star vehicle registration for personal use.

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



On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5213) passed.

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

**Eng. House Bill 5213**—A Bill to amend and reenact §17-3-14b, the Code of West Virginia, 1931, as amended, relating to providing for one free Gold Star Family license plate to a Gold Star spouse.

*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 5223**, To create the Southern Coalfield Resiliency and Revitalization Program.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5223) 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 5294**, Revising state law regulating farm wineries.

On third reading, coming up in regular order, with the Judiciary committee amendment pending, and with the right having been granted on March 4, 2024, for further amendments to be received on third reading, was read a third time.

At the request of Senator Trump, as chair of the Committee on the Judiciary, and by unanimous consent, the Judiciary committee amendment to the bill (*shown in the Senate Journal of March 4, 2024, pages 1526 to 1606, inclusive*) 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:

## **CHAPTER 11. TAXATION.**

### **ARTICLE 16. NONINTOXICATING BEER.**

#### **§11-16-6a. Brewer and resident brewer license to manufacture, sell, and provide ~~complementary~~ samples.**

(a) *Legislative findings.* — The Legislature hereby finds that it is in the public interest to regulate, control, and support the brewing, manufacturing, distribution, sale, consumption, transportation, and storage of nonintoxicating beer and nonintoxicating craft beer and its industry in this state in order to protect the public health, welfare, and safety of the citizens of this state, and promote hospitality and tourism. Therefore, this section authorizes a licensed brewer or resident brewer with its principal

place of business and manufacture located in this state to have certain abilities in order to promote the sale of nonintoxicating beer and nonintoxicating craft beer manufactured in this state for the benefit of the citizens of this state, the state's growing brewing industry, and the state's hospitality and tourism industry, all of which are vital components for the state's economy.

(b) *Sales of nonintoxicating beer.* — A licensed brewer or resident brewer with its principal place of business and manufacture located in the State of West Virginia may offer only nonintoxicating beer or nonintoxicating craft beer manufactured by the licensed brewer or resident brewer for retail sale to customers from the brewer's or resident brewer's licensed premises for consumption off of the licensed premises only in the form of kegs, bottles, cans, or growlers for personal consumption and not for resale. A licensed brewer or resident brewer may not sell, give, or furnish nonintoxicating beer for consumption on the premises of the principal place of business and manufacture located in the State of West Virginia, except for the limited purpose of ~~complimentary~~ samples as permitted in subsection (c) of this section.

(c) ~~Complimentary samples~~ *Samples.* — A licensed brewer or resident brewer with its principal place of business and manufacture located in the State of West Virginia may only offer ~~complimentary~~ samples of nonintoxicating beer or nonintoxicating craft beer brewed at the brewer's or resident brewer's principal place of business and manufacture located in the State of West Virginia. The ~~complimentary~~ samples may be no greater than two ounces per sample per patron, and a sampling shall not exceed 10 ~~complimentary~~ two-ounce samples per patron per day. A licensed brewer or resident brewer providing ~~complimentary~~ samples shall provide complimentary food items to the patron consuming the ~~complimentary~~ samples; and prior to any sampling, verify, using proper identification, that the patron sampling consuming the samples is 21 years of age or over and that the patron is not visibly intoxicated.

(d) *Retail sales.* — Every licensed brewer or resident brewer under this section shall comply with all the provisions of this article as applicable to nonintoxicating beer retailers when conducting

sales of nonintoxicating beer or nonintoxicating craft beer and ~~shall be~~ is subject to all applicable requirements and penalties in this article. In the interest of promoting tourism throughout the state, every licensed brewer or resident brewer manufacturing nonintoxicating beer or nonintoxicating craft beer in this state is authorized, with a limited off-site retail privilege at private ~~fair~~ fairs and festivals, for on-premises consumption sales and off-premises consumption sales of only the brewer or resident brewer's ~~sealed~~ nonintoxicating beer or nonintoxicating craft beer. At least five days prior to an approved private fair and festival, an authorized brewer or resident brewer shall provide a copy of a written agreement to sell only nonintoxicating beer or nonintoxicating craft beer manufactured by the brewer or resident brewer at the private fair and festival's licensed premises. If approved, an authorized brewer or resident brewer may conduct on-premises and off-premises consumption sales of their nonintoxicating beer or nonintoxicating craft beer from a designated booth at the private fair and festival as set forth in §60-7-8a of this code. All authorized and approved brewers or resident brewers conducting the on-premises and off-premises consumption sales shall comply with all retail requirements in §11-16-1 *et seq.* of this code, and specifically with respect to all markups, taxes, and fees. Additionally, an authorized brewer or resident brewer may provide, sell, and serve its nonintoxicating beer or nonintoxicating craft beer ~~complimentary~~ samples in the amount set forth in subsection (c) of this section and its nonintoxicating beer or nonintoxicating craft beer by the glass or drink, or by the bottle or can for on-premises consumption when licensed as set forth in this article to patrons who are 21 years of age or over and who are not intoxicated in the amounts set forth in subsection (c).

(e) *Payment of taxes and fees.* — A licensed brewer or resident brewer under this section shall pay all taxes and fees required of licensed nonintoxicating beer retailers, in addition to any other taxes and fees required, and meet applicable licensing provisions as required by this chapter and by rule of the commissioner.

(f) *Advertising.* — A licensed brewer or resident brewer under this section may advertise a particular brand or brands of

nonintoxicating beer or nonintoxicating craft beer produced by the licensed brewer or resident brewer and the price of the nonintoxicating beer or nonintoxicating craft beer subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance.

(g) *Growler requirements.* — A licensed brewer or resident brewer under this section shall fill a growler and patrons are not permitted to access the secure area or fill a growler. A licensed brewer or resident brewer under this section shall sanitize, fill, securely seal, and label any growler prior to its sale. A licensed brewer or resident brewer under this section may only offer for retail sale growlers no larger than 128 fluid ounces of nonintoxicating beer or nonintoxicating craft beer manufactured by the licensed brewer or resident brewer for personal consumption off of the licensed premises and not for resale. A licensed brewer or resident brewer under this section may refill a growler subject to the requirements of this section. A licensed brewer or resident brewer shall visually inspect any growler before filling or refilling it. A licensed brewer or resident brewer may not fill or refill any growler that appears to be cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container.

(h) *Growler labeling.* — A licensed brewer or resident brewer under this section selling growlers shall affix a conspicuous label on all sold and securely sealed growlers listing the name of the licensee selling the growler, the brand of the nonintoxicating beer or nonintoxicating craft beer in the growler, the alcohol content by volume of the nonintoxicating beer or nonintoxicating craft beer in the growler, and the date the growler was filled or refilled. ~~and, further, all~~ All labeling on the growler shall be consistent with all federal labeling and warning requirements.

(i) *Growler sanitation.* — A licensed brewer or resident brewer authorized under this section shall clean and sanitize all growlers he or she fills or refills in accordance with all state and county health requirements prior to its sealing. In addition, the licensed brewer or resident brewer shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipelines, barrel tubes, and any other related equipment used to fill or refill

growlers. Failure to comply with this subsection may result in penalties under §11-16-23 of this code.

(j) *Fee.* — There is no additional fee for a licensed brewer or resident brewer authorized under this section to sell growlers.

(k) *Limitations on licensees.* — To be authorized under this section, a licensed brewer or resident brewer may not produce more than 25,000 barrels per calendar year at the brewer's or resident brewer's principal place of business and manufacture located in the State of West Virginia. No more than one brewer or resident brewer license may be issued to a single person or entity and no person may hold both a brewer and a resident brewer license. A licensed brewer or resident brewer under this section may only conduct tours, give complimentary samples, and sell growlers during the hours of operation set forth in §11-16-18(a)(1) of this code. A licensed brewer or resident brewer authorized under this section ~~shall be~~ is subject to the applicable penalties under §11-16-23 of this code for violations of this section.

(l) (1) ~~*Contract Brewing Services Alternating Proprietorship Agreements.*~~ - A licensed brewer or resident brewer may enter into ~~contract brewing services~~ alternating proprietorship agreements with another licensed brewer or resident brewer with its principal place of business and manufacture located in the State of West Virginia for purposes of sharing brewing equipment or facilities as part of the manufacture of nonintoxicating beer or nonintoxicating craft beer. Any such ~~contract brewing services~~ alternating proprietorship agreement shall be provided to the West Virginia Alcohol Beverage and Control Administration and set forth the following terms and conditions:

(A) The licensed brewer or resident brewer serving as the brewer of record and retaining ownership, rights, title, and interest in the nonintoxicating beer or nonintoxicating craft beer recipe and brand;

(B) The licensed brewer or resident brewer who will be responsible for executing any brew of nonintoxicating beer or nonintoxicating craft beer;

(C) The location of the facilities to be ~~utilized~~ used for the manufacture of the nonintoxicating beer or nonintoxicating craft beer;

(D) Specifications regarding the packaging of all nonintoxicating beer or nonintoxicating craft beer manufactured under the contract brewing services agreement; and

(E) The manner of payment of any and all federal and state excise taxes associated with the manufactured nonintoxicating beer or nonintoxicating craft beer.

(2) The licensed brewer or resident brewer serving as the brewer of record is responsible for the transportation of the finished and packaged product to ~~their~~ its licensed facility, where it must come to rest ~~be~~ tax determined. Any nonintoxicating beer or nonintoxicating craft beer manufactured pursuant to ~~a contract brewing services~~ an alternating proprietorship agreement shall be credited to the specified brewer of record for purposes of the barrel limitations set forth in §11-16-6a(k) of this code, and not the licensed brewer or resident brewer responsible for executing any brew on behalf of the brewer of record.

(m) *Rules.* — The commissioner, in consultation with the Bureau for Public Health concerning sanitation, may propose rules for legislative approval, pursuant to §29A-3-1 *et seq.* of this code, to implement this section.

#### **§11-16-11a. Nonintoxicating beer sampling.**

(a) Notwithstanding any provision of this code to the contrary, a Class A retail licensee or Class B retail licensee may, with the written approval of the commissioner, conduct a nonintoxicating beer sampling event on a designated nonintoxicating beer sampling day.

(b) At least five business days prior to the nonintoxicating beer sampling, the Class A retail licensee or Class B retail licensee shall submit a written proposal to the commissioner requesting to hold a nonintoxicating beer sampling event, including:

- (1) The day of the event;
- (2) The location of the event;
- (3) The times for the event;
- (4) The names of up to three specific brands, types, and flavors, if any, of the nonintoxicating beer to be sampled; and

(5) A statement indicating that all the nonintoxicating beer brands have been registered and approved for sale in the state by the commissioner.

(c) Upon approval by the commissioner, a Class A retail licensee or Class B retail licensee may serve the complimentary nonintoxicating beer samples of the approved brands, types, and flavors that are purchased by the Class A retail licensee or Class B retail licensee, with all taxes paid, from its inventory.

(d) The complimentary nonintoxicating beer sample on any nonintoxicating beer sampling day shall not exceed:

(1) ~~One~~ Three separate and individual sample servings per brand, type, and flavor per customer verified to be 21 years of age or older; and

(2) ~~Two~~ Four ounces in total volume per brand, type, and flavor.

(e) Servers at the nonintoxicating beer sampling event shall:

(1) Be employees of the Class A retail licensee or Class B retail licensee;

(2) Be at least 21 years of age or older; and

(3) Have specific knowledge of the nonintoxicating beer being sampled to convey to the customer.

(f) All servers at the nonintoxicating beer sampling event shall verify the age of the customer sampling nonintoxicating beer by



requiring and reviewing proper forms of identification. Servers at the nonintoxicating beer event may not serve any person who is:

(1) Under the age of 21 years; or

(2) Intoxicated.

(g) A nonintoxicating beer sampling event shall:

(1) Occur only inside the Class A retail licensee's or Class B retail licensee's licensed premises; and

(2) Cease on or before 9:00 p.m. on any approved nonintoxicating beer sampling day.

(h) Any nonintoxicating beer bottle or can used for sampling must be from the inventory of the licensee, and clearly and conspicuously labeled "SAMPLE, NOT FOR RESALE". If the seal is broken on any nonintoxicating beer bottle or can, or if any nonintoxicating beer bottle or can is opened, then that nonintoxicating beer bottle or can must be removed from the licensed premises immediately following the event.

(i) Violations of this section are subject to the civil and criminal penalties set forth in §11-16-18, §11-16-19, §11-16-20, §11-16-22, §11-16-23, §11-16-24 and §11-16-25 of this code.

(j) To implement the provisions of this section, the commissioner may promulgate emergency rules pursuant to the provisions of §29a-3-1 of this code or propose rules for legislative approval in accordance with the provisions of §29a -3-1 *et seq.* of this code.

## **CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.**

### **ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES**

#### **§60-3A-3a. Liquor sampling.**

(a) Notwithstanding any provision of this code to the contrary, a Class A retail licensee or Class B retail licensee may conduct a liquor sampling event on a designated sampling day.

(b) At least five business days prior to the liquor sampling, the Class A retail licensee or Class B retail licensee shall submit a written proposal to the commissioner informing the Commissioner that the Class A licensee or Class B retail licensee will hold a liquor sampling event, including:

- (1) The day of the event;
- (2) The location of the event;
- (3) The times for the event; and

(4) The specific brand and flavor of the West Virginia product to be sampled.

(c) Upon approval by the commissioner, a Class A retail licensee or Class B retail licensee may serve a complimentary liquor sample of the approved brand and flavor of the West Virginia product that is purchased by the Class A retail licensee, Class B retail licensee, or from the commissioner. Alternatively, a licensed representative may purchase a sealed bottle of West Virginia product at retail in West Virginia from the Class A retail licensee or Class B retail licensee for use at the licensee's liquor sampling event on an approved sampling day. The licensed representative must submit a promotions form and receive approval prior to purchasing and furnishing a sealed bottle of West Virginia product at retail in West Virginia for a Class A retail licensee or Class B retail licensee. The licensed representative may, upon approval of the licensee, serve the complimentary samples subject to the requirements of this section. Any licensed representative that participates in purchasing sealed bottles of West Virginia product for licensees must make this same or equivalent sampling opportunity available to any Class A retail licensee or Class B retail licensee upon request by the licensee.

(d) The complimentary liquor samples on any sampling day shall not exceed:

(1) ~~Three~~ four separate and individual half ounce samples ~~serving~~ per customer verified to be 21 years of age or older; ~~and totaling not more than two ounces of liquor.~~

(2) ~~One and one-half ounces in total volume.~~ Samples may be mixed with each other or with non-alcoholic liquids as long as the total amount of the liquor sampled does not exceed ~~one and one-half~~ two ounces.

(e) Servers at the liquor sampling event shall:

(1) Be employees of the Class A retail licensee, or Class B retail licensee; and

(2) Be at least 21 years of age or older.

(f) All servers at the liquor sampling event shall verify the age of the customer sampling liquor by requiring and reviewing proper forms of identification. Servers at the liquor sampling event may not serve any person who is:

(1) Under the age of 21 years;

(2) Intoxicated.

(g) A liquor sampling event shall:

(1) Occur only inside the Class A retail licensee's licensed premises or Class B retail licensee's restricted area on the licensed premises; and

(2) Cease on or before 9:00 p.m. on any approved sampling day.

(h) Any liquor bottle used for sampling must be from the inventory of the licensee, and clearly and conspicuously labeled "SAMPLE, NOT FOR RESALE". If the seal is broken on any liquor bottle or if any liquor bottle is opened, then that liquor bottle must be removed from the licensed premises immediately following the event.

(i) Violations of this section are subject to the civil and criminal penalties set forth in §60-3A-24, §60-3A-25a, §60-3A-26, and §60-3A-27 of this code;

**ARTICLE 4. LICENSES.****§60-4-3a. Distillery, mini-distillery, and micro-distillery license to manufacture and sell.**

(a) Sales of liquor. — An operator of a distillery, mini-distillery, or micro-distillery may offer liquor for retail sale to customers from the distillery, mini-distillery, or micro-distillery for consumption off-premises only. Except for ~~complimentary~~ samples offered pursuant to §60-6-1 of this code, customers may not consume any liquor on the premises of the distillery, mini-distillery, or micro-distillery, ~~and~~ except for a distillery, mini-distillery, or micro-distillery that obtains a private manufacturer club license set forth in §60-7-1 *et seq.* of this code, and a Class A retail dealer license set forth in §11-16-1 *et seq.* of the code: *Provided*, That a licensed distillery, mini-distillery, or micro-distillery may offer ~~complimentary~~ samples of alcoholic liquors as authorized by this subsection when alcoholic liquors are manufactured by that licensed distillery, mini-distillery, or micro-distillery for consumption on the licensed premises. Notwithstanding any other provision of law to the contrary, a licensed distillery, mini-distillery, or micro-distillery may sell, furnish, and serve alcoholic liquors when licensed accordingly beginning at 6:00 a.m. unless otherwise determined by the residents of the county pursuant to §7-1-3ss of this code.

(b) Retail on-premises and off-premises consumption sales. — Every licensed distillery, mini-distillery, or micro-distillery shall comply with the provisions of §60-3A-9, §60-3A-11, §60-3A-13, §60-3A-16, §60-3A-17, §60-3A-18, §60-3A-19, §60-3A-22, §60-3A-23, §60-3A-24, §60-3A-25, and §60-3A-26 of this code, and the provisions of §60-3-1 *et seq.*, ~~and~~ §60-4-1 *et seq.*, ~~and~~ §60-7-1 *et seq.* of this code, applicable to liquor retailers, ~~and~~ distillers. In the interest of promoting tourism throughout the state, every licensed distillery, mini-distillery, or micro-distillery manufacturing liquor in this state is authorized, with a limited off-site retail privilege at private ~~fairs~~ fairs and festivals, for on-premises consumption sales served by the drink or glass, off-premises consumption sales by the bottle of only the licensed distillery, mini-distillery, or micro-distillery's sealed liquor. At

least five days prior to an approved private fair and festival, an authorized distillery, mini-distillery, or micro-distillery shall provide a copy of a written agreement to sell only liquor manufactured by the licensed distillery, mini-distillery, or micro-distillery at the private fair and festival's licensed premises. If approved, an authorized distillery, mini-distillery, or micro-distillery may conduct on-premises and off-premises consumption sales of ~~their~~ its liquor from a designated booth at the private fair and festival as set forth in §60-7-8a of this code. All authorized and approved distilleries, mini-distilleries, and micro-distilleries' off-premises consumption sales shall comply with all retail requirements in §60-3A-1 *et seq.* of this code, and specifically §60-3A-17 of this code with respect to all markups, taxes, and fees and also all retail requirements of §60-7-1 *et seq.* of this code when applicable. Additionally, every authorized distillery, mini-distillery, and micro-distillery may provide ~~complimentary~~ samples to patrons who are 21 years of age and older and who are not intoxicated. The ~~complimentary~~ liquor samples of the licensed distillery, mini-distillery, or micro-distillery's product on any sampling day shall not exceed:

(1) Three separate and individual ~~samples~~ sample servings per customer verified to be 21 years of age or older; and

(2) ~~One and one-half~~ Six ounces in total volume. Samples may be mixed with each other or with non-alcoholic liquids as long as the total amount of the liquor sampled does not exceed ~~one and one-half~~ six ounces.

(c) Payment of taxes and fees. — The distillery, mini-distillery, or micro-distillery shall pay all taxes and fees required of licensed retailers and meet applicable licensing provisions as required by this chapter and by rule of the commissioner, except for payments of the wholesale markup percentage and the handling fee provided by rule of the commissioner: *Provided*, That all liquor for sale to customers from the distillery, mini-distillery, or micro-distillery for off-premises consumption is subject of a five percent wholesale markup fee and an 80 cents per case bailment fee to be paid to the commissioner: *Provided, however*, That liquor sold by the distillery, mini-distillery, or micro-distillery shall not be priced less

than the price set by the commissioner pursuant §60-3A-17 of this code.

(d) Payments to market zone retailers. — Each distillery, mini-distillery, or micro-distillery shall submit to the commissioner two percent of the gross sales price of each retail liquor sale for the value of all sales at the distillery, mini-distillery, or micro-distillery each month. Any sales by a distillery, mini-distillery, or micro-distillery at a private fair and festival are treated as occurring on their licensed premises for purposes of this market zone calculation. This collection shall be distributed by the commissioner, at least quarterly, to each market zone retailer located in the distillery, mini-distillery, or micro-distillery's market zone, proportionate to each market zone retailer's annual gross prior years pretax value sales. The maximum amount of market zone payments that a distillery, mini-distillery, or micro-distillery shall submit to the commissioner is \$15,000 per annum.

(e) Limitations on licensees. — A distillery, mini-distillery, or micro-distillery may not produce more than 50,000 gallons per calendar year. The commissioner may issue more than one distillery, mini-distillery, or micro-distillery license to a single person or entity and a person may hold both a distillery and a mini-distillery license. The owners of a licensed distillery, mini-distillery, or micro-distillery may operate a winery, farm winery, brewery, or as a resident brewer as otherwise specified in the code.

(f) Building code and tax classification. — Notwithstanding any provision of this code to the contrary, the mere addition of a distillery, mini-distillery, or micro-distillery licensed under this article on a property does not change the nature or use of the property which otherwise qualifies as agricultural use for building code and property tax classification purposes.

(g) A political subdivision of this state may not regulate any of the following activities of a distillery, mini-distillery, or micro-distillery licensed and operating in accordance with this section:

(1) The on-premises sale, tasting, or consumption of liquor during business hours set forth in §60-7-12 of this code;

(2) The storage, warehousing, and wholesaling of liquor in accordance with the rules of the commissioner and federal law or regulations; or

(3) The sale of liquor related items including but not limited to the sale of pre-packaged food not requiring kitchen preparation that are incidental to the sale of liquor and on-premises consumption.

**§60-4-3b. Winery and farm winery license to manufacture and sell.**

(a) An operator of a winery or farm winery may offer wine produced by the winery, farm winery, or a farm entity authorized by §60-1-5c of this code, for retail sale to customers from the winery or farm winery for consumption on-premises or off the off-premises only. Customers may consume wine ~~on the on-premises~~ by the glass or drink or by the bottle when consumed by the glass when an operator of a winery or farm winery offers ~~complimentary~~ samples pursuant to this section and §60-6-1 of this code, and when the winery or farm winery is licensed as a private wine restaurant, or the winery or farm winery is licensed as a private manufacturer club. Customers may not consume any wine on the licensed premises of the winery, farm winery, or a farm entity authorized by §60-1-5c of this code, unless the winery, farm winery, or farm entity has obtained a multi-capacity winery or farm winery license: *Provided, That* under this subsection, a licensed winery or farm winery may offer ~~complimentary~~ samples of wine manufactured by that licensed winery or farm winery for consumption ~~on the on-premises only on Sundays beginning at 6:00 a.m. in any county in which the same has been approved as provided in §7-1-3ss~~ during the hours of operation set forth in §60-8-34 of this code. Notwithstanding any other provision of law to the contrary, a licensed winery or farm winery may sell, serve, and furnish wine, for on-premises consumption when licensed accordingly; ~~beginning at 6:00 a.m., and for off premises consumption beginning at 6:00 a.m. on any day of the week, during the hours of operation set forth in §60-8-34 of this code~~ unless otherwise determined by the residents of the county pursuant to §7-1-3ss of this code.

(b) Restriction by a political subdivision upon activities and events of farm wineries licensed in accordance with §60-4-3b of the code, to market and sell their products shall be reasonable and shall take into account the economic impact on the farm winery of such restriction, the agricultural nature of such activities and events, and whether such activities and events are usual and customary for farm wineries throughout the state of West Virginia and adjacent states. Usual and customary activities and events at farm wineries shall be permitted without local regulation unless there is a substantial impact on the health, safety, or welfare of the public. No local ordinance regulating noise, other than outdoor amplified music, arising from activities and events at farm wineries shall be more restrictive than that in the general noise ordinance. In authorizing outdoor amplified music at a farm winery, the political subdivision shall consider the effect on adjacent property owners and nearby residents.

~~(b)~~ (c) A political subdivision may not regulate any of the following activities of a farm winery licensed and operating in accordance with this section:

(1) The production and harvesting of fruit and other agricultural products and the manufacturing of wine;

(2) The on-premises sale, tasting, or consumption of wine during business hours set forth in §60-8-34 of this code;

(3) The direct sale and shipment of wine by common carrier to consumers in accordance with the requirements of §60-8-6 and §60-8-6a of this code and the rules of the West Virginia Alcohol Beverage Control Commissioner;

(4) The storage, warehousing, and wholesaling of wine in accordance with the rules of the West Virginia and federal law or regulations; or

(5) The sale of wine-related items, including, but not limited, to the sale of pre-packaged food not requiring kitchen preparation, that are incidental to the sale of wine and on-premises consumption.



(6) To serve and sell wine by the glass or drink and by the bottle when consumed by the glass for consumption on- premises consumption, without the requirement to serve prepared food with the wine or application of any local health department limitations for food service in the area in which the wine is served.

(d) No political subdivision may treat private personal gatherings held by the owner of a licensed farm winery who resides at the farm winery or on property adjacent thereto that is owned or controlled by such owner at which gatherings wine is not sold or marketed and for which no consideration is received by the farm winery or its agents differently from private personal gatherings by other citizens.

~~(b) Complimentary samples~~ (e) Samples allowed by the provisions of this section may not exceed ~~two~~ three fluid ounces and no more than ~~three~~ six samples may be given to a patron in any one day.

~~(c) Complimentary samples~~ (f) Samples may be provided only for on-premises consumption.

~~(d)~~ (g) A winery, farm winery, or farm entity, pursuant to §60-1-5c of this code, may offer for retail sale from ~~their~~ its licensed premises sealed original container bottles of wine for off-premises consumption ~~only~~.

~~(e)~~ (h) A winery, farm winery, or farm entity licensed pursuant to §60-1-5c of this code, holding a multi-capacity license and a private wine restaurant license or private manufacturer club license may offer for sale wine by the drink or glass ~~in a private wine restaurant located~~ or wine by the bottle when consumed by the glass on the property of the winery, farm winery, or farm entity licensed pursuant to §60-1-5c of this code.

~~(f)~~ (i) Every licensed winery or farm winery shall comply with the provisions of §60-3-1 *et seq.*, §60-4-1 *et seq.*, and §60-8-1 *et seq.* of this code as applicable to wine retailers, wineries, and suppliers when properly licensed in such capacities.

~~(g)~~ (j) (1) The winery or farm winery shall pay all taxes and fees required of licensed wine retailers and meet applicable licensing provisions as required by this chapter and by rules promulgated by the commissioner.

(2) Each winery or farm winery acting as its own supplier shall submit to the Tax Commissioner the liter tax for all sales at the winery or farm winery each month, as provided in §60-8-1 *et seq.* of this code.

(3) The five percent wine excise tax, levied pursuant to §60-3-9d of this code, or pursuant to §8-13-7 of this code, may not be imposed or collected on purchases of wine in the original sealed package for the purpose of resale in the original sealed package, if the final purchase of the wine is subject to the excise tax or if the purchase is delivered outside this state.

(4) A liter tax shall not be collected on wine sold in the original sealed package for the purpose of resale in the original sealed package if a subsequent sale of the wine is subject to the liter tax.

(5) This section shall not be interpreted to authorize a purchase for resale exemption in contravention of §11-15-9a of this code.

~~(h)~~ (k) A winery or farm winery may advertise a particular brand or brands of wine produced by it. The price of the wine is subject to federal requirements or restrictions.

~~(i)~~ (l) A winery or farm winery shall maintain separate winery or farm winery supplier, retailer, and direct shipper licenses when acting in one or more of those capacities and shall pay all associated license fees, unless the winery or farm winery holds a license issued pursuant to the provisions of §60-8-3(b)(12) of this code. A winery or farm winery, if holding the appropriate licenses or a multi-capacity winery or farm winery license, may act as its own supplier; retailer for off-premises consumption of its wine as specified in §60-6-2 of this code; private wine restaurant; ~~and~~ or direct shipper for wine produced by the winery or farm winery. A winery or farm winery that has applied, paid all fees, and met all requirements may obtain a private manufacturer club license

subject to the requirements of §60-7-1 *et seq.* of this code, and a Class A retail dealer license subject to the requirements of §11-16-1 *et seq.* of this code. All wineries shall use a distributor to distribute and sell their wine in the state, except for farm wineries. Wineries or farm wineries may enter into alternating wine proprietorship agreements, pursuant to §60-1-5c of this code.

(j) (m) The owners of a licensed winery or farm winery may operate a distillery, mini-distillery, or micro-distillery, brewery, or as a resident brewer, as otherwise specified in the code.

(k) (n) For purposes of this section, terms have the same meaning as provided in §8-13-7 of this code.

(l) (o) Building code and tax classification. — Notwithstanding any provision of this code to the contrary, the mere addition of a winery or farm winery licensed under this article on a property does not change the nature or use of the property which otherwise qualifies as agricultural use for building code and property tax classification purposes.

(m) (p) In the interest of promoting tourism throughout the state, every licensed winery or farm winery manufacturing wine in this state is authorized, with a limited off-site retail privilege at private ~~fair~~ fairs and festivals, for on-premises consumption sales and off-premises consumption sales of only the winery or farm winery's ~~sealed~~ wine. At least five days prior to an approved private fair and festival, an authorized winery or farm winery shall provide a copy of a written agreement to sell only wine manufactured by the licensed winery or farm winery at the private fair and festival's licensed premises. If approved, an authorized licensed winery or farm winery may conduct on-premises and off-premises consumption sales of ~~their~~ its wine from a designated booth at the private fair and festival as set forth in §60-7-8a of this code. All authorized and approved wineries and farm wineries' on-premises and off-premises consumption sales shall comply with all retail requirements in §60-8-1 *et seq.* of this code, and specifically with respect to all markups, taxes, and fees. Additionally, an authorized winery, farm winery, or unlicensed winery, as referenced in §60-8-3 of this code ~~or may provide, sell, and serve complimentary wine~~

samples of its wine in the amounts set forth in subsection (b) of this section, wine by the glass or drink, or drinks wine by the bottle, or when consumed by the glass, for on-premises consumption to patrons who are 21 years of age and older and who are not intoxicated ~~in the amounts set forth in subsection (b).~~

(q) Farm Wineries. – A farm winery is permitted to serve and sell wine as authorized by this section without the requirement to serve prepared food or the application of any local health department requirements for food service. Prior to the sale, the licensee shall verify, using proper identification, that any patron purchasing wine is 21 years of age or over and that the patron is not visibly intoxicated.

(r) All Farm Wineries may serve and sell wine at any fair or festival in the state of West Virginia consistent with the requirements of §60-8-3 and §60-8-8 of this code.

## **ARTICLE 6. MISCELLANEOUS PROVISIONS.**

### **§60-6-1. When lawful to possess, use or serve alcoholic liquors.**

The provisions of this chapter may not prevent:

(1) A person from keeping and possessing alcoholic liquors in his or her residence for the personal use of himself or herself, his or her family, his or her employee, or his or her guests if the alcoholic liquors have been lawfully acquired by him or her;

(2) A person, his or her family, or employee from giving or serving such alcoholic liquors to guests in the residence, when the gift or service is not for the purpose of evading the provisions of this chapter;

(3) The holder of a winery or a farm winery license from serving ~~complimentary~~ samples of its wine ~~in moderate quantities for tasting~~ on the winery or the farm winery premises; and

(4) The holder of a distillery, mini-distillery, or a micro-distillery license from serving ~~complimentary~~ samples of its

alcoholic liquor ~~in moderate quantities for tasting~~ on the distillery, mini-distillery, or micro-distillery premises.

## **ARTICLE 7. LICENSES TO PRIVATE CLUBS.**

### **§60-7-2. Definitions; authorizations; requirements for certain licenses.**

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

(1) "Applicant" means a private club applying for a license under the provisions of this article.

(2) "Code" means the official Code of West Virginia, 1931, as amended.

(3) "Commissioner" means the West Virginia Alcohol Beverage Control Commissioner.

(4) "Licensee" means the holder of a license to operate a private club granted under this article, which remains unexpired, unsuspended, and unrevoked.

(5) "Private club" means any corporation or unincorporated association which either:

(A) Belongs to or is affiliated with a nationally recognized fraternal or veterans' organization which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises to which ~~club~~ are admitted only duly-elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which maintains in the building or on the premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests;

(B) Is a nonprofit social club, which is operated exclusively for the benefit of its members, which pays no part of its income to its

shareholders or individual members, which owns or leases a building or other premises to which ~~club~~ are admitted only duly-elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which maintains in the building or on the premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests;

(C) Is organized and operated for legitimate purposes which has at least 100 duly- elected or approved dues-paying members in good standing, which owns or leases a building or other premises, including any vessel licensed or approved by any federal agency to carry or accommodate passengers on navigable waters of this state, to which ~~club~~ are admitted only duly- elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which ~~club~~ the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment and employs a sufficient number of persons for serving meals to members and their guests; or

(D) Is organized for legitimate purposes and owns or leases a building or other delimited premises in any state, county, or municipal park, or at any airport, in which ~~building or premises~~ a club has been established, to which ~~club~~ are admitted only duly-elected and approved dues-paying members in good standing and their guests while in the company of a member and to which the general public is not admitted, and which maintains in connection with the club a suitable kitchen and dining facility and related equipment and employs a sufficient number of persons for serving meals in the club to the members and their guests.

(6) "Private bakery" means an applicant for a private club or licensed private club license that has a primary function of operating a food preparation business that produces baked goods, including brownies, cookies, cupcakes, confections, muffins, breads, cakes, wedding cakes, and other baked goods where the applicant or licensee desires to sell baked goods infused with liquor, wine, or nonintoxicating beer or nonintoxicating craft beer,

~~either:~~ included: (A) In the icing, syrup, drizzle, or some other topping; (B) as an infusion where the alcohol is not processed or cooked out of the baked goods; or (C) ~~the alcohol can be added by the purchaser~~ from an infusion packet containing alcohol no greater than 10 milliliters where the purchaser adds the alcohol. This applicant or licensee may not sell liquor, wine, or nonintoxicating beer or nonintoxicating craft beer for ~~on~~ on-premises or off-premises consumption. The applicant or licensee may sell the baked goods with alcohol added as authorized for on-premises and off-premises consumption. Further, the applicant or licensee shall:

(i) Have at least 50 members;

(ii) Operate a kitchen that produces baked goods, as specified in this subdivision, including at least: (I) A baking oven and a four-burner range or hot plate; (II) a sink with hot and cold running water; (III) a 17 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold storage; (IV) baking utensils and pans, kitchen utensils, and other food consumption apparatus as determined by the commissioner; and (V) food fit for human consumption available to be served during all hours of operation on the licensed premises;

(iii) Maintain, at any one time, a food inventory capable of being prepared in the private bakery's kitchen. In calculating the food inventory, the commissioner shall include television dinners, bags of chips or similar products, microwavable food or meals, frozen meals, pre-packaged foods, baking items such as flour, sugar, icing, and other confectionary items, or canned prepared foods;

(iv) Use an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 21 who are in the private bakery are not sold items containing alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, or wine. A person under 21 years of age may enter the shop and purchase other items not containing alcoholic liquors; and

(v) Meet and be subject to all other private club requirements.

(7) "Private cigar shop" means an applicant for a private club or licensed private club licensee that has a primary function of operating a cigar shop for sales of premium cigars for consumption on or off the licensed premises. Where permitted by law, indoor on-premises cigar consumption is permitted with a limited food menu, which may be met by using a private caterer, for members and guests while the private club applicant or licensee is selling and serving liquor, wine, or nonintoxicating beer or nonintoxicating craft beer for on-premises consumption. Further, the applicant or licensee ~~shall~~ shall:

(A) Have at least 50 members;

(B) Operate a cigar shop and bar with a kitchen, including at least: (i) A two-burner hot plate, air fryer, or microwave oven; (ii) a sink with hot and cold running water; (iii) a 17 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold storage; (iv) kitchen utensils and other food consumption apparatus as determined by the commissioner; and (v) food fit for human consumption available to be served during all hours of operation on the licensed premises;

(C) Maintain, at any one time, not less than a food inventory capable of being prepared in the private club bar's kitchen or have on hand at least \$150 in food provided by a private caterer. In calculating the food inventory, the commissioner shall include television dinners, bags of chips or similar products, microwavable food or meals, frozen meals, pre-packaged foods, or canned prepared foods;

(D) Use an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 21 who are in the private club bar are accompanied by a parent or legal guardian, and if a person under 21 years of age is not accompanied by a parent or legal guardian, that person may not be admitted as a guest; and



(E) Meet and is subject to all other private club requirements.

(8) "Private caterer" means a licensed private club restaurant, private hotel, or private resort hotel authorized by the commissioner to cater and serve food and sell and serve alcoholic liquors, or non-intoxicating beer or non-intoxicating craft beer. A private caterer shall purchase wine sold or served at a catering event from a wine distributor. A private caterer shall purchase nonintoxicating beer and nonintoxicating craft beer sold or served at the catering event from a licensed beer distributor. A private caterer shall purchase liquor from a retail liquor outlet authorized to sell in the market zone, where the catering event is held. The private caterer or the persons or entity holding the catering event shall:

(A) Have at least 10 members and guests attending the catering event;

(B) Have obtained an open container waiver or have otherwise been approved by a municipality or county in which the event is being held;

(C) Operate a private club restaurant on a daily operating basis;

(D) Only use its employees, independent contractors, or volunteers to sell and serve alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer who have received certified training in verifying the legal identification, the age of a purchasing person, and the signs of visible, noticeable, and physical intoxication;

(E) Provide to the commissioner, at least seven days before the event is to take place:

(i) The name and business address of the unlicensed private venue where the private caterer is to provide food and alcohol for a catering event;

(ii) The name of the owner or operator of the unlicensed private venue;

(iii) A copy of the contract or contracts between the private caterer, the person contracting with the caterer, and the unlicensed private venue;

(iv) A floorplan of the unlicensed private venue to comprise the private catering premises, which shall only include spaces in buildings or rooms of an unlicensed private venue where the private caterer has control of the space for a set time period and where the space safely accounts for the ingress and egress of the stated members and guests who will be attending the private catering event at the catering premises. The unlicensed private venue's floorplan during the set time period as stated in the contract shall comprise the private caterer's licensed premises, which is authorized for the lawful sale, service, and consumption of alcoholic liquors, nonintoxicating beer and nonintoxicating craft beer, and wine throughout the licensed private catering premises: *Provided*, That the unlicensed private venue shall: (I) Be inside a building or structure; (II) have other facilities to prepare and serve food and alcohol; (III) have adequate restrooms and sufficient building facilities for the number of members and guests expected to attend the private catering event; and (IV) otherwise be in compliance with health, fire, safety, and zoning requirements;

(F) Not hold more than 15 private catering events per calendar year. Upon reaching the 16th event, the unlicensed venue shall obtain its own private club license;

(G) Submit to the commissioner, evidence that any noncontiguous area of an unlicensed venue is within 150 feet of the private caterer's submitted floorplan and may submit a floorplan extension for authorization to permit alcohol and food at an outdoor event;

(H) Meet and be subject to all other private club requirements; and

(I) Use an age verification system approved by the commissioner.

(9) "Private club bar" means an applicant for a private club or licensed private club licensee that has a primary function for the use of the licensed premises as a bar for the sale and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer and wine when licensed for those sales, while providing a limited food menu for members and guests, and meeting the criteria set forth in this subdivision which:

(A) Has at least 100 members;

(B) Operates a bar with a kitchen, including at least: (i) A two-burner hot plate, air fryer, or microwave oven; (ii) a sink with hot and cold running water; (iii) a 17 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold storage; (iv) kitchen utensils and other food consumption apparatus as determined by the commissioner; and (v) food fit for human consumption available to be served during all hours of operation on the licensed premises;

(C) Maintains, at any one time, a food inventory capable of being prepared in the private club bar's kitchen. In calculating the food inventory, the commissioner shall include television dinners, bags of chips or similar products, microwavable food or meals, frozen meals, prepackaged foods, or canned prepared foods;

(D) Uses an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 18 who are in the private club bar are accompanied by a parent or legal guardian. If a person under 18 years of age is not accompanied by a parent or legal guardian that person may not be admitted as a guest; and

(E) Meets and is subject to all other private club requirements.

(10) "Private food truck" means an applicant for a private club, licensed private club licensee, or licensed private manufacturer's club licensee that has a primary function of operating a food preparation business using an industrial truck, van, or trailer to prepare food and meals for sale at various locations within the state while using a propane or electric generator powered kitchen. The

private food truck applicant shall obtain county or municipal approval to operate for food and liquor, wine, hard cider, and nonintoxicating beer or nonintoxicating craft beer sales and service, while providing a food menu for members and guests. The private food truck applicant shall:

(A) Have at least 10 members;

(B) Operate with a kitchen, including at least: (i) A two-burner hot plate, air fryer, or microwave oven; (ii) a sink with hot and cold running water; (iii) at least a 10 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold storage; and (iv) plastic or metal kitchen utensils and other food consumption apparatus as determined by the commissioner;

(C) Maintain, at any one time, not less than \$200 of food inventory that is fit for human consumption and capable of being prepared and served from the private food truck's kitchen during all hours of operation;

(D) Is sponsored, endorsed, or approved by the governing body or its designee of the county or municipality in which the private food truck is to be located and operated. Each location shall have a bounded and defined area and set hours for private food truck operations, sales, and consumption of alcohol that are not greater than a private club's hours of operation;

(E) Provide the commissioner with a list of all locations, including a main business location, where the private food truck operates, and is approved for sales pursuant to ~~subsection~~ paragraph (D) of this section, and immediately update the commissioner when new locations are approved by a county or municipality;

(F) Require all nonintoxicating beer and nonintoxicating craft beer sold, furnished, tendered, or served pursuant to the license created by this section to be purchased from the licensed distributor where the private food truck has its home location or from a

resident brewer acting in a limited capacity as a distributor, all in accordance with §11-16-1 *et seq.* of this code.

(G) Require wine or hard cider sold, furnished, tendered, or served pursuant to the license created by this section to be purchased from a licensed distributor, winery, or farm winery in accordance with §60-8-1 *et seq.* of this code.

(H) Require liquor sold, furnished, tendered, or served pursuant to the license created by this section shall be purchased from a licensed retail liquor outlet in the market zone or contiguous market zone where the private food truck has its main business location, all in accordance with §60-3A-1 *et seq.* of this code.

(I) A licensee authorized by this section shall use bona fide employees to sell, furnish, tender, or serve the nonintoxicating beer or nonintoxicating craft beer, wine, or liquor.

(J) A brewer, resident brewer, winery, farm winery, distillery, mini-distillery, or micro-distillery may obtain a private food truck license;

(K) Licensed representatives of a brewer, resident brewer, beer distributor, wine distributor, wine supplier, winery, farm winery, distillery, mini-distillery, micro-distillery, and liquor broker representatives may attend a location where a private food truck is located and discuss their respective products but may not engage in the selling, furnishing, tendering, or serving of any nonintoxicating beer or nonintoxicating craft beer, wine, or liquor.

(L) Use an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 21 who are in the private club bar are not permitted to be served any alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, or wine but may be permitted to purchase food or other items;

(M) Obtain all permits required by §60-6-12 of this code; and

(N) Meet and be subject to all other applicable private club requirements.

(11) "Private club restaurant" means an applicant for a private club or licensed private club licensee that has a primary function of using the licensed premises as a restaurant for serving freshly prepared meals and dining in the restaurant area. The private club restaurant may have a bar area separate from or commingled ~~with~~ within the restaurant where seating requirements for members and guests ~~shall be~~ are met by including the restaurant area. The applicant for a private club restaurant license is an applicant which:

(A) Has at least 100 members;

(B) Operate a restaurant and full kitchen with at least: (i) Ovens and four-burner ranges; (ii) refrigerators or freezers, or some combination of refrigerators and freezers greater than 50 cubic feet, or a walk-in refrigerator or freezer; (iii) other kitchen utensils and apparatus as determined by the commissioner; and (iv) freshly prepared food fit for human consumption available to be served during all hours of operation on the licensed premises;

(C) Maintains, at any one time, fresh food capable of being prepared in the private club restaurant's full kitchen. In calculating the food inventory, the commissioner may not include television dinners, bags of chips or similar products, microwavable meals, frozen meals, pre-packaged foods, or canned prepared foods;

(D) Uses an age verification system approved by the commissioner for the purpose of verifying that persons under 18 years of age who are in the bar area of a private club restaurant are accompanied by a parent or legal guardian. The licensee may not seat a person in the bar area who is under the age of 18 years and who is not accompanied by a parent or legal guardian, but may allow that person, as a guest, to dine for food and nonalcoholic beverage purposes in the restaurant area of a private club restaurant:

(E) May uncork and serve members and guests up to two bottles of wine that a member purchased from a wine retailer, wine specialty shop, an applicable winery or farm winery when licensed for retail sales, or a licensed wine direct shipper when the purchase is for personal use and, not for resale. The licensee may charge a

corkage fee of up to \$10 dollars per bottle. In no event may a member or a group of members and guests exceed two sealed bottles or containers of wine to carry onto the licensed premises for uncorking and serving by the private club restaurant and for personal consumption by the member and guests. A member or guest may cork and reseal any unconsumed wine bottles as provided in §60-8-3 (j) of this code and the legislative rules for carrying unconsumed wine off the licensed premises;

(F) Has at least two restrooms for members and their guests: *Provided*, That this requirement may be waived by the local health department upon supplying a written waiver of the requirement to the commissioner: *Provided, however*, That the requirement may also be waived for a historic building by written waiver supplied to commissioner of the requirement from the historic association or district with jurisdiction over a historic building: *Provided, further* That in no event may a private club restaurant have less than one restroom; and

(G) Meets and is subject to all other private club requirements.

(12) "Private manufacturer club" means an applicant for a private club or licensed private club licensee which is also licensed as a distillery, mini-distillery, micro-distillery, winery, farm winery, brewery, or resident brewery that manufacturers liquor, wine, nonintoxicating beer or nonintoxicating craft beer, which may be sold, served, and furnished to members and guests for on-premises consumption at the licensee's licensed premises and in the area or areas denoted on the licensee's floorplan, and which:

(A) Has at least 100 members;

(B) Offers tours, may offer ~~complimentary~~ samples, and may offer space as a conference center or for meetings;

(C) Operates a restaurant and full kitchen with ovens, four-burner ranges, a refrigerator, or freezer, or some combination of a refrigerator and freezer, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves ~~freshly prepared food at least 15 hours per week~~: *Provided*,

That a licensee required by the provisions of this code to serve food on premises in order to lawfully serve alcoholic liquors, ~~beer~~ nonintoxicating beer or nonintoxicating craft beer, wine, or hard cider may meet the requirement of having on-premises food preparation facilities by, during all hours alcoholic liquors, beer, wine, and hard cider are offered for sale or sampling, having on-site an operating food truck or other portable kitchen: *Provided, however,* That the approval of the commissioner and the appropriate health department is required to operate as allowed by subsection (a) of this section;

(D) Maintains, at any one time fresh food capable of being prepared in the private manufacturer club's full kitchen. In calculating the food inventory, the commissioner may ~~not~~ include television dinners, bags of chips or similar products, microwavable meals, frozen meals, pre-packaged foods, or canned prepared foods;

(E) Owns or leases, controls, operates, and uses space which is contiguous, bounded, or fenced real property sufficient to safely operate the licensed premises that would be listed on the licensee's floorplan and may be used for large events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(F) Lists the entire property from paragraph (E) of this subdivision and all adjoining buildings and structures on the private manufacturer club's floorplan that would comprise the licensed premises, which would be authorized for the lawful sale, service, and consumption of alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, and wine throughout the licensed premises, whether these activities were conducted in a building or structure or outdoors while on the private manufacturer club's licensed premises, and as noted on the private manufacturer club's floorplan;

(G) Identifies a person, persons, an entity, or entities who or which have the right, title, and ownership or lease interest in the real property, buildings, and structures located on the proposed licensed premises;



(H) Uses an age verification system approved by the commissioner; and

(I) Meets and is subject to all other private club requirements.

(13) "Private fair and festival" means an applicant for a private club or a licensed private club licensee meeting the requirements of §60-7-8a of this code for a temporary event, and the criteria set forth in this subdivision which:

(A) Has at least 100 members;

(B) Has been sponsored, endorsed, or approved, in writing, by the governing body, or its duly elected or appointed officers, of either the municipality or of the county in which the festival, fair, or other event is to be conducted;

(C) Prepares, provides, or engages a food vendor to provide adequate freshly prepared food or meals to serve its stated members and guests who will be attending the temporary festival, fair, or other event, and further shall provide any documentation or agreements to the commissioner prior to approval;

(D) Does not use third-party entities or individuals to purchase, sell, furnish, or serve alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer;

(E) Provides adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the festival, fair, or other event;

(F) Provides a floorplan for the proposed premises with a defined and bounded area to safely account for the ingress and egress of stated members and guests who will be attending the festival, fair, or other event;

(G) Uses an age verification system approved by the commissioner; and

(H) Meets and is subject to all other private club requirements.

(14) "Private hotel" means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(A) Has at least 2,000 members;

(B) Offers short-term, daily rate accommodations or lodging for members and their guests amounting to at least 30 separate bedrooms, and also offers a conference center for meetings;

(C) Operates a restaurant and full kitchen with ovens, four-burner ranges, walk-in freezers, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 20 hours per week;

(D) Maintains, at any one time, fresh food capable of being prepared in the private hotel's full kitchen. In calculating the food inventory, the commissioner may not include microwavable, frozen, or canned foods;

(E) Owns or leases, controls, operates, and uses acreage amounting to more than one acre but fewer than three acres, which are contiguous acres of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for hotel and conferences and large contracted-for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(F) Lists the entire property from paragraph (E) of this subdivision and all adjoining buildings and structures on the private hotel's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private hotel's licensed premises and as noted on the private hotel's floorplan;

(G) Has an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property buildings and structures located on the proposed licensed premises;

(H) Uses an age verification system approved by the commissioner;

(I) Meets and is subject to all other private club requirements; and

(J) May provide members and guests who are verified by proper form of identification to be 21 years of age or older to have secure access via key or key card to an in-room mini-bar in their rented short-term accommodation; the mini-bar may be a small refrigerator not in excess of 1.6 cubic feet for the sale of nonintoxicating beer or nonintoxicating craft beer, wine, hard cider, and liquor sold from the original sealed container, and the refrigerator may contain: (i) Any combination of 12 fluid ounce cans or bottles not exceeding 72 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; (ii) any combination of cans or bottles of wine or hard cider not exceeding 750 ml of wine or hard cider; (iii) liquor in bottles sized from 50 ml, 100 ml, and 200 ml, with any combination of those liquor bottles not exceeding 750 ml; and (iv) any combination of canned or packaged food valued at least \$50. All markups, fees, and taxes shall be charged on the sale of nonintoxicating beer, nonintoxicating craft beer, wine, liquor, and hard cider. All nonintoxicating beer or nonintoxicating craft beer available for sale shall be purchased from the licensed distributor in the area where licensed. All wine or hard cider available for sale shall be purchased from a licensed wine distributor or authorized farm winery. All liquor available for sale shall be purchased from the licensed retail liquor outlet in the market zone of the licensed premises. The mini-bar shall be checked daily and replenished as needed to benefit the member and guest.

(15) "Private resort hotel" means an applicant for a private club or licensed private club licensee which:

(A) Has at least 5,000 members;

(B) Offers short term, daily rate accommodations or lodging for members and their guests amounting to at least 50 separate bedrooms;

(C) Operates a restaurant and full kitchen with ovens, six-burner ranges, walk-in freezers, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 25 hours per week;

(D) Maintains, at any one time, fresh food capable of being prepared in the private resort hotel's full kitchen. In calculating the food inventory, the commissioner may not include microwavable, frozen, or canned foods;

(E) Owns or leases, controls, operates, and uses acreage amounting to at least 10 contiguous acres of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for destination, resort, and large contracted-for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(F) Lists the entire property from paragraph (E) of this subdivision and all adjoining buildings and structures on the private resort hotel's floorplan comprising the licensed premises which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private resort hotel's licensed premises;

(G) Has an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property, buildings, and structures located on the proposed licensed premises;

(H) Uses an age verification system approved by the commissioner;

(I) Meets and is subject to all other private club requirements;

(J) May have a separately licensed resident brewer with a brewpub license inner-connected via a walkway, doorway, or entryway, all as determined and approved by the commissioner, for limited access during permitted hours of operation for tours and complimentary samples at the resident brewery; and

(K) May provide members and guests who are verified by proper form of identification to be 21 years of age or older to have access via key or key card to an in-room mini-bar in their rented short-term accommodation. The mini-bar may be a small refrigerator not in excess of 3.2 cubic feet for the sale of nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, and liquor sold from the original sealed container, and the refrigerator may contain: (i) Any combination of 12 fluid ounce cans or bottles not exceeding 144 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; (ii) any combination of cans or bottles of wine or hard cider not exceeding one and a half liters of wine or hard cider; (iii) liquor in bottles sized from 50 ml, 100 ml, 200 ml, and 375 ml with any combination of such liquor bottles not exceeding one and a half liters; and (iv) any combination of canned or packaged food valued at least \$100. All markups, fees, and taxes shall be charged on the sale of nonintoxicating beer, nonintoxicating craft beer, hard cider, wine, and liquor. All nonintoxicating beer or nonintoxicating craft beer available for sale shall be purchased from the licensed distributor in the area where licensed. All wine or hard cider available for sale shall be purchased from a licensed wine distributor or authorized farm winery. All liquor available for sale shall be purchased from the licensed retail liquor outlet in the market zone of the licensed premises. The mini-bar shall be checked daily and replenished as needed to benefit the member and guest.

(16) "Private golf club" means an applicant for a private club or licensed private club licensee which:

(A) Has at least 100 members;

(B) Maintains at least one 18-hole golf course with separate and distinct golf playing holes, not reusing nine golf playing holes to comprise the 18 golf playing holes, and a clubhouse;

(C) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and serves freshly prepared food at least 15 hours per week;

(D) Owns or leases, controls, operates, and uses acreage amounting to at least 80 contiguous acres of bounded or fenced real property which would be listed on the private golf club's floorplan and could be used for golfing events and large contracted-for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(E) Lists the entire property from paragraph (D) of this subsection and all adjoining buildings and structures on the private golf club's floorplan comprising the licensed premises which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private golf club's licensed premises;

(F) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property, buildings, and structures located on the proposed licensed premises;

(G) Uses an age verification system approved by the commissioner; and

(H) Meets and is subject to all other private club requirements.

(17) "Private nine-hole golf course" means an applicant for a private club or licensed private club licensee which:

(A) Has at least 50 members;

(B) Maintains at least one nine-hole golf course with separate and distinct golf playing holes;

(C) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and serves freshly prepared food at least 15 hours per week;

(D) Owns or leases, controls, operates, and uses acreage amounting to at least 30 contiguous acres of bounded or fenced real property which would be listed on the private nine-hole golf course's floorplan and could be used for golfing events and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(E) Lists the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private nine-hole golf course's floorplan comprising the licensed premises which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private nine-hole golf course's licensed premises;

(F) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(G) Uses an age verification system approved by the commissioner; and

(H) Meets and is subject to all other private club requirements.

(18) "Private tennis club" means an applicant for a private club or licensed private club licensee which:

(A) Has at least 100 members;

(B) Maintains at least four separate and distinct tennis courts, either indoor or outdoor, and a clubhouse or similar facility;

(C) Has a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises which is capable of serving freshly prepared food;

(D) Owns or leases, controls, operates, and uses acreage amounting to at least two contiguous acres of bounded or fenced real property which would be listed on the private tennis club's

floorplan and could be used for tennis events and large events such as weddings, reunions, conferences, tournaments, meetings, and sporting or recreational events;

(E) Lists the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private tennis club's floorplan comprising the licensed premises which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private tennis club's licensed premises;

(F) Has identified a person, persons, an entity, or entities who or which has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(G) Meets and is subject to all other private club requirements; and

(H) Uses an age verification system approved by the commissioner.

(19) "Private college sports stadium" means an applicant for a private club or licensed private club licensee that operates a college or university stadium or coliseum for Division I, II, or III sports and ~~what that~~ involves a college public or private or university that is a member of the National Collegiate Athletic Association, or its successor, and uses the facility for football, basketball, baseball, soccer, or other Division I, II, or III sports, reserved weddings, reunions, conferences, meetings, or other special events and does not maintain daily or regular operating hours as a bar or restaurant. The licensee may sell alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer when conducting or temporarily hosting non-collegiate sporting events. This license may be issued in the name of the National Collegiate Athletic Association Division I, II, or III college or university or the name of the primary food and beverage vendor under contract with that college or university. All alcohol sales shall take place within the confines of the college or university stadium: *Provided*, That any outside area approved for alcohol sales and nonintoxicating beer or nonintoxicating craft beer



shall be surrounded by a fence or other barrier prohibiting entry except upon the college or university's express permission, and under the conditions and restrictions established by the college or university, so that the alcohol sales area is closed in order to prevent entry and access by the general public. Further the applicant shall:

(A) Have at least 100 members;

(B) Maintain an open-air or enclosed stadium or coliseum venue primarily used for sporting events, such as football, basketball, baseball, soccer, or other Division I, II, or III sports, and also weddings, reunions, conferences, meetings, or other events where parties shall reserve the college stadium venue in advance of the event;

(C) Operate a restaurant and full kitchen with ovens and equipment that is equivalent or greater than a private club restaurant, as determined by the commissioner, on the licensed premises that is capable of serving freshly prepared food or meals to its stated members, guests, and patrons who will be attending the event at the private college sports stadium;

(D) Own or lease, control, operate, and use acreage amounting to at least two contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the private college stadium's floorplan and could be used for contracted-for temporary non-collegiate sporting events, group-type weddings, reunions, conferences, meetings, or other events;

(E) List the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private college sports stadium's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private college sports stadium's licensed premises and as noted on the private college sports stadium's floorplan;

(F) Have an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(G) Meet and be subject to all other private club requirements; and

(H) Use an age verification system approved by the commissioner.

(20) "Private professional sports stadium" means an applicant for a private club or licensed private club licensee that is only open for professional sporting events when the events are affiliated with or sponsored by a professional sporting association, reserved weddings, reunions, conferences, meetings, or other special events and does not maintain daily or regular operating hours as a bar or restaurant. The licensee may not sell alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer when conducting or hosting non-professional sporting events, and further the applicant shall:

(A) Have at least 1,000 members;

(B) Maintain an open-air or enclosed stadium venue primarily used for sporting events, such as football, baseball, soccer, auto racing, or other professional sports, and also weddings, reunions, conferences, meetings, or other events where parties reserve the stadium venue in advance of the event;

(C) Operate a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises which is capable of serving freshly prepared food or meals to serve its stated members, guests, and patrons who will be attending the event at the private professional sports stadium;

(D) Own or lease, control, operate, and use acreage amounting to at least three contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the professional sports stadium's floorplan and could be used for contracted-for professional sporting events, group-type weddings, reunions, conferences, meetings, or other events;

(E) List the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private professional sports stadium's floorplan comprising the licensed premises which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private professional sports stadium's licensed premises;

(F) Have an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(G) Meet and be subject to all other private club requirements; and

(H) Use an age verification system approved by the commissioner.

(21) "Private farmers market" means an applicant for a private club or licensed private club licensee that operates as an association of bars, restaurants, and retailers who sell West Virginia- made products among other products, and other stores who open primarily during daytime hours of 6:00 a.m. to 6:00 p.m., but may operate in the day or evenings for special events where the sale of food and alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer may occur for on-premises consumption, such as reserved weddings, reserved dinners, pairing events, tasting events, reunions, conferences, meetings, or other special events and does not maintain daily or regular operating hours as a bar or restaurant. All businesses that are members of the association shall agree in writing to be liable and responsible for all sales, service, furnishing, tendering, and consumption of alcoholic liquors, nonintoxicating beer, nonintoxicating craft beer, wine, and hard cider occurring on the entire licensed premises of the private farmer's market, including indoor and outdoor bounded areas, and further the applicant shall:

(A) Have at least 100 members;

(B) Have one or more members operating a private club restaurant and full kitchen with ovens, four-burner ranges, a refrigerator or freezer or some combination of a refrigerator and freezer, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serve freshly prepared food at least 15 hours per week;

(C) Have one or more members operating a private club restaurant who maintain, at any one time, fresh food capable of being prepared for events conducted at the private farmers market in the private club restaurant's full kitchen. In calculating the food inventory, the commissioner may not include television dinners, bags of chips or similar products, microwavable meals, frozen meals, pre-packaged foods, or canned prepared foods;

(D) Have an association that owns or leases, controls, operates, and uses acreage amounting to more than one acre, which is contiguous acreage of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for large contracted-for reserved weddings, reserved dinners, pairing events, tasting events, reunions, conferences, meetings, or other special events;

(E) Have an association that lists in the application for licensure the entire property and all adjoining buildings and structures on the private farmers market's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private farmers market's licensed premises and as noted on the private farmers market's floorplan;

(F) Have an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property buildings and structures located on the proposed licensed premises;

(G) Have at least two separate and unrelated vendors applying for the license and certifying that all vendors in the association

have agreed to the liability responsibility associated with a private farmers market license;

(H) Only use its employees, independent contractors, or volunteers to purchase, sell, furnish, or serve liquor, wine, nonintoxicating beer or nonintoxicating craft beer;

(I) Provide adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the private farmers market;

(J) Provide a copy of a written agreement between all the vendors of the association that is executed by all vendors stating that each vendor is jointly and severally liable for any violations of this chapter committed during the event;

(K) Provide a security plan indicating all vendor points of service, entrances, and exits in order to verify members', patrons', and guests' ages, to verify whether a member, patron, or guest is intoxicated, and to provide for the public health and safety of members, patrons, and guests;

(L) Use an age verification system approved by the commissioner; and

(M) Meet and be subject to all other private club requirements.

(22) "Private wedding venue or barn" means an applicant for a private club or licensed private club licensee that is only open for reserved weddings, reunions, conferences, meetings, or other events and does not maintain daily or regular operating hours, and which:

(A) Has at least 25 members;

(B) Maintains a venue, facility, barn, or pavilion primarily used for weddings, reunions, conferences, meetings, or other events where parties reserve or contract for the venue, facility, barn, or pavilion in advance of the event;

(C) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises that is capable of serving freshly prepared food, or engages a food caterer to provide adequate freshly prepared food or meals to serve its stated members, guests, and patrons who will be attending the event at the private wedding venue or barn. The applicant or licensee shall provide written documentation including a list of food caterers or written agreements regarding any food catering operations to the commissioner prior to approval of a food catering event;

(D) Owns or leases, controls, operates, and uses space sufficient to safely operate the licensed premises. The applicant or licensee shall verify that, the property is not less than two acres and is remotely located, subject to the commissioner's approval. The bounded or fenced real property may be listed on the private wedding venue's or barn's floorplan and may be used for large events such as weddings, reunions, conferences, meetings, or other events;

(E) Lists the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private wedding venue or barn's floorplan that would comprise the licensed premises which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private wedding venue or barn's licensed premises;

(F) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(G) Meets and is subject to all other private club requirements; and

(H) Uses an age verification system approved by the commissioner.

(23) "Private multi-sport complex" means an applicant for a private club or licensed private club licensee that is open for multiple sports events to be played at the complex facilities, reserved weddings, concerts, reunions, conferences, meetings, or other special events, and which:

(A) Has at least 100 members;

(B) Maintains an open-air multi-sport complex primarily for use for sporting events, such as baseball, soccer, basketball, tennis, frisbee, or other sports, but may also conduct weddings, concerts, reunions, conferences, meetings, or other events where parties reserve the parts of the sports complex in advance of the sporting or other event;

(C) Operates a restaurant and full kitchen with ovens in the licensee's main facility, as determined by the commissioner, on the licensed premises which is capable of serving freshly prepared food, or meals to serve its stated members, guests, and patrons who will be attending the event at the private multi-sport complex. A licensee may contract with temporary food vendors or food trucks for food sales only, but not on a permanent basis, in areas of the multi-sport complex not readily accessible by the main facility;

(D) Maintains, at any one time, fresh food capable of being prepared in the private multi-sport complex's full kitchen. In calculating the food inventory, the commissioner may not include television dinners, bags of chips or similar products, microwavable meals, frozen meals, prepackaged foods, or canned prepared foods;

(E) Owns or leases, controls, operates, and uses acreage amounting to at least 50 contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the private multi-sport complex's floorplan and could be used for contracted-for sporting events, group-type weddings, concerts, reunions, conferences, meetings, or other events;

(F) Lists the entire property from paragraph (E) of this subdivision and all adjoining buildings and structures on the private multi-sport complex's floorplan which would comprise the

licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors, nonintoxicating beer, nonintoxicating craft beer, and hard cider throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private multi-sport complex's licensed premises and as noted on the private multi-sport complex's floorplan. The licensee may sell alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer from a golf cart or food truck owned or leased by the licensee and also operated by the licensee when the golf cart or food truck is located on the private multi-sport complex's licensed premises;

(G) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(H) Meets and is subject to all other private club requirements; and

(I) Uses an age verification system approved by the commissioner.

(24) "Private coliseum or center" means an applicant for a private club or licensed private club licensee that is open for various events including, but not limited to, musical concerts, bands, sporting events, monster trucks, sports entertainment events, circuses, expos, hobby events, tradeshow, health events, reserved weddings, reunions, retreats, conventions, conferences, meetings, or other special events. The licensee may not sell alcoholic liquors, nonintoxicating beer or wine when conducting or hosting events focused on patrons who are less than 21 years of age, and further the applicant shall:

(A) Have at least 5,000 members;

(B) Maintain an enclosed coliseum or center venue with at least 80,000 square feet of event space primarily used for events ~~as noted above~~, where parties reserve the coliseum or center venue in advance of the event;



(C) Operate a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and be capable of serving freshly prepared food or meals to its stated members, guests, and patrons who will be attending events at the private coliseum or center;

(D) Own or lease, control, operate, and use acreage amounting to at least two contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the private coliseum or center's floorplan and could be used for contracted-for events, ~~as noted above~~, or a private fair and festival, as authorized by the commissioner per dual licensing requirements as set forth in §60-7-2a of this code;

(E) List the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private coliseum or center's floorplan comprising the licensed premises which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on private coliseum or center's licensed premises;

(F) Have an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(G) Meet and be subject to all other private club requirements; and

(H) Use an age verification system approved by the commissioner.

(25) "Private food court" means an applicant who qualifies for a private club restaurant or licensed private club restaurant licensee that operates in a facility within a licensed premises with one licensed floorplan that includes an association of other interconnected licensed private club restaurants or unlicensed restaurants that operate legally without alcohol sales, where all

businesses that are licensed members of the association have agreed in writing to be liable and responsible for all sales, service, furnishing, tendering, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer occurring on the entire licensed premises of the private food court, and further the applicant shall:

(A) Have at least 100 members;

(B) Have at least one member of its association who qualifies for a private club restaurant containing a full kitchen with ovens, four-burner ranges, a refrigerator or freezer or some combination of a refrigerator and freezer, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and be capable of serving freshly prepared food at least 15 hours per week in the private food court;

(C) Have at least one member of its association who qualifies for a private club restaurant who maintains, at any one time, fresh food capable of being prepared in the private club restaurant's full kitchen, and in calculating the food inventory the commissioner may not include television dinners, bags of chips or similar products, microwavable meals, frozen meals, pre-packaged foods, or canned prepared foods;

(D) Have an association that owns or leases, controls, operates, and uses a facility that meets requirements of this article, and the entire facility is listed on the licensee's floorplan as its licensed premises;

(E) Have an association that lists in the application for licensure the entire facility and any inter-connected and adjoining structures on the private food court's floorplan which would compromise the licensed premises, and which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure while on the private food court's licensed premises and as noted on the private food court's licensed floorplan;

(F) Have an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property buildings and structures located on the proposed licensed premises;

(G) Have at least one separate and unrelated business applying for the license and certifying that all licensed businesses in the association have agreed to the liability responsibility associated with a private food court license;

(H) Only use its employees, independent contractors, or volunteers to purchase, sell, furnish, or serve liquor, wine, nonintoxicating beer or nonintoxicating craft beer;

(I) Provide adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the private food court;

(J) Provide a copy of a written agreement between all the vendors of the association that is executed by all businesses stating that each licensed vendor is jointly and severally liable for any violations of this chapter committed on the licensed premises;

(K) Provide a security plan indicating all businesses who will be selling and serving alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer, list non-licensees who will be selling and serving food, list all entrances, and list all exits, provide a plan to verify the ages of members, patrons, and guests, a plan to verify whether a member, patron, or guest is intoxicated, and a plan to provide for the public health and safety of members, patrons, and guests;

(L) Use an age verification system approved by the commissioner; and

(M) Meet and be subject to all other private club requirements.

The ~~Department~~ Division of Natural Resources, the authority governing any county or municipal park, or any county commission, municipality, other governmental entity, public corporation, or public authority operating any park or airport may lease, as lessor, a building or portion thereof or other limited

premises in any park or airport to any corporation or unincorporated association for the establishment of a private club pursuant to this article.

**§60-7-8a. Special license for a private fair and festival; licensee fee and application; license fee; license subject to provisions of article; exception.**

(a) There is hereby created a special license designated Class S2 private fair and festival license for the retail sale of alcoholic liquors and nonintoxicating beer, and nonintoxicating craft beer for on-premises consumption.

(b) To be eligible for the license authorized by subsection (a) of this section, the private fair and festival or other event shall:

(1) Be sponsored, endorsed, or approved by the governing body or its designee of the county or municipality in which the private fair and festival or other event is located;

(2) Make application with the commissioner at least 15 days prior to the private fair, festival, or other event;

(3) Pay a nonrefundable non-prorated license fee of \$500; and

(4) Be approved by the commissioner to operate the private fair, festival, or other event.

(c) A private fair and festival license under this section shall be for a duration of no more than 10 consecutive days.

(d) Nonintoxicating beer and nonintoxicating craft beer sold, furnished, tendered, or served for on-premises consumption by the private fair and festival pursuant to the license created by this section shall be purchased from licensed distributors that service the area in which the private fair and festival is held or from a resident brewer acting in a limited capacity as a distributor, all in accordance with §11-16-1 *et seq.* of this code. ~~Sealed containers of nonintoxicating~~ Nonintoxicating beer or nonintoxicating craft beer may be sold and served for by the drink or glass, or by the bottle or can for on-premises consumption and in sealed bottles or cans for

off-premises consumption if the nonintoxicating beer and nonintoxicating craft beer is being sold by an authorized brewer or resident brewer, as set forth in §11-16-6a(d) of this code, who manufactures the nonintoxicating beer or nonintoxicating craft beer in this state. The on-premises and off-premises consumption sales shall be made pursuant to a written agreement between the private fair and festival and an authorized brewer or resident brewer. Prior to the start of the private fair or festival, an authorized brewer or resident brewer who agrees to offer on-premises and off-premises consumption sales of ~~their~~ nonintoxicating beer or nonintoxicating craft beer from a booth or other facility on the private fair and festival's licensed premises must meet the requirements of §11-16-6a(d) of this code. The written agreement with each authorized brewer or resident brewer shall account for lawful sales of nonintoxicating beer and nonintoxicating craft beer sold for off-premises consumption as set forth in §11-16-1 *et seq.* of this code. The authorized and approved brewer, resident brewer, or its licensed representatives may give or sell approved promotional items to private fair and festival members and guests, but not to the private fair and festival's volunteers, independent contractors, or employees.

(e) Wine or hard cider sold, furnished, tendered, or served for on-premises consumption by the private fair and festival pursuant to the license created by this section shall be purchased from a licensed wine or hard cider distributor or farm winery in accordance with §60-8-1 *et seq.* of this code and §60-8A-1 *et seq.* of this code, as applicable. ~~Sealed containers of wine~~ Wine or hard cider may be sold and served for on-premises consumption by the drink or glass, or by the bottle when consumed by the glass and by the sealed bottle for off-premises consumption by the sealed bottle if the wine or hard cider is being sold by an authorized winery or farm winery, as set forth in §60-4-3b(m) and §60-8A-5(e) of this code, who manufactures that wine or hard cider in this state. The on-premises and off-premises consumption sales shall be made pursuant to a written agreement between the private fair and festival and an authorized winery or farm winery. An authorized winery or farm winery ~~who~~ which agrees to offer for sale and service ~~their~~ its wine or hard cider for on-premises consumption by

the drink or glass, or by the bottle when consumed by the glass pursuant to §60-7-1 et seq. of this code and for off-premises consumption sealed bottle sales from a booth or other facility on the private fair and festival's licensed premises prior to the start of the private fair or festival shall meet the requirements of §60-4-3b(m) and §60-8A-5(e) of this code, as applicable. The written agreement with each authorized winery or farm winery shall account for lawful sales of wine or hard cider sold for on premises or off-premises consumption as set forth in §60-8-1 et seq. of this code and §60-8A-1 et seq. of this code, as applicable. The authorized and approved winery, farm winery or its licensed representatives may give or sell approved promotional items to private fair and festival members and guests, but not to the private fair and festival's volunteers, independent contractors, or employees.

(f) Liquor sold, furnished, tendered, or served for on-premises consumption by the private fair and festival pursuant to the license created by this section shall be purchased from a licensed retail liquor outlet in the market zone or contiguous market zone where the private fair or festival is occurring, all in accordance with §60-3A-1 et seq. of this code. ~~Sealed containers of liquor~~ Liquor may be sold and served for on-premises consumption by the drink off-premises consumption by the sealed bottle if the liquor is being sold by an authorized distillery, mini-distillery, or micro-distillery, as set forth in §60-4-3a of this code, who manufactures ~~their~~ its liquor in this state. Off-premises consumption sales shall comply with §60-3A-17 of this code and §60-4-3a(c) of this code shall not apply to these sales. The on-premises and off-premises consumption sales shall be made pursuant to a written agreement between the private fair and festival and an authorized distillery, mini-distillery, or micro-distillery. An authorized licensed distillery, mini-distillery, or micro-distillery who agrees to offer off-premises consumption sales of their manufactured liquor by the bottle from a booth or other facility on the private fair and festival's licensed premises prior to the start of the private fair, festival, or other event must meet the requirements as set forth in §60-4-3a of this code. An authorized licensed distillery, mini-distillery, or micro-distillery which agrees to offer on-premises consumption

sales of its manufactured liquor by the drink or glass from a booth or other facility on the premises of the licensed fair and festival must meet the requirements set forth and in §60-7-1 *et seq.* of this code. The written agreement with each authorized distillery, mini-distillery, or micro-distillery shall account for lawful sales of liquor sold for off-premises consumption as set forth in §60-3A-1 *et seq.* of this code. An authorized and approved distillery, mini-distillery, micro-distillery or its licensed representatives may give or sell approved promotional items to private fair and festival members and guests, but not to the private fair and festival's volunteers, independent contractors, or employees.

(g) A licensee authorized by this section may use bona fide employees, volunteers, or in limited circumstances licensed representatives to sell, furnish, tender, or serve the nonintoxicating beer, nonintoxicating craft beer, wine, liquor, or hard cider.

(h) Licensed representatives of an authorized and approved brewer, resident brewer, beer distributor, wine distributor, wine supplier, winery, farm winery, distillery, mini-distillery, micro-distillery, and liquor broker representatives may attend a private fair and festival and discuss their respective products ~~but shall not~~ and may engage in the selling, furnishing, tendering, or serving of any nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, or liquor. However, licensed representatives of a brewer, resident brewer, winery, farm winery, distillery, mini-distillery, or micro-distillery that has agreed in writing to conduct sampling, ~~and on-premises consumption sales, and~~ off-premises consumption sales of their respective licensee's products at the private fair and festival, may discuss their respective products and engage in ~~the limited giving of complimentary samples~~ sampling in accordance with §11-16-6a ~~(c) and (d)~~, §60-4-3a ~~(a) and (b)~~, and §60-4-3b ~~(b) and (m)~~ of this code; and the selling of ~~sealed bottles or cans of~~ their respective nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, or liquor products for on-premises consumption or off-premises consumption as specified in this section. All taxes and fees must be paid on lawful sales.

(i) A license issued under this section and the licensee are subject to all other provisions of this article and the rules and orders

of the commissioner: *Provided*, That the commissioner may by rule or order allow certain waivers or exceptions with respect to those provisions, rules, or orders as the circumstances of each private fair and festival require, including without limitation, the right to revoke or suspend immediately any license issued under this section prior to any notice or hearing, notwithstanding §60-7-13a of this code: *Provided, however*, That under no circumstances may the provisions of §60-7-12 of this code be waived or an exception granted with respect thereto;

(j) Dual licensing is permitted for private fairs and festivals pursuant to §60-7-2a of this code, including but not limited to a dual licensing simultaneous to any other qualified permit holders as defined in §60-7-1, et seq. of this code.

(k) A private fair and festival licensee who executes a written agreement with a licensed brewer, resident brewer, winery, farm winery, distillery, mini-distillery, micro-distillery, or ~~their~~ its licensed representatives is jointly liable and responsible for any violations of this article.

(l) A private fair and festival licensee who executes a written agreement with a licensed brewer, resident brewer, winery, farm winery, distillery, mini-distillery, or micro-distillery to conduct limited on-premises and off-premises consumption sales shall not have any pecuniary interest, share, or percentage in any sales of sealed nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, or liquor.

(m) A private fair and festival licensee who executes a written agreement with a licensed brewer, resident brewer, winery, farm winery, distillery, mini-distillery, or micro-distillery to conduct limited on-premises and off-premises consumption sales may charge them a flat booth rental fee.

(n) A private fair and festival licensee, licensed brewer, resident brewer, winery, farm winery, distillery, mini-distillery, micro-distillery, or ~~their~~ licensed representatives who ~~permits~~ permit members or guests to consume, on the private fair and festival's licensed premises, any nonintoxicating beer,



nonintoxicating craft beer, wine, hard cider, or liquor, that was purchased as an off-premises consumption sale, shall have ~~their~~ its respective license immediately suspended, and that conduct is grounds for revocation of ~~their~~ license.

**§60-7-8d. Where private clubs may sell and serve alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer.**

(a) With prior approval of the commissioner a private club licensee may sell, serve, and furnish alcoholic liquor and, if also licensed to sell, serve, and furnish nonintoxicating beer or nonintoxicating craft beer to be consumed on premises in a legally demarcated area which may include a temporary private outdoor dining area or temporary private outdoor street dining area. A temporary private outdoor street dining area shall be approved by the municipal government or county commission in which the licensee operates. The commissioner shall develop and make available an application form to facilitate the purposes of this subsection.

(b) The private club licensee shall submit to the commissioner: (1) the municipal or county approval of the private outdoor dining area or private outdoor street dining area; and, (2) a revised floorplan requesting to sell alcoholic liquors, and when licensed for nonintoxicating beer or nonintoxicating craft beer, then nonintoxicating beer or nonintoxicating craft beer, subject to the commissioner's requirements, in an approved and bounded outdoor area. The approved and bounded area need not be adjacent to the licensee's licensed premises, but in close proximity, for private outdoor street dining or private outdoor dining. For purposes of this subsection, "close proximity" means an available area within ~~150~~ 300 feet of a licensee's licensed premises and under the licensee's control and with right of ingress and egress.

(c) This private outdoor dining or private outdoor street dining may be operated in conjunction with a private wine outdoor dining or private wine outdoor street dining area set forth in §60-8-32a of this code and nonintoxicating beer or nonintoxicating craft beer

outdoor dining or outdoor street dining set forth in §11-16-9 of this code.

(d) For purposes of this section, private outdoor dining and private outdoor street dining include dining areas that are:

(1) Outside and not served by an HVAC system for air handling services and use outside air;

(2) Open to the air; and

(3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally approve a partial enclosure with up to three temporary or fixed walls.

Any area where seating is incorporated inside a permanent building with ambient air through HVAC is not considered outdoor dining pursuant to this subsection.

(e) A private club restaurant or a private manufacturer club licensed for craft cocktail growler sales must provide food or a meal along with sealed craft cocktail growler sales as set forth in this article to a patron who is in-person or in-vehicle while picking up food or a meal, and a sealed craft cocktail growler order-to-go, subject to verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

## **ARTICLE 8. SALE OF WINES.**

### **§60-8-2. Definitions.**

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

"Commissioner" or "commission" means the West Virginia Alcohol Beverage Control Commissioner.

"Distributor" means any person whose principal place of business is within the State of West Virginia who makes purchases from a supplier to sell or distribute wine to retailers, grocery stores, private wine bed and breakfasts, private wine restaurants, private

wine spas, private clubs, or wine specialty shops and that sells or distributes nonfortified dessert wine, port, sherry, and Madeira wines to wine specialty shops, private wine restaurants, private clubs, or retailers under authority of this article and maintains a warehouse in this state for the distribution of wine. For the purpose of a distributor only, the term "person" means and includes an individual, firm, trust, partnership, limited partnership, limited liability company, association, or corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee or other persons in active control of the activities of the trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or violations of this article, notwithstanding the liability of trustees in §44D-10-1 *et seq.* of this code.

"Fortified wine" means any wine to which brandy or other alcohol has been added where the alcohol content by volume does not exceed 24 percent, and includes nonfortified dessert wines where the alcohol content by volume is greater than 17 percent and does not exceed 24 percent.

"Grocery store" means any retail establishment, commonly known as a grocery store, supermarket, delicatessen, caterer, or party supply store, where food, food products, and supplies for the table are sold for consumption off the premises with average monthly sales (exclusive of sales of wine) of not less than \$500 and an average monthly inventory (exclusive of inventory of wine) of not less than \$500. The term "grocery store" also includes and means a separate and segregated portion of any other retail store which is dedicated solely to the sale of food, food products, and supplies for the table for consumption off the premises with average monthly sales with respect to the separate or segregated portion, exclusive of sales of wine, of not less than \$500 and an average monthly inventory, exclusive of inventory of wine, of not less than \$500.

"Hard Cider" means a type of wine that is derived primarily from the fermentation of apples, pears, peaches, honey, or another fruit, or from apple, pear, peach, or another fruit juice concentrate and water; contains no more than 0.64 grams of carbon dioxide per

100 milliliters; contains at least one half of one percent and less than 12 and one-half percent alcohol by volume; and is advertised, labeled, offered for sale, or sold, as hard cider or cider containing alcohol, and not as wine, wine product, or as a substitute for wine.

"Hard Cider Distributor" means any person whose principal place of business is within the State of West Virginia who makes purchases from a supplier to sell or distribute hard cider, but not other types of wine, to retailers, grocery stores, private wine bed and breakfasts, private wine restaurants, private wine spas, private clubs, or wine specialty shops under authority of this code and maintains a warehouse in this state for the distribution of hard cider, but not other types of wine. For the purpose of a hard cider distributor, the term "person" means and includes an individual, firm, trust, partnership, limited partnership, limited liability company, association, or corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee, or any other person or persons in active control of the activities of the trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or violations of this article, notwithstanding the liability of trustees in §44D-10-1 *et seq.* of this code.

"Licensee" means the holder of a license granted under the provisions of this article.

"Nonfortified dessert wine" means a wine that is a dessert wine to which brandy or other alcohol has not been added, and which has an alcohol content by volume of at least 15.6 percent and less than or equal to 17 percent.

"Person" means and includes an individual, firm, partnership, limited partnership, limited liability company, association, or corporation.

"Private wine bed and breakfast" means any business with the sole purpose of providing, in a residential or country setting, a hotel, motel, inn, or other such establishment properly zoned as to its municipality or local ordinances, lodging and meals to its

customers in the course of their stay at the establishment, which business also: (1) Is a partnership, limited partnership, corporation, unincorporated association, or other business entity which as part of its general business purpose provides meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve wine to its members and their guests when the sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member and does not admit the general public.

"Private wine restaurant" means a restaurant which: (1) Is a partnership, limited partnership, corporation, unincorporated association, or other business entity which has, as its principal purpose, the business of serving meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve wine to its members and their guests when the sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member and does not admit the general public. Private clubs that meet the private wine restaurant requirements ~~numbered (1), (2), and (3)~~ in this definition shall be considered private wine restaurants: *Provided*, That, a private wine restaurant shall have at least two restrooms: *Provided, however*, That the two restroom requirement may be waived by a written waiver provided from a local health department to the commissioner: *And provided further*, That a private wine restaurant located in an historic building may also be relieved of the two restroom requirement if a historic association or district with jurisdiction over a historic building provides a written waiver of the requirement to the commissioner: *And provided further*, That in no event shall a private wine restaurant have less than one restroom. *And provided further*, That a winery or farm winery holding a private wine restaurant license or a multi-capacity winery or farm winery license is not subject to the food service requirements of this subdivision.

"Private wine spa" means any business with the sole purpose of providing commercial facilities devoted especially to health, fitness, weight loss, beauty, therapeutic services, and relaxation, and may also be a licensed massage parlor or a salon with licensed beauticians or stylists, which business also: (1) Is a partnership, limited partnership, corporation, unincorporated association, or other business entity which as part of its general business purpose provides meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve up to two glasses of wine to its members and their guests when the sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member, and does not admit the general public.

"Retailer" means any person licensed to sell wine at retail to the public at his or her established place of business for off-premises consumption and who is licensed to do so under authority of this article.

"Supplier" means any manufacturer, producer, processor, winery, farm winery, national distributor, or other supplier of wine who sells or offers to sell or solicits or negotiates the sale of wine to any licensed West Virginia distributor.

"Table wine" means a wine with an alcohol content by volume between 0.5 percent and 15.5 percent.

"Tax" includes within its meaning interest, additions to tax, and penalties.

"Taxpayer" means any person liable for any tax, interest, additions to tax, or penalty under the provisions of this article, and any person claiming a refund of tax.

"Varietal wine" means any wine labeled according to the grape variety from which the wine is made.

"Vintage wine" or "vintage-dated wine" means wines from which the grapes used to produce the wine are harvested during a

particular year, or wines produced from the grapes of a particular harvest in a particular region of production.

"Wine" means any alcoholic beverage obtained by the natural fermentation of the natural content of grapes, other fruits, or honey or other agricultural products containing sugar to which no alcohol has been added and includes table wine, hard cider, nonfortified dessert wine, wine coolers, and other similar wine-based beverages. Fortified wine and any product defined as or contained within the definition of nonintoxicating beer under the provisions of §11-16-1 *et seq.*, of this code are excluded from this definition of wine.

"Wine specialty shop" means a retailer who deals principally in the sale of table wine, nonfortified dessert wines, wine accessories, and food or foodstuffs normally associated with wine and: (1) Who maintains a representative number of wines for sale in his or her inventory which are designated by label as varietal wine, vintage, generic, and/or according to region of production and the inventory shall contain not less than 15 percent vintage or vintage-dated wine by actual bottle count; and (2) who, any other provisions of this code to the contrary notwithstanding, may maintain an inventory of port, sherry, and Madeira wines having an alcoholic content of not more than 22 percent alcohol by volume and which have been matured in wooden barrels or casks. All wine available for sale shall be for off-premises consumption except where wine tasting or wine sampling is separately authorized by this code.

### **§60-8-3. Licenses; fees; general restrictions.**

(a) No person may engage in business in the capacity of a winery, farm winery, supplier, distributor, retailer, private wine bed and breakfast, private wine restaurant, private wine spa, or wine specialty shop without first obtaining a license from the commissioner, nor shall a person continue to engage in any activity after his or her license has expired, been suspended, or revoked. No person may be licensed simultaneously as a distributor and a retailer. No person, except for a winery or farm winery, may be licensed simultaneously as a supplier and a retailer. No person

except for a winery or farm winery holding a multi-capacity winery or farm winery license may be licensed simultaneously as a supplier and a private wine bed and breakfast, private wine restaurant, or a private wine spa. No person may be licensed simultaneously as a distributor and a private wine bed and breakfast, a private wine restaurant, or a private wine spa. No person except for a winery or farm winery or holding a multi-capacity winery or farm winery license may be licensed simultaneously as a retailer and a private wine bed and breakfast, a private wine restaurant, or a private wine spa. Any person who is licensed to engage in any business concerning the manufacture, sale, or distribution of wine may also engage in the manufacture, sale, or distribution of hard cider without obtaining a separate hard cider license.

(b) The commissioner shall collect an annual fee for licenses issued under this article as follows:

(1) One hundred fifty dollars per year for a supplier's license;

(2) Two thousand five hundred dollars per year for a distributor's license and each separate warehouse or other facility from which a distributor sells, transfers, or delivers wine shall be separately licensed and there shall be collected with respect to each location, the annual license fee of \$2,500 as provided in this subdivision;

(3) One hundred fifty dollars per year for a retailer's license;

(4) Two hundred fifty dollars per year for a wine specialty shop license, in addition to any other licensing fees paid by a winery or retailer holding a license. Except for the amount of the license fee and the restriction to sales of winery or farm winery wines, a winery, or farm winery acting as a wine specialty shop retailer is subject to all other provisions of this article which are applicable to a wine specialty shop retailer as defined in §60-8-2 of this code;

(5) One hundred fifty dollars per year for a wine tasting license;

(6) One hundred fifty dollars per year for a private wine bed and breakfast license. Each separate bed and breakfast from which



a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of \$150 as provided in this subdivision;

(7) Two hundred fifty dollars per year for a private wine restaurant license. Each separate restaurant from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of \$250 as provided in this subdivision;

(8) One hundred fifty dollars per year for a private wine spa license. Each separate private wine spa from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of \$150 as provided in this subdivision;

(9) One hundred fifty dollars per year for a wine sampling license issued for a wine specialty shop under subsection (n) of this section;

(10) No fee for a special one-day license under subsection (p) of this section or for a heritage fair and festival license under subsection (q) of this section;

(11) One hundred fifty dollars per year for a direct shipper's license for a licensee who sells and ships only wine and \$250 per year for a direct shipper's license who ships and sells wine, nonfortified dessert wine, port, sherry, or Madeira wines;

(12) Three hundred fifty dollars per year for a multi-capacity winery or farm winery license which enables the holder to operate as a retailer, wine specialty shop, supplier, and direct shipper without obtaining an individual license for each capacity; and

(13) Two hundred fifty dollars per year for a hard cider distributor's license. Each separate warehouse or other facility from which a distributor sells, transfers, or delivers hard cider shall be separately licensed and there shall be collected with respect to each location the annual license fee of \$250 as provided in this subdivision: *Provided*, That if a licensee is licensed as a

nonintoxicating beer or nonintoxicating beer distributor, then there is no additional license fee to distribute hard cider.

(c) The license period begins on July 1 of each year and ends on June 30 of the following year and if granted for a less period, the ~~same~~ fee shall be computed semiannually in proportion to the remainder of the fiscal year.

(d) No retailer may be licensed as a private club as provided by §60-7-1 *et seq.* of this code, except as provided by subsection (k) of this section.

(e) No retailer may be licensed as a Class A retail dealer in nonintoxicating beer as provided by §11-16-1 *et seq.* of this code: *Provided*, That a delicatessen, a caterer, or party supply store, which is a grocery store as defined in §60-8-2 of this code, and which is licensed as a Class A retail dealer in nonintoxicating beer may be a retailer under this article: *Provided, however*, That any delicatessen, caterer, or party supply store licensed in both capacities shall maintain average monthly sales exclusive of sales of wine and nonintoxicating beer which exceed the average monthly sales of nonintoxicating beer.

(f) A wine specialty shop under this article may also hold a wine tasting license authorizing the retailer to serve complimentary samples of wine in moderate quantities for tasting. The wine specialty shop shall organize a wine taster's club, which has at least 50 duly elected or approved dues-paying members in good standing. The club shall meet on the wine specialty shop's premises not more than one time per week and shall either meet at a time when the premises are closed to the general public, or meet in a separate segregated facility on the premises to which the general public is not admitted. Attendance at tastings shall be limited to duly elected or approved dues-paying members and their guests.

(g) A retailer who has more than one place of retail business shall obtain a license for each separate retail establishment. A retailer's license may be issued only to the proprietor or owner of a bona fide grocery store or wine specialty shop.

(h)(1) The commissioner may issue a license for the retail sale of wine at any ~~festival or fair~~ fair or festival which is endorsed or sponsored by the governing body of a municipality or a county commission. The license shall be issued for a term of no longer than 10 consecutive days and the fee for the license is \$250 regardless of the term of the license. The application for the license shall contain information required by the commissioner and shall be submitted to the commissioner at least 30 days prior to the first day when wine is to be sold at the any ~~festival or fair~~ fair or festival.

(2) Notwithstanding subdivision (1) of this subsection, if the applicant for the ~~festival or fair~~ fair or festival license is the manufacturer of the wine, a winery, or a farm winery as defined in §60-1-5a of this code, and the event is located on the premises of a winery or a farm winery, then the license fee is \$50 per ~~festival or fair~~ fair or festival.

(3) A licensed winery or a farm winery, which has the ~~festival or fair~~ fair or festival licensee's written authorization and approval from the commissioner, may, in addition to, or in conjunction with the ~~festival and fair~~ fair and festival licensee, exhibit, conduct complimentary tastings, or sell samples not to exceed ~~three six, two~~ three-fluid ounce, tastings or samples per patron, or serve wine by the glass for consumption on the premises during the operation of a ~~festival or fair~~ fair or festival only; and may sell wine by the bottle for on-premises consumption, when consumed by the glass, and sealed bottles of wine for off-premises consumption ~~only~~: *Provided*, That for licensed wineries or farm wineries at a licensed ~~festival or fair~~ fair or festival; tastings, samples, on-premises sales, and off-premises sales shall occur under the hours of operation as required in this article, except on Sunday, tastings, samples, and off-premises sales are unlawful between the hours of 2:00 a.m. and 6:00 a.m.

(4) A ~~festival or fair~~ fair or festival license may be issued to a "wine club" as defined in this subdivision for a license fee of \$250. The festival or fair committee or the governing body shall designate a person to organize a club under a name which includes the name of the ~~festival or fair~~ fair or festival and the words "wine club". The license shall be issued in the name of the wine club. A

licensee may not sell wine as provided in this subdivision until the wine club has at least 50 dues-paying members who have been enrolled, and to whom membership cards have been issued. Thereafter, new members may be enrolled and issued membership cards at any time during the period for which the license is issued. A wine club licensed under the provisions of this subdivision may sell wine only to its members, and in portions not to exceed eight ounces per serving. The sales shall take place on-premises or in an area cordoned or segregated so as to be closed to the general public, and the general public shall not be admitted to the premises or area. A wine club licensee under the provisions of this subdivision may serve complimentary samples of wine in moderate quantities for tasting. A wine club may not make wine purchases from a direct shipper where the wine may be consumed on the licensed premises of any Class A private wine retail ~~license~~ licensee or private club licensee. A wine club which violates the provisions of this subdivision is subject to the penalties in this article.

(5) A licensed winery or farm winery approved to participate in a ~~festival or fair~~ fair or festival under the provisions of this section and the licensee holding the license, or the licensed winery or farm winery approved to attend a licensed ~~festival or fair~~ fair or festival, is subject to all other provisions of this article and the rules and orders of the commissioner relating to the license: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders required by the circumstances of each ~~festival or fair~~ fair or festival, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions §60-8-27 and §60-8-28 of this code: *Provided, however*, That under no circumstances shall the provisions of §60-8-20(c) or §60-8-20(d) of this code, be waived nor shall any exception be granted with respect to those subsections.

(6) A license issued under the provisions of this section and the licensee holding the license are not subject to the provisions of subsection (g) of this section.

(7) An unlicensed winery temporarily licensed and meeting the requirements set forth in subsection (q) of this section may conduct the same sampling and sales set forth in subsection (q) of this section at a licensed fair and festival upon approval of the licensee holding the fair and festival license and temporary and limited licensure by the commissioner. An unlicensed winery is subject to the same limits, fees, requirements, restrictions, and penalties set forth in subsection (q) of this section: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders required by the circumstances of each ~~festival or fair~~ fair or festival. The commissioner may revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions §60-8-27 and §60-8-28 of this code: *Provided, however*, That under no circumstances shall the provisions of §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception be granted with respect to those subsections.

(i)(1) The commissioner may issue a special license for the retail sale of wine in a professional baseball stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and serve wine for consumption in a professional baseball stadium. For the purpose of this subsection, "professional baseball stadium" means a facility constructed primarily for the use of a major or minor league baseball franchisee affiliated with the National Association of Professional Baseball Leagues, Inc., or its successor, and used as a major or minor league baseball park. Any special license issued pursuant to this subsection shall be for a term beginning on the date of issuance and ending on the next following June 30, and its fee is \$250 regardless of the length of the term of the license. The application for the special license shall contain information required by the commissioner and must be submitted to the commissioner at least 30 days prior to the first day when wine is to be sold at the professional baseball stadium. The special license may be issued in the name of the baseball franchisee or the name of the primary food and beverage vendor under contract with the baseball franchisee. These sales must take place within the confines of the professional baseball stadium. The exterior of the area where wine sales may occur shall be surrounded by a fence or

other barrier prohibiting entry except upon the franchisee's express permission, and under the conditions and restrictions established by the franchisee, so that the wine sales area is closed to free and unrestricted entry by the general public.

(2) A license issued under this subsection and the licensee holding the license are subject to all other provisions of this article and the rules and orders of the commissioner relating to the special license: *Provided*, That the commissioner may by rule or order grant certain waivers or exceptions to those rules or orders required by the circumstances of each professional baseball stadium. The commissioner may revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of this code: *Provided, however*, That under no circumstances may §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception be granted concerning those subsections.

(3) The commissioner may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement this subsection.

(j) A license to sell wine granted to a private wine bed and breakfast, private wine restaurant, private wine spa, or a private club under the provisions of this article entitles the operator to sell and serve wine, for consumption on the premises of the licensee, when the sale accompanies the serving of food or a meal to its members and their guests in accordance with the provisions of this article: *Provided*, That a licensed private wine bed and breakfast, private wine restaurant, private wine spa, or a private club may permit a person over 21 years of age to purchase wine, consume wine, and recork or reseal, using a tamper resistant cork or seal, up to two separate bottles of unconsumed wine in conjunction with the serving of food or a meal to its members and their guests in accordance with the provisions of this article and in accordance with rules promulgated by the commissioner for the purpose of consumption of the wine off premises: *Provided, however*, That a licensed private wine restaurant or a private club may offer for sale, for consumption ~~off the~~ off-premises, sealed bottles of wine to its customers provided that no more than one bottle is sold per each

person over 21 years of age, as verified by the private wine restaurant or private club, for consumption ~~off the~~ off-premises. The licensees may keep and maintain on ~~their~~ its premises a supply of wine in quantities appropriate for the conduct of operations thereof. Any sale of wine is subject to all restrictions set forth in §60-8-20 of this code. A private wine restaurant may also be licensed as a Class A retail dealer in nonintoxicating beer as provided by §11-16-1 *et seq.* of this code.

(k) With respect to subsections (h), (i), (j), (o), and (p) of this section, the commissioner shall propose legislative rules for promulgation in accordance with §29A-1-1 *et seq.* of this code, including, but not limited to, the form of the applications and the suitability of both the applicant and location of the licensed premises.

(l) The commissioner shall propose legislative rules for promulgation in accordance with the provisions of §29A-1-1 *et seq.* of this code to allow restaurants to serve wine with meals and to sell wine by the bottle for off-premises consumption as provided in subsection (j) of this section. Each licensed restaurant shall be charged an additional \$100 per year fee.

(m) The commissioner shall establish guidelines to permit wines to be sold in all stores licensed for retail sales.

(n) Wineries and farm wineries may advertise off premises as provided in §17-22-7 of this code.

(o) A licensed wine specialty shop under this article may also hold a wine sampling license authorizing the wine specialty shop to conduct special wine sampling events ~~at a licensed wine specialty shop~~ at its location during regular hours of business. The wine specialty shop may serve up to ~~three~~ six complimentary samples of wine, consisting of no more than ~~two~~ three fluid ounces each, to any one consumer ~~in one~~ per day. Persons serving the ~~complimentary~~ samples shall be 21 years of age or older and an authorized representative of the licensed wine specialty shop, winery, farm winery, or a representative of a distributor or registered supplier. Distributor and supplier representatives

attending wine sampling events shall register with the commissioner. No licensee, employee, or representative may furnish, give, sell, or serve ~~complimentary~~ samples of wine to any person less than 21 years of age or to a person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs. The wine specialty shop shall notify and secure permission from the commissioner for all wine sampling events 30 days prior to the event. Wine sampling events may not exceed six hours per calendar day. Licensees shall purchase all wines used during these events from a licensed farm winery or a licensed distributor.

(p) The commissioner may issue special one-day licenses to duly organized, nonprofit corporations and associations allowing the sale and serving of wine, and may, if applicable, also allow the charitable auctioning of certain sealed bottles of wine for off-premises consumption only, when raising money for athletic, charitable, educational, or religious purposes. "Auction or auctioning", for the purposes of this subsection, means any silent, physical act, or verbal bid auction, whether or not the auction requires in-presence bidding or online Internet-based electronic bidding through a secure application or website, but shall not include any action in violation of §47-20-10, §47-20-11, or §61-10-1 *et seq.* of this code. The license application shall contain information required by the commissioner and shall be submitted to the commissioner at least 30 days prior to the event. Accompanying the license application, the applicant shall submit a signed and notarized statement that at least 80 percent of the net proceeds from the charitable event will be donated directly to the nonprofit corporation or organization. Wines used during these events may be donated by, or purchased from, a licensed retailer, a distributor, winery, or a farm winery. A licensed winery or farm winery which is authorized in writing by a representative of the duly organized, nonprofit corporation or association which has obtained the one-day license; is in good standing with the state; and obtains the commissioner's approval prior to the one-day license event may, in conjunction with the one-day licensee, exhibit, conduct complimentary tastings, ~~or~~ sell samples not to exceed ~~three~~ six, ~~two~~ three-fluid ounce tastings or samples per patron, sell wine



by the glass or by the bottle, when consumed by the glass, for consumption on the on-premises during the operation of the one-day license event; and may sell certain sealed wine bottles manufactured by the licensed winery or farm winery for off-premises consumption: *Provided*, That for a licensed winery or farm winery at a licensed one-day event, the tastings, samples, on-premises sales, and off-premises sales of its wine shall occur under the hours of operation permitted by this article, except on Sunday, tastings, samples, on-premises sales, and off-premises sales of its wine are unlawful between the hours of 2:00 a.m. and 6:00 a.m., from the one-day licensee's submitted floor plan for the event subject to the requirements in the code and rules. Under no circumstances may the provisions of §60-8-20(c) or §60-8-20(f) of this code be waived nor may any exception be granted with respect to those subsections.

(q)(1) In addition to the authorization granted to licensed wineries and farm wineries in subsections (h) and (p) of this section, an unlicensed winery, regardless of its designation in another state, ~~but~~ that is duly licensed in its domicile state, may pay a \$150 nonrefundable and ~~nonprorated~~ non-prorated fee and submit an application for temporary licensure on a one-day basis for temporary sampling and sale of wine in sealed containers for off-premises consumption at a special one-day license nonprofit event.

(2) The application shall include, but is not limited to, the person or entity's name, address, taxpayer identification number, and location; a copy of its licensure in its domicile state; a signed and notarized verification that it produces 50,000 gallons or less of wine per year; a signed and notarized verification that it is in good standing with its domicile state; copies of its federal certificate of label approvals and certified lab alcohol analysis for the wines it desires to temporarily provide samples and temporarily sell wine in sealed containers for off-premises consumption at a special one-day license for a nonprofit event issued under subsection (p) of this section; and any other information as the commissioner may reasonably require; *Provided*, That the background investigation requirement set forth in §60-8-16 of this code is inapplicable to licenses authorized by this subdivision.

(3) The applicant winery shall include a list of all wines proposed to be temporarily sampled and temporarily sold by the glass or bottle, when consumed by the glass, for on-premises consumption or in sealed containers for off-premises consumption at a special one-day license for a nonprofit event so that the wines may be reviewed in the interest of public health and safety. Once approved, the submitted wine list creates a temporary wine brand registration for up to two special one-day licenses for a nonprofit event for no additional fee.

(4) An applicant winery that receives this temporary special one-day license for a nonprofit event shall provide the commissioner a signed and notarized written agreement acknowledging that the applicant winery understands its responsibility to pay all municipal, local, and sales taxes applicable to the sale of wine in West Virginia.

(5) An application must be submitted ~~per~~ for each special one-day license for a nonprofit event the applicant winery desires to attend, and the license fee shall cover up to two special one-day ~~license~~ licenses for nonprofit events before an additional fee ~~would be~~ is required. In no circumstance would the winery be permitted to attend more than four special one-day licensed events. Any applicant or unlicensed winery desiring to attend more than four special one-day license for nonprofit events per year or otherwise operate in West Virginia would need to seek appropriate licensure as a winery or a farm winery in this state.

(6) Notwithstanding the provisions of this article and requirements for licensure, wine brand registration, payment of wine liter tax, and the winery's appointment of suppliers and distributors, this temporary special one-day license for a nonprofit event, once granted, permits a winery to operate in this limited capacity only at the approved specific, special one-day license for a nonprofit event subject to the limitations contained in this section.

(7) The applicant winery shall also apply for and receive a transportation permit to legally transport wine in the state per §60-6-12 of this code.

(8) The applicant winery is subject to all applicable violations and/or penalties under this article and the legislative rules that are not otherwise excepted by this subsection: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders required by the circumstances of each ~~festival or fair~~ fair or festival. The commissioner may revoke or suspend any license issued pursuant to this article, prior to any notice or hearing.

(r) The commissioner may issue special licenses to heritage fairs and festivals allowing the sale, serving, and sampling of wine from a licensed farm winery. The license application shall contain information required by the commissioner and shall be submitted to the commissioner at least 30 days prior to the event. Wines used during these events may be donated by or purchased from a licensed farm winery. Under no circumstances may the provision of §60-8-20(c) of this code be waived nor may any exception be granted with respect thereto. The commissioner shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to implement the provisions of this subsection.

(s)(1) The commissioner may issue a special license for the retail sale of wine in a college or university stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and serve wine for consumption in a college or university stadium. For the purpose of this subsection, "college stadium" means a facility constructed primarily for the use of a Division I, II, or III college or university that is a member of the National Collegiate Athletic Association, or its successor, and used as a football, basketball, baseball, soccer, or other Division I, II, or III sports stadium. A special license issued pursuant to this subsection shall be for a term beginning on the date of its issuance and ending on the next following June 30, and its fee is \$250 regardless of the length of the term of the license. The application for the special license shall contain information required by the commissioner and must be submitted to the commissioner at least 30 days prior to the first day when wine is to be sold. The special license may be issued in the name of the National Collegiate Athletic Association Division I, II, or III college or university or the name of the primary

food and beverage vendor under contract with that college or university. All sales must take place within the confines of the college or university stadium: *Provided*, That the exterior of the area where wine sales may occur shall be surrounded by a fence or other barrier prohibiting entry except upon the college or university's express permission, and under the conditions and restrictions established by the college or university, so that the wine sales area is closed to free and unrestricted entry by the general public.

(2) A license issued under this subsection and the licensee are subject to the other requirements of this article and the rules and orders of the commissioner relating to the special license: *Provided*, That the commissioner may by rule or order grant certain waivers or exceptions to those rules or orders as required by the circumstances of each the college or university stadium. The commissioner may revoke or immediately suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of this code: *Provided, however*, That §60-8-20(c) or §60-8-20(d) of this code may not be waived, nor shall any exception be granted concerning those subsections.

(3) The commissioner may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement this subsection.

**§60-8-6c. Winery and farm winery license to sell wine growers and provide ~~complimentary~~ samples prior to purchasing a wine growler.**

(a) *Legislative findings.* — The Legislature hereby finds that it is in the public interest to regulate, control, and support the brewing, manufacturing, distribution, sale, consumption, transportation, and storage of wine and its industry in this state to protect the public health, welfare, and safety of the citizens of this state, and promote hospitality and tourism. Therefore, this section authorizes a licensed winery or farm winery with its principal place of business and manufacture located in this state to have certain abilities to promote the sale of wine manufactured in this state for

the benefit of the citizens of this state, the state's growing wine industry, and the state's hospitality and tourism industry, all of which are vital components for the state's economy.

(b) *Sales of wine.* — A licensed winery or farm winery with its principal place of business and manufacture located in the State of West Virginia may, when licensed under this section, offer only wine manufactured by the licensed winery or farm winery for retail sale to customers from the winery or farm winery's licensed premises for consumption ~~off of the licensed~~ off-premises only in the form of original container sealed wine kegs, wine bottles, or wine cans, or also a sealed wine growler for personal consumption, and not for resale. A licensed winery or farm winery may not sell, give, or furnish its wine for consumption on the premises of the principal place of business and manufacture located in the State of West Virginia, except for the limited purpose of complimentary samples as permitted in subsection (c) of this section, ~~or unless separately licensed for on-premises sales in accordance with §60-4-3b of this code, or for on-premises sales when separately licensed~~ as a private wine restaurant or a private manufacturer club.

(c) ~~*Complimentary s Samples.*~~ — A licensed winery or farm winery with its principal place of business and manufacture located in the State of West Virginia may offer complimentary samples of wine as set forth in §60-4-3b of this code.

(d) *Retail sales.* — Every licensed winery or farm winery under this section shall comply with all the provisions of this article as applicable to wine retailers when conducting wine growler sales and is subject to all applicable requirements and penalties in this article.

(e) *Payment of taxes and fees.* — A winery or farm winery licensed under this section shall pay all taxes and fees required of licensed wine retailers, in addition to any other taxes and fees required, and shall meet applicable licensing provisions as required by this chapter and by rule of the commissioner.

(f) *Advertising.* — A licensed winery or farm winery under this section may advertise a particular brand or brands of wine

produced by the licensed winery or farm winery and the price of the wine subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance or target minors.

(g) *Wine Growler defined.* — For purposes of this section and section §60-8-6d of the code, "wine growler" means a container or jug that is made of glass, ceramic, metal, or other material approved by the commissioner, that may be no larger than 128 fluid ounces in size and is capable of being securely sealed. The growler may be used by an authorized licensee for purposes of off-premises sales only of wine for personal consumption, and not for resale. The wine served and sold in a sealed wine growler may include ice or water mixed with the wine to create a frozen alcoholic beverage. Any frozen alcoholic beverage machine used for filling wine growlers shall be sanitized daily and shall be under control and served by the licensee from the secure area. Notwithstanding any other provision of this code to the contrary, a securely sealed wine growler is not an open container under state and local law. A wine growler with a broken seal is an open container under state and local law unless it is located in an area of the motor vehicle physically separated from the passenger compartment. For purpose of this article, a secure seal means using a tamper evident seal, such as: (1) A plastic heat shrink wrap band, strip, or sleeve extending around the cap or lid of wine growler to form a seal that ~~shall be~~ is broken when the container is opened; or (2) A screw top cap or lid that breaks apart when the wine growler is opened.

(h) *Wine Growler requirements.* — A winery or farm winery licensed under this section shall prevent patrons from accessing the secure area where the winery or farm winery fills a wine growler and prevent patrons from filling a wine growler. A licensed winery or farm winery under this section shall sanitize, fill, securely seal, and label any wine growler prior to its sale. A licensed winery or farm winery under this section may refill a wine growler subject to the requirements of this section. A winery or farm winery shall visually inspect any wine growler before filling or refilling it. A winery or farm winery may not fill or refill any wine growler that

appears to be cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container.

(i) *Wine Growler labeling.* — A winery or farm winery licensed under this section selling wine growlers shall affix a conspicuous label on all sold and securely sealed wine growlers listing the name of the licensee selling the wine growler, the brand of the wine in the wine growler, the alcohol content by volume of the wine in the wine growler, and the date the wine growler was filled or refilled. All labeling on the wine growler shall be consistent with all federal labeling and warning requirements.

(j) *Wine Growler sanitation.* — A licensed winery or farm winery authorized under this section shall clean and sanitize all wine growlers it fills or refills in accordance with all state and county health requirements prior to its filling and sealing. In addition, the licensed winery or farm winery shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipelines, barrel tubes, and any other related equipment used to fill or refill growlers. Failure to comply with this subsection may result in penalties under this article.

(k) *Fee.* — There is no additional fee for a licensed winery or farm winery authorized under this section to sell wine growlers, but the licensee shall meet all other requirements of this section.

(l) *Limitations on licensees.* — To be authorized under this section, a licensed winery or farm winery may not produce more than 10,000 gallons of wine per calendar year at the winery or farm winery's principal place of business and manufacture located in the State of West Virginia. A licensed winery or farm winery authorized under this section is subject to the applicable penalties under this article for violations of this section.

(m) *Rules.* — The commissioner, in consultation with the Bureau for Public Health, may propose legislative rules concerning sanitation for legislative approval, pursuant to §29A-3-1 *et seq.* of this code, to implement this section.

**§60-8-8. Authorizing wineries and farm wineries to sell and serve wine at fairs and festivals.**

All wineries and farm wineries also possessing a Class A wine license or private manufacturer club license may serve and sell wine as set forth in §60-4-3b and §60-8-3 of this code at any licensed fair or festival in the state of West Virginia, subject to the fair or festival licensee granting the winery or farm winery permission to do so in writing.

**§60-8-32a. Where wine may be sold and consumed for on-premises consumption.**

(a) With prior approval of the commissioner, a Class A wine licensee may sell, serve, and furnish wine for on premises consumption in a legally demarcated area which may include a temporary private wine outdoor dining area or a temporary private wine outdoor street dining area. A temporary private wine outdoor street area shall be approved by the municipal government or county commission in which the licensee operates. The commissioner shall develop and make available an application form to facilitate the purposes of this subsection.

(b) The Class A wine licensee shall submit to a municipality or county commission for the approval of the private wine outdoor dining area or private wine outdoor street dining area and submit to the municipality or county commission a revised floorplan requesting to sell wine, subject to the commissioner's requirements, in an approved and bounded outdoor area. For private wine outdoor street dining or private wine outdoor dining the approved and bounded outdoor area need not be adjacent to the licensee's licensed premises, but in close proximity and under the licensee's control and with right of ingress and egress. For purposes of this section, "close proximity," means an available area within ~~450~~ 300 feet of the licensee's licensed premises.

(c) This private wine outdoor dining or private wine outdoor street dining may be operated in conjunction with a private outdoor dining or private outdoor street dining area set forth in §60-7-8d of this code, and nonintoxicating beer or nonintoxicating craft beer



outdoor dining or outdoor street dining set forth in §11-16-9 of this code.

(d) For purposes of this section, "private wine outdoor dining and private wine outdoor street dining" include dining areas that are:

(1) Outside and not served by an HVAC system for air handling services and use outside air;

(2) Open to the air; and

(3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally approve a partial enclosure with up to three temporary or fixed walls.

Any areas where seating is incorporated inside a permanent building with ambient air through HVAC is not considered outdoor dining pursuant to this subsection.

(e) Class A licensees licensed for on-premises sales shall provide food, which may be pre-packaged food not requiring kitchen preparation, or a meal along with sealed wine in the original container or a sealed wine growler sales and service as set forth in this section and in §60-8-3 of this code, to a patron who is in-person or in-vehicle while picking up food and sealed wine in the original containers or sealed wine growlers ordered-to-go, subject to verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

(f) West Virginia farm wineries possessing a Class A license may serve and sell wine by the glass or by the bottle in accordance with §60-4-3b and §60-8-32a of this code.

## **ARTICLE 8A. MANUFACTURE AND SALE OF HARD CIDER.**

**§60-8A-5. Winery or farm winery licensee's authority to manufacture, sell, and provide ~~complimentary~~ samples; growler sales; advertisements; taxes; fees; rulemaking.**

(a) Sales of hard cider. — A licensed winery or farm winery with its principal place of business or manufacturing facility located in the State of West Virginia may offer hard cider manufactured by the licensed winery or farm winery for retail sale to customers from the winery's or farm winery's licensed premises for consumption ~~off of the licensed~~ off-premises only in approved and registered hard cider kegs, bottles, or cans, or also sealed wine growlers for personal consumption and not for resale. A licensed winery or farm winery may not sell, give, or furnish hard cider for consumption on the premises of the principal place of business or manufacturing facility located in the State of West Virginia, except for the limited purpose of ~~complimentary~~ samples as permitted in subsection (b) of this section. "Wine Growler" has the meaning set forth in §60-8-6c(g) of this code. Customers may consume hard cider on-premises when an operator of a winery or farm winery is licensed as a private wine restaurant or a private manufacturer club.

(b) ~~Complimentary~~ Samples. — A licensed winery or farm winery with its principal place of business or manufacturing facility located in the State of West Virginia may offer ~~complimentary~~ samples of hard cider manufactured at the winery's or farm winery's principal place of business or manufacturing facility located in the State of West Virginia. The ~~complimentary~~ samples may be no greater than ~~two~~ three fluid ounces per sample per patron, and a sampling shall not exceed six complimentary ~~two~~ three fluid ounce samples per patron per day. A licensed winery or farm winery providing ~~complimentary~~ samples shall provide ~~complimentary~~ food, which may be pre-packaged food not requiring kitchen preparation, items to the patron consuming the ~~complimentary~~ samples; and prior to any sampling, verify, using proper identification, that the patron sampling is 21 years of age or older and that the patron is not noticeably or visibly intoxicated. The winery or farm winery is subject to the hours of operation set forth in §60-8-34 of this code.

(c) Retail sales. — Every licensed winery or farm winery under this section shall comply with all the provisions applicable to wine retailers when conducting sales of hard cider and is subject to all applicable requirements and penalties. A winery or a farm winery

holding a private wine restaurant license or private manufacturer club license may offer for sale and service hard cider by the drink or glass or cider by the bottle when consumed by the glass on the property of the winery or farm winery. In the interest of promoting tourism throughout the state, every licensed winery or farm winery manufacturing cider in this state is authorized, with a limited off-site retail privilege at private fair and festivals, for off-premises consumption sales of ~~only~~ the winery or farm winery's sealed hard cider. At least five days prior to an approved private fair and festival, an authorized winery or farm winery shall provide a copy of a written agreement to sell only hard cider manufactured by the licensed winery or farm winery at the private fair and festival's licensed premises. If approved, an authorized winery or farm winery may conduct on-premises and off-premises consumption sales of their hard cider from a designated booth at the private fair and festival as set forth in §60-7-8a of this code. All authorized and approved wineries and farm wineries' on-premises and off-premises consumption sales of hard cider shall comply with all retail requirements in §60-8-1 *et seq.* of this code and §60-8A-1 *et seq.* of this code, and specifically with respect to all markups, taxes, and fees. Additionally, an authorized winery or farm winery may provide, sell, and serve hard cider samples in the amounts set forth in subsection(b) of this section, hard cider by the glass or drink, or hard cider by the bottle when consumed by the glass of its hard cider for on-premises consumption to patrons who are 21 years of age and older and who are not intoxicated.

(d) Payment of taxes and fees. — A licensed winery or farm winery under this section shall pay all taxes and fees required of licensed wine retailers, in addition to any other taxes and fees required, and meet applicable licensing provisions as required by law and by rule of the commissioner.

(e) Advertising. — A licensed winery or farm winery may advertise a particular brand or brands of hard cider produced by the licensed winery or farm winery and the price of the hard cider subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance or target minors.

(f) Growler requirements. — A licensed winery or farm winery, if offering wine growler filling services, shall meet the filling, labeling, sanitation, and all other wine growler requirements in §60-8-6c of this code.

(g) Fee. — There is no additional fee for a licensed winery or farm winery authorized under §60-8-6c of this code, to sell wine growlers, if a winery or farm winery only desires to sell hard cider in the wine growler, and no other wine, then the annual non-prorated and nonrefundable license fee is \$50.

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

The Chair replied that any impact on Senator Smith 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 Senator Trump's amendment to the bill, the same was put and prevailed.

Engrossed Committee Substitute for House Bill 5294, as just amended, was then put upon its passage.

On the passage of the bill, the yeas were: Barrett, Boley, Caputo, Chapman, Clements, Jeffries, Maroney, Nelson, Oliverio, Phillips, Plymale, Queen, Rucker, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—24.

The nays were: Azinger, Deeds, Grady, Hamilton, Hunt, Karnes, Martin, Maynard, Roberts, and Smith—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 H. B. 5294) 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 Trump, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 5294**—A Bill to amend and reenact the provisions of §11-16-6a and §11-16-11a of the Code of West Virginia, as amended; to amend and reenact §60-3A-3a of said code; to amend and reenact §60-4-3a and §60-4-3b; to amend and reenact §60-6-1 of said code; to amend and reenact §60-7-2, §60-7-8a, and §60-7-8d of said code; to amend and reenact §60-8-2, §60-8-3, §60-8-6c, and to amend said code by adding thereto a new section designated §60-8-8; to amend and reenact §60-8-32a of said code and to amend and reenact §60-8A-5 of said code all relating to alcoholic liquors and non-intoxicating beer generally; removing requirement that certain samples must be complimentary; allowing on-premises consumption of alcoholic beverages at wineries, farm wineries, distilleries, mini distilleries, micro distilleries, brewers or resident brewers under specified conditions; increasing number of samples per patron per day; allowing licensed alcohol representatives to purchase West Virginia product for approved sampling events; modifying sample sizes; authorizing alcohol manufacturers to attend private fairs and festivals, wine festivals, and one day charitable events and sell their manufactured alcohol by the drink or glass for on-premises consumption or by the bottle off-premises consumption; clarifying that certain alcohol manufacturers may sell sealed bottles for off-premises consumption; modifying definition of close proximity to 300 feet; removing the ability of political subdivisions to regulate certain conduct of alcohol manufacturers and wine, wineries and farm wineries; removing private manufacturer club licensees 15 hours per week food service requirement; authorizing simultaneous dual licensing in some circumstances; allowing sale and serving of alcohol, wine, nonintoxicating beer, nonintoxicating craft beer and cider in various types of containers, including glasses and bottles by specified licensees on specified premises; authorizing Class B retail licensees to conduct nonintoxicating beer and liquor

sampling events; modifying sample sizes for Class A retail licenses and Class B retail licenses; authorizing licensed brewers and resident brewers to enter into alternating partnership agreements; providing that wineries or farm wineries possessing certain licenses are not subject to the food requirements for private wine restaurants; authorizing licensed representatives to purchase bottles for Class A retail licenses and Class B retail licenses who conduct events; permitting licensed representatives to serve samples; providing for market zone calculations; allowing Class A wine licensees to serve food that does not require kitchen preparation; allowing wineries or farm wineries providing hard cider samples to serve food that does not require kitchen preparation; and exempting out of state wineries requesting a temporary license from background investigation requirements.

Senator Takubo moved that the bill take effect May 1, 2024.

On this question, the yeas were: Barrett, Boley, Caputo, Chapman, Clements, Jeffries, Maroney, Nelson, Oliverio, Phillips, Plymale, Queen, Rucker, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—24.

The nays were: Azinger, Deeds, Grady, Hamilton, Hunt, Karnes, Martin, Maynard, Roberts, and Smith—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 H. B. 5294) takes effect May 1, 2024.

*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 5617**, Authorizing the Public Service Commission to promulgate rules for maintenance, flushing, flow testing, and marking of fire hydrants owned by water utilities.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—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. 5617) passed with its title.

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

**Eng. House Bill 5632**, Relating generally to West Virginia Real Estate License Act.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 5632) passed with its title.

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

**Eng. House Bill 5696**, Relating to the upper Ohio Valley Trail Network.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5696) 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 5697**, Relating to public charter schools code provisions.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5697) passed with its title.

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

Pending announcement of meetings of standing committees of the Senate, including the Committee on Rules,

On motion of Senator Takubo, at 12:34 p.m., the Senate recessed until 4 p.m. today.

The Senate reconvened at 5:16 p.m. and proceeded to the ninth order of business.

**Eng. Com. Sub. for House Bill 4190**, Relating to the establishment of an alert system for missing cognitively impaired persons.

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:

### **3A. AMBER ALERT PLAN.**

#### **§15-3A-7. Providing for the use of video image recording devices for search purposes during an Amber Alert ~~or~~ , Silver Alert, or Purple Alert Activation.**

(a) The State Police and the Division of Highways shall coordinate a process to utilize all available video recording and monitoring devices for the purpose of monitoring Amber Alert ~~or~~ Silver, or Purple Alert suspect vehicles. This program shall be called the "Guardian Angel Video Monitoring" Program.

(b) The Secretary ~~of Military Affairs and Public Safety~~ the Department of Homeland Security shall also develop a plan to provide for the State Police to monitor and ~~utilize~~ use video recording and monitoring devices during an Amber Alert ~~or~~, Silver Alert, or Purple Alert. This "Guardian Angel Video Monitoring" implementation plan shall include at a minimum, the following:

(1) ~~Utilization~~Use of any state or local video recording and monitoring devices upon agreement with the department, agency, or political subdivision in control of the video recording device; and,

(2) Development of policies and initiatives relating to facilitating sharing of information with neighboring states ~~wherein~~ in which suspect vehicles in Amber Alerts ~~or~~, Silver Alerts, or Purple Alerts may be crossing state lines.

(c) The secretary shall ~~submit the plan to the Joint Committee on Government and Finance no later than December 1, 2008~~ develop a plan for implementation no later than July 1, 2025. The plan shall include an analysis of all related costs for equipping and using a statewide video recording and monitoring system during the duration of an Amber Alert, Silver Alert, or Purple Alert, and recommendations for any additional legislation or actions necessary to further facilitate the implementation of the "Guardian Angel Video Monitoring" program.

### **ARTICLE 3B. SILVER ALERT PLAN.**

#### **§15-3B-2. Findings and declarations relative to "Silver Alert Plan".**

(a) The Legislature finds that:

(1) Public alerts can be one of the most effective tools in locating ~~missing cognitively impaired persons or~~ senior citizens;

(2) Law-enforcement officers and other professionals specializing in the field of missing persons agree that the most critical moments in the search for a missing person are the first few hours immediately following the discovery that the individual is

missing, asserting that if he or she is not found within ~~twenty-four~~ 24 hours, it is unlikely that he or she will be found alive or without serious injury. The rapid dissemination of information, including a description of the missing ~~cognitively impaired person or~~ senior citizen, details of how he or she became missing, and of any vehicle involved, to the citizens of the affected community and region is, therefore, critical;

(3) Alerted to the situation, the citizenry become an extensive network of eyes and ears serving to assist law enforcement in quickly locating and safely recovering a missing ~~cognitively impaired person or~~ senior citizen;

(4) The most effective method of immediately notifying the public of a missing ~~cognitively impaired person or~~ senior citizen is through the broadcast media; and

(5) All forms of developing technologies are required to assist law enforcement in rapidly responding to these alerts and are an additional tool for assuring the well-being and safety of our ~~cognitively impaired~~ senior citizenry. Thus, the use of traffic video recording and monitoring devices for the purpose of surveillance of a suspect vehicle adds yet another set of eyes to assist law enforcement and aid in the safe recovery of the ~~cognitively impaired person or~~ senior citizen.

(b) The Legislature declares that given the successes other states and regions have experienced in using broadcast media alerts to quickly locate and safely recover missing persons, and, with the recent development of highway video recording and monitoring systems, it is altogether fitting and proper, and within the public interest, to establish these programs for West Virginia.

### **§15-3B-3. Establishment of "Silver Alert" program.**

(a) The Secretary of the Department of ~~Military Affairs and Public Safety~~ Homeland Security shall establish a "Silver Alert" program authorizing the broadcast media, upon notice from the State Police, to broadcast an alert to inform the public of a missing ~~cognitively impaired person or a missing~~ senior citizen, subject to

the criteria established in section four of this article. The program shall be a voluntary, cooperative effort between state law-enforcement and the broadcast media.

(b) As used in this article:

(1) ~~"Cognitively impaired" means a person having a deficiency in his or her short term or long term memory, orientation as to person, place, and time, deductive or abstract reasoning, or judgment as it relates to safety: *Provided*, That the cognitive impairment is not caused by the use of alcohol or drugs not legally prescribed by a physician; and~~

(2) ~~"Senior citizen" means a person over sixty five~~ 65 years of age.

(c) The secretary shall notify the broadcast media serving the State of West Virginia of the establishment of "Silver Alert" program and invite their voluntary participation.

~~(d) The secretary shall submit a plan to the Joint Committee on Government and Finance no later than December 1, 2009. The plan shall include "Silver Alert" activation protocols, evaluation of first responder training requirements and needs as related to cognitively impaired persons and senior citizens, coordination and utilization of established programs and analysis of any costs. The secretary shall also make recommendations for any additional legislation or actions necessary to further facilitate the implementation of the "Silver Alert" program.~~

#### **§15-3B-4. Activation of Silver Alert.**

The following criteria shall be met before the State Police activate the Silver Alert:

(1) The person is ~~believed to be cognitively impaired or is a~~ senior citizen;

(2) The person is believed to be missing, regardless of circumstance;

(3) A person who has knowledge that the person is missing has submitted a missing person's report to the State Police or other appropriate law-enforcement agency;

(4) The missing person may be in danger of death or serious bodily injury;

(5) The missing person is domiciled or believed to be located in the State of West Virginia;

(6) The missing person is, or is believed to be, at a location that cannot be determined by an individual familiar with the missing person, and the missing person is incapable of returning to the missing person's residence without assistance; and

(7) There is sufficient information available to indicate that a Silver Alert would assist in locating the missing person.

**§15-3B-6. Aid to missing ~~cognitively impaired adult or senior citizen~~; immunity from civil or criminal liability.**

~~No~~A person or entity who in good faith follows and abides by the provisions of this article is not liable for any civil or criminal penalty as the result of any act or omission in the furtherance thereof unless it is alleged and proven that the information disclosed was false and disclosed with the knowledge that the information was false.

**ARTICLE 3F. PURPLE ALERT PLAN.**

**§15-3F-1. Short Title.**

This article shall be known and may be cited as the "Purple Alert Plan".

**§15-3F-2. Findings and declarations relative to "Purple Alert Plan".**

(a) The Legislature finds that:

(1) Public alerts can be one of the most effective tools in locating a missing person who has a cognitive impairment;

(2) Law-enforcement officers and other professionals, specializing in the field of missing persons, agree that the most critical moments in the search for a missing person are the first few hours immediately following the discovery that the individual is missing, asserting that if he or she is not found within 24 hours, it is unlikely that he or she will be found alive or without serious injury. The rapid dissemination of information, including a description of the missing cognitively impaired person, details of how he or she became missing, and of any vehicle involved, to the citizens of the affected community and region is, therefore, critical;

(3) Alerted to the situation, the citizenry become an extensive network of eyes and ears serving to assist law enforcement in quickly locating and safely recovering a missing person who has a cognitive impairment;

(4) The most effective method of immediately notifying the public of a missing person who has a cognitive impairment is through the broadcast media: and

(5) All forms of developing technologies are required to assist law enforcement in rapidly responding to these alerts and are an additional tool for assuring the well-being and safety of our cognitively impaired citizenry. Thus, the use of traffic video recording and monitoring devices for the purpose of surveillance of a suspect vehicle adds yet another set of eyes to assist law enforcement and aid in the safe recovery of the cognitively impaired person.

(b) The Legislature declares that given the successes other states and regions have experienced in using broadcast media alerts to quickly locate and safely recover missing persons, and, with the recent development of highway video recording and monitoring systems, it is altogether fitting and proper, and within the public interest, to establish these programs for West Virginia.

### **§15-3F-3. Definition of Cognitive Impairment**

For the purposes of this article, "cognitive impairment" means a substantial disorder of thought, mood, perception, orientation, or

memory that grossly impairs judgement, behavior, or the ability to live independently or provide self-care, and includes but is not limited to:

- (1) Alzheimer's disease or other related dementias;
- (2) An intellectual or developmental disability;
- (3) A brain injury; or
- (4) Another mental disability not related to substance abuse.

**§15-3F-4. Establishment of "Purple Alert" program.**

(a) The Secretary of the Department of Homeland Security shall establish a "Purple Alert" program authorizing the broadcast media, upon notice from the State Police, to broadcast an alert to inform the public of a missing person who has a cognitive impairment;

(b) The Secretary shall notify the broadcast media serving the State of West Virginia of the establishment of the "Purple Alert" program and invite their voluntary participation.

(c) The Secretary shall develop a plan for implementation no later than July 1, 2025. The plan shall include "Purple Alert" activation protocols, evaluation of first responder training requirements and needs as related to a cognitively impaired person, coordination and use of established programs, and analysis of any costs. The Secretary shall also make recommendations for any additional legislation or actions necessary to further facilitate the implementation of the "Purple Alert" program.

**§15-3F-5. Activation of Purple Alert.**

The following criteria shall be met before the State Police activate the Purple Alert:

- (1) The person is believed to have a cognitive impairment;
- (2) The person is believed to be missing, regardless of circumstance;

(3) An individual who has knowledge that the person is missing has submitted a missing person's report to the State Police or other appropriate law-enforcement agency;

(4) The missing person may be in danger of death or serious bodily injury;

(5) The missing person is domiciled or believed to be located in the State of West Virginia;

(6) The missing person is, or is believed to be, at a location that cannot be determined by an individual familiar with the missing person, and the missing person is incapable of returning to his or her residence without assistance;

(7) There is sufficient information available to indicate that a Purple Alert would assist in locating the missing person; and

(8) The missing cognitively impaired person does not qualify for a Silver Alert or a Missing Endangered Child Alert.

**§15-3F-6. Notice to participating media; broadcast of alert.**

(a) To participate, the media may agree, upon notice from the State Police via email or facsimile, to transmit information to the public about a missing cognitively impaired person that has occurred within their broadcast service region.

(b) The alerts shall include a description of the missing person, any known details of the circumstances surrounding the person becoming missing, and any other information as the State Police may consider pertinent and appropriate. The State Police shall in a timely manner update the broadcast media with new information when appropriate concerning the missing cognitively impaired person.

(c) The alerts also shall provide information concerning how those members of the public who have information relating to the missing cognitively impaired person may contact the State Police or other appropriate law-enforcement agency.



(d) Concurrent with the notice provided to the broadcast media, the State Police shall also notify the Department of Transportation, the Division of Highways, and the West Virginia Turnpike Commission of the "Purple Alert" so that the department and the affected authorities may, if possible, through the use of their variable message signs, inform the motoring public that a "Purple Alert" is in progress. The department and the affected authorities may provide information relating to the missing cognitively impaired person and information on how motorists may report any information they have to the State Police or other appropriate law-enforcement agency.

(e) The alerts shall terminate upon notice from the State Police.

(f) The Secretary shall develop and undertake a campaign to inform law-enforcement agencies about the "Purple Alert" program established under this article.

#### **§15-3F-7. Immunity from civil or criminal liability.**

A person or entity who in good faith follows and abides by the provisions of this article is not liable for any civil or criminal penalty as the result of any act or omission in the furtherance thereof, unless it is alleged and proven that the information disclosed was false and disclosed with the knowledge that the information was false

The bill (Eng. Com. Sub. for H. B. 4190), as amended, was then ordered to third reading.

**Eng. House Bill 4292**, Providing for enhanced damages for non-payment of royalties due from oil, natural gas, or natural gas liquids production.

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

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

**Eng. House Bill 4305**, Relating to granting in-state resident status to economic development participants.

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

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

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

**ARTICLE 10. FEES AND OTHER MONEY COLLECTED  
AT STATE INSTITUTIONS OF HIGHER EDUCATION.**

**§18B-10-1d. Resident tuition rates for economic development participants.**

(a) The term "resident" or "residency", or any other term or expression used to designate a West Virginia resident student, when used to determine the rate of tuition to be charged students attending state institutions of higher education, may be construed to include economic development participants.

(b) To meet the definition of "economic development participant" under this section, the following criteria must be met:

(1) The person or the person's parent or legal guardian received economic development incentives to locate to West Virginia, offered pursuant to §5B-2-3b of this code; and

(2) The person files with that institution of higher education a letter of intent to establish 0 residency in this state.

(c) An economic development participant who qualifies as a resident on the first day of the semester or term of the institution of higher education may be charged resident tuition rates.

The bill (Eng. H. B. 4305), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4552,** To ensure party affiliation is consistent with candidate's voter registration.

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

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

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

**ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.**

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

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

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

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

(2) Candidates for an office or political position to be filled by the voters of a single county or a subdivision of a county, except for candidates for the House of Delegates, State Senate, circuit judge or family court judge, shall file a certificate of announcement with the clerk of the county commission.

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

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

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

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

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

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

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

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

(6) For partisan elections, the name of the candidate's political party on the date the certificate of announcement is submitted and a statement that the candidate: (A) Is a member of and affiliated with that political party as evidenced by the candidate's current registration as a voter affiliated with that party; and (B) has not been registered as a voter affiliated with any other political party for a period of 60 days before the date of filing the announcement;

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

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

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

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

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

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

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

(i) A candidate who files a certificate of announcement for more than one office or division and does not withdraw, as provided by §3-5-11 of this code, from all but one office prior to the close of the filing period may not be certified by the Secretary of State or placed on the ballot for any office by the board of ballot commissioners.

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

The bill (Eng. Com. Sub. for H. B. 4552), as amended, was then ordered to third reading.

**Eng. House Bill 4721**, Require Surveyors to offer to record surveys of property.

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:

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

## **ARTICLE 13A. LAND SURVEYORS.**

### **§30-13A-10. Scope of Practice.**

(a) A licensee may measure a parcel of land and ascertain its boundaries, corners and contents or make any other authoritative measurements and, in the case of measuring a parcel of land, the licensee shall offer to record the map or plat of the measurements of the survey, for a reasonable fee, for the landowner, in the office of the clerk of the county commission of the county in which the land is located. The practice of surveying can be any of the following, but not limited to:

(1) The performance of a boundary, cadastral, construction, geodetic control, hydrographic, land, mortgage/loan inspection, oil or gas well, partition, photogrammetry, retracement, subdivision or surface mine survey; or

(2) The location, relocation, establishment, reestablishment, laying out or retracement of any property line or boundary of any parcel of land or of any road or utility right-of-way, easement, strip or alignment or elevation of any fixed works by a licensed surveyor.

(b) Activities that must be performed under the responsible charge of a professional surveyor, unless specifically exempted in

subsection (c) of this section, include, but are not limited to, the following:

(1) The creation of maps and georeferenced databases representing authoritative locations for boundaries, the location of fixed works, or topography;

(2) Maps and georeferenced databases prepared by any person, firm, or government agency where that data is provided to the public as a survey product;

(3) Original data acquisition, or the resolution of conflicts between multiple data sources, when used for the authoritative location of features within the following data themes: Geodetic control, orthoimagery, elevation and hydrographic, fixed works, private and public boundaries, and cadastral information;

(4) Certification of positional accuracy of maps or measured survey data;

(5) Adjustment or authoritative interpretation of raw survey data;

(6) Geographic Information System (GIS) - based parcel or cadastral mapping used for authoritative boundary definition purposes wherein land title or development rights for individual parcels are, or may be, affected;

(7) Authoritative interpretation of maps, deeds, or other land title documents to resolve conflicting data elements;

(8) Acquisition of field data required to authoritatively position fixed works or cadastral data relative to geodetic control; and

(9) Analysis, adjustment or transformation of cadastral data of the parcel layer(s) with respect to the geodetic control layer within a GIS resulting in the affirmation of positional accuracy.

(c) The following items are not included as activities within the practice of surveying:

(1) The creation of general maps:



(A) Prepared by private firms or government agencies for use as guides to motorists, boaters, aviators, or pedestrians;

(B) Prepared for publication in a gazetteer or atlas as an educational tool or reference publication;

(C) Prepared for or by education institutions for use in the curriculum of any course of study;

(D) Produced by any electronic or print media firm as an illustrative guide to the geographic location of any event; or

(E) Prepared by laypersons for conversational or illustrative purposes. This includes advertising material and users guides.

(2) The transcription of previously georeferenced data into a GIS or LIS by manual or electronic means, and the maintenance thereof, provided the data are clearly not intended to indicate the authoritative location of property boundaries, the precise definition of the shape or contour of the earth, and/or the precise location of fixed works of humans.

(3) The transcription of public record data, without modification except for graphical purposes, into a GIS- or LIS-based cadastre (tax maps and associated records) by manual or electronic means, and the maintenance of that cadastre, provided the data are clearly not intended to authoritatively represent property boundaries. This includes tax maps and zoning maps.

(4) The preparation of any document by any federal government agency that does not define real property boundaries. This includes civilian and military versions of quadrangle topographic maps, military maps, satellite imagery, and other such documents.

(5) The incorporation or use of documents or databases prepared by any federal agency into a GIS/LIS, including but not limited to federal census and demographic data, quadrangle topographic maps, and military maps.

(6) Inventory maps and databases created by any organization, in either hard-copy or electronic form, of physical features, facilities, or infrastructure that are wholly contained within properties to which they have rights or for which they have management responsibility. The distribution of these maps and/or databases outside the organization must contain appropriate metadata describing, at a minimum, the accuracy, method of compilation, data source(s) and date(s), and disclaimers of use clearly indicating that the data are not intended to be used as a survey product.

(7) Maps and databases depicting the distribution of natural resources or phenomena prepared by foresters, geologists, soil scientists, geophysicists, biologists, archeologists, historians, or other persons qualified to document such data.

(8) Maps and georeferenced databases depicting physical features and events prepared by any government agency where the access to that data is restricted by statute. This includes georeferenced data generated by law enforcement agencies involving crime statistics and criminal activities.

On motion of Senator Woodrum, the following amendment to the Government Organization committee amendment to the bill (Eng. H. B. 4721) was reported by the Clerk and adopted:

On page 1, section 10, line 4, by striking out the words "land owner" and inserting in lieu thereof the word "client".

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

The bill (Eng. H. B. 4721), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4812**, Capping amount of moneys to third party vendors who collect business and occupation taxes on behalf of cities.

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

**Eng. House Bill 4822**, Creating the Certified Sites and Development Readiness 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 4829**, Relating to employment of service personnel and removing the requirement for a high school diploma or general education development certificate.

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 1, section 5, line 10, by striking out the word "section" and inserting in lieu thereof the word "paragraph";

And,

On page 1, section 5, line 11, by striking out the word "custodians".

The bill (Eng. Com. Sub. for H. B. 4829), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4851**, To allow for public and private schools in West Virginia to employ security personnel.

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

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

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

**ARTICLE 5. COUNTY BOARD OF EDUCATION.****§18-5-51. Public school West Virginia Guardian Program.**

(a) Purpose. — County boards of education may contract with an independent contractor who is an honorably discharged veteran, former state trooper, former municipal police officer, former deputy sheriff, or former federal law-enforcement officer to provide West Virginia Guardian services as that term is defined in this section. The purpose of the contract is to provide public safety and/or security on public school grounds and buildings. Any county board of education may contract with as many independent contractors as the county school board considers necessary.

(b) Definitions. — For purposes of this section, the following words have the following meanings:

"Contract" means an agreement between a county board of education and an independent contractor relating to the procurement of public safety or security services.

"County school board" means the same as that term is used in §18-5-1 et seq. of this code.

"Independent contractor" means the same as that term is used in §21-5I-4 of this code.

"Public safety or security" means the protection of students, faculty, and staff of a public school from violence, bullying, theft, substance abuse, the sale or use of illegal substances, exposure to weapons, and threats on school grounds.

"Former deputy sheriff" means the same as that term is used in §7-14C-1 of this code, but who has retired from service.

"Former municipal police officer" means an individual previously employed as a member of a police department by a West Virginia municipality or municipal subdivision, and who has retired from service;

"Former state trooper" means a state police officer employed pursuant to the provisions of §15-2-1 *et seq.* of this code, and who has retired pursuant to the provisions of §15-2-27 of this code.

"Former federal law-enforcement officer" means a federal law-enforcement officer employed pursuant to the provisions of §15-10-5(b) of this code, who was classified as an 1811 Investigator, and who has retired from service.

"Honorably discharged veteran" means an honorably discharged veteran of the armed forces of the United States, reserve, or National Guard.

"West Virginia Guardian" means an independent contractor under contract to a county school board for the purposes of providing public safety and/or security on school grounds. Persons contracted to provide these services shall include an honorably discharged veteran, a former state trooper, a former municipal police officer, a former deputy sheriff, or a former federal law-enforcement officer. A West Virginia Guardian is considered an authorized individual for purposes of the Gun-Free School Zones Act of 1990, 18 U.S.C. §921 and §922.

(c) *Authority.* — Notwithstanding the provisions of §61-7-11a of this code or any applicable rule, an independent contractor acting as a West Virginia Guardian may carry a concealed weapon upon meeting all the requirements of this section. A West Virginia Guardian is not law enforcement and may not arrest. They are to provide public safety and security to protect life and property as set forth in this section, including, but not limited to, detention of individuals as may be necessary pending the arrival of law enforcement.

(d) *Requirements for participation.* — Prior to entering into a contract with a West Virginia Guardian, the county school board shall require an applicant to provide proof that he or she:

(1) Is a citizen of the United States and a resident of the state of West Virginia;

(2) Has received a high school diploma or a General Educational Development diploma known as a GED;

(3) Has met and passed all the requirements for a concealed carry permit as set forth in §61-7-4 of this code;

(4) Has completed and passed all the following training courses and examinations:

(A) The Law Enforcement Professional Standards program at the West Virginia State Police. The cost of this program shall be paid by the independent contractor;

(B) A fitness for duty examination that shall include a physical examination, vision examination, a psychiatric examination, and a pre-employment drug screen. The cost of these each shall be paid by the independent contractor; and

(C) A firearm and less than lethal use of force course. To maintain firearm proficiency, the independent contractor must complete yearly training in firearm and less than lethal use of force course.

(5) Has either been honorably discharged from the United States armed services or is retired from his or her employment as a state trooper, municipal police officer, deputy sheriff, or federal law-enforcement officer;

(6) Is current in any obligation, including taxes, to the state of West Virginia; and

(7) Any other requirements imposed by the county school board which may include, but are not limited to, a pre-employment written examination and a pre-employment polygraph exam. A county school board may also require an independent contractor to carry appropriate liability insurance at his or her expense.

(e) *Exclusions from participation.* — Any of the following shall preclude an independent contractor from participation as a West Virginia Guardian:

(1) A dishonorable or less than honorable discharge from the United States armed services;

(2) Having not retired from service as a state trooper, municipal police officer, or deputy sheriff;

(3) Having not retired from service as a federal law-enforcement officer;

(4) Credible evidence of illegal drug use by the independent contractor in the preceding five-year period;

(5) A disqualifying criminal offense, which shall include, but is not limited to:

(A) Domestic violence as set forth in §61-2-28 of this code;

(B) Driving under the influence as set forth in §17C-5-2 of this code;

(C) Child abuse as set forth in §61-8D-1 *et seq.* of this code; or

(D) Unlawful manufacture, delivery, or possession with intent to deliver any controlled substance as set forth in §60A-4-1 *et seq.* of this code; or

(E) Any other misdemeanor or felony conviction deemed exclusionary for contracting with the independent contractor by the county school board.

(f) *Liability.* — A county school board may not be held civilly liable or be criminally prosecuted for any action of a West Virginia Guardian acting within the scope of the duties for which their services were contracted unless the county school board can be shown to be grossly negligent or committed willful misconduct.

(g) *Miscellaneous.* —

(1) In contracting for the services set forth in this section, county school boards are not subject to the purchasing requirements set forth in §5A-3-1 *et seq.* of this code.

(2) Nothing in this section requires a county board of education to contract with a West Virginia Guardian. Participation by a county of board of education is voluntary and subject to the availability of county funds. Any county board of education that opts to participate shall do so at its own expense. The provisions of this section place no obligation for the state to appropriate money for the purposes set forth in this section.

(3) As an independent contractor, a West Virginia Guardian is not eligible for participation in the public employee insurance plan, workers' compensation, additional state retirement credited to employment as a West Virginia Guardian, or any other state-sponsored or state-offered benefit plan.

The bill (Eng. Com. Sub. for H. B. 4851), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4867**, Require pornography websites to utilize age verification methods to prevent minors from accessing content.

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

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

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

**CHAPTER 49A. CHILD ONLINE PROTECTION  
AND LIABILITY.**

**ARTICLE 1. LIABILITY FOR PUBLISHERS AND  
DISTRIBUTORS OF SEXUAL MATERIAL HARMFUL  
TO MINORS.**

**§49A-1-101. Definitions.**

As used in this chapter:



"Application" means, as used in this section, a computer software program designed to run on a smartphone, computer tablet, mobile device, smart television, laptop, desktop, or other application enabled devices.

"Commercial entity" includes a for-profit or non-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legally recognized entity.

"Digital identification" means information stored on a digital network that may be accessed by a commercial entity and that serves as proof of the identity of an individual. It includes, but is not limited to, the West Virginia Mobile ID.

"Distribute" means to issue, sell, give, provide, deliver, transfer, transmute, circulate, or disseminate by any means.

"Intentionally" means conduct that is willfully engaged and the consequences of such conduct results in a violation of this article.

"Internet" means the international computer network of both federal and non-federal interoperable packet switched data networks.

"Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware by documentation or action that the person's conduct is of that nature or that the circumstance exists.

"Minor" means any person under 18 years old.

"News-gathering organization" means any of the following:

(1) an employee of a newspaper, news publication, or news source, printed or on an online or mobile platform, of current news and public interest, while operating as an employee as provided in this subsection, who can provide documentation of employment with the newspaper, news publication, or news source; or

(2) an employee of a radio broadcast station, television broadcast station, cable television operator, or wire service while

operating as an employee as provided in this subsection, who can provide documentation of employment.

"Personally identifiable information" means any information about an individual maintained by an agency, including:

(1) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and

(2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.

"Publish" means to communicate or make information available to another person or entity on a publicly available Internet website or application.

"Sexual conduct" means actual or explicitly simulated acts of masturbation, sexual intercourse, or physical contact in an act of apparent sexual stimulation or gratification with a person's clothed or unclothed genitals, pubic area, buttocks, or breast.

"Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

"Sexual material harmful to minors" means any description or representation of sexual conduct or sexual excitement when it:

(1) appeals to the prurient, shameful, or morbid interest to minors;

(2) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

(3) is, when taken, as a whole, lacking in serious literary, artistic, political, or scientific value for minors.

"Substantial portion" means more than 33-1/3% of total material on a website or application which meets the definition of "sexual material harmful to minors" as defined in this section.

"Transactional data" means a sequence of information that documents an exchange, agreement, or transfer between an individual, commercial entity, or third party used for the purpose of satisfying a request or event. Transactional data includes records from mortgage, education, and employment entities.

**§49A-1-102. Reasonable age verification methods.**

(a) Any commercial entity that knowingly and intentionally publishes or distributes sexual material harmful to minors on an Internet website that contains a substantial portion of such materials shall, in order to prove that an individual is 18 years of age or older, require an individual to:

(1) provide digital identification; or

(2) comply with a commercial or governmental age verification system that verifies age using:

(A) government-issued identification which may be digital identification; or

(B) a commercially reasonable method that relies on public or private transactional data to verify the age of an individual.

(b) Any commercial entity or third party that performs the required age verification shall not retain any identifying information of the individual after access has been granted to the material: *Provided*, That nothing in this subsection shall be interpreted to require the deletion of data that was otherwise held or obtained by a commercial entity or third party which the commercial entity, or third party, held prior to the age verification or which is, or was, otherwise held by a commercial entity or third party and was not gained or compiled as a part of the age verification process.

**§49A-1-103. Applicability of Article.**

(a) This article may not be construed to affect the rights of a news-gathering organization or public interest broadcasts.

(b) An Internet service provider, or its affiliates or subsidiaries, a search engine, or a cloud service provider shall not be held to have violated the provisions of this article solely for proving access or connection to or from a website or other information or content on the internet or on a facility, system, or network, including transmission, downloading, intermediate storage, access software, or other services to the extent the provider or search engine is not responsible for the creation of the content that constitutes sexual material harmful to minors.

**§49A-1-104. Liability for failing to perform reasonable age verification for sexual material harmful to minors; damages; liability for retention of data; damages; creation of cause of action; and statute of limitations.**

(a) Any commercial entity that knowingly and intentionally publishes or distributes sexual material harmful to minors on the internet from a website, or through an application, that contains a substantial portion of sexual material harmful to minors shall be held liable if the entity fails to perform reasonable age verification methods to verify the age of an individual attempting to access the material. A commercial entity that is found to have violated this section shall be liable for damages resulting from a minor child's access to such material, and the individual who brings an action on behalf of the minor shall be entitled to:

(1) Actual damages for financial, physical, and emotional harm incurred by the person bringing the action, if the court determines that the harm is a direct consequence of the violation or violations; and

(2) An award of reasonable attorney fees and court costs.

(b) An award of damages pursuant to this section may not be imposed for violations occurring more than five years before the action is brought and no award of damages may be imposed for any violation that occurred prior to the enactment of this section during the 2024 Regular Session of the West Virginia Legislature.

**§49A-1-105. Injunction by action of attorney general; civil penalties; basis of civil penalties; and statute of limitations.**

(a) If the attorney general believes that a commercial entity is knowingly and intentionally violating or has knowingly violated this article, and the action is in the public interest, the attorney general may bring an action in the circuit court located where a minor child, or individual, has accessed the sexual material harmful to minors, or in the circuit court located where an individual resides who has had any identifiable information improperly retained, used, shared, or sold, against a commercial entity or third party to enjoin the violation, recover a civil penalty for violating this article. If a court of competent jurisdiction finds that the commercial entity has engaged in a violation of this article, it may assess a civil penalty for each violation of this article in addition to any other damages that may have been incurred, as follows:

(1) \$10,000 per day that the commercial entity operates an Internet website in violation of the age verification requirements of this article; and

(2) \$10,000 per instance when the commercial entity retains identifying information in violation of subsection (b) of this section.

(b) The Legislature hereby creates a statute of limitations for the filing of any civil action under this section and an action shall be filed within five years after the discovery of the violation of the provisions of this section, or in the exercise of reasonable diligence should have known of the violation of the provisions of this section. A civil penalty pursuant to this section may not be imposed for violations occurring prior to the enactment of this section during the 2024 Regular Session of the West Virginia Legislature. The attorney general may recover reasonable and necessary attorney's fees and costs incurred in a civil action under this article.

The bill (Eng. Com. Sub. for H. B. 4867), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4880**, Relating to personal income tax social security exemption.

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

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

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

**ARTICLE 21. PERSONAL INCOME TAX.**

**§11-21-12. West Virginia adjusted gross income of resident individual.**

(a) General. — The West Virginia adjusted gross income of a resident individual means his or her federal adjusted gross income as defined in the laws of the United States for the taxable year with the modifications specified in this section.

(b) Modifications increasing federal adjusted gross income. — There shall be added to federal adjusted gross income, unless already included therein, the following items:

(1) Interest income on obligations of any state other than this state or of a political subdivision of any other state unless created by compact or agreement to which this state is a party;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Any deduction allowed when determining federal adjusted gross income for federal income tax purposes for the taxable year that is not allowed as a deduction under this article for the taxable year;

(4) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt

from tax under this article, to the extent deductible in determining federal adjusted gross income;

(5) Interest on a depository institution tax-exempt savings certificate which is allowed as an exclusion from federal gross income under Section 128 of the Internal Revenue Code, for the federal taxable year;

(6) The amount of a lump sum distribution for which the taxpayer has elected under Section 402(e) of the Internal Revenue Code of 1986, as amended, to be separately taxed for federal income tax purposes; and

(7) Amounts withdrawn from a medical savings account established by or for an individual under §33-15-20 or §33-16-15 of this code that are used for a purpose other than payment of medical expenses, as defined in those sections.

(c) Modifications reducing federal adjusted gross income. — There shall be subtracted from federal adjusted gross income to the extent included therein:

(1) Interest income on obligations of the United States and its possessions to the extent includable in gross income for federal income tax purposes;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States or of the State of West Virginia to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States or of the State of West Virginia, including federal interest or dividends paid to shareholders of a regulated investment company, under Section 852 of the Internal Revenue Code for taxable years ending after June 30, 1987;

(3) Any amount included in federal adjusted gross income for federal income tax purposes for the taxable year that is not included in federal adjusted gross income under this article for the taxable year;

(4) The amount of any refund or credit for overpayment of income taxes imposed by this state, or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes;

(5) Annuities, retirement allowances, returns of contributions and any other benefit received under the West Virginia Public Employees Retirement System, and the West Virginia State Teachers Retirement System, including any survivorship annuities derived therefrom, to the extent includable in gross income for federal income tax purposes: *Provided*, That notwithstanding any provisions in this code to the contrary this modification shall be limited to the first \$2,000 of benefits received under the West Virginia Public Employees Retirement System, the West Virginia State Teachers Retirement System and, including any survivorship annuities derived therefrom, to the extent includable in gross income for federal income tax purposes for taxable years beginning after December 31, 1986; and the first \$2,000 of benefits received under any federal retirement system to which Title 4 U.S.C. §111 applies: *Provided, however*, That the total modification under this paragraph shall not exceed \$2,000 per person receiving retirement benefits and this limitation shall apply to all returns or amended returns filed after December 31, 1988;

(6) Retirement income received in the form of pensions and annuities after December 31, 1979, under any West Virginia police, West Virginia Firemen's Retirement System or the West Virginia State Police Death, Disability and Retirement Fund, the West Virginia State Police Retirement System or the West Virginia Deputy Sheriff Retirement System, including any survivorship annuities derived from any of these programs, to the extent includable in gross income for federal income tax purposes;

(7) (A) For taxable years beginning after December 31, 2000, and ending prior to January 1, 2003, an amount equal to two percent multiplied by the number of years of active duty in the Armed Forces of the United States of America with the product thereof multiplied by the first \$30,000 of military retirement income, including retirement income from the regular Armed Forces, Reserves and National Guard paid by the United States or



by this state after December 31, 2000, including any survivorship annuities, to the extent included in gross income for federal income tax purposes for the taxable year.

(B) For taxable years beginning after December 31, 2000, the first \$20,000 of military retirement income, including retirement income from the regular Armed Forces, Reserves and National Guard paid by the United States or by this state after December 31, 2002, including any survivorship annuities, to the extent included in gross income for federal income tax purposes for the taxable year.

(C) For taxable years beginning after December 31, 2017, military retirement income, including retirement income from the regular Armed Forces, Reserves and National Guard paid by the United States or by this state after December 31, 2017, including any survivorship annuities, to the extent included in federal adjusted gross income for the taxable year. For taxable years beginning after December 31, 2018, retirement income from the uniformed services, including the Army, Navy, Marines, Air Force, Coast Guard, Public Health Service, National Oceanic Atmospheric Administration, reserves, and National Guard, paid by the United States or by this state after December 31, 2018, including any survivorship annuities, to the extent included in federal adjusted gross income for the taxable year.

(D) In the event that any of the provisions of this subdivision are found by a court of competent jurisdiction to violate either the Constitution of this state or of the United States, or is held to be extended to persons other than specified in this subdivision, this subdivision shall become null and void by operation of law.

(8) Decreasing modification for social security income.

~~(A) For taxable years beginning on and after January 1, 2020, 35 percent of the amount of social security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited to, social security benefits paid by the Social Security Administration as Old Age, Survivors and Disability Insurance Benefits as provided in §42 U.S.C. 401 *et. seq.* or as Supplemental~~

~~Security Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 *et. seq.*, included in federal adjusted gross income for the taxable year shall be allowed as a decreasing modification from federal adjusted gross income when determining West Virginia taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(D) of this code.~~

~~(B) For taxable years beginning on or after January 1, 2021, 65 percent of the social security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited to, social security benefits paid by the Social Security Administration as Old Age, Survivors and Disability Insurance Benefits as provided in §42 U.S.C. 401 *et. seq.* or as Supplemental Security Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 *et. seq.*, included in federal adjusted gross income for the taxable year shall be allowed as a decreasing modification from federal adjusted gross income when determining West Virginia taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(D) of this code.~~

~~(C)~~ (A) For taxable years beginning on or after January 1, 2022, 100 percent of the social security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited to, social security benefits paid by the Social Security Administration as Old Age, Survivors and Disability Insurance Benefits as provided in §42 U.S.C. 401 *et. seq.* or as Supplemental Security Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 *et. seq.*, included in federal adjusted gross income for the taxable year shall be allowed as a decreasing modification from federal adjusted gross income when determining West Virginia taxable income subject to the tax imposed by this article, subject to the limitation in ~~§11-21-12(c)(8)(D)~~ §11-21-12(c)(8)(B) of this code.

~~(D)~~ (B) The deduction allowed by ~~§11-21-12(c)(8)(A), §11-21-12(c)(8)(B), and §11-21-12(c)(8)(C)~~ §11-21-12(c)(8)(A) of this code are allowable only when the federal adjusted gross income of a married couple filing a joint return does not exceed \$100,000, or \$50,000 in the case of a single individual or a married individual filing a separate return.

(C) For taxable years on and after January 1, 2025, and at the beginning of every tax year thereafter until the decreasing modification on personal income tax payable on social security benefits reaches 100 percent, social security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited to social security benefits paid by the Social Security Administration as Old Age, Survivors and Disability Insurance Benefits as provided in §42 U.S.C. 401 *et. seq.* or as Supplemental Security Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 *et. seq.*, included in federal adjusted gross income for the taxable year may be allowed as a decreasing modification from federal adjusted gross income when determining West Virginia taxable income subject to the tax imposed by this article and the limitations as set forth in this paragraph, as follows:

(i) Any decreasing modifications or personal income tax payable on social security benefits allowed by this paragraph are allowable only when the federal adjusted gross income of a married couple filing a joint return exceeds \$100,000, or \$50,000 in the case of a single individual or a married individual filing a separate return.

(ii) In tax years when the Secretary of Revenue has determined pursuant to the provisions of §11-21-4h of this code that a reduction in the rate of personal income tax is at the maximum allowable rate of 10 percent, no decreasing modification for personal income tax payable on social security benefits as set forth in this paragraph shall be allowed for that taxable year.

(iii) In tax years when the Secretary of Revenue has determined pursuant to the provisions of §11-21-4h of this code that a reduction in the rate of personal income is allowable in a percentage amount less than the maximum allowable 10 percent, on January 1 of that taxable year the decreasing modification for personal income tax payable on social security benefits as set forth in this paragraph shall be set at whichever of the following provides the greatest benefit to the taxpayer:

(I) Thirty-five percent of the personal income tax payable on social security benefits received; or

(II) A percentage amount rounded to the nearest whole percentage equal to the difference between what the rate reduction allowable pursuant to §11-21-4h for personal income tax would be and the maximum allowable 10 percent: *Provided*, That the nearest whole percentage may not exceed 100 percent of the personal income tax payable on social security benefits received.

(iv) In tax years when the Secretary of Revenue has determined pursuant to the provisions of §11-21-4h of this code that no reduction in the rate of personal income tax is permissible, on January 1 of that taxable year the decreasing modification for personal income tax payable on social security benefits paid as set forth in this paragraph shall be 100 percent of the personal income tax payable on social security benefits received.

(v) Decreasing modifications to personal income tax payable on social security benefits as set forth in this paragraph shall be cumulative in nature. The decreasing modification for personal income tax payable on social security benefits allowed pursuant to the provisions of this paragraph shall continue until such time as the decreasing modification for personal income tax payable on social security benefit payments is 100 percent. Once the decreasing modification of personal income tax payable on social security benefits has reached 100 percent, the Tax Commissioner shall notify the Joint Committee on Government and Finance and the decreasing modification for personal income tax payable on social security benefits shall remain at 100 percent.

(vi) When necessary, the Secretary of Revenue and the State Auditor will certify to the Tax Commissioner that a percentage change in the decreasing modification on the personal income tax payable on social security benefits is required as soon as the new percentage is determined. The certification will provide the percentage of the decreasing modification of personal income tax payable on social security benefits, the remaining percentage of the decreasing modification of personal income tax payable on social security benefits, and the amount of the reduction in the personal income tax as set forth in §11-21-4h, if any.

(vii) The Tax Commissioner shall prepare an annual report to the Joint Committee on Government and Finance due by September 30 of each year after the effective date of this paragraph, detailing any modifications to the decreasing modification of personal income tax payable on social security benefits.

(viii) Notwithstanding any provision of this code to the contrary, the Tax Commissioner may propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code to implement the provisions of this paragraph.

(9) Federal adjusted gross income in the amount of \$8,000 received from any source after December 31, 1986, by any person who has attained the age of 65 on or before the last day of the taxable year, or by any person certified by proper authority as permanently and totally disabled, regardless of age, on or before the last day of the taxable year, to the extent includable in federal adjusted gross income for federal tax purposes: *Provided*, That if a person has a medical certification from a prior year and he or she is still permanently and totally disabled, a copy of the original certificate is acceptable as proof of disability. A copy of the form filed for the federal disability income tax exclusion is acceptable: *Provided, however*, That:

(i) Where the total modification under subdivisions (1), (2), (5), (6), (7), and (8) of this subsection is \$8,000 per person or more, no deduction shall be allowed under this subdivision; and

(ii) Where the total modification under subdivisions (1), (2), (5), (6), (7), and (8) of this subsection is less than \$8,000 per person, the total modification allowed under this subdivision for all gross income received by that person shall be limited to the difference between \$8,000 and the sum of modifications under subdivisions (1), (2), (5), (6), (7), and (8) of this subsection;

(10) Federal adjusted gross income in the amount of \$8,000 received from any source after December 31, 1986, by the surviving spouse of any person who had attained the age of 65 or who had been certified as permanently and totally disabled, to the

extent includable in federal adjusted gross income for federal tax purposes: *Provided*, That:

(i) Where the total modification under subdivisions (1), (2), (5), (6), (7), and (8) of this subsection is \$8,000 or more, no deduction shall be allowed under this subdivision; and

(ii) Where the total modification under subdivisions (1), (2), (5), (6), (7), and (8) of this subsection is less than \$8,000 per person, the total modification allowed under this subdivision for all gross income received by that person shall be limited to the difference between \$8,000 and the sum of subdivisions (1), (2), (5), (6), (7), and (8) of this subsection;

(11) Contributions from any source to a medical savings account established by or for the individual pursuant to §33-15-20 or §33-16-15 of this code, plus interest earned on the account, to the extent includable in federal adjusted gross income for federal tax purposes: *Provided*, That the amount subtracted pursuant to this subdivision for any one taxable year may not exceed \$2,000 plus interest earned on the account. For married individuals filing a joint return, the maximum deduction is computed separately for each individual; and

(12) Any other income which this state is prohibited from taxing under the laws of the United States including, but not limited to, tier I retirement benefits as defined in Section 86(d)(4) of the Internal Revenue Code.

(d) Modification for West Virginia fiduciary adjustment. — There shall be added to or subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under §11-21-19 of this code.

(e) Partners and S corporation shareholders. — The amounts of modifications required to be made under this section by a partner or an S corporation shareholder, which relate to items of income, gain, loss or deduction of a partnership or an S corporation, shall be determined under §11-21-17 of this code.

(f) Husband and wife. — If husband and wife determine their federal income tax on a joint return but determine their West Virginia income taxes separately, they shall determine their West Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been determined separately.

(g) Effective date. —

(1) Changes in the language of this section enacted in the year 2000 shall apply to taxable years beginning after December 31, 2000.

(2) Changes in the language of this section enacted in the year 2002 shall apply to taxable years beginning after December 31, 2002.

(3) Changes in the language of this section enacted in the year 2019 shall apply to taxable years beginning after December 31, 2018.

(4) Changes in the language of this section enacted in the year 2024 shall apply to taxable years beginning after December 31, 2024.

The bill (Eng. Com. Sub. for H. B. 4880), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4882**, Extending in-state tuition rates to all members and veterans of the National Guard, reserves, and armed forces as well as their spouses and dependents.

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

**Eng. Com. Sub. for House Bill 4919**, Relating to the Promise Scholarship.

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

**Eng. House Bill 4945**, Relating generally to the Hope Scholarship Program.

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

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

**Eng. Com. Sub. for House Bill 4956**, Creating the Oral Health and Cancer Rights Act.

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

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

**Eng. Com. Sub. for House Bill 4967**, Relating to the administration of the Voluntary Remediation and Redevelopment Act to provide new liability protections for persons and companies who wish to purchase and redevelop former industrial properties.

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

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

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

## **ARTICLE 22. VOLUNTARY REMEDIATION AND REDEVELOPMENT ACT.**

### **§22-22-1. Legislative findings; legislative statement of purpose.**

(a) The Legislature finds there is property in West Virginia that is not being put to its highest productive use because it is contaminated or it is perceived to be contaminated as a result of past activity on the property.



(b) The Legislature further finds that abandonment or ~~under use~~ underutilization of contaminated or potentially contaminated industrial sites results in inefficient use of public facilities and services and increases the pressure for development of uncontaminated pristine land. Since existing industrial areas frequently have transportation networks, utilities, and an existing infrastructure, it can be less costly to society to redevelop existing industrial areas than to relocate amenities for industrial areas at pristine sites.

(c) The Legislature further finds that the existing legal structure creates uncertainty regarding the legal effect of remediation upon liability. Legal uncertainty serves as a further disincentive to productive redevelopment of brownfields. Therefore, incentives should be put in place to encourage voluntary redevelopment of contaminated or potentially contaminated sites.

(d) The Legislature further finds that an administrative program should be established to encourage persons to voluntarily develop and implement remedial plans without the need for enforcement action by the ~~Division~~ Department of Environmental Protection. Therefore, it is the purpose of this article to:

(1) Establish an administrative program to facilitate voluntary remediation activities and brownfield revitalization;

(2) Provide financial incentives to entice investment at brownfield sites; and

(3) Establish limitations on liability under environmental laws and rules for those persons who remediate sites in accordance with applicable standards established under this article.

## **§22-22-2. Definitions.**

As used in this article, unless otherwise provided or indicated by the context:

"Abandoned property" means real property for which the current owner cannot be determined or cannot be located or

property which has been forfeited to or acquired by the State for the nonpayment of taxes pursuant to State law;

(a) "Applicable standards", mean the remediation levels established in or pursuant to section three of this article;

"Bona fide prospective purchaser" means a person or a tenant of a person who acquires ownership, or proposes to acquire ownership, of real property after the release of hazardous substances occurred;

~~(b) "Brownfield" means any industrial or commercial property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant; which is abandoned or not being actively used by the owner as of the effective date of this article, but shall not include any site subject to a unilateral enforcement order under §104 through §106 of the "Comprehensive Environmental Response, Compensation and Liability Act", 94 Stat. 2779, 42 U.S.C. §9601, as amended, or which has been listed or proposed to be listed by the United States environmental protection agency on the priorities list of Title I of said act, or subject to a unilateral enforcement order under §3008 and §7003 of the "Resource Conservation Recovery Act" or any unilateral enforcement order for corrective action under this chapter;~~

~~(c) "Certified laboratory" means any laboratory approved by the director under laboratory certification rules adopted pursuant to section fifteen, article one of this chapter.~~

"Brownfields Revolving Fund" means the special revenue fund established to provide loans for site assessments and remediation of eligible brownfield sites;

~~(d) "Contaminant" or "contamination" means any man made or man induced alteration of the chemical, physical, or biological integrity of soils, sediments, air, and surface water or groundwater resulting from activities regulated under this article, in excess of~~

applicable standards in this chapter, including any hazardous substance, petroleum, or natural gas;

(e) "Controls" means to apply engineering measures, such as capping or treatment, or institutional measures, such as deed restrictions, to contaminated sites;

"Department" means the West Virginia Department of Environmental Protection;

(f) "Development Authority" means any authority as defined in ~~article twelve, chapter seven~~ §7-12-1, et seq. of this code or the state Development Office as defined in ~~article two, chapter five-b~~ §2-5B-1, et seq. of this code.

~~(g) "Director" means the director of the Division of Environmental Protection or such other person to whom the director has delegated authority or duties pursuant to this article;~~

~~(h) "Division" means the Division of Environmental Protection of the State of West Virginia;~~

(i) "Engineering controls" means remedial actions directed exclusively toward containing or controlling the migration of contaminants through the environment. These include, but are not limited to, slurry walls, liner systems, caps, leachate collection systems, and groundwater recovery trenches;

(j) "Hazardous substance" means any substance identified as a hazardous substance pursuant to the "Comprehensive Environmental Response, Compensation and Liability Act," ~~94 Stat. 2779, 42 U.S.C. §9601-9604-9606, as amended;~~

"Innocent land owner" means a person who holds any title, security interest, or any other interest in a brownfield site and who acquired ownership of the real property after the release of hazardous substances occurred;

~~(k) "Institutional controls" means legal or contractual restrictions on property use that remain effective after the remediation action is completed and are used to meet applicable~~

~~standards. The term may include, but is not limited to, deed and water use restrictions;~~

(4) "Industrial activity" means commercial, manufacturing, public utility, mining, or any other activity done to further either the development, manufacturing, or distribution of goods and services, intermediate and final products, and solid waste created during such activities, including, but not limited to; administration of business activities; research and development; warehousing; shipping; transport; remanufacturing; stockpiling of raw materials; storage, repair, and maintenance of commercial machinery or equipment; and solid waste management;

"Institutional controls" means legal or contractual restrictions on property use that remain effective after the remediation action is completed and are used to meet applicable standards. The term may include, but is not limited to, deed and water use restrictions;

(m) "Land-use covenant" means an environmental covenant within the meaning of §22-22B-2(4) of this code, and is a document or deed restriction issued by the ~~director~~ Secretary on remediated sites which have attained and demonstrate continuing compliance with site-specific standards for any contaminants at the site and which is agreed to by the owner of the property. The covenant shall be recorded by deed in the office of the county clerk of the county wherein the site is situated. The document or covenant shall be included by any grantor or lessor in any deed or other instrument of conveyance or any lease or other instrument whereby real property is let for a period of one year or more, as more fully set forth in sections thirteen and fourteen of this article;

(n) "Licensed remediation specialist" means a person certified by the ~~director~~ Secretary pursuant to rules adopted under section three of this article as qualified to perform professional services and to supervise the remediation of contaminated sites;

~~(o) "Mitigation measure" means any remediation action performed by a person prior to or during implementation of a remediation plan to protect human health and the environment;~~

(p) "Natural gas" means natural gas, natural gas liquids, liquefied natural gas, coalbed methane, synthetic gas usable for fuel, or mixtures of natural gas and synthetic gas;

~~(q)(r)~~ "Nonresidential property" means any real property on which ~~commercial, industrial, manufacturing or any other activity is performed. done to further the development, manufacturing or distribution of goods and services, intermediate and final business activities, research and development, warehousing, shipping, transport, remanufacturing, stockpiling of raw materials, storage, repair and maintenance of commercial machinery and equipment, and solid waste management.~~ This term shall not include schools, day care centers, nursing homes, or other residential-style facilities or recreational areas;

~~(r)~~ "Owner" means ~~any person owning or holding legal or equitable title or possessory interest in property or, where title or control of property was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to this state or a political subdivision of this state, or any person who owned the property before the conveyance;~~

"Operator" means the person responsible for the overall operation of a facility site. A person who executes a voluntary remediation agreement with the Secretary may be considered an operator for the purpose of carrying out the activities required by the government;

"Owner" means any person owning or holding legal or equitable title or possessory interest in property or, where title or control of property was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to this state or a political subdivision of this state;

(t) "Person" means any public or private corporation, institution, association, firm, or company organized or existing under the laws of this or any other state or country; the state of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation;

partnership; trust; estate; person or individuals acting individually or as a group; or any legal entity whatever;

(u) "Petroleum" means oil or petroleum of any kind and in any form, including, without limitation, crude oil or any fraction thereof, oil sludge, oil refuse, used oil, substances or additives in the refining or blending of crude petroleum or petroleum stock;

(v) "Practical quantitation level" means the lowest analytical level that can be reliably achieved within specified limits of precision and accuracy under routine laboratory conditions for a specified matrix. It is based on quantitation, precision, and accuracy under normal operation of a laboratory and the practical need in a compliance-monitoring program to have a sufficient number of laboratories available to conduct the analyses;

(w) "Property" means any parcel of real property, and any improvements thereof;

(x) ~~"Related" means the persons who are related to the third degree of consanguinity or marriage;~~

(y) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, dumping, or disposing of any contaminant or regulated substance into the environment, including, without limitation, the abandonment or improper discarding of barrels, containers, or any other closed receptacle containing any contaminant;

(z) "Remediation" or "remedial action" means to cleanup, mitigate, correct, abate, minimize, eliminate, control, and contain or prevent a release of a contaminant into the environment in order to protect the present or future public health, safety, welfare, or the environment, including preliminary actions to study or assess the release;

(aa) "Remediation contractor" means any person who enters into and is carrying out a contract to cleanup, remediate, respond to or remove a release or threatened release of a contaminant and includes any person who the contractor retained or hired to provide services under a remediation contract;

~~(bb)~~ "Residential" means any real property or portion thereof which is designed for the housing of human beings and does not meet the definition of "nonresidential" property set forth above;

~~(ee)~~ "Risk" means the probability that a contaminant, when released into the environment, will cause an adverse effect in exposed humans or other living organisms;

"Secretary" means the Secretary of the Department of Environmental Protection or any other person to whom he or she has delegated authority or duties in accordance with §22-1-6 or §22-1-8 of this code;

~~(dd)~~ "Site" means any property or portion thereof which contains or may contain contaminants and is eligible ~~for~~ to participate in the voluntary remediation program as provided under this article;

~~(ee)~~ "Unilateral enforcement order" means a written final order issued by a federal or state agency charged with enforcing environmental law, which compels the fulfillment of an obligation imposed by law, rule against a person without their voluntary consent; and

~~(ff)~~ "Voluntary remediation" means a series of measures that may be self-initiated by a person to identify and address potential sources of contamination of property and to establish that the property complies with applicable remediation standards.

### **§22-22-3. Rule-making authority of the ~~director~~ Secretary.**

~~Within one year after the effective date of this section, The~~ director Secretary, in accordance with chapter twenty-nine-a of this code, shall propose, and subsequently may amend, suspend, or rescind, rules that do the following:

(a) Establish an administrative program for both brownfield revitalization and voluntary remediation, including application procedures;

(b) Establish procedures for the licensure of remediation specialists, including, but not limited to establishing licensing fees, testing procedures, disciplinary procedures, and methods for revocation of licenses;

(c) Establish procedures for community notification and involvement;

(d) Establish risk-based standards for remediation;

(e) Establish standards for the remediation of property;

(f) Establish a risk protocol for conducting risk assessments and establishing risk-based standards. The risk protocol shall:

(1) Require consideration of existing and reasonably anticipated future human exposures based on current and reasonably anticipated future land and water uses and significant adverse effects to ecological receptor health and viability;

(2) Include, at a minimum, both central tendency and reasonable upper bound estimates of exposure;

(3) Require risk assessments to consider, to the extent practicable, the range of probabilities of risks actually occurring, the range or size of populations likely to be exposed to risk, and quantitative and qualitative descriptions of uncertainties;

(4) Establish criteria for what constitutes appropriate sources of toxicity information;

(5) Address the use of probabilistic modeling;

(6) Establish criteria for what constitutes appropriate criteria for the selection and application of fate and transport models;

(7) Address the use of population risk estimates in addition to individual risk estimates;

(8) To the extent ~~deemed~~ considered appropriate and feasible by the ~~director~~ Secretary considering available scientific information, define appropriate approaches for addressing



cumulative risks posed by multiple contaminants or multiple exposure pathways;

(9) Establish appropriate sampling approaches and data quality requirements; and

(10) ~~This protocol shall~~ Include public notification and involvement provisions so that the public can understand how remediation standards are applied to a site and provide for clear communication of site risk issues, including key risk assessment assumptions, uncertainties, populations considered, the context of site risks to other risks, and how the remedy will address site risks;

(g) Establish chemical and site-specific information, where appropriate for purpose of risk assessment. Risk assessments should use chemical and site-specific data and analysis, such as toxicity, exposure, and fate and transport evaluations in preference to default assumptions. Where chemical and site-specific data are not available, a range and distribution of realistic and plausible assumptions should be employed;

(h) Establish criteria to evaluate and approve methods for the measurement of contaminants using the practical quantitation level and related laboratory standards and practices to be used by certified laboratories;

(i) Establish standards and procedures for the ~~utilization~~ use of certificates of completion, land use covenants, and other legal documents necessary to effectuate the purposes of this article; and

(j) Establish any other rules necessary to carry out the requirements and the legislative intent of this act.

**§22-22-4. Voluntary remediation program; eligibility application and fee; information available to public; confidentiality of trade secrets; information; criminal penalties; requirements of site assessment; rejection or return of application; appeal of rejection.**

(a) Any site is eligible for participation in the voluntary remediation program, except those sites subject to a ~~federal~~

~~environmental protection agency~~ unilateral enforcement order, under §§ 104 through §106 of the Comprehensive Environmental Response, Compensation and Liability Act (~~CERCLA~~), ~~94 Stat. 2779~~, 42 U.S.C. §§~~9601~~ 9604-9006, ~~as amended~~, or which have been listed or proposed to be listed by the United States Environmental Protection Agency ("USEPA") on the priorities list of Title I of said act, or which is subject to a unilateral enforcement order under §3008 and §7003 of the Resource Conservation Recovery Act ("RCRA"), 42 U.S.C. § 6928 or § 6973, or which is subject to any unilateral enforcement order for corrective action under this chapter: *Provided*, That the release which is subject to remediation was not created through gross negligence or willful misconduct. ~~In order to participate in the voluntary remediation program, a person must submit an application to the director and enter into a voluntary remediation agreement as set forth in section seven of this article.~~

(b) Any person who desires to participate in the voluntary remediation program ~~must~~ shall submit to the ~~division~~ Department an application and an application fee established by the ~~director~~ Secretary. The application shall be on a form provided by the ~~director~~ Secretary and contain the following information: The applicant's name, address, financial and technical capability to perform the voluntary remediation, a general description of the site, a site assessment of the actual or potential contaminants ~~made~~ prepared by a licensed remediation specialist, and all other information required by the ~~director~~ Secretary.

(c) The ~~director~~ Secretary shall promulgate a legislative rule establishing a reasonable application fee. Fees collected under this section shall be deposited to the credit of the Voluntary Remediation Fund in the State Treasury as established in §22-22-6 of this code ~~section six of this article~~.

(d) Information obtained by the ~~division~~ Department under this article shall be available to the public, unless the ~~director~~ Secretary certifies such information to be confidential. The ~~director~~ Secretary may make such certification where any person shows, to the satisfaction of the ~~director~~ Secretary, that the information or parts thereof, if made public, would divulge methods, processes, or

activities entitled to protection as trade secrets. In submitting data under this article, any person required to provide such confidential data may designate the data which that person believes is entitled to protection under this section and submit such designated data separately from other data submitted under this article. This designation request shall be made in writing. Any person who divulges or discloses any information entitled to protection under this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned in a county jail for not more than one year, or both fined and imprisoned.

(e) The site assessment must include a legal description of the site; a description of the physical characteristics of the site, and the general operational history of the site to the extent that the history is known by the applicant; and information of which the applicant is aware concerning the nature and extent of any known contamination at the site and immediately contiguous to the site, or wherever the contamination came to be located.

(f) The ~~director~~ Secretary may reject or return an application if:

- (1) A federal requirement precludes the eligibility of the site;
- (2) The application is not complete and accurate; or
- (3) The site is ineligible under the provisions of this article.

(g) The ~~director~~ Secretary shall act upon all applications within ~~forty-five~~ 45 days of receipt, unless an extension of time is mutually agreed to and confirmed in writing. If an application is returned by the ~~director~~ Secretary because it is not complete or accurate, the ~~director~~ Secretary shall provide the applicant a list of all information that is needed to make the application complete or accurate. The applicant may resubmit an application without submitting an additional application fee.

(h) If the ~~director~~ Secretary rejects the application, then he or she shall notify the applicant that the application has been rejected and provide an explanation of the reasons for the rejection. The applicant may, within ~~twenty-five~~ 25 days of rejection, indicate his

or her desire to resubmit the application. Upon final determination by the ~~director~~ Secretary, if the application is rejected, the ~~director~~ Secretary shall return one half of the application fee. The applicant may appeal the ~~director's~~ Secretary's rejection of the application to the Environmental Quality Board established under ~~article three, chapter twenty-two b of this code~~ §22B-3-1, et seq. of this code.

(i) Upon withdrawal of an application, the applicant is entitled to the refund of one half of the application fee, provided the application has not been accepted by the Secretary.

**§22-22-5. Brownfields Revolving Fund applicant eligibility application; loans; remediation process; brownfield remediation; eligibility; application; remediation loan; and obtaining information from director public notification.**

(a) ~~For brownfield property,~~ A person may be eligible for Brownfields Revolving Fund moneys when ~~any~~ environmental remediation is undertaken pursuant to this article, by a development authority or any ~~and the person who did not cause or contribute to the contamination on the property.~~ A person receiving Brownfields Revolving Fund moneys shall comply with the appropriate standards established by the ~~director~~ Secretary pursuant to this article and rules promulgated hereunder.

(b) After conferring with the ~~director~~ Secretary, the person may apply to the ~~director~~ Secretary for a site assessment or remediation loan under section six of this article §22-22-6 of this code. ~~A site assessment must be conducted to establish existing contamination of the site.~~ An application for brownfield remediation money from the Brownfields Revolving Fund must be submitted along with the an application fee to be established by the Secretary. ~~The procedures established for voluntary remediation set forth in section four must be followed. The director shall establish a reasonable application fee.~~

~~(b)~~(c) Brownfields sites being remediated by persons who did not cause or contribute to the contamination of the site are also eligible for consideration for remediation loans established under

article fifteen, chapter thirty one of this code §15-31-1, et seq. of this code.

(e)(d) Persons undertaking brownfield remediation, who did not cause or contribute to the contamination of the brownfield site, may obtain all information relating to contamination at the site in the possession of the director prior to engaging in a site assessment receiving Brownfields Revolving Fund moneys to perform remediation and revitalization of brownfield sites shall comply with the following public notice and involvement requirements:

(1) Submit a notice of intent to remediate to the Department. This notice shall provide, to the extent known, a brief description of the location of the site; a listing of the contaminants involved; and the proposed remediation measures. The Department shall publish an acknowledgment noting the receipt of the notice of intent in a Department publication of general circulation. At the time a notice of intent to remediate a site is submitted to the Department, a copy of the notice shall be provided to the municipality and the county in which the site is located. A summary of the notice of intent shall be published in a newspaper of general circulation serving the area in which the site is located;

(2) Provide a 30-day public, county, and municipal comment period for the notice required by this subsection during which the public, county, and municipality may request to be involved in the development of the remediation and reuse plans for the site. If requested by the public, county, municipality, or the Secretary, the person undertaking the remediation shall develop and implement a public involvement program plan which meets the requirements set forth by the Secretary; and

(3) Adhere to other public notice requirements as stipulated by federal or other grantors that provide moneys to the Brownfields Revolving Fund, or as promulgated in the rules developed by the Secretary.

**§22-22-6. Voluntary remediation administrative fund established; voluntary remediation fees authorized; Brownfields revolving fund established; disbursement of funds moneys; employment of specialized persons authorized.**

(a) There is hereby ~~created~~ reauthorized and continued in the State Treasury a special revenue fund known as the Voluntary Remediation Administrative Fund. The fund shall operate as a special fund whereby all deposits and payments thereto do not expire to the General Revenue Fund but shall remain in the fund and be available for expenditure in succeeding fiscal years. This fund shall consist of fees collected by the ~~director~~ Secretary in accordance with the provisions of this article as well as interest earned on investments made from moneys deposited in the fund. Moneys from this fund shall be expended by the ~~director~~ Secretary for the administration, licensing, enforcement, inspection, monitoring, planning, research, and other activities required by this article.

The ~~director~~ Secretary shall promulgate legislative rules in accordance with the provisions of ~~chapter twenty-nine~~ a §29A-3-1 et seq. of this code establishing a schedule of voluntary remediation fees applicable to persons who conduct activities subject to the provisions of this article. The fees may include an appropriate assessment of other program costs not otherwise attributable to any specific site but necessary for the administrative activities required to carry out the provisions of this article.

(b) There is hereby ~~created~~ reauthorized and continued in the State Treasury a special revenue fund known as the Brownfields Revolving Fund. The fund shall be comprised of moneys allocated to the state by the federal government expressly for the purposes of establishing and maintaining a state brownfields redevelopment revolving fund, all receipts from loans made from the fund, any moneys appropriated by the Legislature, all income from the investment of moneys held in the fund, and all other sums designated for deposit to the fund from any source, public or private. The fund shall operate as a special fund whereby all deposits and payments thereto do not expire to the General Revenue Fund but shall remain in the account and be available for expenditure in succeeding fiscal years. Moneys in the fund, to the extent that moneys are available, shall be used ~~solely~~ to make loans to persons to finance site assessments and remediation of eligible brownfield sites and such other activities as authorized by any

federal grant received or any legislative appropriation: *Provided*, That moneys in the fund may be utilized to defray those costs incurred by the ~~division~~ Department in administering the provisions of this subsection. The ~~director~~ Secretary shall promulgate rules in accordance with the provisions of ~~chapter twenty-nine~~ a §29A-3-1 et seq. of this code, to govern the disbursement of moneys from the fund, and establish a state brownfields redevelopment assistance program to direct the distribution of loans from the fund, and establish the interest rates and repayment terms of ~~such~~ any loans: *Provided, however*, That amounts in the fund, ~~other than those~~ appropriated by the ~~federal government~~ West Virginia Legislature, and which are found from time to time to exceed the amount needed for the purposes set forth in this article, may be transferred to other accounts or funds and redesignated for other purposes through appropriations of the Legislature. Moneys from any other source, public or private, shall remain in the fund.

In order to carry out the administration and management of the fund, the ~~division~~ Department ~~is authorized to~~ may employ officers, agents, advisors, and consultants, including attorneys, financial advisors, engineers, other technical advisors, and public accountants and, notwithstanding any provisions of this code to the contrary, ~~to~~ determine their duties and compensation without the approval of any other agency or instrumentality.

**§22-22-7. Voluntary remediation agreement; required use of licensed remediation specialist; required provisions of a voluntary remediation agreement; failure to reach agreement; appeal to the Environmental Quality Board; no enforcement action when subject of agreement.**

Upon acceptance of an application, the ~~director~~ Secretary shall enter into an agreement with the applicant for the remediation of the site which sets forth the following:

(a) A person desiring to participate in the voluntary remediation program ~~must~~ shall enter into a voluntary remediation agreement that sets forth the terms and conditions of the evaluation of the reports and the implementation of work plans;

(b) Any voluntary remediation agreement approved by the ~~director~~ Secretary shall provide for the services of a licensed remediation specialist for supervision of all activities described in the agreement;

(c) A voluntary remediation agreement ~~must~~ shall provide for cost recovery of all reasonable costs incurred by the ~~division~~ Department in review and oversight of the person's work plan and reports as a result of field activities or attributable to the voluntary remediation agreement, which are in excess of the fees submitted by the applicant along with a schedule of payments; appropriate tasks, deliverables, and schedules for performance of the remediation; a listing of all statutes and rules for which compliance is mandated; a description of any work plan or report to be submitted for review by the ~~director~~ Secretary, including a final report that provides all information necessary to verify that all work contemplated by the agreement has been completed; the licensed remediation specialist's supervision of remediation contractors; and a listing of the technical standards to be applied in evaluating the work plans and reports, with reference to the proposed future land use to be achieved. The voluntary remediation agreement may also provide for alternate dispute resolutions between the parties to the agreement, including, but not limited to, arbitration or mediation of any disputes under this agreement;

(d) ~~No~~ A voluntary remediation agreement may not be modified or amended, unless the amendment or modification is reduced to writing and mutually agreed upon by the parties to the agreement: *Provided*, That when the ~~director~~ Secretary determines that there is an imminent threat to the public, he or she may unilaterally modify or amend the agreement;

(e) Upon acceptance of an application, the ~~director~~ Secretary and the applicant shall develop a remediation agreement. If an agreement is not reached between the applicant and the ~~director~~ Secretary on or before the ~~thirty-first~~ 31st day after the application has been accepted, either party may withdraw from negotiations. ~~Should this occur~~, If this occurs, the agency retains the application fee. The applicant may appeal the failure to reach agreement to the Environmental Quality Board as established under ~~article three~~,



~~chapter twenty-two b of this code~~ §22B-3-1, et seq. of this code. By mutual agreement, when it becomes impractical to reach an agreement within ~~thirty-one~~ 31 days, the time limit may be extended in writing; and

(f) The ~~division~~ Department may not initiate an enforcement action against a person who is in compliance with this section for the contamination that is the subject of the voluntary remediation agreement or for the activity that resulted in the contamination, unless there is an imminent threat to the public.

#### **§22-22-8. Voluntary remediation work plans and reports.**

After signing a voluntary remediation agreement, the person undertaking remediation shall prepare and submit the appropriate work plans and reports to the ~~director~~ Secretary. The ~~director~~ Secretary shall review and evaluate the work plans and reports for accuracy, quality, and completeness. The ~~director~~ Secretary may approve a voluntary remediation work plan or report or disapprove and notify the person of additional information needed to obtain approval.

#### **§22-22-9. Termination of agreement; cost of recovery; legal actions.**

The person undertaking remediation may, in ~~their~~ his or her sole discretion, terminate the agreement as provided by the terms of the agreement and by giving ~~fifteen~~ 15 days advance written notice of termination. Only those costs incurred or obligated by the ~~director~~ Secretary before notice of termination of the agreement are recoverable, if the agreement is terminated. The termination of the agreement does not affect any right the ~~director~~ Secretary may have under any other law to recover costs. The person undertaking the remediation must pay the ~~division's~~ Department's costs associated with the voluntary remediation within ~~thirty-one~~ 31 days after receiving notice that the costs are due and owing. The ~~director~~ Secretary may bring an action in Kanawha County circuit court or in the circuit court in the county wherein the property is situated to recover the amount owed to the ~~division~~ Department and reasonable legal expenses.

**§22-22-10. Inspections; right of entry; sampling; reports and analyses.**

(a) The ~~director~~ Secretary, upon presentation of proper credentials, may enter any building, property, premises, place, or facility where brownfield or voluntary remediation activities are being or have been performed for the purpose of making an inspection to ascertain the compliance by any person with the provisions of this article or the rules promulgated by the ~~director~~ Secretary.

(b) The ~~director~~ Secretary shall make periodic inspections at sites subject to this article. After an inspection is made, a report shall be filed with the ~~director~~ Secretary and a copy shall be provided to the person who is responsible pursuant to the voluntary agreement for remediation activities. The reports shall not disclose any confidential information protected under the provisions of ~~subsection (d), section four of this article §22-22-4(d) of this code.~~ The inspection reports shall be available to the public in accordance with the provisions of ~~article one, chapter twenty nine b of this code §29B-1-1, et seq. of this code.~~

(c) The ~~director~~ Secretary may, upon presentation of proper credentials, enter any building, motor vehicle, property, premises, or site where brownfield or voluntary remediation activities are being or have been performed and take samples of wastes, soils, air, surface water, and groundwater. In taking such samples, the ~~director~~ Secretary may utilize ~~such~~ sampling methods ~~as are~~ necessary in exercising good scientific technique. Following the taking of any sample, the ~~director~~ Secretary shall give the person responsible in the voluntary agreement for remediation activities a receipt describing the sample obtained and, if requested, a portion of each sample equal in volume or weight to the portion retained. The ~~director~~ Secretary shall promptly provide a copy of any analysis made to the responsible person named in the voluntary agreement.

(d) Upon presentation of proper credentials, the ~~director~~ Secretary shall be given access to all records relating to a ~~brownfield or~~ voluntary remediation.

**§22-22-11. Licensed remediation specialist, licensure procedures.**

(a) ~~No~~ A person may not practice as a licensed remediation specialist without a license issued by the ~~director~~ Secretary. Any violation of this provision shall be subject to the enforcement orders as set forth in ~~section twelve of this article~~ §22-22-12 of this code.

(b) To obtain a license, a person must apply to the ~~director~~ Secretary in writing on forms approved and supplied by the ~~director~~ Secretary. Each application for examination for a license shall contain:

(1) The full name of the person applying for the license;

(2) The principal business address of the applicant;

(3) All formal academic education and experience of the applicant to demonstrate professional expertise of the applicant;

(4) If waiver of the examination is being requested, any license or certification that the person desires to be considered as part of the waiver request;

(5) The examination fee; and

(6) Any other necessary information prescribed by the ~~director~~ Secretary.

(c) The ~~director~~ Secretary shall establish the date, time, and location of licensed remediation specialist examinations.

(d) The applicant ~~must~~ shall demonstrate that he or she possesses a practical knowledge of the remediation activities; procedures necessary to remediate a site; and the management of contaminants at a site, including, but not limited to, site investigation, health and safety protocol, quality assurance, feasibility studies and remedial design.

(e) If the ~~director~~ Secretary does not certify the remediation specialist applicant, the ~~director~~ Secretary shall inform the

applicant in writing of the reasons therefor. The ~~director~~ Secretary may not deny a license without cause.

(f) It is the licensed remediation specialist's duty to protect the safety, health, and welfare of the public as set forth in this article, in the performance of his or her professional duties. The licensed remediation specialist is responsible for any release of contaminants during remediation activities undertaken pursuant to the approved remediation agreement, work plans, or reports. If a licensed remediation specialist faces a situation where he or she is unable to meet this duty, the licensed remediation specialist may either sever the relationship with the client or employer or refuse professional responsibility for work plan, report, or design. The specialist shall notify the ~~division~~, Department if there is a threat to the environment or the health, safety, or welfare of the public.

(g) A licensed remediation specialist shall only perform assignments for which the specialist is qualified by training and experience in those specific technical fields; be objective in work plans, reports, and opinions; and avoid any conflict of interest with employer, clients, and suppliers. A licensed remediation specialist shall not solicit or accept gratuities, directly or indirectly, from contractors, agents, or other parties dealing directly with the employer or client in regard to professional services being performed at the work site; accept any type of bribe; falsify or permit misrepresentation of professional qualifications; intentionally provide false information to the ~~director~~ Secretary; or knowingly associate with ~~one~~ a person who is engaging in business or professional practices of a fraudulent or dishonest nature.

(h) A licensed remediation specialist shall not charge any special fees above usual and customary professional rates for being licensed.

(i) The license issued by the ~~director~~ Secretary may be renewed every two years for any licensed remediation specialist in good standing. The ~~director~~ Secretary, by rule, shall establish license fees.

(j) The ~~director~~ Secretary ~~is authorized to~~ may revoke a license; suspend a license for not more than five years; or impose lesser sanctions as may be appropriate for acts or omissions in violation of this article.

**§22-22-12. Enforcement orders for licensed remediation specialists; cease and desist order; criminal penalties.**

(a) If the ~~director~~ Secretary, upon inspection, investigation, or through other means observes, discovers, or learns that a licensed remediation specialist has violated the provisions of this article or any rules promulgated hereunder, the ~~director~~ Secretary may:

(1) Issue an order stating with reasonable specificity the nature of the violation and requiring compliance immediately or within a specified time. An order under this section includes, but is not limited to, orders suspending or revoking licenses, orders requiring a person to take remedial action, or cease and desist orders; or

(2) Request the prosecuting attorney of the county in which the alleged violation occurred bring a criminal action as provided for herein.

(b) Any person issued an order may file a request for reconsideration with the ~~director~~ Secretary within seven days of the receipt of the order. The ~~director~~ Secretary shall conduct a hearing on the merits of the order within ~~ten~~ 10 days of the filing of the request for reconsideration. The filing of a notice of request for reconsideration does not stay or suspend the execution or enforcement of the order.

(c) Any licensed remediation specialist who fraudulently misrepresents that work has been completed and such action results in an unjustified and inexcusable disregard for the safety of others, thereby placing another in imminent danger or contributing to ongoing harm to the environment, ~~he or she shall be~~ is guilty of a felony and, upon conviction thereof, shall be fined not more than \$50,000, or imprisoned not less than one nor more than two years, or both ~~such fine and imprisonment.~~

(d) If any person associated with remediation of a brownfield or voluntary remediation site engages in fraudulent acts or representations to the ~~division~~ Department, he or she ~~shall be~~ is guilty of a felony and, upon conviction thereof, shall be fined not more than \$50,000 or imprisoned not less than one nor more than two years, or both.

#### **§22-22-13. Certificate of completion.**

(a) The licensed remediation specialist shall issue a final report to the person undertaking the voluntary remediation when the property meets the applicable standards and all work has been completed as contemplated in the voluntary remediation agreement or the site assessment shows that all applicable standards are being met. Upon receipt of the final report, the person may seek a certificate of completion from the ~~director~~ Secretary.

(b) The ~~director~~ Secretary may delegate the responsibility for issuance of a certificate of completion to a licensed remediation specialist in limited circumstances, as specified by rule pursuant to this article.

(c) The certificate of completion shall contain a provision relieving a person who undertook the remediation and subsequent successors and assigns from all liability to the state as provided under this article which shall remain effective as long as the property complies with the applicable standards in effect at the time the certificate of completion was issued. This certificate is subject to reopener provisions of section fifteen of this article and may, if applicable, result in a land-use covenant as provided in section fourteen of this article.

#### **§22-22-14. Land-use covenant; criminal penalties.**

(a) The ~~director~~ Secretary shall establish by rule, criteria for deed recordation of land-use covenants and containing all necessary deed restrictions. The ~~director~~ Secretary shall cause all land-use covenants to appear in the chain of title by deed to be properly recorded in the office of the county clerk where the remediation site is located. If institutional and engineering controls

are used, in whole or in part, to achieve a remediation standard, the ~~director~~ Secretary shall direct that a land-use covenant be applied. The covenant shall include whether residential or nonresidential exposure factors were used to comply with the site-specific standard. The covenant shall contain a provision relieving the person who undertook the remediation and subsequent successors and assigns from all civil liability to the state as provided under this article and shall remain effective as long as the property complies with the applicable standards in effect at the time the covenant was issued.

(b) Whoever knowingly violates a land-use covenant by converting nonresidential property to residential property is guilty of a felony, and, upon conviction thereof, shall be fined not more than \$25,000, imprisoned for not more than five years, or both.

#### **§22-22-15. Reopeners.**

Any person who completes remediation in compliance with this article shall not be required to undertake additional remediation actions for contaminants subject to the remediation, unless the ~~director~~ Secretary demonstrates that:

(a) Fraud was committed in demonstrating attainment of a standard at the site that resulted in avoiding the need for further remediation of the site;

(b) New information confirms the existence of an area of a previously unknown contamination which contains contaminants that have been shown to exceed the standards applied to the previous remediation at the site;

(c) The level of risk is increased significantly beyond the established level of protection at the site due to substantial changes in exposure conditions, such as, a change in land use, or new information is obtained about a contaminant associated with the site which revises exposure assumptions beyond the acceptable range. Any person who changes the use of the property causing the level of risk to increase beyond established protection levels shall be required by the ~~division~~ Department to undertake additional remediation measures under the provisions of this article;

(d) The release occurred after the effective date of this article on a site not used for industrial activity prior to the effective date of this article; the remedy relied, in whole or in part, upon institutional or engineering controls instead of treatment or removal of contamination; and treatment, removal, or destruction has become technically and economically practicable; or

(e) The remediation method failed to meet the remediation standard or combination of standards.

In the event that any of the foregoing circumstances occur, the remediation agreement will be reopened and revised to the extent necessary to return the site to its previously agreed to state of remediation or other appropriate standard.

**§22-22-16. Duty of assessor and citizens to notify ~~director~~ Secretary when change of property use occurs.**

If an assessor in any county becomes aware of a change of remediated property use from nonresidential property to residential, the assessor shall check the land record of the county to ascertain if a land-use covenant appears to have been violated. Should it appear that a violation has occurred, the assessor shall notify the ~~director~~ Secretary in writing of the suspected violation. If any citizen becomes aware of a change of property use from nonresidential to residential, the citizen may check the land record of the county to ascertain if a land use covenant appears to have been violated and may notify the ~~director~~ Secretary in writing. The ~~director~~ Secretary shall then investigate and proceed with any necessary enforcement action.

**§22-22-17. Public notification for brownfields.**

[Repealed.]

**§22-22-18. Environmental liability protection.**

(a) Any person demonstrating compliance with the applicable standards established in section three of this article, whether by remediation or where the site assessment shows that the contamination at the site meets applicable standards, shall be relieved of further liability for the remediation of the site under this



chapter. Contamination identified in the remediation agreement submitted to and approved by the ~~division~~ Department ~~shall not be~~ is not subject to citizen suits or contribution actions. The protection from further remediation liability provided by this article applies to the following persons:

(1) The current or future owner or operator of the site, including development authorities and fiduciaries who participated in the remediation of the site;

(2) A person who develops or otherwise occupies the site;

(3) A successor or assign of any person to whom the liability protection applies;

(4) A public utility, as defined in ~~section two, article one, chapter twenty four~~ §24-1-2 of this code, and for the purpose of this article, a utility engaged in the storage and transportation of natural gas, to the extent the public utility performs activities on the site;

(5) A remediation contractor;

(6) A licensed remediation specialist; and

(7) A lender or developer who engages in the routine practices of commercial lending, including, but not limited to, providing financial services, holding of security interests, workout practices, foreclosure, or the recovery of funds from the sale of a site.

(b) A person shall not be considered a person responsible for a release or a threatened release of contaminants simply by virtue of conducting or having a site assessment conducted. Nothing in this section relieves a person of any liability for failure to exercise due diligence in performing a site assessment.

(c) The Secretary may, consistent with programs developed under federal law, make a determination to limit the liability of lenders, innocent purchasers or landowners, de minimis contributors, or others who have grounds to claim limited responsibility for a containment or cleanup that may be required

pursuant to the Hazardous Waste Management Act §22-18-1, et seq. of this code, the Water Pollution Control Act §22-11-1, et seq. of this code, the Groundwater Protection Act §22-12-1, et seq. of this code, or any other applicable law.

(d) A person who is a bona fide prospective purchaser shall not be held liable for a containment or cleanup that may be required at a brownfield site pursuant to the Hazardous Waste Management Act §22-18-1, et seq. of this code, the Water Pollution Control Act §22-11-1, et seq. of this code, the Groundwater Protection Act §22-12-1, et seq. of this code, or any other applicable law, if:

(1) The person did not cause, contribute, or consent to the release or threatened release;

(2) The person is not liable or potentially liable through any direct or indirect familial relationship or any contractual, corporate, or financial relationship or is not the result of a reorganization of a business entity that was potentially liable;

(3) The person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to stop any continuing release, prevent any threatened future release, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substances; and

(4) The person does not impede the performance of any response action.

(e) A person who is an innocent land owner who holds title, security interest, or any other interest in a brownfield site shall not be held liable for a containment or cleanup that may be required at a brownfield site pursuant to the Hazardous Waste Management Act §22-18-1, et seq. of this code, the Water Pollution Control Act §22-11-1, et seq. of this code, the Groundwater Protection Act §22-12-1, et seq. of this code, or any other applicable law if:

(1) The person did not cause, contribute, or consent to the release or threatened release;

(2) The person is not liable or potentially liable through any direct or indirect familial relationship or any contractual, corporate, or financial relationship or is not the result of a reorganization of a business entity that was potentially liable;

(3) The person made all appropriate inquiries into the previous uses of the facility in accordance with generally accepted good commercial and customary standards and practices, including those established by federal law;

(4) The person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to stop any continuing release, prevent any threatened future release, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substances;

(5) The person does not impede the performance of any response action; and either

(6) At the time the person acquired the interest, he or she did not know and had no reason to know, that any hazardous substances had been or were likely to have been disposed of on, in, or at the site, or

(7) The person is a government entity that acquired the site by escheat or through other involuntary transfer or acquisition.

(f) A person that owns real property that is contiguous to or otherwise similarly situated with respect to, and that is or may be contaminated by a release or threatened release of a hazardous substance from real property that is not owned by that person shall not be considered liable for a containment or cleanup that may be required pursuant to the Hazardous Waste Management Act §22-18-1, *et seq.* of this code, the Water Pollution Control Act §22-11-1, *et seq.* of this code, the Groundwater Protection Act §22-12-1, *et seq.* of this code, or any other applicable law if the person did not cause, contribute, or consent to the release or threatened release, if the person is not liable or potentially liable through any direct or indirect familial relationship or any contractual, corporate,

or financial relationship or is not the result of a reorganization of a business entity that was potentially liable, and if such person provides full cooperation, assistance, and access to persons that are authorized to conduct response actions at the facility from which there has been a release.

(g) The provisions of this section shall not otherwise limit the authority of the Secretary to require any person responsible for the contamination or pollution to contain or remediate sites where solid or hazardous waste or other substances have been improperly managed.

#### **§22-22-20. Affirmative defenses.**

Any person who is alleged to have violated an environmental law or the common law equivalent, which occurred while acting pursuant to this article, may affirmatively plead the following in response to an alleged violation:

(a) An act of God;

(b) An intervening act of a public agency;

(c) Migration from property owned by a third party;

(d) Actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the environmental laws or at the direction of the ~~division~~ Department;

(e) An act of a third party who was not an agent or employee of the lender, fiduciary, developer, remediation contractor, or development authority; or

(f) If the alleged liability for a lender, fiduciary, developer, or development authority arises after foreclosure, and the lender, fiduciary, developer, or development authority exercised due care with respect to the lender's, fiduciary's, developer's, or development authority's knowledge about the contaminants, and took reasonable precautions based upon such knowledge against foreseeable actions of third parties and the consequences arising therefrom. A lender, fiduciary, developer, remediation contractor,

or development authority may avoid liability by proving any other defense which may be available to it.

The bill (Eng. Com. Sub. for H. B. 4967), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 5127**, Including Potomac State College in the definition of community and technical college education program for participation in 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 5188**, Relating to awards and benefits for duty related disability in the municipal police officers and firefighters retirement system.

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

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

On page two, section 17, lines 21-23, by striking out all of subsection (c) and inserting in lieu thereof a new subsection (c) to read as follows:

(c) If the member is partially disabled, the member shall receive 45 percent of his or her average full monthly compensation for the 12-month contributory period preceding the member's disability award, or the shorter period if the member has not worked 12 months. If the member remains partially disabled until attaining 60 years of age, the member shall then receive the retirement benefit provided in §8-22A-14 and §8-22A-15 of this code.;

And,

On page two, section 17, line 24, by striking out the words "or partially".

The bill (Eng. Com. Sub. for H. B. 5188), as amended, was then ordered to third reading.

**Eng. House Bill 5257**, Relating generally to allowing the Supreme Court of Appeals discretion to create uniform pay scales for all levels of judicial support staff.

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:

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

## **CHAPTER 50. MAGISTRATE COURTS.**

### **ARTICLE 1. COURTS AND OFFICERS.**

#### **§50-1-8. Magistrate court clerks; salaries; duties; duties of circuit clerk.**

(a) In each county having three or more magistrates, the judge of the circuit court or the chief judge of the circuit court, if there is more than one judge of the circuit court, shall appoint a magistrate court clerk. In all other counties the judge may appoint a magistrate court clerk or may, by rule, require the duties of the magistrate court clerk to be performed by the clerk of the circuit court, in which event the circuit court clerk is entitled to additional compensation in the amount of \$2,500 per year. The magistrate court clerk serves at the will and pleasure of the circuit judge.

(b) Magistrate court clerks shall be paid at least twice per month by the state. The annual salary of all magistrate court clerks is ~~\$52,296. Beginning July 1, 2023, the annual salary of a~~ magistrate court clerk shall be \$54,596 shall be determined by a pay scale established by the Administrative Director of the

Supreme Court. Magistrate court clerks may receive any general salary increase granted to state employees, whose salaries are not set by statute, expressed as a percentage increase or an across-the-board increase, implemented after July 1, 2023.

(c) In addition to other duties that may be imposed by the provisions of this chapter or by the rules of the Supreme Court of Appeals or the judge of the circuit court or the chief judge of the circuit court if there is more than one judge of the circuit court, it is the duty of the magistrate court clerk to establish and maintain appropriate dockets and records in a centralized system for the magistrate court, to assist in the preparation of the reports required of the court and to carry out on behalf of the magistrates or chief magistrate if a chief magistrate is appointed, the administrative duties of the court.

(d) The magistrate court clerk, or if there is no magistrate court clerk in the county, the clerk of the circuit court, may issue all manner of civil process and require the enforcement of subpoenas and subpoenas duces tecum in magistrate court.

#### **§50-1-9. Magistrate assistants; salary; duties.**

(a) In each county there shall be at least one magistrate assistant for each magistrate; however, the Supreme Court of Appeals may authorize additional magistrate assistants if the workload of a county's magistrate court requires extra staff support. Each magistrate assistant shall be appointed by the magistrate under whose authority and supervision and at whose will and pleasure he or she shall serve. If more than one magistrate assistant per magistrate is approved by the Supreme Court of Appeals, then the chief magistrate, or chief circuit judge if no chief magistrate is designated, shall appoint, supervise, and assign job duties for any additional magistrate assistant as needed for that county. The assistant shall not be a member of the immediate family of any magistrate and shall not have been convicted of a felony or any misdemeanor involving moral turpitude and shall reside in the State of West Virginia. For the purpose of this section, "immediate family" means the relationships of mother, father, sister, brother, child, or spouse.

(b) A magistrate assistant shall have the duties, clerical or otherwise, assigned by the magistrate and prescribed by the rules of the Supreme Court of Appeals or the judge of the circuit court, or the chief judge of the circuit court if there is more than one judge of the circuit court. In addition to these duties, magistrate assistants shall perform and are accountable to the magistrate court clerks with respect to the following duties:

- (1) The preparation of summons in civil actions;
- (2) The assignment of civil actions to the various magistrates;
- (3) The collection of all costs, fees, fines, forfeitures, and penalties which are payable to the court;
- (4) The submission of moneys, along with an accounting of the moneys, to appropriate authorities as provided by law;
- (5) The daily disposition of closed files which are to be located in the magistrate clerk's office;
- (6) All duties related to the gathering of information and documents necessary for the preparation of administrative reports and documents required by the rules of the Supreme Court of Appeals, the judge of the circuit court or the chief judge of the circuit court if there is more than one judge of the circuit court;
- (7) All duties relating to the notification, certification, and payment of jurors serving pursuant to the terms of this chapter; and
- (8) All other duties or responsibilities whereby the magistrate assistant is accountable to the magistrate court clerk as determined by the magistrate.

(c) Magistrate assistants shall be paid at least twice per month by the state. The annual salary of all magistrate assistants is \$46,932. ~~Beginning July 1, 2023, the annual salary of a magistrate assistant shall be \$49,232~~ shall be determined by a pay scale established by the Administrative Director of the Supreme Court. Magistrate assistants may receive any general salary increase granted to state employees, whose salaries are not set by statute, expressed as a percentage increase or an across-the-board increase enacted after July 1, 2023.



**§50-1-9a. Magistrate court deputy clerks; duties; salary.**

(a) Whenever required by workload and upon the recommendation of the judge of the circuit court, or the chief judge of the circuit court if there is more than one judge of the circuit court, the Supreme Court of Appeals may provide by rule for the appointment of magistrate court deputy clerks. The magistrate court deputy clerks shall be appointed by the judge of the circuit court, or the chief judge of the circuit court if there is more than one judge of the circuit court, to serve at his or her will and pleasure under the immediate supervision of the magistrate court clerk.

(b) Magistrate court deputy clerks shall have the duties, clerical or otherwise, as may be assigned by the magistrate court clerk and as may be prescribed by the rules of the Supreme Court of Appeals, the judge of the circuit court, or the chief judge of the circuit court, if there is more than one judge of the circuit court. Magistrate court deputy clerks may also exercise the power and perform the duties of the magistrate court clerk as may be delegated or assigned by the magistrate court clerk.

(c) A magistrate court deputy clerk may not be an immediate family member of any magistrate, magistrate court clerk, magistrate assistant, or judge of the circuit court within the same county; may not have been convicted of a felony or any misdemeanor involving moral turpitude; and must reside in this state. For purposes of this subsection, "immediate family member" means a mother, father, sister, brother, child, or spouse.

(d) Magistrate court deputy clerks shall be paid at least twice per month by the state. The annual salary of all magistrate court deputy clerks is \$46,932. ~~Beginning July 1, 2023, the annual salary of a magistrate court deputy clerk shall be \$49,232~~ shall be determined by a pay scale established by the Administrative Director of the Supreme Court. Magistrate court deputy clerks may receive any general salary increase granted to state employees whose salaries are not set by statute, expressed as a percentage increase or an across-the-board increase implemented after July 1, 2023.

**CHAPTER 51. COURTS AND THEIR OFFICERS.****ARTICLE 2A. FAMILY COURTS.**

**§51-2A-6. Compensation and expenses of family court judges and their staffs.**

(a) A family court judge is entitled to receive as compensation for his or her services an annual salary of \$62,500: *Provided*, That beginning July 1, 2005, a family court judge is entitled to receive as compensation for his or her services an annual salary of \$82,500: *Provided, however*, That beginning July 1, 2011, the annual salary of a family court judge shall be \$94,500: *Provided further*, That beginning July 1, 2020, the annual salary of a family court judge shall be \$103,950.

(b) The secretary-clerk of the family court judge is appointed by the family court judge and serves at his or her will and pleasure. The secretary-clerk of the family court shall be paid at least twice per month by the state. The annual salary of all secretary-clerks of the family court is \$42,576. ~~Beginning July 1, 2023, the annual salary of a family court secretary clerk shall be \$44,876 shall be determined by a pay scale established by the Administrative Director of the Supreme Court.~~ Family court secretary-clerks may receive any general salary increase granted to state employees, whose salaries are not set by statute, expressed as a percentage increase or an across-the-board increase enacted after July 1, 2023.

(c) The family court judge may employ not more than one family case coordinator who serves at his or her will and pleasure: *Provided*, That the Supreme Court of Appeals may authorize additional family case coordinators if the workload of a circuit's family court requires extra staff support. The annual salary of the family case coordinator of the family court judge ~~shall be established by the Administrative Director of the Supreme Court of Appeals but may not exceed \$54,576. Beginning July 1, 2023, the annual salary of a family court case coordinator shall not exceed \$56,876 shall be determined by a pay scale established by the Administrative Director of the Supreme Court.~~ Family court case coordinators may receive any general salary increase granted to state employees, whose salaries are not set by statute, expressed as a percentage increase or an across-the-board increase enacted

after July 1, 2023. If more than one family case coordinator is approved by the Supreme Court of Appeals, then the chief family court judge of that circuit shall appoint, supervise, and assign job duties for any additional family case coordinator as needed for that circuit.

(d) The sheriff or his or her designated deputy shall serve as a bailiff for a family court judge. The sheriff of each county shall serve or designate persons to serve so as to assure that a bailiff is available when a family court judge determines the same is necessary for the orderly and efficient conduct of the business of the family court.

(e) Disbursement of salaries for family court judges and members of their staffs are made by or pursuant to the order of the Director of the Administrative Office of the Supreme Court of Appeals.

(f) Family court judges and members of their ~~staffs~~ staff are allowed their actual and necessary expenses incurred in the performance of their duties. The expenses and compensation will be determined and paid by the Director of the Administrative Office of the Supreme Court of Appeals under such guidelines as he or she may prescribe, as approved by the Supreme Court of Appeals.

(g) The Supreme Court of Appeals is authorized to create additional classifications of support staff that it deems necessary to adequately and efficiently staff the family courts of this state, including, but not limited to, receptionists, assistant case coordinators, and assistant secretary-clerks. The Supreme Court of Appeals may determine the authority to hire and terminate, supervise, and assign job duties for these positions pursuant to its own employment rules, policies, and procedures. The annual salary of additional support staff authorized by this section shall not exceed the regular annual salary of a secretary-clerk and shall be paid by the state on the same basis established for secretary-clerks as provided in this section.

**CHAPTER 62. CRIMINAL PROCEDURE.****ARTICLE 1C. BAIL.****§62-1C-1a. Pretrial release; types of release; conditions for release; considerations as to conditions of release.**

(a) Subject to the provisions of §62-1C-1 of this code when a ~~person~~ defendant charged with a violation or violations of the criminal laws of this state first appears before a judicial officer:

(1) Except for good cause shown, a judicial officer shall release a ~~person~~ defendant charged with a misdemeanor ~~an~~ offense on his or her own recognizance at the initial appearance ~~unless that person~~ he or she is charged with:

(A) A misdemeanor offense of actual violence or threat of violence against a person;

(B) A misdemeanor offense where the victim was a minor, as defined in §61-8C-1 of this code;

(C) A misdemeanor offense involving the use of a deadly weapon, as defined in §61-7-2 of this code;

(D) A misdemeanor ~~offense~~ violation of the Uniform Controlled Substances Act involving a Schedule I or II narcotic drug or methamphetamine as set forth in chapter 60A of this code;

(E) A misdemeanor offenses of sexual abuse;

(F) A serious misdemeanor traffic offense set forth in §17C-5-1 or §17C-5-2 of this code; or

(G) A misdemeanor offense involving auto tampering; petit larceny; or possession, transfer, or receiving of stolen property when the alleged value ~~on~~ of the property involved exceeds \$250.

(2) For the ~~misdemeanor~~ offenses ~~specified~~ listed in this subsection, and all other offenses ~~which~~ that carry a possible penalty of incarceration, ~~the arrested person is entitled to a~~ defendant shall be admitted to bail subject to the least restrictive

condition or combination of conditions that the judicial officer determines reasonably necessary to assure that person will appear as required, and ~~which that~~ that will not jeopardize the safety of the ~~arrested person~~ defendant, victims, witnesses, or other persons in the community or the safety and maintenance of evidence: Provided, That a magistrate may not release a defendant charged with a felony offense on his or her own recognizance at an initial appearance. Further conditions may include that the ~~person charged~~ defendant shall:

(A) Not violate any criminal law of this state, another state, or the United States;

(B) Remain in the custody of a person designated by the judicial officer who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is reasonably able to assure the judicial officer that the ~~person~~ defendant will appear as required and will not pose a danger to himself or herself or to the safety of any other person or the community;

(C) Participate in home incarceration pursuant to §62-11B-1 *et seq.* of this code;

(D) Participate in an electronic monitoring program if one is available where the person is charged or will reside;

(E) Maintain employment, or, if unemployed, actively seek employment;

(F) Avoid all contact with an alleged victim of the alleged offense and with potential witnesses and other persons as directed by the court;

(G) Refrain from the use or excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in §60A-1-1 *et seq.* of this code without a prescription from a licensed medical practitioner; or

~~(H) Execute an agreement to forfeit, upon failing to appear as required, property of a sufficient unencumbered value, including~~

~~money, as is reasonably necessary to assure the appearance of the person as required. The person charged shall provide the court with proof of ownership, the value of the property, and information regarding existing encumbrances of the property as, in the discretion of the judicial officer, is reasonable and necessary collateral to ensure the subsequent appearance of the person as required;~~

~~(I) Post a cash bond, or execute a bail bond with solvent sureties who will execute an agreement to forfeit an amount reasonably necessary to assure appearance of the person as required. If other than an approved surety, the surety shall provide the court with information regarding the value of its assets and liabilities and the nature and extent of encumbrances against the surety's property. The surety shall have a net worth of sufficiently unencumbered value to pay the amount of the bail bond; or~~

~~(J)~~(H) Satisfy any other condition that is reasonably necessary to assure the appearance of the person defendant as required and to assure the safety of the ~~arrested person~~ defendant, victims, witnesses, other persons in the community, or the safety and maintenance of evidence.

(3) ~~Proper~~ The considerations in determining whether to release the ~~arrested person~~ defendant on ~~an unsecured bond~~ his or her own recognizance, fixing a reasonable amount of bail, or imposing other reasonable conditions of release ~~are~~ shall be:

(A) The ability of the ~~arrested person~~ defendant to give bail;

(B) The nature, number, and gravity of the offenses;

(C) The potential penalty the ~~arrested person~~ defendant faces;

(D) Whether the alleged acts were violent in nature;

(E) The ~~arrested person's~~ defendant's prior record of criminal convictions and delinquency adjudications, if any;

(F) The character, health, residence, and reputation of the ~~arrested person~~ defendant;

(G) The character and strength of the evidence which has been presented to the judicial officer;

(H) Whether the ~~arrested person~~ defendant is currently on probation, extended supervision, or parole;

(I) Whether the ~~arrested person~~ defendant is already on bail or subject to other release conditions in other pending cases;

(J) Whether the ~~arrested person~~ defendant has been bound over for trial after a preliminary examination;

(K) Whether the ~~arrested person~~ defendant has in the past forfeited bail or violated a condition of release or was ever a fugitive from justice; and

(L) The policy against unnecessary incarceration of ~~arrested persons~~ defendants pending trial set forth in this section.

(b) In all misdemeanors, ~~each~~ bail may not exceed three times the maximum fine provided for the offense. If the person is charged with more than one misdemeanor, ~~each~~ bail may not exceed three times the highest combined total maximum fine ~~of the charged offenses for the offenses.~~

(c) Notwithstanding any provisions of this article to the contrary, whenever a defendant ~~person not subject to the provisions of §62-1C-1 of this code~~ not released on his or her own recognizance pursuant to subsection (a) of this section remains incarcerated after his or her initial appearance, relating to a misdemeanor, ~~due to the inability to meet the requirements of a secured bond,~~ a magistrate or judge shall hold a hearing within five days of setting the initial bail to determine if there is a condition or combination of conditions which can meet the considerations set forth in §62-1C-1a(a)(2) of this code.

(d) A judicial officer may upon notice and hearing modify the conditions of release at any time by imposing additional or different conditions.

(e) A prosecuting attorney and defense counsel, unless expressly waived by the defendant, shall appear at all hearings in which bail ~~or bond conditions~~ condition is or are at issue other than the proceeding at which the conditions of release are initially set.

(f) ~~No~~ A judicial officer may not recommend the services of a surety who is his or her relative as that term is defined in §6B-1-3 of this code.

**§62-1C-2. Bail defined; ~~form~~ selection of form by defendant; receipts; right of judicial officer to impose conditions on release.**

(a) Bail is the pretrial release of a defendant from custody upon terms and conditions specified by order of an appropriate judicial officer. Bail shall be set at a monetary amount determined by a judicial officer to provide adequate security for the appearance of a defendant to answer to a specific criminal charge before any court or magistrate at a specific time or at any time to which the case may be continued.

~~(b) It may take any~~ Except as provided in §62-1C-2(e), a defendant is entitled to and may select one of the following forms for making bail:

~~(a) The~~ (1) By the deposit by the defendant or by some other person for him or her of cash, in a manner consistent with rules promulgated by the Supreme Court of Appeals;

(2) By executing an agreement to forfeit, upon failing to appear as required, real or personal property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required which shall be known as a recognizance. The defendant or person or persons owning the property shall provide the court with proof of ownership, the value of the property, and information regarding existing encumbrances of the property as, in the discretion of the judicial officer, is reasonable and necessary collateral to ensure the subsequent appearance of the defendant as ordered; or



(3) By use of a bail bondsman, as defined in §51-10A-1 of this code, who shall post a cash bond or execute a bail bond with a solvent surety or sureties who will execute an agreement to forfeit an amount reasonably necessary to assure appearance of the defendant as required. If other than an approved surety is used, the surety shall provide the judicial officer with information regarding the value of its assets and liabilities and the nature and extent of encumbrances against the surety's property. The surety shall have a net worth of sufficiently unencumbered value to pay the amount of the bail bond.

~~(b) The written undertaking by one or more persons to forfeit a sum of money equal to the amount of the bail if the defendant is in default for appearance, which shall be known as a recognizance;~~

~~(c) Such other form as the judge of the court that will have jurisdiction to try the offense may determine.~~

(c) All bail shall be received by the clerk of the court, or by the magistrate and, except in case of recognizance, receipts shall be given therefor by him to the surety.

(d) Nothing in this article shall be construed as limiting a circuit court at any stage of a proceeding from imposing any condition or combination of conditions that he or she determines are reasonably necessary to assure that the defendant will appear as required, and that will not jeopardize the safety of the defendant, victims, witnesses, or other persons in the community or the safety and maintenance of evidence pursuant to the provisions of §62-1C-1a of this code, including, but not limited to, release of a defendant on his or her own recognizance.

(e) A judicial officer, in his or her discretion, may set a cash only bail, in a manner consistent with rules promulgated by the Supreme Court of Appeals for the following offenses:

(1) Violations of the Uniform Controlled Substances Act for manufacturing, delivering, or possessing with the intent to deliver a Schedule I or II substance as set forth in chapter 60A of this code;

(2) All offenses included in §61-2-1 et seq. of this code;

(3) All offenses included in §61-8B-1 *et seq.* of this code;

(4) All offenses included in §61-8C-1 *et seq.* of this code; or

(5) All offenses included in §61-8D-1 *et seq.* of this code.

Senator Trump requested a ruling from the Chair as to whether he should be excused from voting under Rule 43 of the Rules of the Senate, as he is a candidate running for the office of Justice of the Supreme Court of Appeals of West Virginia.

The Chair replied that Senator Trump should be excused from voting on any matter pertaining to the bill and, without objection, Senator Trump was excused from voting on any matter pertaining to the bill.

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

The bill (Eng. H. B. 5257), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 5338**, Relating to Safe Harbor for Cybersecurity Programs.

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

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

**Eng. Com. Sub. for House Bill 5405**, Providing additional professional development and support to West Virginia educators through teacher and leader induction and professional growth.

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:

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

## **CHAPTER 18. EDUCATION.**

### **ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

#### **§18-9A-10. Foundation allowance to improve instructional programs, instructional technology, and teacher and leader induction and professional growth.**

(a) The total allowance to improve instructional programs and instructional technology is the sum of the following:

(1) For instructional improvement, in accordance with county and school electronic strategic improvement plans required by §18-2E-5 of this code, an amount equal to 10 percent of the increase in the local share amount for the next school year shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be allocated to the counties as follows:

(A) One hundred fifty thousand dollars shall be allocated to each county; and

(B) Allocation to the counties of the remainder of these funds shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment.

Moneys allocated by this subdivision shall be used to improve instructional programs according to the county and school strategic improvement plans required by §18-2E-5 of this code and approved by the state board.

Up to 50 percent of this allocation for the improvement of instructional programs may be used to employ professional educators and service personnel in the county. Prior to the use of

any funds from this subdivision for personnel costs, the county board must receive authorization from the state superintendent. The state superintendent shall require the county board to demonstrate: (1) The need for the allocation; (2) efficiency and fiscal responsibility in staffing; (3) sharing of services with adjoining counties in the use of the total local district board budget; and (4) employment of technology integration specialists to meet the needs for implementation of the West Virginia Strategic Technology Learning Plan. County boards shall make application for the use of funds for personnel for the next fiscal year by May 1 of each year. On or before June 1, the state superintendent shall review all applications and notify applying county boards of the approval or disapproval of the use of funds for personnel during the fiscal year appropriate. The state superintendent shall require the county board to demonstrate the need for an allocation for personnel based upon the county's inability to meet the requirements of state law or state board policy.

The funds available for personnel under this subdivision may not be used to increase the total number of professional noninstructional personnel in the central office beyond four.

The plan shall be made available for distribution to the public at the office of each affected county board; plus

(2) For the purposes of improving instructional technology, an amount equal to 20 percent of the increase in the local share amount for the next school year shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be allocated to the counties as follows:

(A) Thirty thousand dollars shall be allocated to each county; and

(B) Allocation to the counties of the remainder of these funds shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment.

Moneys allocated by this subdivision shall be used to improve instructional technology programs according to the county board's strategic technology learning plan.

This allocation for the improvement of instructional technology programs may also be used for the employment of technology system specialists essential for the technology systems of the schools of the county to be fully functional and readily available when needed by classroom teachers. The amount of this allocation used for the employment of technology system specialists shall be included and justified in the county board's strategic technology learning plan; plus

(3) One percent of the state average per pupil state aid multiplied by the number of students enrolled in dual credit, advanced placement, and international baccalaureate courses, as defined by the state board, distributed to the counties proportionate to enrollment in these courses in each county; plus

(4) For the purpose of supporting county-level implementation of the comprehensive systems for teacher and leader induction and professional growth pursuant to §18A-3C-3 of this code, an amount equal to 20 percent of the increase in the local share amount for the next school year shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be allocated to the counties in a manner established by the state board which considers the following factors:

(A) The number of full-time-equivalent teachers employed by the county with zero years of experience;

(B) The number of full-time-equivalent teachers employed by the county who are less than fully certified for the teaching position in which they are employed;

~~(B)~~ (C) The total number of full-time-equivalent teachers employed by the county with one year of experience, with two years of experience, and with three years of experience;

~~(C)~~ (D) The number of full-time-equivalent principals, assistant principals, and vocational administrators employed by the county who are in their first or second year of employment as a principal, assistant principal, or vocational administrator;

~~(D)~~ (E) The number of full-time-equivalent principals, assistant principals, and vocational administrators employed by the county who are in their first year in an assignment at a school with a programmatic level in which they have not previously served as a principal, assistant principal, or vocational administrator; and

~~(E)~~ (F) Needs identified in the strategic plans for continuous improvement of schools and school systems including those identified through the performance evaluations of professional personnel.

Notwithstanding any provision of this subsection to the contrary, no county may receive an allocation for the purposes of this subdivision which is less than the county's total 2016-2017 allocation from the Teacher Mentor and Principals Mentorship appropriations to the Department of Education. Moneys allocated by this subdivision shall be used for implementation of the comprehensive systems for teacher and leader induction and professional growth pursuant to §18A-3C-3 of this code. Notwithstanding any provision of this subsection to the contrary, for each of the five school years beginning with the school year 2020 – 2021 and ending after the school year 2024 – 2025, from funds to be allocated under this subdivision, \$100,000 shall be retained by the Department of Education to assist county boards with the design and implementation of a teacher leader framework to accomplish the teacher induction and professional growth aspects of their comprehensive systems of support for teacher and leader induction and professional growth pursuant to §18A-3C-3 of this code. The Department of Education may also retain an additional amount of funds to be allocated under this subdivision beginning with the school year 2024 – 2025, not exceeding \$15,000,000, to accommodate the participation by county school systems in regional professional learning cadres or teacher leadership networks established or supported by the Department of Education, to expand regional professional learning cadres or

teacher leadership networks designed to support the full implementation of the Third Grade Success Act provided in §18-2E-10 of this code, to implement the Department of Education's academic initiatives, and to assist teachers who are less than fully certified for the teaching position in which they are employed as further provided in §18A-3C-3 of this code. Up to \$2,000,000 of the \$15,000,000 shall be distributed to county boards for the purpose of expanding the school districts' ability to contract with organizations that facilitate the school districts' participation in regional professional learning cadres or teacher leadership networks designed to support math and science improvement or to support teachers who are less than fully certified for the teaching position in which they are employed as further provided in §18A-3C-3 of this code. The \$2,000,000 shall be distributed to the county boards under a grant program to be established by the state board by rule pursuant to §29A-3B-1 *et seq.* of this code. The rule shall include at least the following:

(A) A requirement and procedures for county boards to submit applications for a grant;

(B) Criteria on which awards of the grants will be based on; and

(C) A requirement for an external evaluation for any program funded by a grant.

(b) Notwithstanding the restrictions on the use of funds pursuant to subdivisions (1) and (2), subsection (a) of this section, a county board may:

(1) Utilize up to 25 percent of the allocation for the improvement of instructional programs in any school year for school facility and equipment repair, maintenance, and improvement or replacement and other current expense priorities and for emergency purposes. The amount of this allocation used for any of these purposes shall be included and justified in the county and school strategic improvement plans or amendments thereto; and

(2) Utilize up to 50 percent of the allocation for improving instructional technology in any school year for school facility and equipment repair, maintenance, and improvement or replacement and other current expense priorities and for emergency purposes. The amount of this allocation used for any of these purposes shall be included and justified in the county board's strategic technology learning plan or amendments thereto.

## **CHAPTER 18A. SCHOOL PERSONNEL.**

### **ARTICLE 3C. IMPROVING TEACHING AND LEARNING.**

#### **§18A-3C-3. Comprehensive system for teacher and leader induction and professional growth.**

(a) The intent of the Legislature is to allow for local-level implementation of comprehensive systems of support for building professional practice consistent with sound educational practices and resources available. In this regard, it is the intent of the Legislature that the comprehensive systems of support shall incorporate support for improved professional performance that begins with meaningful assistance for beginning teachers and leaders and also is targeted on deficiencies identified through the educator personnel evaluation process and other professional development needs identified in the strategic plans for continuous improvement of schools and school systems. Further, because of significant variability among the counties, not only in the size of their teaching force, distribution of facilities and available resources, but also because of their varying needs, the Legislature intends for the implementation of this section to be accomplished in a manner that provides adequate flexibility to the counties to design and implement a comprehensive system of support for improving professional performance that best achieves the goals of this section within the county. Finally, because of the critical importance of ensuring that all teachers perform at the accomplished level or higher in the delivery of instruction that at least meets the West Virginia Professional Teaching Standards and because achieving this objective at a minimum entails providing assistance to address the needs as indicated by the data informed results of annual performance evaluations, including the self-



assessed needs of the teachers themselves, the Legislature expects the highest priority for county and state professional development will be on meeting these needs and that the comprehensive systems of support for improving professional practice will reflect substantial redirection of existing professional development resources toward this highest priority.

(b) Each county board shall ensure that the results on the comprehensive statewide student assessment for the students taught by each teacher are provided to that teacher so that the teacher can see the performance of the students he or she taught the previous school year.

~~(b)~~ (c) On or before July 1, 2018, the state board shall publish guidelines on the design and implementation of a county-level comprehensive system of support for improving professional practice. The purpose of the guidelines is to assist the county board with the design and implementation of a system that best achieves the goals of this section within the county. The guidelines may include examples of best practices and resources available to county boards to assist them with the design and implementation of a comprehensive system of support and may include guidelines for the design and implementation of a teacher leader framework committed to improving the quality of instruction.

~~(c)~~ (d) Effective for the school year beginning July 1, 2018, and thereafter, a county board is not eligible to receive state funding appropriated for the purposes of this section or any other provision of law related to beginning teacher and principal internships and mentor teachers and principals unless it has adopted a plan for implementation of a comprehensive system of support for improving professional practice, the plan has been verified by the state board as meeting the requirements of this section and the county is implementing the plan. The plan shall address the following:

(1) The manner in which the county will provide the strong school-based support and supervision that will assist beginning teachers in developing instructional and management strategies, procedural and policy expertise, and other professional practices

they need to be successful in the classroom and perform at the accomplished level. Nothing in this subdivision prohibits a school or school system that was granted an exception or waiver from §18A-3-2c of this code prior to the effective date of this section from continuing implementation of the program in accordance with the exception or waiver;

(2) The manner in which the county will provide the strong support and supervision necessary to assist teachers employed by the county who are less than fully certified for the teaching position in which they are employed that will include an emphasis on grade-level content, standards driven instruction, research-based instructional strategies, and mentoring support consistent with the West Virginia Professional Teaching Standards.

~~(2)~~ (3) The manner in which the county will provide the strong support and supervision that will assist beginning principals in developing instructional leadership, supervisory and management strategies, procedural and policy expertise, and other professional practices they need to be successful in leading continuous school improvement and performing at the accomplished level or above;

~~(3)~~ (4) The manner in which the county in cooperation with the teacher preparation programs in this state will provide strong school-based support and assistance necessary to make student and resident teaching a productive learning experience;

~~(4)~~ (5) The manner in which the county will use the data from the educator performance evaluation system to serve as the basis for providing professional development specifically targeted on the area or areas identified through the evaluation process as needing improvement. If possible, this targeted professional development should be delivered at the school site using collaborative processes, mentoring or coaching or other approaches that maximize use of the instructional setting;

~~(5)~~ (6) The manner in which the county will use the data from the educator performance evaluation system to serve as the basis for establishing priorities for the provision of county-level

professional development when aggregate evaluation data from the county's schools indicates an area or areas of needed improvement;

~~(6)~~ (7) If a county uses master teachers, mentors, academic coaches, or any other approaches using individual employees to provide support, supervision, or other professional development or training to other employees for the purpose of improving their professional practice, the manner in which the county will select each of these individual employees based upon demonstrated superior performance and competence as well as the manner in which the county will coordinate support for these employees. If the duties of the position are to provide mentoring to an individual teacher at only one school, then priority shall be given to applicants employed at the school at which those duties will be performed;

~~(7)~~ (8) The manner in which the county will use local resources available, including, but not limited to, funds for professional development and academic coaches, to focus on the priority professional development goals of this section;

~~(8)~~ (9) The manner in which the county will adjust its scheduling, use of substitutes, collaborative planning time, calendar, or other measures as may be necessary to provide sufficient time for professional personnel to accomplish the goals of this section as set forth in the county's plan; and

~~(9)~~ (10) The manner in which the county will monitor and evaluate the effectiveness of implementation and outcomes of the county system of support for improving professional practice.

~~(d)~~ (e) Effective the school year beginning July 1, 2020, and thereafter, appropriations for supporting county-level implementation of the comprehensive systems of support for teacher and leader induction and professional growth pursuant to §18-9A-10 of this code and any new appropriation which may be made for the purposes of this section shall be expended by county boards only to accomplish the activities as set forth in their county plan pursuant to this section. Effective the school year beginning July 1, 2020, and thereafter, any employee service or employment as a mentor is not subject to the provisions of this code governing

extra duty contracts. A county board may adopt a teacher leader framework designed to accomplish the purposes of this section related to teacher induction and professional growth and, if the county board adopts a county salary supplement pursuant to §18A-4-5a of this code to provide additional compensation to teachers who, in addition to teaching duties, are assigned other duties for new teacher induction, improving professional practice and furthering professional growth among teachers as set forth in the county's comprehensive system of support, then appropriations made for supporting the purposes of this section may be applied to that salary supplement and other associated costs which may include a reduction in the teaching load of the teacher leader: Provided, That effective July 1, 2024, and thereafter, any additional amount paid to a teacher pursuant to this section shall only be for the duration of any service provided under this section and not be considered salary for the purposes of the computation of an annuity under §18-7A-26 of this code.

(e) (f) The Department of Education shall assist county boards with the design and implementation of a teacher leader framework to accomplish the teacher induction and professional growth aspects of their comprehensive systems of support pursuant to this section. The goals of a teacher leader framework are to achieve:

(1) Increased student achievement and growth through the development of a shared leadership structure at the school level;

(2) Broader dissemination and use of effective teacher strategies through an increase in teacher collaboration; and

(3) Stronger and more positive school and district culture through the development and retention of highly effective teachers.

(f) (g) The Department of Education may form networks among schools or school systems, or both, of comparable size and interests for the design and implementation of teacher leader frameworks that are shall be:

(A) Driven by varying district and school needs;

(B) Related to existing state and district initiatives;

(C) Designed to improve student achievement and growth; and

(D) Designed to fit district size, current culture for collaboration, and funding capacity.

~~(g)~~ (h) A teacher leader framework adopted by a county board must:

(1) Create specific roles and responsibilities, eligibility requirements, and compensation plans for each teacher leader position, and clearly communicate these to teacher leaders, administrators, and other stakeholders;

(2) Provide regular, targeted professional learning opportunities for teacher leaders, and encourage redelivery within their respective schools;

(3) Provide time and opportunities for teacher leaders to collaborate with administrators, curriculum staff, other teacher leaders, and teachers;

(4) Monitor and evaluate the effectiveness of the teacher leader program through surveys from school administrators and school faculty; and

(5) Include teacher leaders in the school improvement planning process;

~~(h) The Legislative Oversight Commission on Education Accountability shall review the progress of the implementation of the comprehensive systems of support for teacher and leader induction and professional growth and may make any recommendations it considers necessary to the Legislature during the next regular legislative session.~~

The bill (Eng. Com. Sub. for H. B. 5405), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 5514**, Enhancing training requirements for county boards of education members.

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 7, section 4, lines 28 through 33, by striking out the proviso and inserting in lieu thereof the following: *Provided, however, That a county board member who is in default of a training requirement established in §18-5-1a of this code shall not, until after the default is cured, receive compensation for any meeting held during the period of default. For purposes of compensation, a member in default of a training requirement may cure the default by completing the unfulfilled training requirements within three months of the default. Upon curing the default, the member shall receive compensation, without interest, for the meetings held during the period of default: Provided, further, That up to five paid meetings may be provided when planning for activities such as running an election for excess levy, construction bond hearings, school closure hearings, personnel hearings, student expulsion hearings, and in the case of a disaster: And provided further, That members shall be paid for up to two trainings.*

The bill (Eng. Com. Sub. for H. B. 5514), as amended, was then ordered to third reading.

**Eng. House Bill 5528**, Relating to the renewable energy facilities 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 5544**, Relating to requiring certain reporting from the Mountaineer Trail Network Authority each year.

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

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

**Eng. House Bill 5548**, Relating to modifying requirements imposed on any owner, operator, or manager within a tourism development project.

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

At the request of Senator Takubo, 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.

**Eng. House Bill 5594**, Exempting the West Virginia School of Osteopathic Medicine, West Virginia University and Marshall University from contracts, agreements, or memorandums of understanding with spending units in state government with exceptions.

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

**Eng. Com. Sub. for House Bill 5604**, Relating to procurement by state spending units.

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

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

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

## **CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.**

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

**§5A-3-10. Competitive bids; publication of solicitations for sealed bids; purchase of products of nonprofit workshops; employee to assist in dealings with nonprofit workshops; continuing procurements over \$1 million.**

(a) A purchase of and contract for commodities, printing, and services shall be based on competitive bids, except when another method of procurement is determined to be in the best interest of the State.

(b) The director shall solicit, on behalf of spending units, sealed bids for the purchase of commodities and printing which is estimated to exceed \$25,000. The director may delegate the procurement of commodities, services, or printing estimated to be \$25,000 or less to the spending unit. The director may set a higher or lower delegated procurement limit for a particular spending unit if the director determines that such action would be in the best interest of the spending unit and the State. In no event may the director authorize more than \$100,000 of delegated procurement authority to a spending unit.

(c) *Bids for the purchase of technical infrastructure.* Notwithstanding the provisions of subsection (b) of this section to the contrary, the director shall solicit, on behalf of spending units, sealed bids for the purchase of technical infrastructure as defined in §5A-6-2 of this code which is estimated to exceed \$250,000. The director shall delegate the procurement of technical infrastructure estimated to be \$250,000 or less to the spending unit. The director may set a higher or lower delegated procurement limit for a particular spending unit for the purchase of technical infrastructure if the director determines that such action would be in the best interest of the spending unit and the State.

(d) Spending units shall not make an individual purchase in excess of the delegated procurement limit established in ~~subsection (b)~~ subsections (b) or (c) of this section, issue a series of requisitions for the same or similar commodity or service or divide or plan procurements with the intention to circumvent the delegated procurement limit established in ~~subsection (b)~~ subsections (b) or (c) of this section, or otherwise avoid the use of



sealed bids. Any spending unit that discovers it has awarded multiple contracts for the same or similar commodity or service to an individual vendor over any 12-month period shall file copies of all contracts awarded or orders placed for the commodity, service, or printing in question within the 12 preceding months with the director upon exceeding the delegated ~~limit~~ limits, along with a statement explaining how either the multiple contract awards or orders do not circumvent the delegated procurement ~~limit~~ limits, or how the contracts or orders were not intended to circumvent the delegated ~~limit~~ limits. If the spending unit does not report to the director within a reasonable period, the director shall contact the spending unit to request such statement and may suspend the purchasing authority of the spending unit until the spending unit complies with the reporting requirement of this subsection, as determined appropriate. The director may conduct a review of any spending unit to ensure compliance with this subsection. Following a review, in consultation with the relevant spending unit, the director shall complete a report summarizing his or her findings and forward the report to the spending unit. In addition, the director shall report to the Joint Committee on Government and Finance on January 1 and July 1 of each year the spending units which have reported under this subsection and the findings of the director.

~~(d)~~ (e) The director may permit bids by electronic transmission to be accepted in lieu of sealed bids.

~~(e)~~ (f) Bids shall be solicited by public notice. The notice may be published by any advertising medium the director considers advisable. The director may also solicit sealed bids by sending requests by mail or electronic transmission to prospective vendors.

~~(f)~~ (g) (1) The director may, without competitive bidding, purchase commodities and services produced and offered for sale by nonprofit workshops, as defined in §5A-1-1 of this code, which are located in this state: *Provided*, That the commodities and services shall be of a fair market price and of like quality comparable to other commodities and services otherwise available as determined by the director.

(2) To encourage contracts for commodities and services with nonprofit workshops, the director shall employ a person whose responsibilities in addition to other duties are to identify all commodities and services available for purchase from nonprofit workshops, to evaluate the need of the state for commodities and services to coordinate the various nonprofit workshops in their production efforts, and to make available to the workshops information about available opportunities within state government for purchase of commodities or services which might be produced and sold by such workshops. Funds to employ such a person shall be included annually in the budget.

~~(g)~~ (h) For all commodities and services in an amount exceeding \$1 million, if the procurement of the commodity or service is continuing in nature, 12 months prior to the expiration of the contract or final renewal option, whichever is later, the spending unit shall coordinate with the Purchasing Division on a new procurement for such commodity or service under the requirements of this article. This procurement shall be awarded or terminated no later than 180 days after the procurement specifications have been finally approved by the Purchasing Division.

#### **§5A-3-10f. Use of cooperative contracts.**

Any state spending unit may make a written request to the director to procure technical infrastructure pursuant to a competitively procured agreement. The director shall respond to the request within 30 days of receipt of the request. If the director does not respond within 30 days of receipt of the request, the director is deemed to have approved the request and the spending unit may procure technical infrastructure pursuant to the competitively procured agreement.

### **ARTICLE 6. OFFICE OF TECHNOLOGY.**

#### **§5A-6-2. Definitions.**

As used in this article:

"Information systems" means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

"Information technology" means any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

"Information technology marketplace portal" or "IT marketplace portal" means a structured digital catalog that customers can use to find, buy, deploy, and manage third-party information technology products and services whose pricing and discount levels are set by the third-party providers.

"Technology services" means professional services designed to provide functions, maintenance, and support of information technology devices, or services including, but not limited to, computer systems application development and maintenance; systems integration and interoperability; operating systems maintenance and design; computer systems programming; computer systems software support; planning and security relating to information technology devices; data management consultation; information technology education and consulting; information technology planning and standards; establishment of local area network and workstation management standards; and cloud computing.

"Telecommunications" means the preparation, transmission, communication, or related processing of information by electrical, electromagnetic, electromechanical, electro-optical, or electronic means.

"Chief Information Officer" means the person holding the position created in §5A-6-3 of this code and vested with authority to oversee state spending units in planning and coordinating information systems that serve the effectiveness and efficiency of the state and individual state spending units, and further the overall management goals and purposes of government: *Provided*, That reference to "Chief Technology Officer" in other articles of this code shall mean "Chief Information Officer".

"Technical infrastructure" means all information systems, information technology, information technology equipment, telecommunications, and technology services as defined in this section.

"Technology project" means a project where technology is a significant component and is either valued at \$250,000 or more, or will involve sensitive or restricted data.

"Steering committee" means an internal agency oversight committee established jointly by the Chief Information Officer and the agency proposing the project, which shall include representatives from the Office of Technology and at least one representative from the agency proposing the project.

"Technology portfolio" means a strategic management process documenting relationships between agency missions and information technology and telecommunications investments.

**§5A-6-4f. Information technology marketplace portal.**

(a) On or before September 1, 2024, the Secretary of Administration shall approve at least two IT marketplace portals for use by state spending units. Any IT marketplace approved by the Secretary must meet the following minimum qualifications: (1) Be as equally accessible to West Virginia-based third-party solutions as they are to national solutions; (2) offer real-time transaction capability; (3) offer third-party solutions in addition to a providers' own products; (4) have the capability to apply negotiated contracts; (5) have the capability to search and filter by compliance frameworks; (6) have capability to view product security compliance in real-time; and (7) offer diverse solution types. Diverse solution types include, but are not limited to software, software as a service, machine learning algorithms, professional services, large data sets, and virtual images.

(b) The Chief Information Officer shall determine if the procurement of technical infrastructure through an IT marketplace portal is advantageous for the State of West Virginia. The Chief Information Officer may utilize best value procurement when determining if using an IT marketplace portal is most advantageous for the State.

(c) Upon the approval of an IT marketplace portal by the Secretary, a state spending unit may use the IT marketplace to procure technical infrastructure.

## CHAPTER 11. TAXATION.

### ARTICLE 8. LEVIES.

#### **§11-8-26. Unlawful expenditures by local fiscal body.**

(a) Except as provided in §11-8-14b, §11-8-25a, and §11-8-26a of this code, or subsection (b) of this section, a local fiscal body ~~shall~~ may not expend money or incur obligations:

- (1) In an unauthorized manner;
- (2) For an unauthorized purpose;
- (3) In excess of the amount allocated to the fund in the levy order; or
- (4) In excess of the funds available for current expenses.

(b) Local fiscal bodies may not obligate funds beyond the current fiscal year except for contracts executed to procure technology licensing service agreements. Local fiscal bodies shall justify entering into multi-year technology license service agreements by maintaining documentation of material fiscal savings to the body.

~~(b)~~ (c) Notwithstanding the foregoing and any other provision of law to the contrary, a local fiscal body or its duly authorized officials may not be penalized for a casual deficit which does not exceed its approved levy estimate by more than three percent: *Provided*, That such casual deficit is satisfied in the levy estimate for the succeeding fiscal year: *Provided, however*, That in calculating a deficit for purposes of this section, account shall not be taken of any amount for which the local fiscal body may be liable for the unfunded actuarial accrued liability of the West Virginia Retiree Health Benefit Trust Fund or any amount allocated to the local fiscal body as an employer annual required contribution that exceeds the minimum annual employer payment

component of the contribution, all as provided under §5-16D-1 *et seq.* of this code.

The bill (Eng. Com. Sub. for H. B. 5604), as amended, was then ordered to third reading.

**Eng. House Joint Resolution 21**, Amending the Constitution to prohibit persons not United States citizens from voting in any election held within this state.

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

The following amendment to the resolution, 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 question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in the year 2024, which proposed amendment is that Section 1, Article IV thereof, be amended, to read as follows:

## **ARTICLE IV. ELECTION AND OFFICERS.**

### **4-1. Election and officers.**

The citizens of the state shall be entitled to vote at all elections held within the counties in which they respectively reside; but no person who is a minor, or who has been declared mentally incompetent by a court of competent jurisdiction, or who is under conviction of treason, felony, or bribery in an election, or who has not been a resident of the state and of the county in which he or she offers to vote for 30 days next preceding such offer shall be permitted to vote while such disability continues; but no person in the military, naval, or marine service of the United States shall be deemed a resident of this state by reason of being stationed therein, nor shall any person who is not a citizen of the United States be entitled to vote at any election held within this state.

*Resolved further*, That in accordance with the provisions of §3-11-1 *et seq.* of the Code of West Virginia, 1931, as amended, such amendment is hereby numbered "Amendment 1" and designated as the "Citizens Voting Amendment" and the purpose of the proposed amendment is summarized as follows: "The purpose of this amendment is to prohibit persons who are not citizens of the United States from voting in West Virginia elections."

The resolution (Eng. H. J. R. 21), as amended, was then ordered to third reading.

The Senate proceeded to the tenth order of business.

**Eng. Com. Sub. for House Bill 4753**, Relating to providing health insurance coverage concerning biomarker testing.

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

**Eng. Com. Sub. for House Bill 4975**, Relating to establishing a foster parent information system.

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

**Eng. Com. Sub. for House Bill 5609**, Relating to confidentiality of child care records and the Foster Care Ombudsman.

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

**Eng. Com. Sub. for House Joint Resolution 28**, Protection from medically-assisted suicide or euthanasia in West Virginia Amendment.

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

At the request of Senator Takubo, unanimous consent being granted, the Senate returned to the third order of business.

**Executive Communications**

The Clerk presented the following communications from His Excellency, the Governor, regarding bills approved by him:



*Jim Justice*  
*Governor of West Virginia*

March 6, 2024

The Honorable Lee Cassis, Clerk  
West Virginia Senate  
State Capitol  
Charleston, West Virginia 25305

Dear Mr. Clerk:

Enclosed for filing in your office, pursuant to the provisions of law, is the following bill:

Committee Substitute for Senate Bill No. Six Hundred Sixty-eight (668), which was presented to me on February 29, 2024.

You will note that I approved this bill on March 6, 2024.

Sincerely,

A handwritten signature in blue ink, reading "Jim Justice".

Jim Justice  
Governor

JJ: mrp

cc: The Honorable Stephen J. Harrison





*Jim Justice*  
*Governor of West Virginia*

March 6, 2024

The Honorable Steven J. Harrison, Clerk  
West Virginia House of Delegates  
State Capitol  
Charleston, West Virginia 25305

Dear Mr. Clerk:

Enclosed for filing in your office, pursuant to the provisions of law, are the following bills:

House Bill No. Five Thousand Six (5006), which was presented to me on February 29, 2024.

House Bill No. Five Thousand Two Hundred Sixty-one (5261), which was presented to me on February 29, 2024.

House Bill No. Five Thousand Two Hundred Sixty-seven (5267), which was presented to me on February 29, 2024.

House Bill No. Five Thousand Two Hundred Seventy-three (5273), which was presented to me on February 29, 2024.

You will note that I approved these bills on March 6, 2024.

Sincerely,

A handwritten signature of Jim Justice in black ink.

Jim Justice  
Governor

JJ: mrp

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cc: The Honorable Lee Cassis

The Senate again proceeded to the fourth order of business.

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

Your Committee on Education has had under consideration

**Senate Concurrent Resolution 36** (originating in the Committee on Education)—Requesting a study of the School Building Authority including its funding sources, the types of projects it funds, its distributions by county, its distributions by type of project, and its methods for evaluating projects for funding.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Amy N. Grady,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the resolution (S. C. R. 36) contained in the foregoing report from the Committee on Education was then referred to the Committee on Rules.

Senator Weld, 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 4110**, Authorizing certain miscellaneous agencies and boards to promulgate legislative rules.

And has amended same.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on March 5, 2024;

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

Senator Weld, 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 4320**, Relating to access for minor children's medical records.

With amendments from the Committee on Health and Human Resources pending;

And reports the same back without recommendation as to passage; but with the recommendation that it first be rereferred to the Committee on the Judiciary.

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4320) 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 rereferred to the Committee on the Judiciary.

Senator Weld, 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 4399**, Creating the equitable right to expungement.

And has amended same.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4399) 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 Weld, 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 4700**, Banning certain persons from sport wagering activities.

And has amended same.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 4700) 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 Weld, 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 4786**, Delivery Network Company (DNC) Insurance Model Act.

With amendments from the Committee on Banking and Insurance pending;

And has also amended same.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4786) 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 Woodrum, 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 4793**, Relating to moonshine.

And has amended same.

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

Respectfully submitted,

Jack David Woodrum,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 4793) 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 Grady, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

**Eng. House Bill 4863**, Patriotic Access to Students in Schools Act.

And has amended same.

**Eng. House Bill 5252**, Requiring certain minimum experience for the director or coordinator of services class title involving school transportation.

And has amended same.

And,

**Eng. Com. Sub. for House Bill 5553**, To provide and change graduation requirements and change duties relating to academic content standards.

And has amended same.

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

Respectfully submitted,

Amy N. Grady,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bills (Eng. H. B. 4863, Eng. H. B. 5252, and Eng. Com. Sub. for H. B. 5553) 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 Tarr, 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 4883**, Relating to increasing annual salaries of certain employees of the state.

And has amended same.

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

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4883) 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 Weld, 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 4911**, Relating to the sale of raw milk.

With amendments from the Committee on Agriculture and Natural 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,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4911) 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 Weld, 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 4951**, To facilitate the interstate practice of School Psychology in educational or school settings.

And reports the same back without recommendation as to passage; but with the recommendation that it first be rereferred to the Committee on the Judiciary.

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4951) 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 rereferred to the Committee on the Judiciary.

Senator Weld, 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 4999**, Creating exception to spousal privilege.



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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4999) 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 Weld, 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 5084**, Require retailers to verify identification and age upon purchase of vape products.

And has amended same.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5084) 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 Maroney, 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 5105**, To eliminate the vaccine requirements for public virtual schools.

And has amended same.

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

Respectfully submitted,

Michael J. Maroney,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5105) 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 Weld, 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 5232**, The Business Liability Protection Act.

And reports the same back without recommendation as to passage; but with the recommendation that it first be rereferred to the Committee on the Judiciary.

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5232) 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 rereferred to the Committee on the Judiciary.

Senator Clements, 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 5238**, Mandating that all courts provide adjudication for juvenile offenders for traffic violations to the Division of Motor Vehicles.

And has amended same.

**Eng. Com. Sub. for House Bill 5287**, Relating generally to traffic safety.

And has amended same.

And,

**Eng. Com. Sub. for House Bill 5583**, Permitting the Commissioner of the Division of Highways to issue a special permit to operate or move a vehicle or combination of vehicles of a size or weight of vehicles or nondivisible load exceeding the maximum specified.

And has amended same.

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

Respectfully submitted,

Charles H. Clements,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 5238, 5287, and 5583) contained in the preceding report from the Committee on Transportation and Infrastructure were each taken up for

immediate consideration, read a first time, and ordered to second reading.

Senator Weld, 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 5349**, West Virginia Truth in Food Labeling Act.

And reports the same back without recommendation as to passage; but with the recommendation that it first be rereferred to the Committee on the Judiciary.

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5349) 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 rereferred to the Committee on the Judiciary.

Senator Tarr, 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 5435**, Establishing the registered apprenticeship to associate of applied science program to be administered by the Council for Community and Technical College Education.

With an amendment from the Committee on Education pending;

Now on second reading, having been read a first time and referred to the Committee on Finance on March 5, 2024;

And reports the same back with the recommendation that it do pass as amended by the Committee on Education to which the bill was first referred.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

Senator Weld, 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 5510**, Clarify law regarding the crime of witness tampering.

And has amended same.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5510) 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 Weld, 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 5668**, Creating the Responsible Gaming and Research Act.

And reports the same back without recommendation as to passage; but with the recommendation that it first be rereferred to the Committee on the Judiciary.

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5668) 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 rereferred to the Committee on the Judiciary.

The Senate proceeded to the thirteenth order of business.

The following communications were reported by the Clerk:

The Senate of West Virginia  
Charleston

LEE CASSIS  
CLERK OF THE SENATE



STATE CAPITOL, ROOM M-211  
1900 KANAWHA BOULEVARD, EAST  
CHARLESTON, WV 25305-0800  
304-537-7800

March 6, 2024

The Honorable Jim Justice, II  
Governor, State of West Virginia  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305

Dear Governor Justice,

The following bills, authenticated by the signature of the Clerk of each House, and signed by the President of the Senate and the Speaker of the House of Delegates, have been examined and found truly enrolled:

**Com. Sub. for S. B. 331**, Eliminating cap on maximum amount of money in county's financial stabilization fund;

**Com. Sub. for S. B. 370**, Updating Public Employees Grievance Board procedure that certain decisions be appealed to Intermediate Court of Appeals;

**S. B. 529**, Including Salem University in PROMISE Scholarship program;

**Com. Sub. for S. B. 539**, Creating cold case database;

And,

**S. B. 712**, Reducing minimum age for State Police cadet.

These bills are presented to you on this day, March 6, 2024.

Respectfully submitted,

  
Lee Cassis  
Clerk of the Senate

C: The Honorable Stephen J. Harrison  
Clerk of the House of Delegates

LEE.CASSIS@WVSSENATE.GOV

The Senate of West Virginia  
Charleston

LEE CASSIS  
CLERK OF THE SENATE



STATE CAPITOL, ROOM M.211  
1900 KANAWHA BOULEVARD, EAST  
CHARLESTON, WV 25305-0800  
304-357-7800

March 6, 2024

The Honorable Jim Justice, II  
Governor, State of West Virginia  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305

Dear Governor Justice,

The following bill, authenticated by the signature of the Clerk of each House, and signed by the President of the Senate and the Speaker of the House of Delegates, has been examined and found truly enrolled:

**S. B. 602, Cardiac Emergency Response Plan Act.**

This bill is presented to you on this day, March 6, 2024.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Lee Cassis".

Lee Cassis  
Clerk of the Senate

C: The Honorable Stephen J. Harrison  
Clerk of the House of Delegates





STEPHEN J. HARRISON  
CLERK OF THE HOUSE

*West Virginia House of Delegates*

OFFICE OF THE CLERK  
BUILDING 1, SUITE 212  
1900 KANAWHA BLVD., EAST  
CHARLESTON 25305

(304) 340-3200  
STEVE.HARRISON@WVHOUSE.GOV

March 6, 2024

The Honorable Jim Justice, II  
Governor, State of West Virginia  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305

Dear Governor Justice,

The following bills, authenticated by the signature of the Clerk of each House, and signed by the Speaker of the House of Delegates and the President of the Senate, have been examined and found truly enrolled:

**Com. Sub. for H. B. 4809**, Health Care Sharing Ministries Freedom to Share Act;

**Com. Sub. for H. B. 4850**, Removing the sunset clause from Oil and Gas Personal Property Tax;

**Com. Sub. for H. B. 5057**, To raise the threshold for nominal referral fees from \$25 to \$100;

**And,**

**H. B. 5268**, Relating to the enhanced recovery of oil and natural gas in horizontal wells.

These bills are presented to you on this day, March 6, 2024.

Respectfully submitted,

A handwritten signature in cursive script, reading "Stephen J. Harrison".  
Stephen J. Harrison  
Clerk of the House of Delegates

C: The Honorable Lee Cassis  
Clerk of the Senate

Under the provisions of Rule 15 of the Rules of the Senate, the following senator was added as a co-sponsor to the following resolution on March 5, 2024:

**Senate Resolution 67:** Senator Caputo.

Pending announcement of meetings of standing committees of the Senate, including the Committee on Rules,

On motion of Senator Takubo, at 6:11 p.m., the Senate adjourned until tomorrow, Thursday, March 7, 2024, at 10 a.m.

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## THURSDAY, MARCH 7, 2024

The Senate met at 10:45 a.m.

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

Prayer was offered by the Honorable Bill Hamilton, a senator from the eleventh district.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Robert L. Karnes, a senator from the eleventh district.

Pending the reading of the Journal of Wednesday, March 6, 2024,

At the request of Senator Azinger, 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. Senate Bill 148**, Establishing auto-renewal program for wildlife licenses.

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 219**, Relating to Uniform Controlled Substances Act.

The message further announced the appointment of the following conferees on the part of the House of Delegates:

Delegates Kelly, Steele, and Garcia.

On motion of Senator Takubo, the Senate agreed to the appointment of a conference committee on the bill.

Whereupon, Senator Blair (Mr. President) appointed the following conferees on the part of the Senate:

Senators Weld, Deeds, 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 passage, to take effect from passage, of

**Eng. Senate Bill 438**, Modifying roster requirements of authorizing entities.

A message from the Clerk of the House of Delegates announced that that body had receded from its amendments to, and the passage as amended by deletion, to take effect from passage, of

**Eng. Com. Sub. for Senate Bill 451**, Directing Prosecuting Attorneys Institute to make training available to certain new prosecuting attorneys.

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 477**, Prohibiting public disclosure of personal information on internet.

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 487**, Requiring periodic review of professional development for teachers and education staff.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

On page 1, section 1, line 17, by striking out "10" and inserting in lieu thereof "5".

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Senate Bill 487, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 487) 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 540**, Updating WV coordinate systems.

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 653**, Supplementing and amending appropriations to School Building Authority, School Construction Fund.

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 657**, Expiring funds from Excess Lottery Revenue Fund to General Revenue.

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 806**, Removing certain required reports to Legislative Oversight Commission on Education Accountability.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page 5, by striking out Article 9F in its entirety, and inserting in lieu thereof the following:

**ARTICLE 9F. SCHOOL ACCESS SAFETY ACT.**

**§18-9F-8. Report.**

The authority shall report to the Legislative Oversight Commission on Education Accountability ~~during the June and September, 2007, and January, 2008, interim meeting periods regarding implementation of the provisions of~~ annually regarding its duties under this article, including but not limited to:

(1) County school access safety plans or annual plan updates;

(2) Allocations, transfers and disbursements of School Access Safety Fund moneys; and

(3) Collaboration with the state board and the Division of Homeland Security and Emergency Management in complying with the provisions of this article.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Senate Bill 806**—A Bill to amend and reenact §18-2-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-5B-7 of said code; to repeal §18-5F-6 of said code; to repeal §18-9A-7a of said code; to amend and reenact §18-9F-8 of said code; and to amend and reenact §18A-3C-3 of said code, all relating to the Legislative Oversight Commission on Education Accountability; removing required submission of plan to implement and update computer science instruction and learning standards in the public schools; removing required submission of annual report on innovation zones and the progress of innovation zone plans; removing required report on all aspects of the program at the end of the first year a virtual instruction program is implemented; removing required report on proposed revisions to the calculation of the allowance for service personnel to provide additional funded service personnel positions for lower-population density districts covering a large geographic areas; revising School Building Authority reporting on the school access safety and crisis response article to require the authority to report annually on its duties under the article; and removing requirement for review of the progress of the implementation of the comprehensive systems

of support for teacher and leader induction and professional growth.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Senate Bill 806, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 806) 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, 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 844**, Redesignating Educational Broadcasting Authority as Educational Broadcasting Commission.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

On further motion of Senator Takubo, the Senate concurred in the changed effective date of the bill, that being to take effect from passage, instead of ninety days from passage.

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

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Boley, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—30.

The nays were: Caputo, Plymale, and Woelfel—3.

Absent: Maroney—1.

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. 844) 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, to take effect from passage, of

**Eng. Com. Sub. for Senate Bill 865**, Changing reference to Curator of Department of Arts, Culture, and History to secretary.

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 4845**, To prohibit swatting.

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 4940**, A squatter cannot be considered a tenant in WV.



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 5178**, Requiring car dealerships in this state to utilize a search engine to determine if buyers of vehicles have valid motor vehicle insurance.

A message from the Clerk of the House of Delegates announced that that body had refused to concur in the Senate amendments to, and requested the Senate to recede therefrom, as to

**Eng. House Bill 5237**, Prohibiting driving slow in left lane except under certain circumstances.

On motion of Senator Takubo, the Senate refused to recede from its amendments to the bill and requested the appointment of a committee of conference of three from each house on the disagreeing votes of the two houses.

Whereupon, Senator Blair (Mr. President) appointed the following conferees on the part of the Senate:

Senators Clements, Oliverio, and Woelfel.

*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 Senate amendments to, and the passage as amended with its Senate amended title, of

**Eng. Com. Sub. for House Bill 5432**, To move the essential functions of the Information Services and Communications Division into the Office of Technology.

### **Executive Communications**

Senator Blair (Mr. President) laid before the Senate the following proclamation from His Excellency, the Governor, extending this current legislative session until and including the tenth day of March, 2024, which was received and read by the Clerk:

**EXECUTIVE DEPARTMENT****Charleston****A PROCLAMATION****By the Governor**

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

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

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

**NOW, THEREFORE, I, JIM JUSTICE**, Governor of the State of West Virginia, do hereby issue this Proclamation, in accordance with Subsection D, Article VI, Section 51 of the Constitution of West Virginia, extending the two thousand twenty-four regular session of the Legislature for an additional period not to exceed one day, through and including the tenth day of March, two thousand twenty-four; but no matters other than the Budget Bill shall be considered during this extension of the regular session, except the matters detailed in section 14, article VII of this Constitution and 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.



**By the Governor**

**DONE** at the Capitol in the City of Charleston, State of West Virginia, on this the Seventh Day of March, in the Year of our Lord, Two Thousand Twenty-Four, and in the One Hundred Sixty-First Year of the State.

A handwritten signature in blue ink, reading "Jim Justice".

**GOVERNOR**

A handwritten signature in blue ink, reading "Mac Warner".

**SECRETARY OF STATE**

Senator Blair (Mr. President) then laid before the Senate the following communication from His Excellency, the Governor, regarding annual reports, which communication was received and filed with the Clerk:



*Jim Justice*  
*Governor of West Virginia*

March 7, 2024

**Executive Message 2**  
**2024 Regular Session**

The Honorable Craig Blair  
President, West Virginia State Senate  
State Capitol, Rm 229M  
Charleston, WV 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 2023

Administration, West Virginia Department of; State Building Commission Fund Month End of May 2023

Administration, West Virginia Department of; State Building Commission Fund Month End of June 2023

Administration, West Virginia Department of; State Building Commission Fund Month End of January 2022

Administration, West Virginia Department of; State Building Commission Fund Month End of August 2023

Administration, West Virginia Department of; State Building Commission Fund Month End of July 2023

Administration, West Virginia Department of; State Building Commission Fund End of Month October 2023

Administration, West Virginia Department of; State Building Commission Fund End of Month November 2023

Administration, West Virginia Department of; Shared Services Section within the Finance Division Annual Report

State Capitol | 1900 Kanawha Blvd., East, Charleston, WV 25305 | (304) 558-2000

## OFFICE OF THE GOVERNOR

Administration, West Virginia Department of; State Building Commission Fund Month End of December 2023

Administration, West Virginia Department of; State Building Commission Fund Month End of January 2024

Agriculture, West Virginia Department of; Farm-to-Food Bank Tax Credit 2021-2022

Architects, West Virginia Board of; Annual Report FY2023 & FY2022

Attorney General, West Virginia Office of the; Annual Report 2023

Attorney General, West Virginia Office of the; 2023 Annual Report on the Activities of the Consumer Protection and Antitrust Division

Auditors Office, West Virginia State; 2023 Annual Report

Auditors Office, West Virginia State; 2023 West Virginia State Dollar

City of Welch; First Semi-Annual Progress Report of 2023

City of Welch; Second Semi-Annual Progress Report of 2023

Claims Commission, West Virginia Legislative; Supplemental Report of the Legislative Claims Commission for December 2023

Coal Mine Health and Safety, State of West Virginia Board of; 2023 Annual Report of the Board of Coal Mine Health and Safety

Consolidated Public Retirement Board, West Virginia; West Virginia State Police Disability Experience Annual Report Fiscal Year 2023

Dentistry, West Virginia Board of; Report for the Biennium for Fiscal Years 2022 & 2023

Examiners in Counseling, West Virginia Board of; 2021-2023 Annual Report

Grievance Board, Public Employee; 2022 Annual Report

Insurance Commissioner, State of West Virginia Offices of the; Occupational Pneumoconiosis Board 2022-2023 Annual Report

Insurance Commissioner, State of West Virginia Offices of the; West Virginia State Agency Workers' Compensation Annual Report

Insurance Commissioner, State of West Virginia Offices of the; 2022 Annual Report

Insurance Commissioner, State of West Virginia Offices of the; 2022 Annual Medical Malpractice Report

Insurance Commissioner, State of West Virginia Offices of the; Office of the Consumer Advocate Annual Report for Calendar Year 2023

Interstate Medical Licensure Compact; FY2023 Annual Report

Jobs Investment Trust, West Virginia; Fiscal Year 2023 Annual Report

Licensed Dietitians, West Virginia Board of; Annual Report for Fiscal Year's 2021/2022

## OFFICE OF THE GOVERNOR

Licensed Dietitians, West Virginia Board of; Annual Report for Fiscal Year 2022-2023

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending May 31, 2023

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending June 30, 2023

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending August 31, 2023

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending July 31, 2023

Lottery, West Virginia; Monthly Report on Lottery Operations Month End September 2023

Lottery, West Virginia; Monthly Report on Lottery Operations Month End April 2023

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending November 30, 2023

Lottery, West Virginia; Monthly Report on Lottery Operations Month End January 2024

Lottery, West Virginia; 2023 Annual Comprehensive Financial Report for the Fiscal Years Ended June 30, 2023 and 2022

Medical Imaging & Radiation Therapy Technology Board of Examiners, West Virginia; FY 2023 Annual Report

Miners' Health, Safety and Training, West Virginia Office of; FY2023 Annual Report and Directory of Mines

Multimodal Transportation Facilities, West Virginia Department of Transportation/Division of; Annual Report for Fiscal Year 2022-2023

Municipal Bond Commission, West Virginia; Annual Receipts and Disbursements July 1, 2022-June 30, 2023

National Guard, West Virginia; Annual Report 2023

Natural Resources, West Virginia Division of; Annual Report 2022-2023

Natural Resources, West Virginia Division of; Annual Report 2022-2023

Occupational Therapy, West Virginia Board of; Annual Report 2022-2023

Osteopathic Medicine, West Virginia School of; Annual Report 2022-2023

Pharmacy, West Virginia Board of; Controlled Substances Monitoring Program 2023 Annual Report

Potomac River Basin, Interstate Commission on the; Eighty Second Financial Statement for the period of October 1, 2021 to September 30, 2022

Public Transit, West Virginia Department of Transportation/Division of; 2022 Annual Safety Status Report

Real Estate Appraiser Licensing and Certification Board, West Virginia; Annual Report Fiscal Years 2022 and 2023

Registration for Professional Engineers, West Virginia Board of; FY 2023 Annual Report

## OFFICE OF THE GOVERNOR

Rehabilitation Council, West Virginia State; 2023 Annual Report

Respiratory Care, West Virginia Board of; Annual Report July 1, 2022 - June 30, 2023

State Fire Marshal, West Virginia; FY 2023 Annual Report

State Police, West Virginia; 2022-2023 Annual Report

State Privacy Office, West Virginia; 2023 Annual Report

State Resiliency Office, West Virginia; Annual Report 2023

Tax Department, West Virginia State; 2023 Tax Credit and Accountability Report for the West Virginia Innovative Mine Safety Technology Tax Credit

Tax Department, West Virginia State; Fifty-Fifth Biennial Report West Virginia Tax Laws

Tax Department, West Virginia State; Special Method for Appraising Qualified Capital Additions to Manufacturing Facilities Tax Year 2023

Tax Department, West Virginia State; Special Method for Appraising Qualified Capital Additions to Manufacturing Facilities Tax Year 2022

Tax Department, West Virginia State; West Virginia Tax Expenditure Study for 2024

Tax Department, West Virginia State; West Virginia Tax Credit Review and Accountability Report for the Economic Opportunity Tax Credit and the Manufacturing Investment Tax Credit

Treasurer, West Virginia Office of the; Cash Management Improvement Act CMIA

Treasury Investments, Board of; Operating Report June 2023

Treasury Investments, Board of; Operating Report May 2023

Treasury Investments, Board of; Operating Report August 2023

Treasury Investments, Board of; Operating Report September 2023

Treasury Investments, Board of; Operating Report October 2023

Treasury Investments, Board of; Audited Financial Statements with Supplementary & Other Financial Information Year Ended June 30, 2023

Treasury Investments, Board of; Annual Comprehensive Financial Report Fiscal Year Ended June 30, 2023

Treasury Investments, Board of; Operating Report December 2023

Treasury Investments, Board of; Operating Report January 2024

Veterinary Medicine, West Virginia Board of; 2023 Fiscal Year Biennium Report

Water Development Authority, West Virginia; Fiscal Year 2023 Annual Report

Water Sanitation Commission, Ohio River Valley; 2023 Annual Report



OFFICE OF THE GOVERNOR

Sincerely,



Jim Justice  
Governor

cc: Lee Cassis, Clerk, West Virginia State Senate  
Division of Culture and History



Senator Blair (Mr. President) next laid before the Senate the following communication from His Excellency, the Governor, submitting the annual probation and parole report, which was received:



*Jim Justice*  
*Governor of West Virginia*

March 7, 2024

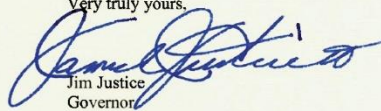
**EXECUTIVE MESSAGE NO. 3**  
**2024 REGULAR SESSION**

The Honorable Craig Blair  
President, Senate of West Virginia  
State Capitol, Rm 229M  
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 11, 2023 through March 6, 2024.

Very truly yours,

  
Jim Justice  
Governor

cc: Lee Cassis, Senate of West Virginia  
Division of Archives and History

State Capitol | 1900 Kanawha Blvd., East, Charleston, WV 25305 | (304) 558-2000

The Senate proceeded to the sixth order of business.

Senator Weld offered the following resolution:

**Senate Resolution 70**—Memorializing the life of Heather Nicole Miller.

Which, under the rules, lies over one day.

Senator Stover offered the following resolution:

**Senate Resolution 71**—Congratulating Kerri-Anne Cook on her remarkable high school golf career and for becoming the first female golfer in West Virginia history to win the WVSSAC AA state golf tournament.

Which, under the rules, lies over one day.

Senator Takubo announced that in the meeting of the Committee on Rules previously held, the committee, in accordance with Rule 17 of the Rules of the Senate, had removed from the Senate third reading calendar, **Engrossed Committee Substitute for House Bill 5127**; and from the Senate second reading calendar, **Engrossed Committee Substitute for House Bill 5609**.

The Senate proceeded to the seventh order of business.

**Senate Resolution 68**, Designating March 7, 2024, as Recovery Community Day.

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

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

**Senate Resolution 69**, Recognizing month of March as National Social Work Awareness Month.

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

At the request of Senator Takubo, and by unanimous consent, the Senate returned to the second order of business and the introduction of guests.

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for House Bill 4190**, Relating to the establishment of an alert system for missing cognitively impaired persons.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—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. 4190) 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 4190**—A Bill to amend and reenact §15-3A-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §15-3B-2, §15-3B-3, §15-3B-4, and §15-3B-6 of said code; and to amend said code by adding thereto a new article, designated §15-3F-1, §15-3F-2, §15-3F-3, §15-3F-4, §15-

3F-5, §15-3F-6, and §15-3F-7; all relating to establishing a "Purple Alert" program; providing for inclusion of the "Purple Alert" program in the "Guardian Angel Video Monitoring" Program; providing a date for implementation for addition of the "Silver Alert" and "Purple Alert" programs in the "Guardian Angel Video Monitoring" Program; removing persons with cognitive impairment from the "Silver Alert"; providing legislative findings relating to the "Purple Alert" program; defining cognitive impairment; providing for the establishment of a "Purple Alert" Plan; providing criteria for the activation of a "Purple Alert"; providing for termination of a "Purple Alert"; providing for date of implementation of the "Purple Alert"; providing for notice and broadcasting of a "Purple Alert"; providing for the Secretary to develop and undertake a campaign to inform law enforcement agencies about the "Purple Alert"; and providing immunity for individuals providing information pursuant to a "Purple Alert" in good faith.

Senator Takubo moved that the bill take effect July 1, 2024.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

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. 4190) takes effect July 1, 2024.

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

**Eng. House Bill 4305**, Relating to granting in-state resident status to economic development participants.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4305) 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 4552**, To ensure party affiliation is consistent with candidate's voter registration.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—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. 4552) 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 4552**—A Bill to amend and reenact §3-5-7 of the Code of West Virginia, 1931, as amended, relating to verification of candidate's party affiliation as stated in certificate of announcement; specifying that certificate of announcement for partisan election must include candidate's political party on date of submittal; requiring election officer receiving certificate of announcement to electronically verify candidate's current party affiliation; requiring election officer to refuse certificate of announcement if candidate's current party affiliation not as stated on certificate of announcement; and providing an internal effective date.

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

**Eng. House Bill 4721**, Require Surveyors to offer to record surveys of property.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4721) 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 4721**—A Bill to amend and reenact §30-13A-10 of the Code of West Virginia, 1931, as amended, relating to requiring land surveyors to offer to record maps or plats of measured parcels of land made by the surveyor for a reasonable fee.

*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 4812**, Capping amount of moneys to third party vendors who collect business and occupation taxes on behalf of cities.

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

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

**Eng. House Bill 4822**, Creating the Certified Sites and Development Readiness Program.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4822) 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 4829**, Relating to employment of service personnel and removing the requirement for a high school diploma or general education development certificate.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—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. 4829) 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 4829**—A Bill to amend and reenact §18A-2-5 of the Code of West Virginia, 1931, as amended, relating to employment of service personnel and removing the requirement for a high school diploma or general education development certificate for school bus drivers who are 21 years of age or older.

*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 4851**, To allow for public and private schools in West Virginia to employ security personnel.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—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. 4851) 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 4851**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-51, relating to the creation of the West Virginia Guardian Program; setting out purpose of the program; allowing county school boards to contract with certain persons to provide safety services as independent contractors; defining terms; setting out the authority of independent contractors participating in the program; providing requirements for participation of a person in the program; providing exclusions from participation of a person in the program; setting forth a limitation of liability; providing exemptions from purchasing requirements; and excluding independent contractor from participation in state benefit programs.

*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 4867**, Require pornography websites to utilize age verification methods to prevent minors from accessing content.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—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. 4867) 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 4867**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new chapter, designated §49A-1-101, §49A-1-102, §49A-1-103, §49A-1-104, and §49A-1-105 all relating to creating liability for publishers and distributors of sexual material harmful to minors; providing definitions; relating to what constitutes reasonable age verification; providing exceptions to applicability of this article; requiring a commercial entity that provides pornography and other materials defined as being harmful to minors as a substantial portion of the entity's content to verify the age of individuals accessing the material, relating to liability, and establishing a cause of action; establishing requirements, liability, and a establishing a cause of action for the retention of data; imposing liability for publishers and distributors of material harmful to minors who fail to comply with verification requirements; providing that an

internet service provider or hosting entity is not liable for hosting or transmitting material harmful to minors to the extent that it is not the creator of the material; providing a five year statute of limitations to these civil actions; relating to certain civil actions allowable by the Attorney General, relating to remedy of civil penalties, and relating to a five year statute of limitations for civil actions relating for attorney general civil actions.

*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 4880**, Relating to personal income tax social security exemption.

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

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

**Eng. Com. Sub. for House Bill 4882**, Extending in-state tuition rates to all members and veterans of the National Guard, reserves, and armed forces as well as their spouses and dependents.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—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. 4882) 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 4919**, Relating to the Promise Scholarship.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—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. 4919) passed with its title.

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

**Eng. House Bill 4945**, Relating generally to the Hope Scholarship Program.

On third reading, coming up in regular order, with the unreported Finance committee amendment pending, and with the right having been granted on yesterday, Wednesday, March 6, 2024, for further amendments to be received on third reading, was reported by the Clerk.

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

calendar, with the right to amend on third reading remaining in effect and with the unreported Finance committee amendment pending.

**Eng. Com. Sub. for House Bill 4967**, Relating to the administration of the Voluntary Remediation and Redevelopment Act to provide new liability protections for persons and companies who wish to purchase and redevelop former industrial properties.

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 4967 pass?"

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—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. 4967) 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 4967**—A Bill to amend and reenact §22-22-1, §22-22-2, §22-22-3, §22-22-4, §22-22-5, §22-22-6, §22-22-7, §22-22-8, §22-22-9, §22-22-10, §22-22-11, §22-22-12, §22-22-13, §22-22-14, §22-22-15, §22-22-16, of the Code of West Virginia, 1931, as amended, to repeal §22-22-17 of said

code, and amend and reenact §22-22-18 and §22-22-20, all relating to the administration of the Voluntary Remediation and Redevelopment Act to provide new liability protections for those who wish to purchase and redevelop former industrial properties; defining terms; providing for rulemaking by the Secretary of the Department of Environmental Protection; clarifying procedures involving the Brownfields Revolving Fund; revising public notice provisions concerning the fund; providing that the Secretary may limit the liability of lenders, innocent purchasers, landowners, de minimis contributors, or others who have limited responsibility for contamination under the Hazardous Waste Management Act, the Water Pollution Control Act, the Groundwater Protection Act or any other applicable law; providing that bona fide prospective purchasers are not liable for a containment at a brownfield site if certain conditions are met; providing that an innocent land owner who holds title or security interest in a brownfield site are not liable for contamination at a brownfield site if defined conditions are met; providing that a person that owns contiguous real property that is contaminated by a release of a hazardous substance from real property that is not owned by that person is not liable for contamination under defined conditions; and providing that the Secretary may require anyone responsible for contamination to remediate sites where substances have been improperly managed.

*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 5127**, Including Potomac State College in the definition of community and technical college education program for participation in the "Learn and Earn Program".

Having been removed from the Senate third reading calendar in earlier proceedings today, no further action thereon was taken.

**Eng. Com. Sub. for House Bill 5188**, Relating to awards and benefits for duty related disability in the 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: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—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. 5188) 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 5257**, Relating generally to allowing the Supreme Court of Appeals discretion to create uniform pay scales for all levels of judicial support staff.

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

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

**Eng. Com. Sub. for House Bill 5338**, Relating to Safe Harbor for Cybersecurity Programs.

On third reading, coming up in regular order, with the unreported Finance committee amendment pending, and with the right having been granted on yesterday, Wednesday, March 6, 2024, for further amendments to be received on third reading, was read a third time.

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

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

**ARTICLE 8H. SAFE HARBOR FOR CYBERSECURITY PROGRAMS.**

**§31A-8H-1. Definitions.**

As used in this article:

(1) "Business" means any limited liability company, limited liability partnership, corporation, sole proprietorship, association, or other group, however organized and whether operating for profit or not for profit, including a financial institution or bank holding company organized, chartered, or holding a license authorizing operation under the laws of this state, any other state, the United States, or any other country, or the parent or subsidiary of any of the foregoing.

"Business" does not include any body, authority, board, bureau, commission, district, or agency of the state or of any political subdivision of the state.

(2) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this article and other applicable law.

(3) "Covered entity" means a business that accesses, maintains, communicates, or processes personal information or restricted information in or through one or more systems, networks, or services located in or outside this state.

(4) "Data breach" means unauthorized access to and acquisition of computerized data that compromises the security or confidentiality of personal information or restricted information owned by or licensed to a covered entity and that causes, reasonably is believed to have caused, or reasonably is believed



will cause a material risk of identity theft or other fraud to person or property. "Data breach" does not include either of the following:

(A) Good faith acquisition of personal information or restricted information by the covered entity's employee or agent for the purposes of the covered entity provided that the personal information is not used for an unlawful purpose or subject to further unauthorized disclosure;

(B) Acquisition of personal information pursuant to a search warrant, subpoena, or other court order, or pursuant to a subpoena, order, or duty of a regulatory state agency.

(5) "Distributed ledger technology" means an electronic ledger or other record of transactions or other data to which all of the following apply:

(A) The electronic ledger is uniformly ordered.

(B) The electronic ledger is redundantly maintained or processed by more than one computer or machine to guarantee the consistency or nonrepudiation of the recorded transactions or other data.

(6) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(7) "Encryption" means the use of an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key.

(8) "Individual" means a natural person.

(9)(A) "Personal information" means any information relating to an individual who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, social security number, driver's license number or state identification card number, passport number, account number, or credit or debit card number, precise location data, biometric data, an online identifier, or to one or more factors

specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that individual.

(B) "Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records or any of the following media that are widely distributed:

(i) Any news, editorial, or advertising statement published in any bona fide newspaper, journal, or magazine, or broadcast over radio, television, or the internet.

(ii) Any gathering or furnishing of information or news by any bona fide reporter, correspondent, or news bureau to news media identified in this paragraph.

(iii) Any publication designed for and distributed to members of any bona fide association or charitable or fraternal nonprofit business.

(iv) Any type of media similar in nature to any item, entity, or activity identified in this paragraph.

(10) "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.

(11) "Redacted" means altered or truncated so that no more than the last four digits of a social security number, driver's license number, state identification card number, passport number, account number, or credit or debit card number is accessible as part of the data.

(12) "Smart contract" means an electronic record that is an event-driven program or computerized transaction protocol that runs on a distributed, decentralized, shared, and replicated ledger that executes the term of a contract, including but not limited to, taking custody over and instructing the transfer of assets.

(13) "Transaction" means a sale, trade, exchange, transfer, payment, or conversion of virtual currency or other digital asset or

any other property or any other action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

**§31A-8H-2. Affirmative defenses.**

(a) A covered entity seeking an affirmative defense under this chapter shall do at least one of the following:

(1) create, maintain, and comply with a written cybersecurity program that contains administrative, technical, operational, and physical safeguards for the protection of personal information and that reasonable conforms to an industry recognized cybersecurity framework, as described in §31A-8H-3; or

(2) Create, maintain, and comply with a written cybersecurity program that contains administrative, technical, and physical safeguards for the protection of both personal information and restricted information and that reasonably conforms to an industry recognized cybersecurity framework, as described in §31A-8H-3.

(b) A covered entity's cybersecurity program shall be designed to do all of the following with respect to the personal information described in division (a)(1) or (2) of this section, as applicable:

(1) Protect the security and confidentiality of the personal information;

(2) Protect against any anticipated threats or hazards to the security or integrity of the personal information;

(3) Protect against unauthorized access to and acquisition of the personal information that is likely to result in a material risk of identity theft or other fraud to the individual to whom the personal information relates.

(c) The scale and scope of a covered entity's cybersecurity program under division (A) (1) or (2) of this section, as applicable, is appropriate if it is based on all of the following factors:

(1) The size and complexity of the covered entity;

(2) The nature and scope of the activities of the covered entity;

(3) The sensitivity of the information to be protected;

(4) The cost and availability of tools to improve information security and reduce vulnerabilities;

(5) The resources available to the covered entity.

(d) (1) A covered entity that satisfies subsections (a)(1),(b), and (c) of this section is entitled to an affirmative defense to any cause of action sounding in tort that is brought under the laws of this state or in the courts of this state and that alleges that the failure to implement reasonable information security controls resulted in a data breach concerning personal information.

(2) A covered entity that satisfies subsections (a)(2), (b), and (c) of this section is entitled to an affirmative defense to any cause of action sounding in tort that is brought under the laws of this state or in the courts of this state and that alleges that the failure to implement reasonable information security controls resulted in a data breach concerning personal information or restricted information.

A covered entity satisfies all requirements of this section if its cybersecurity program reasonably conforms to an industry-recognized cybersecurity framework, as described in §31A-8H-3 of this code.

### **§31A-8H-3. Cybersecurity program framework.**

(a) A covered entity's cybersecurity program, as described in section §31A-8H-2 of this code, reasonably conforms to an industry-recognized cybersecurity framework for purposes of this article if the cybersecurity program meets any of the following three requirements as applicable:

(1)(A) The cybersecurity program reasonably conforms to the current version of any of the following or any combination of the following, subject to paragraph (B) of this subdivision and subsection (b) of this section:

(i) The framework for improving critical infrastructure cybersecurity developed by the national institute of standards and technology.

(ii) National institute of standards and technology special publication 800-171.

(iii) National institute of standards and technology special publications 800-53 and 800-53a.

(iv) National institute of standards and technology special publication 800-76-1.

(v) The federal risk and authorization management program security assessment framework.

(vi) The center for internet security critical security controls for effective cyber defense.

(vii) The international organization for standardization/international electrotechnical commission 27000 family — information security management systems.

(viii) The Cybersecurity Maturity Model Certification at a minimum of Level 2 with external certification.

(B) When a final revision to a framework listed in paragraph (A) is published, a covered entity whose cybersecurity program reasonably conforms to that framework shall reasonably conform the elements of its cybersecurity program to the revised framework within the time frame provided in the relevant framework upon which the covered entity intends to rely to support its affirmative defense, but in no event later than one year after the publication date stated in the revision.

(2)(A) The covered entity is regulated by the state, by the federal government, or both, or is otherwise subject to the requirements of any of the laws or regulations listed below, and the cybersecurity program reasonably conforms to the entirety of the current version of any of the following, subject to paragraph (B) of this subdivision:

(i) The security requirements of the federal Health Insurance Portability and Accountability Act of 1996, as set forth in 45 C.F.R. pt. 164, subpt. C.

(ii) Title V of the federal Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102, as amended.

(iii) The federal Information Security Modernization Act of 2014, Pub. L. No. 113-283.

(iv) The federal Health Information Technology for Economic and Clinical Health Act as set forth in 45 C.F.R. pt. 162.

(v) Any applicable rules, regulations, or guidelines for critical infrastructure protection adopted by the federal environmental protection agency, the federal cybersecurity and infrastructure security agency, or the north American reliability corporation.

(B) When a framework listed in paragraph (A) of this subdivision is amended, a covered entity whose cybersecurity program reasonably conforms to that framework shall reasonably conform the elements of its cybersecurity program to the amended framework within the time frame provided in the relevant framework upon which the covered entity intends to rely to support its affirmative defense, but in no event later than one year after the effective date of the amended framework.

(3)(A) The cybersecurity program reasonably complies with both the current version of the payment card industry data security standard and conforms to the current version of another applicable industry-recognized cybersecurity framework listed in subdivision (a)(1) of this section, subject to paragraph (B) of this subdivision and subsection (b) of this section.

(B) When a final revision to the payment card industry data security standard is published, a covered entity whose cybersecurity program reasonably complies with that standard shall reasonably comply the elements of its cybersecurity program with the revised standard within the time frame provided in the relevant framework upon which the covered entity intends to rely

to support its affirmative defense, but not later than the effective date for compliance.

(b) If a covered entity's cybersecurity program reasonably conforms to a combination of industry-recognized cybersecurity frameworks and two or more of those frameworks are revised, the covered entity whose cybersecurity program reasonably conforms to or complies with, as applicable, those frameworks shall reasonably conform the elements of its cybersecurity program to or comply with, as applicable, all of the revised frameworks within the time frames provided in the relevant frameworks but in no event later than one year after the latest publication date stated in the revisions.

**§31A-8H-4. Limitation on private right of action.**

This article shall not be construed to provide a private right of action, including a class action, with respect to any act or practice regulated therein.

**§31A-8H-5. Security assessments; limitation on liability.**

(a) Any institution of higher education in this state may offer a cybersecurity assessment program as part of an undergraduate or graduate program relating to cybersecurity to any business in the state.

(b) An institution of higher education in this state, or any employee or student thereof, offering a cybersecurity assessment program shall be immune from civil liability that arises from the failure of a covered entity to conform to the provisions of this article.

Engrossed Committee Substitute for House Bill 5338, as just amended, was then put upon its passage.

Pending extended discussion,

The question being "Shall Engrossed Committee Substitute for House Bill 5338 pass?"

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Clements, Deeds, Grady, Hamilton, Jeffries, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Smith, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—27.

The nays were: Chapman, Hunt, Karnes, Rucker, Stover, and Woelfel—6.

Absent: Maroney—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. 5338) passed.

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

**Eng. Com. Sub. for House Bill 5338**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §31A-8H-1, §31A-8H-2, §31A-8H-3, §31A-8H-4, and §31A-8H-5, all relating to providing an affirmative legal defense to certain types of businesses against certain types of lawsuits claiming that the business failed to implement reasonable cybersecurity protections and that as a result, a data breach of personal information or restricted information occurred if the business creates, maintains, and complies with a written cybersecurity program that contains administrative, technical, operational, and physical safeguards for the protection of personal information as set forth in this act; defining terms; describing the requirements of the cybersecurity program; construction of article; clarifying no private cause of action provided by article; and providing immunity in certain circumstances to certain institutions of higher education in this state that offer a cybersecurity assessment program as part of an undergraduate or graduate program relating to cybersecurity to any business in the state.

Senator Takubo moved that the bill take effect January 1, 2025.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Clements, Deeds, Grady, Hamilton, Jeffries, Martin,



Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Smith, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—27.

The nays were: Chapman, Hunt, Karnes, Rucker, Stover, and Woelfel—6.

Absent: Maroney—1.

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. 5338) takes effect January 1, 2025.

*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 5405**, Providing additional professional development and support to West Virginia educators through teacher and leader induction and professional growth.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—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. 5405) 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 5405**—A Bill to amend and reenact §18-9A-10 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18A-3C-3 of said code, all relating to increasing support and professional development for educators; expanding factors used to determine how funds for supporting county-level implementation of the comprehensive systems for teacher and leader induction and professional growth are allocated to the counties; authorizing retention of certain funding for 2024 – 2025 school year by the Department of Education for certain regional professional learning cadres or teacher leadership networks, implementing the Department of Education's academic initiatives, and to assist teachers who are less than fully certified; requiring up to a certain portion of the retained funding to be distributed to county boards for certain purposes under a grant program to be established by state board rule; specifying minimum contents of rule; requiring county boards to ensure that the results on the comprehensive statewide student assessment for the students taught by each teacher are provided to that teacher; adding to topics to be addressed by the plan for implementation of a comprehensive system of support for improving professional practice; requiring certain additional amounts paid to a teacher be only for the duration of any service provided and not be considered salary for the computation of an annuity under the Teachers Retirement System; and removing requirement for the Legislative Oversight Commission on Education Accountability to review the progress of the implementation of the comprehensive systems of support for teacher and leader induction and professional growth and authority to make recommendations to the Legislature.

*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 5514**, Enhancing training requirements for county boards of education 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: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—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. 5514) 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 5528**, Relating to the renewable energy facilities program.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: Phillips—1.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 5528) passed with its title.

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

At the request of Senator Queen, and by unanimous consent, the Senate returned to the second order of business and the introduction of guests.

Pending announcement of a meeting of the Committee on Rules,

On motion of Senator Takubo, at 12:11 p.m., the Senate recessed until 1:30 p.m. today.

The Senate reconvened at 1:54 p.m. and resumed consideration of the remainder of its third reading calendar, the next bill coming up in numerical sequence being

**Eng. Com. Sub. for House Bill 5544**, Relating to requiring certain reporting from the Mountaineer Trail Network Authority each year.

On third reading, coming up in regular order, with the right having been granted on yesterday, Wednesday, March 6, 2024, for amendments to be received on third reading, was read a third time.

On motions of Senators Maynard and Woodrum, 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:

**ARTICLE 17A. MOUNTAINEER TRAIL NETWORK  
RECREATION AUTHORITY.**

**§20-17A-6. Reporting.**

**(a) There shall be an annual report made from the Mountaineer Trail Network Authority to the Joint Committee on Economic Development concerning:**

**(1) Progress made towards the goals laid out in §20-17-1 *et seq.* and §20-17A-1 *et seq.* of this code;**

**(2) A report of grants requested and received; and**

(3) Progress made on other projects within the Trail Networks throughout the state.

(b) This reporting shall begin on December 1, 2024.

## **ARTICLE 20. MOUNTAIN BIKE RESPONSIBILITY ACT.**

### **§20-20-1. Legislative findings.**

The West Virginia Legislature finds that our natural resources and topography provide world class opportunities to attract both resident and nonresident bicyclists to this state to enjoy the sport of mountain biking, significantly contributing to the economy of West Virginia. Further, it is recognized that there are inherent risks in the sport of bicycling, and the purpose of this article is to define those areas of responsibilities and affirmative acts for which the mountain operators shall be liable for loss, damage, or injury and to define those risks that the bicyclist expressly assume. Nothing in this article shall impact other defenses that may be raised by mountain operators against claims asserted by bicyclists.

### **§20-20-2. Definitions.**

The terms in this article have the following meaning, unless the context clearly requires a different meaning:

(1) "Aerial passenger tramway" means any device operated by a trail system operator used to transport passengers by single or double reversible tramway, chairlift or gondola lift, T-bar lift, J-bar lift, platter lift, or similar device; a fiber rope or wire rope tow, or a conveyor.

(2) "Mountain Bicyclist" means any person present at a trail system area under the control of a trail system operator for the purpose of engaging in activities, including, without limitation, bicycling downhill or uphill, jumping on a bicycle, or any other cycling device. "Mountain Bicyclist" does not include a person using an aerial passenger tramway.

(3) "Trail system area" means the property owned, leased, or authorized under a special use permit, and under the control of the trail system operator.

(4) "Trail system operator" means any person, partnership, corporation, or other commercial entity, its agents, officers, employees, or representatives, who has, as part of a commercial, private, or for-profit endeavor, operational responsibility for mountain bicycling activities at any trail system area and the use of an aerial passenger tramway for such purpose. Trail system operator does not include any public or non-profit corporation, its agents, officers, employees, or representatives, who has operational responsibility of mountain bicycling activities at any trail system area.

(5) "Passenger" means any person who is lawfully using an aerial passenger tramway or is waiting to embark or has recently disembarked from an aerial passenger tramway and is in its immediate vicinity.

(6) "Mountain Bike trails" means all mountain bike trails designated by the trail system operator to be used by mountain bicyclists for the purpose of participating in the sport of mountain biking including but not limited, to downhill trails, cross-country trails, free ride trails, pump tracks, and skills areas.

**§20-20-3. Duties of trail system operators with respect to trail system.**

Every trail system operator shall:

(1) Maintain a trail board at a prominent location at the trail system area displaying that area's network of mountain bike trails;

(2) Designate and mark conspicuously all mountain bike trails with a name and color, or symbol recognized in the mountain biking industry reflecting the relative degree of difficulty of the mountain bike trail. Such designation shall be at or near the top or entrance of the mountain bike trail. Any mountain bike trail which is closed shall be so marked at the trailhead;

(3) Follow published operational industry standards and guidelines;

(4) Provide internal trained and dedicated emergency response personnel or enter into an adequate emergency response plan with a local fire or EMS agency, or post at the trail board maintained under subdivision (1) of this section instructions on how to contact emergency response personnel;

(5) Maintain the mountain bike trails in a reasonably safe condition, except that such trail system operator shall not be responsible for any injury, loss or damage caused by the following: uneven or slippery rail and feature conditions; varying slopes and terrain; bumps; stumps; trees; roots; forest growth; cliffs; rock and rock drops; loose gravel and dirt; wet surfaces; holes and potholes; downed timber; debris; depressions; other bicyclists; dark tunnels; jumps; bridges; dirt or wood features/jumps; elevated features; and other constructed features; lift loading and unloading; padded and nonpadded barriers; paved surfaces; collisions with vehicles, pedestrians, wildlife, heavy equipment that is identified as a dangerous and/or hazardous work zone; properly marked permanent structures; and mechanical or other failure of rental or personal equipment;

(6) Post at the trail board maintained under subdivision (1) of this section the following language:

"WARNING – ASSUMPTION OF RISKS:

Under West Virginia law, every mountain bicyclist is considered to have accepted and to have knowledge of the risk of injury (including death) to the mountain bicyclist, as well as damage to property of the mountain bicyclist. Under West Virginia law, every mountain bicyclist has the duty to take the precautions that are necessary to avoid injury or death, as well as damage to property. West Virginia law sets forth certain limitations on the liability of trail system operators for injury or death to a bicyclist, as well as damage to property.

(7) Post a sign at all aerial passenger tramways that advises the passengers to seek advice if not familiar with riding the aerial passenger tramway; and

(8) Construct, operate, maintain, and repair any aerial passenger tramway in accordance with relevant and published national standards and safety requirements for such machinery.

**§20-20-4. Duties of passengers.**

No passenger shall:

(1) Board or embark upon or disembark from an aerial passenger tramway except at an area designated for such purpose;

(2) Drop, throw, or expel any object from an aerial passenger tramway;

(3) Perform any act that interferes with the running or operation of an aerial passenger tramway;

(4) Use any aerial passenger tramway if the passenger does not have the ability to use it safely without instruction, until the passenger has received sufficient instruction to permit safe usage;

(5) Embark on an aerial passenger tramway without engaging such safety or restraining devices as may be provided;

(6) Embark on an aerial passenger tramway without the authority, expressed or implied, of the trail system operator;

(7) Embark on an aerial passenger tramway while impaired by alcohol or drugs.

**§20-20-5. Duties of mountain bicyclists.**

(a) It is expressly recognized that mountain bicycling as a recreational sport is hazardous, regardless of all feasible safety measures which can be taken.

(b) Each mountain bicyclist expressly assumes the risk of, and legal responsibility for, any injury, loss or damage to person or



property which results from participation in the sport of mountain bicycling including, but not limited to, any injury, loss or damage caused by the following: uneven or slippery trail and feature conditions; varying slopes and terrain; bumps, stumps; trees; roots; forest growth; cliffs; rock and rock drops; loose gravel and dirt; wet surfaces; holes and potholes; downed timber; debris; depressions; other bicyclists; dark tunnels; jumps; bridges; dirt or wood features/jumps; elevated features and other constructed features; lift loading and unloading; padded and nonpadded barriers; paved surfaces; collisions with vehicles, pedestrians, wildlife, heavy equipment that is identified as a dangerous and/or hazardous work zone; properly marked permanent structures; and mechanical or other failure of rental or personal equipment.

(c) Each mountain bicyclist shall have the sole individual responsibility for knowing the range of his or her own ability to negotiate any trail. Further, it shall be the duty of each mountain bicyclist to ride within the limits of the mountain bicyclist's own ability; to maintain reasonable control of speed and course at all times while mountain bicycling; to heed all posted warnings; to mountain bicycle only on a bike trail area designated by the trail system operator; to assess the difficulty of mountain bike trails; to be able to stop or avoid other individuals and objects; and to refrain from acting in a manner which may cause or contribute to the injury of anyone.

(d) If involved in a collision with another individual that results in injury, it shall be the duty of a mountain bicyclist to remain in the vicinity of the collision until giving his or her name and current address to a representative of the trail system operator or to all other parties to the collision except to secure aid for a person injured in a collision. A mountain bicyclist who leaves the vicinity to secure aid shall provide his or her name and current address after securing the aid.

(e) If while mountain bicycling any mountain bicyclist collides with any object or person, except an obviously intoxicated person of whom the trail system operator is aware, the responsibility for such collision shall be solely that of the mountain bicyclist or

mountain bicyclists involved and not that of the trail system operator.

**§20-20-6. Liability of trail system operator.**

(a) A trail system operator may be liable for injury, loss, or damage caused by its failure to follow the duties set forth in section 3 of this article where the violation of duty is causally related to the injury, loss, or damage suffered.

(b) A trail system operator is not liable for any injury, loss, or damage caused by the negligence of any person who is not an agent or employee of the trail system operator.

(c) A trail system operator is not liable for any injury, loss, or damage caused by a mountain bicyclist or passenger's violation of any duty described in this article.

(d) Every trail system operator shall carry public liability insurance in limits of no less than \$100,000 per person, \$300,000 per occurrence, and \$10,000 for property damage.

**§20-20-7. Liability of passengers.**

Any passenger may be liable for injury, loss, or damage resulting from violations of the duties established in section four of this article where the violation of duty is causally related to the injury, loss, or damage suffered.

**§20-20-8. Liability of mountain bicyclist.**

Any mountain bicyclist may be liable for injury, loss, or damage resulting from violations of the duties established in section five of this article where the violation of duty is causally related to the injury, loss, or damage suffered.

**§20-20-9. Release of minor participant.**

A parent or guardian of a minor participant may execute a release assuming responsibility for the risks of the minor participant. The release must give notice to the minor participant, and the parent or guardian, of the risks associated with the release.

Engrossed Committee Substitute for House Bill 5544, as just amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—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. 5544) passed.

On motions of Senators Maynard and Woodrum, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 5544**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §20-17A-6, and to amend said code by adding thereto a new article, designated §20-20-1, §20-20-2, §20-20-3, §20-20-4, §20-20-5, §20-20-6, §20-20-7, §20-20-8, and §20-20-9, all relating to requiring certain reporting from the Mountaineer Trail Network Authority each year, beginning on December 1, 2024; to the creation of the Mountain Bike Responsibility Act; stating a legislative purpose; defining terms; and providing for duties of trail system operators, mountain bicyclists, and passengers on aerial passenger tramways.

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

**Eng. House Bill 5548**, Relating to modifying requirements imposed on any owner, operator, or manager within a tourism development project.

On third reading, coming up in regular order, with the unreported Economic Development committee amendment pending, and with the right having been granted on yesterday, Wednesday, March 6, 2024, for further amendments to be received on third reading, was reported by the Clerk.

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

**Eng. House Bill 5594**, Exempting the West Virginia School of Osteopathic Medicine, West Virginia University and Marshall University from contracts, agreements, or memorandums of understanding with spending units in state government with exceptions.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: Rucker—1.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 5594) 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 5604**, Relating to procurement by state spending units.

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

At the request of Senator Woodrum, unanimous consent was granted to offer an amendment to the bill on third reading.

Thereupon, on motion of Senator Woodrum, the following amendment to the bill was reported by the Clerk and adopted:

On page 6, section 26, by striking out the entirety of subsection (b) and inserting in lieu thereof a new subsection (b) to read as follows:

"(b) Local fiscal bodies may not obligate funds beyond the current fiscal year except for contracts executed to procure technology licensing service agreements or technology services including cloud computing. Local fiscal bodies shall justify entering into multi-year technology license service agreements or technology services including cloud computing by maintaining documentation of material fiscal savings to the body."

Engrossed Committee Substitute for House Bill 5604, as just amended, was then put upon its passage.

Pending discussion,

The question being "Shall Engrossed Committee Substitute for House Bill 5604 pass?"

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—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. 5604) passed.

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

**Eng. Com. Sub. for House Bill 5604**—A Bill to amend and reenact §5A-3-10 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section designated §5A-3-10f; to amend and reenact §5A-6-2 of said code; to amend said code by adding thereto a new section, designated §5A-6-4f; and to amend and reenact §11-8-26 of said code, all relating generally to procurement by state spending units and local fiscal bodies of technology and technical infrastructure products and services; modifying process for procurement of technical infrastructure by state spending units; and permitting local fiscal bodies to enter into multi-year technology license service agreements with justification.

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

**Eng. House Joint Resolution 21**, Amending the Constitution to prohibit persons not United States citizens from voting in any election held within this state.

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

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

The Senate proceeded to the ninth order of business.

**Eng. Com. Sub. for House Bill 4110**, Authorizing certain miscellaneous agencies and boards to promulgate legislative rules.

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

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

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

**ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS  
BOARDS AND AGENCIES TO PROMULGATE  
LEGISLATIVE RULES.**

**§64-9-1. West Virginia Board of Accountancy.**

The legislative rule filed in the State Register on July 24, 2023, authorized under the authority of §30-9-5 of this code, relating to the West Virginia Board of Accountancy (board rules and rules of professional conduct, 1 CSR 01), is authorized.

**§64-9-2. West Virginia Board of Acupuncture.**

The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-36-7 of this code, modified by the West Virginia Board of Acupuncture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 22, 2023, relating to the West Virginia Board of Acupuncture (applications for licensure to practice acupuncture, 32 CSR 03), is authorized.

**§64-9-3. West Virginia Department of Agriculture.**

(a) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §19-11B-10 of this code, modified by the West Virginia Department of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 16, 2023, relating to the West Virginia Department of Agriculture (frozen desserts and imitation frozen desserts, 61 CSR 04B), is authorized.

(b) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §19-16A-4 of this code, modified by the West Virginia Department of Agriculture to meet the objections of the Legislative Rule-Making Review Committee

and refiled in the State Register on November 3, 2023, relating to the West Virginia Department of Agriculture (certified pesticide applicator rules, 61 CSR 12A), is authorized.

(c) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §19-16A-4 of this code, modified by the West Virginia Department of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 26, 2023, relating to the West Virginia Department of Agriculture (licensing to pesticide businesses, 61 CSR 12B), is authorized.

(d) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §19-29-1 of this code, modified by the West Virginia Department of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 26, 2023, relating to the West Virginia Department of Agriculture (West Virginia molluscan shellfish, 61 CSR 23B), is authorized.

(e) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §19-12E-7 of this code, relating to the West Virginia Department of Agriculture (select plant-based derivative products, 61 CSR 30), is not authorized.

(f) The legislative rule filed in the State Register on December 15, 2022, authorized under the authority of §19-36-1 of this code, relating to the West Virginia Department of Agriculture (agritourism, 61 CSR 37), is authorized.

#### **§64-9-4. West Virginia Board of Barbers and Cosmetologists.**

(a) The legislative rule filed in the State Register on June 14, 2023, authorized under the authority of §30-27-5 of this code, modified by the West Virginia Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 11, 2023, relating to the West Virginia Board of Barbers and Cosmetologists (procedures, criteria, and curricula for examination and licensure of barbers, cosmetologists, nail



technicians, aestheticians, and hair stylists, 3 CSR 01), is authorized with the following amendments:

On page 3, by striking out the entirety of subsection 11.1. and inserting in lieu thereof a new subsection 11.1. to read as follows:

"11.1. The Board shall issue a professional license to practice to an applicant who holds a comparable valid license or other authorization to practice in that particular field from another state, if the applicant demonstrates that he or she:

11.1.a. Holds a valid license or other authorization to practice in another state which was granted after completion of educational requirements required in another state;

11.1.b. Does not have charges pending against his or her valid license or other authorization to practice and has never had a valid license or other authorization to practice revoked;

11.1.c. Has paid the applicable fee;

11.1.d. Is at least 18 years of age;

11.1.e. Has a high school diploma, a GED, or has passed the "ability to benefit test" approved by the United States Department of Education;

11.1.f. Is a citizen of the United States or is eligible for employment in the United States; and

11.1.g. Has presented a certificate of health issued by a licensed physician.

11.2 The Board shall recognize reciprocity for military barbers with a DD214."

(b) The legislative rule filed in the State Register on June 14, 2023, authorized under the authority of §30-1-23 of this code, modified by the West Virginia Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 24, 2023, relating to the West Virginia Board of Barbers

and Cosmetologists (application for waiver of initial licensing fees for certain individuals, 3 CSR 15), is authorized.

(c) The legislative rule filed in the State Register on June 14, 2023, authorized under the authority of §30-27-8a of this code, modified by the West Virginia Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 21, 2023, relating to the West Virginia Board of Barbers and Cosmetologists (cosmetology apprenticeship, 3 CSR 16), is authorized.

#### **§64-9-5. West Virginia Board of Examiners in Counseling.**

(a) The legislative rule filed in the State Register on October 6, 2023, authorized under the authority of §30-31-6 of this code, modified by the West Virginia Board of Examiners in Counseling to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 15, 2023, relating to the West Virginia Board of Examiners in Counseling (licensing rule, 27 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on October 6, 2023, authorized under the authority of §30-31-6 of this code, modified by the West Virginia Board of Examiners in Counseling to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 15, 2023, relating to the West Virginia Board of Examiners in Counseling (marriage and family therapist licensing rule, 27 CSR 08), is authorized.

#### **§64-9-6. West Virginia Board of Dentistry.**

The legislative rule filed in the State Register on July 25, 2023, authorized under the authority of §60A-9-5A of this code, modified by the West Virginia Board of Dentistry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 18, 2023, relating to the West Virginia Board of Dentistry (practitioner requirements for accessing the

West Virginia Controlled Substances Monitoring Program database, 5 CSR 10), is authorized.

**§64-9-7. West Virginia Board of Licensed Dietitians.**

(a) The legislative rule filed in the State Register on April 25, 2023, authorized under the authority of §30-35-4 of this code, modified by the West Virginia Board of Licensed Dietitians to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 11, 2023, relating to the West Virginia Board of Licensed Dietitians (licensure and renewal requirements, 31 CSR 01), is authorized with the following amendment:

On page 2, paragraph 4.1.2.3., by striking out "\$50" and inserting in lieu thereof "\$46".

(b) The legislative rule filed in the State Register on April 25, 2023, authorized under the authority of §30-35-4 of this code, modified by the West Virginia Board of Licensed Dietitians to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 11, 2023, relating to the West Virginia Board of Licensed Dietitians (continuing professional education requirements, 31 CSR 05), is authorized.

(c) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-35-4 of this code, relating to the West Virginia Board of Licensed Dietitians (telehealth practice, requirements, and definitions, 31 CSR 07), is authorized.

**§64-9-8. West Virginia Department of Economic Development.**

The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §20-19-7 of this code, modified by the West Virginia Department of Economic Development to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 13, 2023, relating to the West Virginia Department of Economic

Development (the operation of motorsports complexes and events, 145 CSR 19), is authorized with the following amendments:

On page 1, subsection 2.5., after the word "to" and before the word "impact" by inserting the word "reasonably";

On page 2, subsection 3.1, after the word "is" by inserting the word "reasonably";

On page 2, subsection 3.7., by striking out the words "at any time" and inserting in lieu thereof the words "during normal business hours";

On page 2, by striking out the entirety of subdivision 3.8.1. and inserting in lieu thereof a new subdivision 3.8.1. to read as follows:

"3.8.1. Helmet and eye protection requirements shall be governed by the safety procedures and requirements established by the sanctioning body hosting the motorsports events.";

On page 2, by striking out the entirety of subdivisions 3.8.2., 3.8.3., and 3.8.4;

On page 3, by striking out the entirety of subdivisions 3.9.1., 3.9.2., 3.9.3., 3.9.4., and 3.9.5., and inserting in lieu thereof of new subdivision 3.9.1. to read as follows:

"3.9.1. Safety belts, shoulder harness, and crotch belt requirements shall be governed by the safety procedures and requirements established by the sanctioning body hosting the motorsport event.";

On page 3, by striking out the entirety of subdivision 3.10.2. and inserting in lieu thereof a new subdivision 3.10.2. to read as follows:

"3.10.2. Vehicles participating in a race or race practice shall be governed by the safety procedures and requirements established by the sanctioning body hosting the motorsport event.";

On page 3, by striking out the entirety of subdivisions 3.11.1, 3.11.2., and 3.11.3 and inserting in lieu thereof a new subdivision 3.11.1. to read as follows:

"3.11.1. Clothing requirements for non-drivers shall be governed by the safety procedures and requirements established by the sanctioning body hosting the motorsports event."

On page 3, by striking out the entirety of subdivision 3.13.1. and inserting in lieu thereof a new subdivision 3.13.1 to read as follows:

"3.13.1. Fences shall be erected around the perimeter of the road course, with the specific requirements determined by a risk assessment considering the track's size, terrain, type of racing, and potential hazards."

On page 4 by striking out the entirety of subdivisions 3.13.2. and 3.13.3. and inserting in lieu thereof a new subdivision 3.13.2. to read as follows:

"3.13.2. If the infield of the road course is accessible by spectators or other non-driving participants, multiple access points shall also be provided to allow emergency entry and exit.";

On page 4, by striking out the entirety of subdivisions 3.14.1., 3.14.2., 3.14.3., 3.14.4., and 3.14.5. and inserting in lieu thereof a new subdivision 3.14.1. to read as follows:

"3.14.1. Flag station and flagmen requirements shall be governed by the safety procedures and requirements established by the sanctioning body hosting the motorsports event.";

On page 4, subsection 4.1., after the word "maintained" by adding the words "in accordance with the requirements established by the sanctioning body hosting the motorsports event.";

On page 5, by striking out the entirety of subsections 4.3. and 4.4.;

On page 5, by striking out the entirety of subsection 5.1. and inserting in lieu thereof a new subsection 5.1. to read as follows:

"5.1. All run-off areas at a motorsport facility must be of sufficient size and constructed with materials appropriate for the intended racing events to provide a reasonable expectation of minimizing injury or damage to the drivers and spectators in the event of an off-track excursion.";

On page 5, by striking out the entirety of subdivision 6.1.1. and 6.1.2. and inserting in lieu thereof a new subdivision 6.1.1. to read as follows:

"6.1.1. Fire services provided by a motorsports operator must ensure all emergency equipment meets or exceeds State safety requirements.";

And,

On page 5, by striking out the entirety of subdivisions 6.2.1. and 6.2.2.

#### **§64-9-9. State Election Commission.**

(a) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §3-8-8 of this code, modified by the State Election Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 25, 2023, relating to the State Election Commission (corporate and membership organization political activity, 146 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on September 13, 2023, authorized under the authority of §3-1A-5 of this code, modified by the State Election Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 17, 2023, relating to the State Election Commission (regulation of campaign finance, 146 CSR 03), is authorized.

(c) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §3-1-48 of this code, modified by the State Election Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 25, 2023, relating to the State Election Commission (application and approval process for Secretary of State expenditures from the County Assistance Voting Equipment Fund, 146 CSR 07), is authorized.

#### **§64-9-10. Board of Funeral Service Examiners.**

The legislature directs the Board of Funeral Service Examiners to amend the legislative rule filed in the State Register on April 1, 2023, authorized under the authority of §30-6-6 of this code, relating to the Board of Funeral Service Examiners (funeral director, embalmer, apprentice, courtesy card holder, and funeral establishment requirements, 175 CSR 02), with the following amendments:

On page 1, subsection 2.2, by striking out the word "general" and inserting in lieu thereof the word "direct";

On page 6, subdivision 5.7.1., by striking out the word "ABFSC" and inserting in lieu thereof the words "American Board of Funeral Home Education (ABFSE)";

On page 10, by striking out subdivision 12.1.2 in its entirety;

And,

By renumbering the remaining subdivisions.

#### **§64-9-11. West Virginia Massage Therapy Licensure Board.**

(a) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-37-6 of this code, modified by the West Virginia Massage Therapy Licensure Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 22, 2023, relating to the West Virginia Massage Therapy Licensure Board (general provisions, 194 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-37-6 of this code, modified by the West Virginia Massage Therapy Licensure Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 22, 2023, relating to the West Virginia Massage Therapy Licensure Board (schedule of fees, 194 CSR 04), is authorized.

(c) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-37-6 of this code, relating to the West Virginia Massage Therapy Licensure Board (establishment licensure, 194 CSR 07), is authorized.

**§64-9-12. West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners.**

The legislative rule filed in the State Register on July 24, 2023, authorized under the authority of §30-23-7 of this code, modified by the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 6, 2023, relating to the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners (medical imaging technologists, 18 CSR 01), is authorized.

**§64-9-13. West Virginia Board of Medicine.**

(a) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §30-3E-3 of this code, modified by the West Virginia Board of Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 1, 2023, relating to the West Virginia Board of Medicine (licensure, practice requirements, disciplinary and complaint procedures, continuing education, and physician assistants, 11 CSR 01B), is authorized.

(b) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §30-3-7 of this code, modified by the West Virginia Board of Medicine to meet the



objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 1, 2023, relating to the West Virginia Board of Medicine (continuing education for physicians and podiatric physicians, 11 CSR 06), is authorized.

(c) The legislative rule filed in the State Register on November 21, 2022, authorized under the authority of §30-3-7 of this code, relating to the West Virginia Board of Medicine (permitting and disciplinary procedures: educational permits for graduate medical interns, residents and fellows, 11 CSR 12), is authorized.

**§64-9-14. West Virginia Nursing Home Administrators Licensing Board.**

The legislative rule filed in the State Register on June 9, 2023, authorized under the authority of §30-25-6 of this code, relating to the West Virginia Nursing Home Administrators Licensing Board (nursing home administrators, 21 CSR 01), is authorized with the following amendment:

On page 13, by adding a new paragraph 6.2.a.3.G., to read as follows:

"6.2.a.3.G Failure to cooperate with OHFLAC or the designated Medicare Beneficiary and Family Centered Care – Quality Improvement Organization is grounds for disciplinary action and further review by the Board."

And,

By renumbering the remaining paragraphs.

**§64-9-15. West Virginia Board of Optometry.**

(a) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-8-6 of this code, modified by the West Virginia Board of Optometry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 16, 2023, relating to the West Virginia Board of Optometry (rules of the West Virginia

Board of Optometry, 14 CSR 01), is authorized with the following amendments:

On page 6, by striking out all of subsection 11.1. and inserting in lieu thereof a new subsection 11.1. to read as follows:

11.1. The Board may issue a temporary permit to practice optometry to an applicant who has graduated from an optometry school accredited by the Accreditation Council of Optometric Education or its successor. The applicant shall also meet the requirements of subsections 11.2-11.3. and pay the temporary permit fee required in the Board's rule, Schedule of Fees, W. Va. Code of State Rules, §14CSR5. The temporary permit may be issued before the applicant passes all sections of the prescribed exam administered by the National Board of Examiners in Optometry, its successor or equivalent. A certified copy of the applicant's accredited optometry school transcript indicating successful completion of the requirements for a doctorate degree in optometry must be submitted to qualify for a non-military temporary permit. The provisions of §14-1-18 of this rule establish alternative temporary permit requirements for members of the military and their spouses.;

On page 6, subdivision 11.2.1. by striking out the words "parts I and II of";

On page 6, subdivision 11.2.1. by striking out the words "registration for the exam National Board exam";

On page 7, by striking out all of subsection 11.3 and renumbering the remaining subsections.

And,

On page 9, subsection 16.1. by striking the words "if the spouse" and inserting in lieu thereof the word "and".

(b) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-8-6 of this code, modified by the West Virginia Board of Optometry to meet the objections of the Legislative Rule-Making Review Committee and

refiled in the State Register on November 15, 2023, relating to the West Virginia Board of Optometry (continuing education, 14 CSR 10), is authorized.

(c) The legislative rule filed in the State Register on July 31, 2023, authorized under the authority of §30-8-6 of this code, modified by the West Virginia Board of Optometry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 16, 2023, relating to the West Virginia Board of Optometry (injectable pharmaceutical agents certificate, 14 CSR 11), is authorized with the following amendments:

On page 3, after section 7, by adding a new section 8 to read as follows:

**"§14-11-8. Reporting.**

8.1. The certificate holder shall notify the primary care physician or other health care provider as identified by the patient receiving the medication by injection and shall document in the patient's record that the patient's primary care provider was notified of an injection given to the patient. The notification shall include the diagnosis, treatment, any adverse effects of the injection, and the expected results of the injection. In no event shall the reporting be construed as permission or approval of an order for treatment by injection.

8.2. If the patient does not have a primary care provider or refuses to provide written permission to report the injection to his or her primary care provider, the certificate holder may provide a written statement to the patient regarding the injections he or she received to give to his or her current primary care provider or any subsequent primary care provider.

8.3. The certificate holder shall maintain a logbook of all injections and submit it to the Board upon request. The logbook shall include:

8.3.a. The patient's initials, age, gender and race;

8.3.b. The purpose of the injection;

8.3.c. The name of the medication administered and the type and location of the injection;

8.3.d. The treatment guidelines which were followed and which must be compliant with the guidelines approved by the Board:

8.3.e. The name and certification or licensure level of any persons working in conjunction with the certificate holder to administer medication through injections; and

8.3.f. How the primary care provider was notified that the patient needed an injection.

8.4. The Board may require a certificate holder to supply the complete medical record for any of the patients listed in the logbook for review and may also request an audit of the certificate holder's full records to ensure compliance with injection certificate requirements.

8.5. If a patient has an adverse reaction to the injection, the certificate holder shall provide the Board with an incident report, within 5 business days, listing the details of the adverse reaction and the measures used to correct that reaction.

8.6. A certificate holder's reports containing patient Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) patient privacy requirements.";

And,

Renumbering the following sections accordingly.

(d) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-8-6 of this code, modified by the West Virginia Board of Optometry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 15, 2023, relating to the

West Virginia Board of Optometry (eyelid procedures, 14 CSR 14), is authorized with the following amendments:

On page 1, subsection 3.1, after the word 'adnexa' by adding the following: 'that do not extend beyond the dermal layer of the skin or mucus membranes';

On page 1, after section 3, by adding a new section 4 to read as follows:

**"§14-14-4. Exclusions.**

An optometrist may not perform:

4.1. Surgery related to removal of the eye from a living human being;

4.2. Surgery requiring full thickness incision or excision of the cornea or sclera other than paracentesis in an emergency situation requiring immediate reduction of the pressure inside the eye;

4.3. Penetrating keratoplasty (corneal transplant) or lamellar keratoplasty;

4.4. Surgery requiring incision of the iris or ciliary body;

4.5. Surgery of the eyelid for eyelid malignancies or mechanical repair of blepharochalasis, ptosis, or tarsorrhaphy;

4.6. Surgery of the bony orbit, including orbital implants;

4.7. Incisional or excisional surgery of the lacrimal system other than lacrimal probing or related procedures; or

4.8. Surgery requiring full thickness conjunctivoplasty."

**§64-9-16. West Virginia Board of Osteopathic Medicine.**

(a) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-14-14 of this code, modified by the West Virginia Board of Osteopathic Medicine to meet the objections of the Legislative Rule-Making Review

Committee and refiled in the State Register on September 15, 2023, relating to the West Virginia Board of Osteopathic Medicine (licensing procedures for osteopathic physicians, 24 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-3E-3 of this code, modified by the West Virginia Board of Osteopathic Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 15, 2023, relating to the West Virginia Board of Osteopathic Medicine (osteopathic physician assistants, 24 CSR 02), is authorized.

**§64-9-17. West Virginia Board of Pharmacy.**

(a) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-5-7 of this code, modified by the West Virginia Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 26, 2023, relating to the West Virginia Board of Pharmacy (licensure and practice of pharmacy, 15 CSR 01), is authorized with the following amendments:

On page 16, subdivision 12.3.1. by striking out the word "current" and inserting in lieu thereof 2023;

On page 14, subsection 9.4, by striking out 15 CSR 19 and inserting in lieu thereof 15CSR 20;

On page 16, subdivision 12.3.2. by striking out the word "current" and inserting in lieu thereof 2023;

And,

On page 19, subdivision 13.2.2. by striking out the word "current" and inserting in lieu thereof 2023;

(b) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-5-7 of this code, relating to the West Virginia Board of Pharmacy (Board of

Pharmacy rules for continuing education for licensure for pharmacists, 15 CSR 03), is authorized.

(c) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-5-7 of this code, relating to the West Virginia Board of Pharmacy (Board of Pharmacy rules for registration of pharmacy technicians, 15 CSR 07), is authorized.

(d) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-5-7 of this code, modified by the West Virginia Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 26, 2023, relating to the West Virginia Board of Pharmacy (immunizations administered by pharmacists, pharmacy interns, and pharmacy technicians, 15 CSR 12), is authorized.

(e) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-5-7 of this code, modified by the West Virginia Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 26, 2023, relating to the West Virginia Board of Pharmacy ( Board of Pharmacy rules for centralized prescription processing, 15 CSR 14), is authorized.

(f) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-5-7 of this code, modified by the West Virginia Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 26, 2023, relating to the West Virginia Board of Pharmacy (regulations governing pharmacy permits, 15 CSR 15), is authorized.

(g) The legislative rule filed in the State Register on July 20, 2023, authorized under the authority of §30-5-7 of this code, relating to the West Virginia Board of Pharmacy (Board of Pharmacy rules for the substitution of biological pharmaceuticals, 15 CSR 17), is authorized.

**§64-9-18. Board of Professional Surveyors.**

The legislative rule filed in the State Register on July 31, 2023, authorized under the authority of §30-13A-6 of this code, modified by the Board of Professional Surveyors to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 3, 2023, relating to the Board of Professional Surveyors (examination and licensing of professional surveyors in West Virginia, 23 CSR 01), is authorized.

**§64-9-19. Board of Examiners of Psychologists.**

(a) The legislative rule filed in the State Register on July 25, 2023, authorized under the authority of §30-21-6 of this code, modified by the Board of Examiners of Psychologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 15, 2023, relating to the Board of Examiners of Psychologists (disciplinary and complaint procedures for psychologists, 17 CSR 04), is authorized with the following amendments:

On page 2, section 5, subsection 6, after the word "shall" by inserting the following: "first determine whether the conduct alleged in the complaint, if true, would constitute a violation of the rules of the Board or otherwise falls within the jurisdiction of the Board. Upon completing that initial determination, the Board shall";

On page 3, section 5, subsection 6, subdivision 2, after the word "Board" by inserting the words "and dismissed";

On page 3, section 5, subsection 7, by striking out the word "The" and inserting in lieu thereof "If it determines that the complaint falls within its jurisdiction, the";

On page 3, section 5, subsection 12, by striking out the words "unless the complaint is determined to fall within the provisions of sub-division 5.6.2. of this rule" and inserting in lieu thereof the words "initially determined pursuant to sub-section 5.6 of this rule to be within its jurisdiction"; and



On page 4, section 5, subsection 17, after the words "discretion to dismiss a complaint hereunder", by inserting the words "or under subsection 5.6".

(b) The legislative rule filed in the State Register on July 25, 2023, authorized under the authority of §30-21-6 of this code, modified by the Board of Examiners of Psychologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 15, 2023, relating to the Board of Examiners of Psychologists (contested case hearing procedure, 17 CSR 05), is authorized.

**§64-9-20. West Virginia Real Estate Commission.**

(a) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-40-8 of this code, modified by the West Virginia Real Estate Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 27, 2023, relating to the West Virginia Real Estate Commission (licensing real estate brokers, associate brokers, and salespersons and the conduct of brokerage business, 174 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-40-8 of this code, relating to the West Virginia Real Estate Commission (schedule of fees, 174 CSR 02), is authorized.

(c) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-40-8 of this code, modified by the West Virginia Real Estate Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 27, 2023, relating to the West Virginia Real Estate Commission (requirements for real estate courses, course providers, and instructors, 174 CSR 03), is authorized.

**§64-9-21. West Virginia Board of Registered Nurses.**

(a) The legislative rule filed in the State Register on August 1, 2023, authorized under the authority of §30-7-4 of this code,

modified by the West Virginia Board of Registered Nurses to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 16, 2023, relating to the West Virginia Board of Registered Nurses (policies, standards and criteria for the evaluation, approval and national nursing accreditation of prelicensure nursing education programs, 19 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on July 26, 2023, authorized under the authority of §30-7-4 of this code, modified by the West Virginia Board of Registered Nurses to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 16, 2023, relating to the West Virginia Board of Registered Nurses (requirements for registration and licensure and conduct constituting professional misconduct, 19 CSR 03), is authorized with the following amendments:

On page 2, paragraph 3.1.a.4. by striking out the word "that" and inserting in lieu thereof the word "this";

On page 3, paragraph 3.1.b.5., by striking out the word "state" and inserting in lieu thereof the words "West Virginia";

On page 4, paragraph 3.1.c.4., by striking out the word "state" and inserting in lieu thereof the words "West Virginia";

And,

On page 6, subdivision 6.1.e., by striking out the word "state" and inserting in lieu thereof the words "West Virginia";

(c) The legislative rule filed in the State Register on July 26, 2023, authorized under the authority of §30-7-4 of this code, relating to the West Virginia Board of Registered Nurses (advanced practice registered nurse licensure requirements, 19 CSR 07), is authorized.

(d) The legislative rule filed in the State Register on July 26, 2023, authorized under the authority of §30-7-4 of this code,

relating to the West Virginia Board of Registered Nurses (fees for services rendered by the board, 19 CSR 12), is authorized.

**§64-9-22. West Virginia Board of Respiratory Care.**

The legislative rule filed in the State Register on June 8, 2023, authorized under the authority of §30-34-6a of this code, modified by the West Virginia Board of Respiratory Care to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 28, 2023, relating to the West Virginia Board of Respiratory Care (student temporary permit, 30 CSR 09), is authorized with the following amendment:

On page 2, subsection 3.2, after the word "review" by inserting the words "and approval".

**§64-9-23. Secretary of State.**

(a) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §3-1A-6 of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 25, 2023, relating to the Secretary of State (guidelines for the use of nicknames and other designations on the ballot, 153 CSR 14), is authorized.

(b) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §3-1A-6 of this code, relating to the Secretary of State (Combined Voter Registration and Driver Licensing Fund, 153 CSR 25), is authorized.

(c) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §3-1A-6 of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 25, 2023, relating to the Secretary of State (minimum standards for election administration, infrastructure, and security minimum standards and reserve funding, 153 CSR 55), is authorized.

**§64-9-24. State Treasurer.**

(a) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §36-8-28 of this code, modified by the West Virginia State Treasurer to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 2, 2023, relating to the West Virginia State Treasurer (enforcement of the Uniform Unclaimed Property Act, 112 CSR 05), is authorized with the following amendments:

On page 1, line 6, in the name of the Series, following the words "PROPERTY ACT", by adding the words "AND THE UNKNOWN AND UNLOCATABLE INTEREST OWNERS ACT";

And,

On page 7, subsection 15.4, following the words "requirements of section", by striking out the number "10" and inserting in lieu thereof the number "9."

(b) The legislative rule filed in the State Register on July 13, 2023, authorized under the authority of §18-30A-6 of this code, modified by the West Virginia State Treasurer to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 2, 2023, relating to the West Virginia State Treasurer (Jumpstart Savings Program, 112 CSR 20), is authorized.

(Senator Trump in the Chair.)

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

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

Following discussion,

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

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

The bill (Eng. Com. Sub. for H. B. 4110), as amended, was then ordered to third reading.

**Eng. House Bill 4292**, Providing for enhanced damages for non-payment of royalties due from oil, natural gas, or natural gas liquids production.

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

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

**Eng. House Bill 4297**, Law Enforcement Officers Safety 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:

### **ARTICLE 3. DIVISION OF CORRECTIONS AND REHABILITATION.**

#### **§15A-3-10. Law-enforcement powers of employees; authority to carry firearms.**

(a) Other than as outlined in this section, a correctional officer employed by the division is not a law-enforcement officer as that term is defined in §30-29-1 of this code.

(b) The commissioner is a law-enforcement official, and has ~~the authority to use~~ may, and permit and allow or disallow his or her designated employees to use, publicly provided carriage to travel from their residences to their workplace and return: *Provided*, That the usage is subject to the supervision of the commissioner and is directly connected with and required by the nature and in the performance of the official's or designated employee's duties and responsibilities.

(c) All employees of the division are responsible for enforcing rules and laws necessary for the control and management of correctional units and the maintenance of public safety that is within the scope of responsibilities of the division.

(d) Persons employed by the Division of Corrections and Rehabilitation as correctional officers ~~are authorized and empowered to~~ may make arrests of persons already charged with a violation of law who surrender themselves to the correctional officer, ~~to~~ arrest persons already in the custody of the division for violations of law occurring in the officer's presence, ~~to~~ detain or arrest persons for violations of state law committed on the property of any facility under the jurisdiction of the commissioner, and ~~to~~ conduct investigations, pursue, and apprehend escapees from the custody of a facility of the division.

(e) The commissioner may designate correctional employees as correctional peace officers who ~~have the authority~~ may:

(1) ~~To detain~~ Detain persons for violations of state law committed on the property of any state correctional institution;

(2) ~~To conduct~~ Conduct investigations regarding criminal activity occurring within a correctional facility;

(3) ~~To execute~~ Execute criminal process or other process in furtherance of these duties; and

(4) ~~To apply~~ Apply for, obtain, and execute search warrants necessary for the completion of ~~his or her~~ their duties and responsibilities.

(f) The Corrections Special Operations Team is continued and consists of the Corrections Emergency Response Team, the K9 unit, and the Crisis Negotiations team created under the former Division of Corrections. The Corrections Special Operations Team serves as the first responder necessary for the protection of life, liberty, and property. It has limited law-enforcement authority regarding matters occurring at jails, correctional centers, and juvenile centers, and arrest powers to apprehend escapees, absconders, and in all matters arising on the grounds of a facility under the care and control of the commissioner: *Provided, That* at any time the Corrections Special Operations Team is apprehending an escapee or an absconder outside the confinement of the facility grounds, it does so with the assistance and cooperation of local law enforcement or the West Virginia State Police.

(g) Notwithstanding any provision of this code to the contrary, the commissioner may issue a certificate authorizing any correctional employee who has successfully completed the division's training program for firearms certification to carry a firearm in the performance of his or her official duties. The training program shall be approved by the commissioner and be equivalent to the training requirements applicable to deputy sheriffs for the use and handling of firearms. Any correctional employee authorized to do so by the commissioner may carry division-issued firearms while in the performance of his or her official duties, which shall include travel to and from work sites. To maintain certification, a correctional employee must successfully complete an annual firearms qualification course equivalent to that required of certified law-enforcement officers as established by the law enforcement professional standards program. The certificate shall be on a form prescribed by the commissioner and shall bear his or her official signature.

(h) In recognition of the duties of their employment supervising the confinement and transportation of inmates, and their arrest powers referenced in this section which constitute law enforcement, correctional officers with the power to arrest and who have been authorized to carry firearms by the Commissioner are

determined to be qualified law-enforcement officers as that term is used in 18 U.S.C. § 926B.

(i) Any state designated correctional officer may carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U.S.C. § 926B, if the following criteria are met:

(1) The Commissioner of Corrections has a written policy authorizing correctional officers to carry a concealed firearm for self-defense purposes;

(2) There is in place a requirement that the designated correctional officers annually qualify in the use of a firearm with standards for qualification which are equal to, or exceed, those required of sheriff's deputies by the Law-Enforcement Professional Standards Program;

(3) The Commissioner issues a photographic identification and certification card which identify the designated correctional officers as qualified law-enforcement employees pursuant to the provisions of this subsection.

(j) Any policy instituted pursuant to this section shall include provisions which:

(1) Preclude or remove a person from participation in the concealed firearm program;

(2) Preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm and;

(3) Prohibit persons from carrying a firearm pursuant to the provisions of this subsection while in an impaired state as defined in §17C-5-2 of this code.

(k) Any designated correctional officer who participates in a program authorized by the provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.



(l) It is the intent of the Legislature in enacting the amendments to this section during the 2024 regular session of the Legislature to authorize designated correctional officers wishing to do so to meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. § 926B.

(m) The privileges authorized by the amendments to this section enacted during the 2024 regular session of the Legislature are wholly within the discretion of the Commissioner.

The bill (Eng. H. B. 4297), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4350**, Relating to appointment of candidates after filing period.

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:

## **ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.**

### **§3-5-11. Withdrawals; filling vacancies in candidacy; publication.**

a) A candidate who has filed a certificate of announcement and wishes to withdraw and decline to stand as a candidate for the office shall file a signed and notarized statement of withdrawal on a form provided by the Secretary of State with the same officer with whom the certificate of announcement was filed. If the notarized statement of withdrawal is received by the proper officer by the deadlines set forth in subsection (b) of this section, the candidate's withdrawal is final and his or her name shall not be certified as a candidate nor printed on any ballot. If a candidate files a notarized statement of withdrawal after the deadlines set forth in

subsection (b) of this section, the candidate shall not be withdrawn and the candidate's name shall remain on the ballot.

(b) Deadlines for withdrawing as a candidate:

(1) For primary or special primary elections or nonpartisan elections held in conjunction with a primary election: The notarized statement of withdrawal must be received by the same officer with whom the certificate of announcement was filed by the close of business of that officer not later than the third Tuesday following the close of the candidate filing period.

(2) For general or special general elections or nonpartisan elections held in conjunction with a general election: The notarized statement of withdrawal must be received by the same officer with whom the certificate of announcement was filed by the close of business of that officer not later than ~~eighty-four~~ 84 days before the general election.

(c) Upon request of the candidate's family, the board of ballot commissioners may remove the name of a candidate who dies before the ballots are printed. If a candidate dies after the ballots are printed but before the election, the clerk of the county commission shall give a written notice which shall be posted with the sample ballot at each precinct with the county to the following effect: "To the voter: (name) of (residence), a candidate for (office) is deceased."

(d) If after the time is closed for announcing as a candidate there is a vacancy on the ballot caused by the failure of any person of a particular party to file for each available seat of each available office, ~~the executive committee of the party for the political division within which such candidate was to be voted for, or its chair if the committee fails to act, may fill the vacancy and certify the candidate named to the appropriate filing officer: *Provided*, That for a delegate district or senatorial district situated entirely within a single county, the county executive committee, or its chairperson if the committee fails to act, may fill the vacancy and certify the candidate named to the appropriate filing officer. Certification of the appointment by the executive committee or its~~

~~chair, the candidate's certificate of announcement, and the filing fee must be received by the appropriate filing officer as follows: For an appointment by an executive committee, no later than the second Friday following the close of filing, for an appointment by its chair, no later than the third Tuesday following the close of filing: *Provided, however,* That any candidate appointed to an intra county delegate or senatorial district by a county executive committee for that district pursuant to the process and by the deadline provided in this subsection shall not be refused certification for placement on the 2022 primary election ballot for that reason. A candidate appointed to fill a vacancy on the ballot under this subsection shall have his or her name printed on the primary ballot for that party. that vacancy may not be filled: *Provided,* That if no person in any party has filed to run for an available seat or available office by the close of the candidate filing period, the relevant party executive committee may fill the vacancy and submit the name to the appropriate filing officer no later than the third Tuesday following the close of the filing period: *Provided, however,* That if the executive committee fails to make an appointment within the time required, the chairperson of the executive committee may make the appointment not later than two days following the deadline for the executive committee; *Provided further,* That for a delegate district or senatorial district situated entirely within a single county, the county executive committee, or its chairperson if the committee fails to act, may fill the vacancy and certify the candidate named to the appropriate filing officer.~~

(e) No other vacancy shall be filled after the date of the primary election, except as provided in §3-5-19 of this code.

~~(e) The amendments to this section enacted by the Legislature during the 2022 Regular Session shall be retrospective to January 30, 2022.~~

### **§3-5-19. Vacancies in nominations; how filled; fees.**

(a) If any vacancy occurs in the party nomination of candidates for office nominated at the primary election or by appointment under the provisions of section ~~eleven~~ 11 of this article, the

vacancies may be filled, subject to the following requirements and limitations:

(1) Each appointment made under this section shall be made by the executive committee of the political party for the political division in which the vacancy occurs: *Provided*, That if the executive committee holds a duly called meeting in accordance with §3-1-9 of this code but fails to make an appointment or fails to certify the appointment of the candidate to the proper filing officer within the time required, the chairperson of the executive committee may make the appointment not later than two days following the deadline for the executive committee: *Provided, however*, That for a delegate district or senatorial district situated entirely within a single county, the county executive committee, or its chairperson if the committee fails to act, may fill the vacancy and certify the candidate named to the appropriate filing officer.

(2) Each appointment made under this section is complete only upon the receipt by the proper filing officer of the certificate of appointment by the executive committee, or its chairperson, as the case may be, the certificate of announcement of the candidate as prescribed in section seven of this article and, except for appointments made under subdivision (4), (5), (6) or (7) of this subsection, the filing fee or waiver of fee as prescribed in section eight or eight-a of this article. The proper filing officer is the officer with whom the original certificate of announcement is regularly filed for that office.

(3) If a vacancy in nomination will be caused by the failure of a candidate to file for an office, or by withdrawal of a candidate, ~~no later than the third Tuesday following the close of candidate filing pursuant to the provisions of section eleven of this article, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than 30 days after the last day to file a certificate of announcement pursuant to section seven of this article: *Provided*, That in no case shall any such vacancy be filled after the date of the primary election.~~ the vacancy may not be filled.

(4) If a vacancy in nomination is caused by the disqualification of a candidate and the vacancy occurs not later than 84 days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer not later than 78 days before the general election. A candidate may be determined disqualified if a written request is made by an individual with information to show a candidate's ineligibility to the State Election Commission no later than 84 days before the general election explaining grounds why a candidate is not eligible to be placed on the general election ballot or not eligible to hold the office, if elected. The State Election Commission shall review the reasons for the request. If the commission finds the circumstances warrant the disqualification of the candidate, the commission shall authorize appointment by the executive committee to fill the vacancy. Upon receipt of the authorization, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than 78 days before the general election.

(5) If a vacancy in nomination is caused by the incapacity of the candidate and if the vacancy occurs not later than 84 days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than 78 days before the general election.

~~(6) If a vacancy in nomination is caused by the timely filing of a notarized statement of withdrawal, according to section eleven of this article, of a candidate whose name would otherwise appear on the general election ballot, a replacement on the general election ballot may be appointed by the executive committee and certified to the proper filing officer no later than 78 days before the general election.~~

~~(7)~~(6) If a vacancy in nomination is caused by the death of the candidate occurring no later than 25 days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than 21 days following the date of death or no later than 22 days before the general election, whichever date occurs first.

(b) Except as otherwise provided in §3-10-1 *et seq.* of this code, if any vacancy occurs in a partisan office or position other than political party executive committee, which creates an unexpired term for a position which would not otherwise appear on the ballot in the general election, and the vacancy occurs after the close of candidate filing for the primary election but not later than 84 days before the general election, a nominee of each political party may be appointed by the executive committee and certified to the proper filing officer no later than 78 days before the general election. Appointments shall be filed in the same manner as provided in subsection (a) of this section, except that the filing fee shall be paid before the appointment is complete.

(c) When a vacancy occurs in the board of education after the close of candidate filing for the primary election but not later than 84 days before the general election, a special candidate filing period shall be established. Candidates seeking election to any unexpired term for board of education shall file a certificate of announcement and pay the filing fee to the clerk of the county commission no earlier than the first Monday in August and no later than 77 days before the general election.

~~(d) The amendments to this section enacted by the Legislature during the 2022 Regular Session shall be retrospective to January 30, 2022.~~

The bill (Eng. Com. Sub. for H. B. 4350), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4399**, Creating the equitable right to expungement.

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

At the request of Senator Weld, as vice 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 Weld, 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:

**ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.**

**§61-11-22. Pretrial diversion agreements; conditions; drug court programs.**

(a) A prosecuting attorney of any county of this state or a person acting as a special prosecutor may enter into a pretrial diversion agreement with a person charged with an offense against the State of West Virginia, when he or she considers it to be in the interests of justice. The agreement is to be in writing and is to be executed in the presence of the person's attorney, unless the person has executed a waiver of counsel.

(b) Any agreement entered into pursuant to the provisions of subsection (a) of this section may not exceed 24 months in duration. The duration of the agreement must be specified in the agreement. The terms of any agreement entered into pursuant to the provisions of this section may include conditions similar to those set forth in §62-12-9 of this code relating to conditions of probation. The agreement may require supervision by a probation officer of the circuit court, with the consent of the court. An agreement entered into pursuant to this section must include a provision that the applicable statute of limitations be tolled for the period of the agreement.

(c) A person who has entered into an agreement for pretrial diversion with a prosecuting attorney and who has successfully complied with the terms of the agreement is not subject to prosecution for the offense or offenses described in the agreement or for the underlying conduct or transaction constituting the offense or offenses described in the agreement, unless the agreement includes a provision that upon compliance the person agrees to plead guilty or nolo contendere to a specific related offense, with or without a specific sentencing recommendation by the prosecuting attorney.

(d) No person charged with a violation of the provisions of §17C-5-2 of this code may participate in a pretrial diversion program: *Provided*, That a court may defer proceedings in accordance with §17C-5-2b of this code.

(e) No person is eligible for pretrial diversion programs if charged with:

(1) A felony crime of violence against the person where the alleged victim is a family or household member as defined in ~~§48-27-203~~ §48-27-204 of this code;

(2) A violation of §61-8-12 of this code or a felony violation of the provisions of §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, and §61-8D-1 *et seq.* of this code;

(3) A violation of §61-2-9a(a) of this code;

(4) A violation of §61-2-9d of this code;

(5) A violation of § 61-2-28 of this code; or

(6) A violation of §61-2-9 of this code where the alleged victim is a family or household member as defined in ~~§48-27-203~~ §48-27-204 of this code.

### **§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 Rule 11 of the West Virginia Rules of Criminal Procedure 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 §62-11A-1 *et seq.*, §62-11B-1 *et seq.*, and §62-11C-1 *et seq.* of this code.