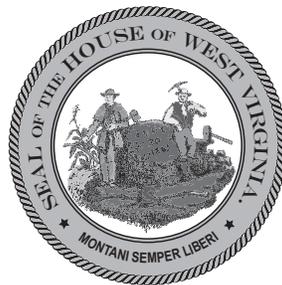


West Virginia Legislature

JOURNAL
of the
HOUSE of DELEGATES

Eighty-Fourth Legislature
First Regular Session

Held at Charleston
Published by the Clerk of the House



March 9, 2019
SIXTIETH DAY

Saturday, March 9, 2019

SIXTIETH DAY

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

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

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

The Clerk proceeded to read the Journal of Friday, March 8, 2019, being the first order of business, when the further reading thereof was dispensed with and the same approved.

Conference Committee Report Availability

At 11:17 a.m., the Clerk announced that the report of the Committee of Conference on **Com. Sub. for S. B. 481**, Relating to Judicial Vacancy Advisory Commission, shall be available in the Clerk's Office.

Committee Reports

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

By Delegates Westfall, Azinger, Barrett, Bates, Brown, Capito, Criss, Espinosa, Estep-Burton, Graves, Hartman, Hott, Householder, D. Jeffries, Lovejoy, P. Martin, McGeehan, Nelson, Porterfield, Robinson, Rowe, Shott, Sponaugle, Waxman and Williams:

H. C. R. 108 - "Requesting the Joint Committee on Government and Finance to study the feasibility and propriety of authorizing and regulating a program for the rental of privately owned passenger motor vehicles through what is commonly known as a peer-to-peer car sharing program, establishing a regulatory framework to enable peer-to-peer car sharing entities to operate in West Virginia and the manner in which individually owned passenger motor vehicles are rented, maintained and insured in the program."

Whereas, The technology evolution is constantly advancing the means of doing business in all industries, including the business of the rental of motor vehicles; and

Whereas, Americans are increasingly utilizing the "sharing" economy to provide as well as to obtain transportation, travel and overnight accommodations; customers use services like Airbnb, Uber, and Lyft, relying on peers, instead of businesses for travel and transportation and drivers and hosts have created cottage industries in various parts of the country to generate income by renting their cars and homes, charging rates for these services; and

Whereas, The rental of individually owned passenger motor vehicles to the public under rental agreements, known as 'peer-to-peer carsharing' has become an increasing common transaction either already authorized and occurring or for which authorization is currently being sought throughout the country; and

Whereas, There has been a nationwide emergence of private vehicle rental program providers through what is known as peer-to-peer car sharing programs, who operate, facilitate or administer the rental of individually owned private passenger motor vehicles to the public via digital and or other electronic means, without the necessity of personal, direct, in-person contact between the parties; and

Whereas, Currently, West Virginia law provides that a person may not engage in a daily car rental business unless licensed by the Commissioner of Motor Vehicles and comply with all of the duties and requirements set forth in W. Va. Code §17A-6D-1 *et seq.*; furthermore, a person may not rent a motor vehicle to another person unless the renter is licensed to operate a motor vehicle, the owner of the motor vehicle has inspected the license of the renter and has compared and verified the signature of the operator's license with the signature of such person, written in his or her presence, thereby inhibiting the ability to conduct rental transactions via digital or electronic means; and

Whereas, West Virginia law also provides that persons who rent a motor vehicle to another person must keep records of the registration of the rented vehicle as well as information about the person renting the vehicle, which shall be open to inspection by law enforcement and the DMV; and

Whereas, There are other issues to be considered in the peer-to-peer car rental business platform of renting individually owned passenger motor vehicles via digital or electronic means, including issues of insurance coverage on individually owned passenger vehicles used for hire, as well as liability issues and potential regulation of such transactions and activity that may be subject to regulation as a motor carrier for hire; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance study the feasibility and propriety of authorizing and regulating a program for the rental of privately owned passenger motor vehicles through what is commonly known as a peer-to-peer car sharing program, establishing a regulatory framework to enable peer-to-peer car sharing entities to operate in West Virginia and the manner in which individually owned passenger motor vehicles are rented, maintained and insured in the program; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the Legislature, on the first day of the regular session, 2020, on its findings, conclusions and recommendations together with drafts of any legislation to effectuate its recommendations; and, be it

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

At the request of Delegate Summers, and by unanimous consent, reference of the resolution (H. C. R. 108) to a committee was dispensed with, and it was taken up for immediate consideration and adopted.

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

Mr. Speaker (Mr. Hanshaw), Chair of the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration:

S. C. R. 5, Home of Coach Bob Bolen Mountain State University 2004 NAIA Champions sign,

S. C. R. 6, US Army SP4 Darrell Gregory Triplett Memorial Bridge,

S. C. R. 16, US Army SP4 Wilbur Allen Smith Memorial Bridge,

S. C. R. 17, Sardis District Veterans Memorial Bridge,

Com. Sub. for S. C. R. 24, Hazel Dickens Memorial Bridge,

Com. Sub. for S. C. R. 26, Thompson-Lambert Memorial Bridge,

Com. Sub. for S. C. R. 28, US Army SP5 James Henry Caruthers Memorial Road,

S. C. R. 31, SGT James E. Mattingly Bridge,

S. C. R. 32, US Army SSG Henry Kilgore Bridge,

Com. Sub. for S. C. R. 34, US Army SPC Julian Lee Berisford Memorial Bridge,

Com. Sub. for S. C. R. 36, US Army CPL Cory M. Hewitt Memorial Bridge,

S. C. R. 38, Urging CSX support New River Train,

And,

Com. Sub. for S. C. R. 45, US Army Corporal T-5 Albert John "Engine" Arco Memorial Bridge,

And reports the same back with the recommendation that they each be adopted.

In the absence of objection, the resolutions (S. C. R. 5, S. C. R. 6, S. C. R. 16, S. C. R. 17, Com. Sub. for S. C. R. 24, Com. Sub. for S. C. R. 26, Com. Sub. for S. C. R. 28, S. C. R. 31, S. C. R. 32, Com. Sub. for S. C. R. 34, Com. Sub. for S. C. R. 36, S. C. R. 38 and Com. Sub. for S. C. R. 45) were each taken up for immediate consideration and adopted.

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

Messages from the Executive

The following communications were laid before the House of Delegates and reported by the Clerk:

JIM JUSTICE
Governor of West Virginia

March 7, 2019

EXECUTIVE MESSAGE NO. 3 2019 REGULAR SESSION

The Honorable Roger Hanshaw
Speaker, West Virginia House of Delegates
State Capitol, Rm 228M
Charleston, WV 25305

Dear Mr. Speaker:

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

Administration, West Virginia Department of; Public Records Management and Preservation Act Annual Report

Administration, West Virginia Department of; Public Defender Services Annual Report Fiscal Year 2018

Aeronautics Commission, West Virginia Department of Transportation; 2018 Annual Report

Alcohol Beverage Control Administration, West Virginia; 2018 Fiscal Year Annual Report

Architects, West Virginia Board of; Annual Report FY 2018 & FY 2017

Attorney General, State of West Virginia; Biennial Report and Official Opinions for the Fiscal Years Beginning July 1, 2016 and Ending June 30, 2018

Attorney General, State of West Virginia; Annual Report 2018

Attorney General, State of West Virginia; 2018 Annual Report on the Activities of the Consumer Protection and Antitrust Division

Auditor's Office, West Virginia State; West Virginia State Dollar Report 2018

Barbour County, West Virginia; Financial Statements of Barbour County for the Fiscal Year Ended June 30, 2018

Board of Risk and Insurance Management, State of West Virginia Department of Administration; Annual Report for fiscal year ending June 30, 2017

Bureau of Senior Services, State of West Virginia; FY 2017 Annual Report

Chiropractic Examiners, State of West Virginia Board of; Annual Report 2016-2018

Commercial Motor Vehicle Weight and Safety Enforcement Advisory Committee; 2018 Annual Report

Consolidated Public Retirement Board's, West Virginia; (West Virginia State Police Disability Experience) Annual Report Fiscal Year 2018

Consumer Advocate Offices of the WV Insurance Commissioner, West Virginia Office of; 2018 Annual Report

Counseling, West Virginia Board of; 2016-2018 Annual Report

Culture and History, West Virginia Division of; Annual Report 2017-2018

Department of Health and Human Resources, State of West Virginia; SFY 2017 Sanction Policy Change Data Annual Report

Education, West Virginia Department and Board of; 2018 State of Education Report

Environmental Protection (Office of Oil and Gas), West Virginia Department of; FY 2017 Annual Report for Fund 3323

Environmental Protection (Office of Oil and Gas), West Virginia Department of; FY 2018 Annual Report for Fund 3322

Environmental Protection, West Virginia Department of; Quarterly Reports Special Reclamation Fund and the Special Reclamation Water Trust Fund for the Quarter Ended December 31, 2018

Federal Communications Commission; Annual Report

Financial Institutions, West Virginia Division of; 117th Annual Report Fiscal Year ending June 30, 2018

Forestry, West Virginia Division of; 2018 Logging Sediment Control Act Annual Report

Forward, West Virginia; 2018 Annual Report WV Women Moving Forward

Funeral Service Examiners, West Virginia Board of; Annual Report (Period July 1, 2016- June 30, 2018)

Harrison County Department of Health and Human Resources; Annual Summary Report October 2016 to December 2017

Herbert Henderson Office of Minority Affairs; Annual Report 2017

Innovative Mine Safety Technology Credit Act, West Virginia; Annual Report

Insurance Commissioner, West Virginia Office of the; 2017 Annual Report

Insurance Commissioner, West Virginia Office of the; 2018 Annual Medical Malpractice Report

Interstate Commission on the Potomac River Basin; October 1, 2016 to September 30, 2017

Interstate Insurance Product Regulation Commission Compact; Annual Report 2017

Jobs Investment Trust, West Virginia; Years Ended June 30, 2018 and 2017

Judicial Compensation Commission, West Virginia; 2018 Report

Legislative Claims Commission, West Virginia; Reports of Legislative Claims Commission

Legislative Claims Commission, West Virginia; Supplemental Report for December 2018

Lottery, West Virginia; Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2018 and 2017

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending January 31, 2019

Medical Imaging and Radiation Therapy Technology Board of Examiners, West Virginia; 2018 Annual Report

Medicine, West Virginia Board of; Annual Report for the Biennium 7/1/16-6/30/18

Municipal Bond Commission, West Virginia; Annual Report July 1, 2017- June 30, 2018

National Coal Heritage Area Authority; 2017 Annual Report

Natural Resources, West Virginia Division of; 2017-2018 Annual Report

Occupational Therapy, West Virginia Board; Annual Report for Fiscal Year 2017/2018

Office of Miners' Health, Safety and Training; 2017 Annual Report

Osteopathic Medicine, West Virginia School of; Annual Report

Personnel, West Virginia Division of; Annual Report FY 2018

Pharmacy, West Virginia Board of (Controlled Substances Monitoring Program); 2018 Annual Report

Physical Therapy, West Virginia State Board of; Annual Report of the Biennium July 1, 2016- June 30, 2018

Professional Engineers, West Virginia State Board of Registered; Annual Report FY 2018

Public Employees Grievance Board; 2018 Annual Report

Public Service Commission Consumer Advocate Division, State of West Virginia; 2018 Annual Report

Public Service Commission of West Virginia; 2018 Management Summary Report and the Electric and Gas Utilities Supply-Demand Forecast Reports

Regional Intergovernmental Council (Boone, Clay, Kanawha, Putnam Counties); 2017 Annual Report

Ron Yost Personal Assistance Services (RYPAS) Board; 2018 Annual Report

Sanitarians, West Virginia Board of; 2018 Annual Report

Senior Services, West Virginia Bureau of; Annual Report State Fiscal Year 2018 July 1, 2017- June 30, 2018

State Tax Department (Manufacturing Property Tax Adjustment Credit), West Virginia; Annual Report

State Tax Department, West Virginia; West Virginia Fireworks Safety Fee Report

Tax Department, West Virginia State; Report for Tax Year 2018

Tax Department, West Virginia State; West Virginia Tax Expenditure Study

Tax Department, West Virginia State; Calculation of Regular School Levy Rates for Tax Year 2019 and the Effects on Projected County School Revenues

Treasury Investments, West Virginia Board of; Year Ended June 30, 2018

Treasury Investments, West Virginia Board of; Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2018

United States Department of Energy (National Energy Technology Laboratory); 2017 Annual Report

Veterinary Medicine, West Virginia Board of; Biennium Report July 1, 2016-June 30, 2018

Water Development Authority, West Virginia; Fiscal Year 2018 Annual Report

West Virginia University Medicine; 2017 Annual Report

Sincerely,

Jim Justice,
Governor.

JIM JUSTICE
Governor of West Virginia

March 7, 2019

**EXECUTIVE MESSAGE NO. 4
2018 REGULAR SESSION**

The Honorable Roger Hanshaw
Speaker, West Virginia House of Delegates
State Capitol, Rm 228M
Charleston, WV 25305

Dear Mr. Speaker:

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 extended relief to the persons named on the attached report, during the period of March 6, 2018 through March 7, 2019.

Very truly yours,

Jim Justice,
Governor

PARDONS & MEDICAL RESPITES GRANTED

BY GOVERNOR JUSTICE

FOR THE PERIOD

MARCH 6, 2018 – MARCH 7, 2019**Richard Lee Devore, Sr.****Decided: March 15, 2018**

In March 2018, Governor Justice received a medical respite application that both the warden and commissioner of the Division of Corrections believed should be granted. Mr. Devore had been given a poor prognosis and had not reached his minimum sentence date (September 2018) and was no longer ambulatory and required palliative care.

For these reasons, Governor Justice granted a medical respite, allowing him to spend his last moments with his family.

NO PARDONS WERE GRANTED DURING THIS TIME PERIOD.**Messages from the Senate**

A message from the Senate, by

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

Com. Sub. for S. B. 4, Relating generally to Municipal Home Rule Program.

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

Com. Sub. for S. B. 4 - "A Bill to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended, relating to municipal home rule; making legislative findings; establishing the Municipal Home Rule Pilot Program as a permanent program identified as the Municipal Home Rule Program; providing for continuation of plans and amendments approved during Municipal Home Rule Pilot Program; providing that any ordinance, act, resolution, rule, or regulation enacted pursuant to the Municipal Home Rule Pilot Program shall continue until repealed; expanding eligibility to participate in home rule to additional municipalities; establishing annual assessment for participants in Municipal Home Rule Program; establishing penalty for failing to timely pay annual assessment; creating special revenue account for Municipal Home Rule Board; authorizing certain expenditures from special revenue fund; providing suspension of annual assessment when certain conditions are met; clarifying the authority of the Municipal Home Rule Board; requiring Municipal Home Rule Board to reject any application or amendment that does not reasonably demonstrate municipality's ability to manage related costs or liabilities; requiring publication of administrative rules of Municipal Home Rule Board on its website and made available to the public in print upon request; clarifying procedures related to submitting amendment to approved plan; requiring certain notice prior to proposing or amending a plan; requiring public hearing and notice of hearing prior to municipality proposing a plan or amendment; amending certain prohibitions on the powers and duties of municipalities under home rule; providing more specific direction regarding the requirements for municipalities participating in the Municipal Home Rule Program that reinstate or raise business and occupation taxes and its impact on municipal sales tax in certain circumstances; prohibiting municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule, or regulation contrary to laws governing professional licensing or certification of employees; prohibiting municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule, or regulation contrary to laws, rules, or regulations governing enforcement of building codes or fire codes; prohibiting municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule, or regulation contrary to federal laws, regulations, or standards that would affect state's required compliance or jeopardize federal funding; prohibiting municipalities

participating in the Home Rule Program from passing an ordinance, act, resolution, rule, or regulation contrary to laws or rules governing procurement of architectural and engineering services with certain exceptions; prohibiting municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule, or regulation contrary to chapter 17C of the Code of West Virginia, 1931, as amended; prohibiting municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule, or regulation contrary to laws, rules, or regulations governing communication technologies or telecommunication carriers; prohibiting municipalities participating in the Municipal Home Rule Program from enacting any ordinance, act, resolution, rule, or regulation that governs the sale, transfer, possession, use, storage, taxation, registration, licensing, or carrying of firearms, ammunition, or accessories thereof; prohibiting municipalities participating in the Municipal Home Rule Program from enacting any ordinance, act, resolution, rule, or regulation that imposes duties on another governmental entity and providing certain exceptions to that prohibition; prohibiting municipalities from prohibiting or effectively limiting the rental of a property or regulating the duration, frequency, or location of such rental and providing certain exceptions to that prohibition and limitation; modifying reporting requirements; eliminating automatic termination of the Municipal Home Rule Pilot Program on July 1, 2019; and making technical corrections throughout.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 667**), and there were—yeas 92, nays 6, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Bibby, Graves, Hanna, C. Martin, P. Martin and Waxman.

Absent and Not Voting: Ellington and Rohrbach.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 4) passed.

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

A message from the Senate, by

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

S. B. 28, Removing hotel occupancy tax limit collects for medical care and emergency services.

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

On page four, section fourteen, subsection (c), subdivision (11), after the word “infrastructure”, by inserting the words “in an amount not to exceed \$200,000”.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 668**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Ellington and Rohrbach.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 28) passed.

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

A message from the Senate, by

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

Com. Sub. for S. B. 402, Authorizing Division of Forestry investigate and enforce timber theft violations.

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

Com. Sub. for S. B. 402 - "A Bill to amend and reenact §19-1A-3b of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-3-52 of said code, all relating to authorizing the Division of Forestry to investigate and enforce timber theft and intentional damage to the timber of another; increasing the threshold between felony and misdemeanor from \$1,000 to \$2,500; requiring ten years elapse between offenses for sentence enhancement purposes and establishing criminal penalties."

The further title amendment offered by Delegate Howell and adopted by the House being as follows:

Com. Sub. for S. B. 402 - "A Bill to amend and reenact §19-1A-3b of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-3-52 of said code, all relating to authorizing the Division of Forestry to investigate and enforce timber theft and intentional damage to the timber of another; increasing the threshold between felony and misdemeanor from \$1,000 to \$2,500; requiring enhanced penalties for subsequent offenses occurring within ten years of the first offense; and establishing criminal penalties."

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 669**), and there were—yeas 97, nays 1, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Foster.

Absent and Not Voting: Ellington and Rohrbach.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 402) passed.

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

A message from the Senate, by

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

Com. Sub. for S. B. 405, Increasing limit on additional expenses incurred in preparing notice list for redemption.

The amendment of the bill by the Senate being as follows:

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

“ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHEATED AND WASTE AND UNAPPROPRIATED LANDS

§11A-3-23. Redemption from purchase; receipt; list of redemptions; lien; lien of person redeeming interest of another; record.

(a) After the sale of any tax lien on any real estate pursuant to §11A-3-5 of this code, the owner of, or any other person who was entitled to pay the taxes on, any real estate for which a tax lien on the real estate was purchased by an individual may redeem at any time before a tax deed is issued for the real estate. In order to redeem, he or she shall pay to the State Auditor the following amounts:

(1) An amount equal to the taxes, interest and charges due on the date of the sale, with interest at the rate of one percent per month from the date of sale;

(2) All other taxes which have since been paid by the purchaser, his or her heirs or assigns, with interest at the rate of one percent per month from the date of payment;

(3) Any additional expenses incurred from January 1 of the year following the sheriff's sale to the date of redemption for the preparation of the list of those to be served with notice to redeem and any written documentation used for the preparation of the list, with interest at the rate of one percent per month from the date of payment for reasonable legal expenses incurred for the services of an attorney who has performed an examination of the title to the real estate and rendered written documentation used for the preparation of the list: ~~Provided, That the~~ The maximum amount the owner or other authorized person shall pay, excluding the interest, for the expenses incurred for the preparation of the list of those to be served required by §11A-3-19 of this code is ~~\$300~~ \$500: ~~Provided however, That the~~ An attorney may only charge a fee for legal services actually performed and must certify that he or she conducted an examination to determine the list of those to be served required by §11A-3-19 of this code; and

(4) All additional statutory costs paid by the purchaser.

(b) Where the State Auditor has not received from the purchaser satisfactory proof of the expenses incurred in preparing the notice to redeem, and any written documentation used for the preparation of the list of those to be served with notice to redeem, including the certification required in subdivision (3), subsection (a) of this section, incident thereto, in the form of receipts or other evidence of legal expenses, incurred as provided in section nineteen of this article, the person redeeming shall pay the State Auditor the sum of ~~\$300~~ \$500 plus interest at the rate of one percent per month from January 1 of the year following the sheriff's sale for disposition by the sheriff pursuant to the provisions of §11A-3-10, §11A-3-24, §11A-3-25, and §11A-3-32 of this code.

(c) The person redeeming shall be given a receipt for the payment and the written opinion or report used for the preparation of the list of those to be served with notice to redeem required by section nineteen of this article.

(d) Any person who, by reason of the fact that no provision is made for partial redemption of the tax lien on real estate purchased by an individual, is compelled in order to protect himself or herself to redeem the tax lien on all of the real estate when it belongs, in whole or in part, to some other person, shall have a lien on the interest of that other person for the amount paid to redeem the

interest. He or she shall lose his or her right to the lien, however, unless within thirty days after payment he or she files with the clerk of the county commission his or her claim in writing against the owner of the interest, together with the receipt provided in this section. The clerk shall docket the claim on the judgment lien docket in his or her office and properly index the claim. The lien may be enforced as other judgment liens are enforced.

(e) Before a tax deed is issued, the county clerk may accept, on behalf of the State Auditor, the payment necessary to redeem any real estate encumbered with a tax lien and write a receipt. The amount of the payment necessary to redeem any real estate encumbered with a tax lien shall be provided by the State Auditor and the State Auditor shall update the required payments plus interest at least monthly.

(f) On or before the tenth day of each month, the county clerk shall deliver to the State Auditor the redemption money paid and the name and address of the person who redeemed the property on a form prescribed by the State Auditor.

§11A-3-25. Distribution of surplus to purchaser.

(a) Where the land has been redeemed in the manner set forth in §11A-3-23 of this code, and the State Auditor has delivered the redemption money to the sheriff pursuant to §11A-3-24 of this code, the sheriff shall, upon receipt of the sum necessary to redeem, promptly notify the purchaser or his or her heirs or assigns, by mail, of the fact of the redemption and pay to the purchaser or his or her heirs or assigns the following amounts:

(1) From the sale of tax lien surplus fund provided by §11A-3-10 of this code:

(A) The surplus of money paid in excess of the amount of the taxes, interest and charges paid by the purchaser to the sheriff at the sale; and

(B) The amount of taxes, interest and charges paid by the purchaser on the date of the sale, plus the interest at the rate of one percent per month from the date of sale to the date of redemption;

(2) All other taxes on the land which have since been paid by the purchaser or his or her heirs or assigns, with interest at the rate of one percent per month from the date of payment to the date of redemption;

(3) Any additional reasonable expenses that the purchaser may have incurred from January 1 of the year following the sheriff's sale to the date of redemption for the preparation of the list of those to be served with notice to redeem and any written documentation used for the preparation of the list, in accordance with §11A-3-19 of this code, with interest at the rate of one percent per month from the date of payment, but the amount which shall be paid, excluding the interest, for the expenses incurred for the preparation of the list of those to be served with notice to redeem required by §11A-3-19 of this code shall not exceed the amount actually incurred by the purchaser or ~~\$300~~ \$500, whichever is less: *Provided*, That the attorney may only charge a fee for legal services actually performed and must certify that he or she conducted an examination to determine the list of those to be served required by §11A-3-19 of this code; and

(4) All additional statutory costs paid by the purchaser.

(b) (1) The notice shall include:

(A) A copy of the redemption certificate issued by the State Auditor;

(B) An itemized statement of the redemption money to which the purchaser is entitled pursuant to the provisions of this section; and

(C) Where, at the time of the redemption, the State Auditor has not received from the purchaser satisfactory proof of the expenses incurred in preparing the list of those to be served with notice to redeem and any written documentation used for the preparation of the list in accordance with §11A-3-19 of this code, the State Auditor shall also include instructions to the purchaser as to how these expenses may be claimed.

(2) Subject to the limitations of this section, the purchaser is entitled to recover any expenses incurred in preparing the list of those to be served with notice to redeem and any written documentation used for the preparation of the list from January 1 of the year following the sheriff's sale to the date of the sale to the date of the redemption.

(c) Where, pursuant to §11A-3-23 of this code, the State Auditor has not received from the purchaser satisfactory proof of the expenses incurred in preparing the list of those to be served with notice to redeem, including written documentation used for preparation of the list, in the form of receipts or other evidence within thirty days from the date of notification by the State Auditor, the sheriff shall refund the amount to the person redeeming and the purchaser is barred from any claim. Where, pursuant to that section, the State Auditor has received from the person redeeming and therefore delivered to the sheriff the sum of ~~\$300~~ \$500 plus interest at the rate of one percent per month from January 1 of the year following the sheriff's sale to the date of the sale to the date of redemption, and the purchaser provides the sheriff within thirty days from the date of notification satisfactory proof of the expenses, and the amount of the expenses is less than the amount paid by the person redeeming, the sheriff shall refund the difference to the person redeeming.

§11A-3-36. Operating fund for land department in Auditor's office.

(a) The Auditor shall establish a special operating fund for the land department in his or her office. He or she shall pay into such fund all redemption fees, all publication or other charges collected by him or her, if such charges were paid by or were payable to him or her, the unclaimed surplus proceeds received by him or her from the sale of delinquent and other lands pursuant to this article, and all payments made to him or her under the provisions of §11A-3-64 and §11A-3-65 of this code, except such part thereof as represents state taxes and interest. All payments so excepted shall be credited by the Auditor to the general school fund or other proper state fund.

(b) The operating fund shall be used by the Auditor in cases of deficits in land sales to pay any balances due to deputy commissioners for services rendered, and any unpaid costs including those for publication which have accrued or will accrue under the provisions of this article, to pay fees due surveyors under the provisions of §11A-3-43, and to pay for the operation and maintenance of the land department in his or her office. ~~The surplus over and above the amount of \$100,000, remaining in the fund at the end of any fiscal year, shall be paid by the Auditor into the general school fund. The surplus over and above the amount of 20 percent of gross revenue from operation of the fund from the prior year, remaining at the end of any fiscal year, shall be paid by the Auditor into the General School Fund.~~

§11A-3-56. Redemption from purchase; receipt; list of redemptions; lien; lien of person redeeming interest of another; record.

(a) After the sale of any tax lien on any real estate pursuant to 11A-3-45 or §11A-3-48 of this code, the owner of, or any other person who was entitled to pay the taxes on, any real estate for which a tax lien thereon was purchased by an individual, may redeem at any time before a tax deed

is issued therefor. In order to redeem, he or she must pay to the deputy commissioner the following amounts:

(1) An amount equal to the taxes, interest and charges due on the date of the sale, with interest thereon at the rate of one percent per month from the date of sale;

(2) ~~all~~ All other taxes thereon, which have since been paid by the purchaser, his or her heirs or assigns, with interest at the rate of one percent per month from the date of payment;

(3) ~~such~~ Such additional expenses as may have been incurred in preparing the list of those to be served with notice to redeem, and for any licensed attorney's title examination incident thereto, with interest at the rate of one percent per month from the date of payment, but the amount he or she shall be required to pay, excluding said interest, for such expenses incurred for the preparation of the list of those to be served with notice to redeem required by §11A-3-52 of this code, and for any licensed attorney's title examination incident thereto, shall not exceed ~~\$200~~ \$500. An attorney may only charge a fee for legal services actually performed and must certify that he or she conducted an examination to determine the list of those to be served required by §11A-3-52 of this code;

(4) ~~all~~ All additional statutory costs paid by the purchaser; and

(5) ~~the~~ The deputy commissioner's fee and commission as provided by §11A-3-66 of this code. Where the deputy commissioner has not received from the purchaser satisfactory proof of the expenses incurred in preparing the notice to redeem, ~~and any examination of title or of any licensed attorney's title examination~~ incident thereto, in the form of receipts or other evidence thereof, the person redeeming shall pay the deputy commissioner the sum of ~~\$200~~ \$500 plus interest thereon at the rate of one percent per month from the date of the sale for disposition pursuant to the provisions of §11A-3-57, §11A-3-58, and §11A-3-64 of this code. Upon payment to the deputy commissioner of those and any other unpaid statutory charges required by this article, and of any unpaid expenses incurred by the sheriff, the Auditor and the deputy commissioner in the exercise of their duties pursuant to this article, the deputy commissioner shall prepare an original and five copies of the receipt for the payment and shall note on said receipts that the property has been redeemed. The original of such receipt shall be given to the person redeeming. The deputy commissioner shall retain a copy of the receipt and forward one copy each to the sheriff, assessor, the Auditor and the clerk of the county commission. The clerk shall endorse on the receipt the fact and time of such filing and note the fact of redemption on his or her record of delinquent lands.

(b) Any person who, by reason of the fact that no provision is made for partial redemption of the tax lien on real estate purchased by an individual, is compelled in order to protect himself or herself to redeem the tax lien on all of such real estate when it belongs, in whole or in part, to some other person, shall have a lien on the interest of such other person for the amount paid to redeem such interest. He or she shall lose his or her right to the lien, however, unless within thirty days after payment he or she shall file with the clerk of the county commission his or her claim in writing against the owner of such interest, together with the receipt provided for in this section. The clerk shall docket the claim on the judgment lien docket in his or her office and properly index the same. Such lien may be enforced as other judgment liens are enforced.

§11A-3-57. Notice of redemption to purchaser; moneys received by sheriff.

(a) Upon payment of the sum necessary to redeem, the deputy commissioner shall promptly deliver to the sheriff the redemption money paid and the name and address of the purchaser, his or her heirs or assigns.

(b) Of the redemption money received by the sheriff pursuant to this section, the sheriff shall hold as surplus to be disposed of pursuant to §11A-3-64 of this code an amount thereof equal to the amount of taxes, interest and charges due on the date of the sale, plus the interest at the rate of one percent per month thereon from the date of sale to the date of redemption.

§11A-3-58. Distribution to purchaser.

(a) Where the land has been redeemed in the manner set forth in §11A-3-56 of this code, and the deputy commissioner has delivered the redemption money to the sheriff pursuant to §11A-3-57 of this code, the sheriff shall, upon delivery of the sum necessary to redeem, promptly notify the purchaser, his or her heirs or assigns, by mail, of the redemption and pay to the purchaser, his or her heirs or assigns, the following amounts:

(1) The amount paid to the deputy commissioner at the sale;

(2) all other taxes thereon, which have since been paid by the purchaser, his or her heirs or assigns, with interest at the rate of one percent per month from the date of payment;

(3) such additional expenses as may have been incurred in preparing the list of those to be served with notice to redeem, and for any licensed attorney's title examination incident thereto, with interest at the rate of one percent per month from the date of payment, but the amount which shall be paid, excluding said interest, for such expenses incurred for the preparation of the list of those to be served with notice to redeem required by §11A-3-52 of this code, and for any licensed attorney's title examination incident thereto, shall not exceed ~~\$200~~ \$500; and

(4) all additional statutory costs paid by the purchaser.

(b) (1) The notice shall include:

(A) A copy of the redemption certificate issued by the deputy commissioner;

(B) An itemized statement of the redemption money to which the purchaser is entitled pursuant to the provisions of this section; and

(C) Where, at the time of the redemption, the deputy commissioner has not received from the purchaser satisfactory proof of the expenses incurred in preparing the list of those to be served with notice to redeem ~~and any~~ or for any licensed attorney's title examination incident thereto, the deputy commissioner shall also include instructions to the purchaser as to how these expenses may be claimed.

(2) Subject to the limitations of this section, the purchaser is entitled to recover any expenses incurred in preparing the list of those to be served with notice to redeem and for any licensed attorney's title examination incident thereto from the date of the sale to the date of the redemption.

(c) Where, pursuant §11A-3-56 of this code, the deputy commissioner has not received from the purchaser satisfactory proof of the expenses incurred in preparing the notice to redeem, in the form of receipts or other evidence of legal expenses, and any ~~or for any licensed attorney's~~ title examination and rendered written documentation used for the preparation of the list incident thereto, in the form of receipts or other evidence thereof, and therefore received from the purchaser as required by said section and delivered to the sheriff the sum of ~~\$200~~ \$500 plus interest thereon at the rate of one percent per month from the date of the sale to the date of redemption, and the sheriff has not received from the purchaser such satisfactory proof of such expenses within thirty days from the date of notification, the sheriff shall refund such amount to the person redeeming and the purchaser

is barred from any claim thereto. Where, pursuant to §11A-3-56 of this code, the deputy commissioner has received from the purchaser and therefore delivered to the sheriff said sum of ~~\$200~~ \$500 plus interest thereon at the rate of one percent per month from the date of the sale to the date of redemption, and the purchaser provides the sheriff within thirty days from the date of notification such satisfactory proof of such expenses, and the amount of such expenses is less than the amount paid by the person redeeming, the sheriff shall refund the difference to the person redeeming.”

On motion of Delegate Kessinger, the House of Delegates requested the Senate agree to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses.

Whereupon,

The Speaker appointed as conferees on the part of the House of Delegates the following:

Delegates Pack, Bibby and Tomblin.

A message from the Senate, by

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

Com. Sub. for S. B. 487, Relating to admissibility of health care staffing requirements in litigation.

Delegate Summers moved that the House of Delegates refuse to recede from its amendment and request the Senate to agree to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses.

Subsequently, unanimous consent having been obtained, the bill was placed at the foot of messages.

A message from the Senate, by

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

S. B. 596, Adjusting voluntary contribution amounts on certain DMV forms.

On motion of Delegate Summers, the House of Delegates refused to recede from its amendment and requested the Senate to agree to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses.

Whereupon,

The Speaker appointed as conferees on the part of the House of Delegates the following:

Delegates Harshbarger, Phillips and Hartman.

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

A message from the Senate, by

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

Com. Sub. for S. B. 624, Allowing county boards of education use alternative assessment provided in Every Student Succeeds Act.

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

On page one, section five, subsection (d), subdivision (3), by striking out “The department shall negotiate reasonable per student costs for the delivery and administration of the alternative assessment that is equal to the per-student assessment cost as determined by the statewide assessment contract. The department shall be responsible for the costs of collecting and submitting the evidence needed to satisfy the requirements specified in 20 U.S.C. §6311 (b)(2)(H) and 34 CFR 200.3. If the U.S. Department of Education determines that an alignment study is needed, the department shall ensure that a holistic alignment approach is used to evaluate the degree of alignment between the assessment and the state academic standards and the study shall include at least three test forms” and the period, and inserting in lieu thereof the following: “The state Department of Education shall pay no more than the general summative assessment per-student cost for a locally selected assessment used pursuant to the locally selected assessment option. If required by the U.S. Department of Education, the state department shall be responsible for contracting and paying no more than \$100,000 total, of the costs of any studies required as part of the peer review process to satisfy the requirements specified in 20 U.S.C. §6311 (b)(2)(H) and 34 CFR 200.3. If the U.S. Department of Education determines that an alignment study is needed for a locally selected assessment option, the state department shall ensure that an independent alignment study is used to evaluate the degree of alignment between the assessment and the state academic standards and the study shall include at least three test forms. If the locally selected assessment is approved by the U.S. Department of Education and meets federal and state law, the state department shall enter into a contract that allows for county boards of education to implement the locally selected assessment.”

And,

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

Com. Sub. for S. B. 624 - “A Bill to amend and reenact §18-2E-5 of the Code of West Virginia, 1931, as amended, relating to allowing county boards of education to use an alternative assessment, such as the ACT assessment, pursuant to the locally selected assessment option provided for in the Every Student Succeeds Act; and setting forth requirements for the West Virginia Department of Education pertaining to the alternative assessment.”

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 670**), and there were—yeas 97, nays 1, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Zukoff.

Absent and Not Voting: Ellington and Rohrbach.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 624) passed.

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

On this question, the yeas and nays were taken (**Roll No. 671**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Ellington and Rohrbach.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 624) takes effect from its passage.

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

A message from the Senate, by

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

S. B. 673, Relating to public higher education accountability and planning.

Delegate Kessinger moved the House of Delegates recede from its amendment to the bill.

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

The yeas and nays having been ordered, they were taken (**Roll No. 672**), and there were—yeas 52, nays 46, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Angelucci, Barrett, Bates, Bibby, N. Brown, S. Brown, Campbell, Canestraro, Caputo, Criss, Dean, Diserio, Doyle, Evans, Fast, Fleischauer, Fluharty, Hamrick, Hanna, Hartman, Hicks, Higginbotham, Hornbuckle, Howell, J. Jeffries, Jennings, Kump, Lavender-Bowe, Longstreth, Lovejoy, Miley, Pethtel, Phillips, Porterfield, Queen, Rodighiero, Sponaule, Staggers, Storch, Swartzmiller, R. Thompson, Toney, Waxman, Williams, Wilson and Zukoff.

Absent and Not Voting: Ellington and Rohrbach.

So, a majority of the members present and voting having voted in the affirmative, the motion prevailed.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 673**), and there were—yeas 84, nays 14, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Angelucci, Barrett, S. Brown, Campbell, Caputo, Diserio, Doyle, Evans, Fleischauer, Lavender-Bowe, Longstreth, Miley, Queen and Waxman.

Absent and Not Voting: Ellington and Rohrbach.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 673) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 2001, Relating to exempting social security benefits from personal income tax.

Delegate Summers moved that the House of Delegates concur in the following amendment of the bill by the Senate:

On page four, section twelve, line seventy-seven, after the word “year” and the period, by inserting “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” and a period.

And,

On page four, section twelve, lines eighty-two through eighty-seven, by striking out all of subdivision (8) and inserting in lieu thereof a new subdivision, designated subdivision (8), to read as follows:

“(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) 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) of this code.

(D) The deduction allowed by §11-21-12(c)(8)(A), §11-21-12(c)(8)(B), and §11-21-12(c)(8)(C) 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.”

And,

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

Com. Sub. for H. B. 2001- “A Bill to amend and reenact §11-21-12 of the Code of West Virginia, 1931, as amended, relating to exemptions from personal income tax; providing for an exemption for members of certain uniformed services; exempting social security benefits from personal income tax; clarifying that tier one railroad retirement benefits are not subject to personal income tax; specifying an effective date; and removing obsolete language.”

Delegate Westfall moved the previous question, which demand was sustained.

On this question, the yeas and nays were taken (**Roll No. 674**), and there were—yeas 15, nays 81, absent and not voting 4, with the yeas and absent and not voting being as follows:

Yeas: Atkinson, Azinger, Butler, Capito, Cooper, Harshbarger, Higginbotham, Hott, Kump, Porterfield, Rowan, Shott, Waxman, Westfall and Wilson.

Absent and Not Voting: Ellington, Mandt, Rohrbach and Steele.

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

Delegate J. Kelly requested to be excused from voting on Com. Sub. for H. B. 2001 under the provisions of House Rule 49.

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

On the motion to concur in the Senate amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 675**), and there were—yeas 53, nays 44, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Angelucci, Barrett, Bates, Boggs, N. Brown, S. Brown, Butler, Byrd, Campbell, Canestraro, Caputo, Dean, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hornbuckle, Lavender-Bowe, Longstreth, Lovejoy, McGeehan, Miley, Miller, Paynter, Pethtel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Skaff, Sponaugle, Staggers, Swartzmiller, C. Thompson, R. Thompson, Tomblin, Walker, Williams and Zukoff.

Absent and Not Voting: Ellington, Rohrbach and Steele.

So, a majority of the members present and voting having voted in the affirmative, the motion to concur in the amendment of the bill by the Senate prevailed.

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 676**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Ellington, Rohrbach and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2001) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 2503, Relating to court actions.

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

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

“ARTICLE 4. COURT ACTIONS.

PART VI.

PROCEDURES IN CASES OF CHILD NEGLECT OR ABUSE.

§49-4-601. Petition to court when child believed neglected or abused; venue; notice; right to counsel; continuing legal education; findings; proceedings; procedure.

(a) *Petitioner and venue.* — If the department or a reputable person believes that a child is neglected or abused, the department or the person may present a petition setting forth the facts to the circuit court in the county in which the child resides, or if the petition is being brought by the department, in the county in which the custodial respondent or other named party abuser resides, or in which the abuse or neglect occurred, or to the judge of the court in vacation. Under no circumstance may a party file a petition in more than one county based on the same set of facts.

(b) *Contents of Petition.* — The petition shall be verified by the oath of some credible person having knowledge of the facts. The petition shall allege specific conduct including time and place, how the conduct comes within the statutory definition of neglect or abuse with references ~~thereto to~~ the statute, any supportive services provided by the department to remedy the alleged circumstances, and the relief sought. Each petition shall name as a party each parent, guardian, custodian, other person standing in loco parentis of or to the child allegedly neglected or abused and state with specificity whether each parent, guardian, custodian, or person standing in loco parentis is alleged to have abused or neglected the child.

(c) *Court action upon filing of petition.* — Upon filing of the petition, the court shall set a time and place for a hearing and shall appoint counsel for the child. When there is an order for temporary custody pursuant to this article, the preliminary hearing shall be held within 10 days of the order continuing or transferring custody, unless a continuance for a reasonable time is granted to a date certain, for good cause shown.

(d) *Department action upon filing of the petition.* — At the time of the institution of any proceeding under this article, the department shall provide supportive services in an effort to remedy circumstances detrimental to a child.

(e) *Notice of hearing.* —

(1) The petition and notice of the hearing shall be served upon both parents and any other guardian, custodian, or person standing in loco parentis, giving to the ~~parents or custodian~~ those persons at least five days' actual notice of a preliminary hearing and at least ten days' notice of any other hearing.

(2) Notice shall be given to the department, any foster or pre-adoptive parent, and any relative providing care for the child.

(3) In cases where personal service within West Virginia cannot be obtained after due diligence upon any parent or other custodian, a copy of the petition and notice of the hearing shall be mailed to the person by certified mail, addressee only, return receipt requested, to the last known address of the person. If the person signs the certificate, service ~~shall be~~ is complete and the certificate shall be filed as proof of the service with the clerk of the circuit court.

(4) If service cannot be obtained by personal service or by certified mail, notice shall be by publication as a Class II legal advertisement in compliance with §59-3-1 *et seq.* of this code.

(5) A notice of hearing shall specify the time and place of ~~the hearing~~ hearings, the right to counsel of the child, ~~and parents, or~~ and other guardians, custodians, at every stage of the proceedings, and other persons standing in loco parentis with the child and the fact that the proceedings can result in the permanent termination of the parental rights.

(6) Failure to object to defects in the petition and notice may not be construed as a waiver.

(f) *Right to counsel.* —

~~(1) In any proceeding under this article, the child, his or her parents, and his or her legally established custodian or other persons standing in loco parentis to him or her has the right to be represented by counsel at every stage of the proceedings and shall be informed by the court of their right to be so represented and that if they cannot pay for the services of counsel, that counsel will be appointed.~~

(1) In any proceeding under this article, the child shall have counsel to represent his or her interests at all stages of the proceedings.

~~(2) Counsel shall be appointed in the initial order. For parents, legal guardians, and other persons standing in loco parentis, the representation may only continue after the first appearance the parent or other persons standing in loco parentis cannot pay for the services of counsel.~~

(2) The court's initial order shall appoint counsel for the child and for any parent, guardian, custodian, or other person standing in loco parentis with the child if such person is without retained counsel.

~~(3) Counsel for other parties shall only be appointed upon request for appointment of counsel. If the requesting parties have not retained counsel and cannot pay for the services of counsel, the court shall, by order entered of record, appoint an attorney or attorneys to represent the other party or parties and so inform the parties.~~

(3) The court shall, at the initial hearing in the matter, determine whether persons other than the child for whom counsel has been appointed:

(A) Have retained counsel; and

(B) Are financially able to retain counsel.

(4) A parent, guardian, custodian, or other person standing *in loco parentis* with the child who is alleged to have neglected or abused the child and who has not retained counsel and is financially unable to retain counsel beyond the initial hearing, shall be afforded appointed counsel at every stage of the proceedings.

~~(4)~~ (5) Under no circumstances may the same attorney represent both the child and another party the other party or parties., nor may the The same attorney may not represent both parents or custodians more than one parent or custodian: However, Provided, That one attorney may represent both parents or custodians where both parents or guardians custodians consent to this representation after the attorney fully discloses to the client the possible conflict and where the attorney assures advises the court that she or he is able to represent each client without impairing her or his professional judgment.; however, if more than one child from a family is involved in the proceeding, one attorney may represent all the children.

~~(5)~~ (6) A parent who is a co-petitioner is entitled to his or her own attorney.

(7) The court may allow to each attorney so appointed pursuant to this section a fee in the same amount which appointed counsel can receive in felony cases.

~~(6)~~ (8) The court shall, *sua sponte* or upon motion, appoint counsel to any unrepresented party if, at any stage of the proceedings, the court determines doing so is necessary to satisfy the requirements of fundamental fairness.

(g) *Continuing education for counsel.* — Any attorney representing a party under this article shall receive a minimum of eight hours of continuing legal education training per reporting period on child abuse and neglect procedure and practice. In addition to this requirement, any attorney appointed to represent a child must first complete training on representation of children that is approved by the administrative office of the Supreme Court of Appeals. The Supreme Court of Appeals shall develop procedures for approval and certification of training required under this section. Where no attorney has completed the training required by this subsection, the court shall appoint a competent attorney with demonstrated knowledge of child welfare law to represent the parent or child. Any attorney appointed pursuant to this section shall perform all duties required of an attorney licensed to practice law in the State of West Virginia.

(h) *Right to be heard.* — In any proceeding pursuant to this article, the party or parties having custodial or other parental rights or responsibilities to the child shall be afforded a meaningful opportunity to be heard, including the opportunity to testify and to present and cross-examine witnesses. Foster parents, pre-adoptive parents, and relative caregivers shall also have a meaningful opportunity to be heard.

(i) *Findings of the court.* — Where relevant, the court shall consider the efforts of the department to remedy the alleged circumstances. At the conclusion of the adjudicatory hearing, the court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether the child is abused or neglected and whether the respondent is abusing, neglecting, or, if applicable, a battered parent, all of which shall be incorporated into the order of the court. The findings must be based upon conditions existing at the time of the filing of the petition and proven by clear and convincing evidence.

(j) *Priority of proceedings.* — Any petition filed and any proceeding held under this article shall, to the extent practicable, be given priority over any other civil action before the court, except proceedings under §48-27-309 of this code and actions in which trial is in progress. Any petition filed

under this article shall be docketed immediately upon filing. Any hearing to be held at the end of an improvement period and any other hearing to be held during any proceedings under this article shall be held as nearly as practicable on successive days and, with respect to the hearing to be held at the end of an improvement period, shall be held as close in time as possible after the end of the improvement period and shall be held within 30 days of the termination of the improvement period.

(k) *Procedural safeguards.* — The petition may not be taken as confessed. A transcript or recording shall be made of all proceedings unless waived by all parties to the proceeding. The rules of evidence shall apply. Following the court's determination, it shall ~~be inquired of~~ ask the parents or custodians whether or not appeal is desired and the response transcribed. A negative response may not be construed as a waiver. The evidence shall be transcribed and made available to the parties or their counsel as soon as practicable, if the ~~same~~ transcript is required for purposes of further proceedings. If an indigent person intends to pursue further proceedings, the court reporter shall furnish a transcript of the hearing without cost to the indigent person if an affidavit is filed stating that he or she cannot pay for the transcript ~~therefor~~.

PART VI.

JUVENILE PROCEEDINGS.

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

(a) Notwithstanding any other provision of law to the contrary, any person who is 18 years of age or older who is convicted as an adult of an offense that he or she committed while in the custody of the ~~Division~~ Bureau of Juvenile Services and who is ~~therefor~~ sentenced for the conviction to a regional jail or state correctional facility for the offense may not be returned to the custody of the ~~division~~ bureau upon the completion of his or her adult sentence.

(b) Upon the incarceration in a regional jail or state correctional facility of any person 18 years of age or older who remains subject to the juvenile jurisdiction of the circuit court for crimes committed in a juvenile facility, the Bureau of Juvenile Services shall provide written notification to both the circuit court with juvenile jurisdiction over the person and the judicial authority in the county where the criminal charges are pending that the person is being detained, remains in the jurisdiction of a circuit court, and is pending a sentence as an adult offender. Prior to the imposition of a sentence on the criminal charges, the juvenile facility in which the adult crime occurred shall inform the judicial authority in the county with jurisdiction over the criminal offense which circuit court has juvenile jurisdiction over the person. The judicial authority in the county with jurisdiction over the criminal offense shall then notify the circuit court with juvenile jurisdiction over the person. The person may not be released from custody on the criminal offense until the judicial authority in the county where the criminal charges are pending has been notified by the circuit court with juvenile jurisdiction over the person that it has conducted the hearing required in §49-4-722(c) of this code.

~~(b)~~(c) Prior to completion of the adult sentence specified in subsection (a) of this section, the circuit court having jurisdiction over the underlying juvenile matter shall conduct a hearing to determine whether the person who has turned 18 years of age shall remain in the regional jail during pendency of the underlying juvenile matter or if another disposition or pretrial placement is appropriate and available: Provided, That the court may not remand a child who reached the age of 18 years to a juvenile facility or placement during the pendency of the underlying juvenile matter: Provided, however, That the Commissioner of the Division of Corrections and Rehabilitation is authorized to designate a unit in one or more of the institutions under his or her management to ensure that the detention of any person 18 years of age or older who is subject to subsection (a) of this section and who remains subject to the juvenile jurisdiction of a Circuit Court, may be placed in

by the Commissioner, so that the person does not have contact with or come within sight or sound of any adult incarcerated persons.”

And,

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

Com. Sub. for H. B. 2503 - “A Bill to amend and reenact §49-4-601 and §49-4-722 of the Code of West Virginia, 193, as amended, all relating to court actions in abuse and neglect proceedings; counsel appointment procedures in child neglect or abuse cases; requiring a petition to include the names of all parents, guardians, custodians, or other persons standing *in loco parentis* with the child and an express statement as to whether each parent, guardian, custodian, or person standing *in loco parentis* is alleged to have neglected or abused the child; requiring the court to appoint counsel for the child, parents, guardians, custodians, and persons standing *in loco parentis* prior to the initial hearing; clarifying when a court may and may not appoint counsel; requiring a court to appoint counsel to an unrepresented person if necessary to satisfy the requirements of fundamental fairness; directing notice to various courts in actions involving certain adults held in juvenile custody when charged or convicted of adult crimes; requiring the Bureau of Juvenile Services to provide written notification to court as to such defendants during various stages of the criminal process in cases of adults in the juvenile jurisdiction of the circuit court; requiring notice generally; requiring that notice to be given by courts that a hearing required by subsection (a) of this section has been held; and authorizing the Commissioner of Corrections and Rehabilitation to establish one or more facilities to house adult offenders who remain under the juvenile jurisdiction of the circuit court to comply with federal sight and sound restrictions.”

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

A message from the Senate

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

Com. Sub. for H. B. 2768, Reducing the use of certain prescription drugs.

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

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

“ARTICLE 54. OPIOID REDUCTION ACT.

§16-54-1. Definitions.

As used in this section:

‘Acute pain’ means a time limited pain caused by a specific disease or injury.

‘Chronic pain’ means a noncancer, nonend of life pain lasting more than three months or longer than the duration of normal tissue healing.

‘Health care practitioner’ or ‘practitioner’ means:

- (1) A physician ~~licensed~~ authorized pursuant to the provisions of §30-3-1 *et seq.* and §30-14-1 *et seq.* of this code;
- (2) A podiatrist licensed pursuant to the provisions of §30-3-1 *et seq.* of this code;
- (3) A physician assistant with prescriptive authority as set forth in §30-3E-3 of this code;
- (4) An advanced practice registered nurse with prescriptive authority as set forth in §30-7-15a of this code;
- (5) A dentist licensed pursuant to the provisions of §30-4-1 *et seq.* of this code; ~~and~~
- (6) An optometrist licensed pursuant to the provisions of §30-8-1 *et seq.* of this code;
- (7) A physical therapist licensed pursuant to the provisions of §30-20-1 *et seq.* of this code;
- (8) An occupational therapist licensed pursuant to the provisions of § 30-28-1 *et seq.* of this code;
- (9) An osteopathic physician licensed pursuant to the provisions of §30-14-1 *et seq.* of this code;
and
- (10) A chiropractor licensed pursuant to the provisions of §30-16-1 *et seq.* of this code.

'Insurance provider' means an entity that is regulated under the provisions of §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.* and §33-25A-1 *et seq.* of this code.

'Office' means the Office of Drug Control Policy.

'Pain clinic' means the same as that term is defined in §16-5H-2 of this code.

'Pain specialist' means a practitioner who is board certified in pain management or a related field.

'Prescribe' means the advisement of a physician or other licensed practitioner to a patient for a course of treatment. It can include but is not limited to medication, services, supplies, equipment, procedures, diagnostic tests, or screening as permitted by the physician or other licensed practitioner's scope of practice.

'Referral' means the recommendation by a person to another person for the purpose of initiating care by a health care practitioner.

'Schedule II opioid drug' means an opioid drug listed in §60A-2-206 of this code.

'Surgical procedure' means a medical procedure involving an incision with instruments performed to repair damage or arrest disease in a living body.

§16-54-3. Opioid prescription notifications.

Prior to issuing a prescription for an opioid ~~a~~ Schedule II opioid drug, a practitioner shall:

- (1) Advise the patient regarding the quantity of the opioid ~~Schedule II opioid drug~~ Schedule II opioid drug and a patient's option to fill the prescription in a lesser quantity; and
- (2) Inform the patient of the risks associated with the opioid ~~Schedule II opioid drug~~ Schedule II opioid drug prescribed.

§16-54-4. Opioid prescription limitations.

(a) When issuing a prescription for ~~an opioid~~ a Schedule II opioid drug to an adult patient seeking treatment in an emergency room for outpatient use, a health care practitioner may not issue a prescription for more than a four-day supply: *Provided*, That a prescription for a Schedule II opioid drug issued to an adult patient in an emergency room for outpatient use is not considered to be an initial Schedule II opioid prescription.

(b) When issuing a prescription for ~~an opioid~~ a Schedule II opioid drug to an adult patient seeking treatment in an urgent care facility setting for outpatient use, a health care practitioner may not issue a prescription for more than a four-day supply: *Provided*, That an additional dosing for up to no more than a seven-day supply may be permitted, but only if the medical rationale for more than a four-day supply is documented in the medical record.

(c) A health care practitioner may not issue ~~an opioid~~ an initial Schedule II opioid drug prescription to a minor for more than a three-day supply and shall discuss with the parent or guardian of the minor the risks associated with ~~opioid~~ Schedule II opioid drug use and the reasons why the prescription is necessary.

(d) A dentist or an optometrist may not issue ~~an opioid~~ a Schedule II opioid drug prescription for more than a three-day supply. ~~at any time.~~

(e) A practitioner, other than a dentist or an optometrist, may not issue an initial ~~opioid~~ Schedule II opioid drug prescription for more than a seven-day supply. The prescription shall be for the lowest effective dose which in the medical judgement of the practitioner would be the best course of treatment for this patient and his or her condition.

(f) Prior to issuing an initial ~~opioid~~ Schedule II opioid drug prescription, a practitioner shall:

(1) Take and document the results of a thorough medical history, including the patient's experience with nonopioid medication, nonpharmacological pain management approaches, and substance abuse history;

(2) Conduct, as appropriate, and document the results of a physical examination. The physical exam should be relevant to the specific diagnosis and course of treatment, and should assess whether the course of treatment would be safe and effective for the patient.

(3) Develop a treatment plan, with particular attention focused on determining the cause of the patient's pain; and

(4) Access relevant prescription monitoring information under the Controlled Substances Monitoring Program Database.

(g) Notwithstanding any provision of this code or legislative rule to the contrary, no medication listed as a Schedule II ~~controlled substance~~ opioid drug as set forth in §60A-2-206 of this code, may be prescribed by a practitioner for greater than a 30-day supply: *Provided*, That two additional prescriptions, each for a 30-day period for a total of a 90-day supply, may be prescribed if the practitioner accesses the West Virginia Controlled Substances Monitoring Program Database as set forth in §60A-9-1 *et seq.* of this code: *Provided, however*, That the limitations in this section do not apply to cancer patients, patients receiving hospice care from a licensed hospice provider, patients receiving palliative care, a patient who is a resident of a long-term care facility, or a patient receiving medications that are being prescribed for use in the treatment of substance abuse or opioid dependence.

(h) A practitioner is required to conduct and document the results of a physical examination every 90 days for any patient for whom he or she continues to treat with any Schedule II ~~controlled substance~~ opioid drug as set forth in §60A-2-206 of this code. The physical examination should be relevant to the specific diagnosis and course of treatment, and should assess whether continuing the course of treatment would be safe and effective for the patient.

(i) A veterinarian licensed pursuant to the provisions of §30-10-1 *et seq.* of this code may not issue ~~more than an initial opioid~~ Schedule II opioid drug prescription for more than a seven-day supply. The prescription shall be for the lowest effective dose which in the medical judgment of the veterinarian would be the best course of treatment for the patient and his or her condition.

(j) ~~A prescription for any opioid drug listed on~~ In conjunction with the issuance of the third prescription for a Schedule II opioid drug, as set forth in §60A-2-206 of this code for greater than a seven-day period shall require the patient to shall execute a narcotics contract with the prescribing practitioner. The contract shall be made a part of the patient's medical record. The narcotics contract is required to provide at a minimum that:

(1) The patient agrees only to obtain scheduled medications from this particular prescribing practitioner;

(2) The patient agrees he or she will only fill those prescriptions at a single pharmacy which includes a pharmacy with more than one location;

(3) The patient agrees to notify the prescribing practitioner within 72 hours of any emergency where he or she is prescribed scheduled medication; ~~and~~

(4) If the patient fails to honor the provisions of the narcotics contract, the prescribing practitioner may either terminate the provider-patient relationship or continue to treat the patient without prescribing a Schedule II opioid drug for the patient. Should the practitioner decide to terminate the relationship, he or she is required to do so pursuant to the provisions of this code and any rules promulgated hereunder. Termination of the relationship for the patient's failure to honor the provisions of the contract is not subject to any disciplinary action by the practitioner's licensing board; and

(5) If another physician is approved to prescribe to the patient.

(k) A pharmacist is not responsible for enforcing the provisions of this section and the Board of Pharmacy may not discipline a licensee if he or she fills a prescription in violation of the provisions of this section.

§16-54-5. Subsequent prescriptions; limitations.

(a) ~~No fewer than six days~~ After issuing the initial Schedule II opioid drug prescription as set forth in §16-54-4 of this code, the practitioner, after consultation with the patient, may issue a subsequent prescription for ~~an opioid~~ a Schedule II opioid drug to the patient if:

(1) The subsequent prescription would not be deemed an initial prescription pursuant to §16-54-4 of this code;

(2) The practitioner determines the prescription is necessary and appropriate to the patient's treatment needs and documents the rationale for the issuance of the subsequent prescription; and

(3) The practitioner determines that issuance of the subsequent prescription does not present an undue risk of abuse, addiction, or diversion and documents that determination.

(b) Prior to issuing the subsequent Schedule II opioid drug prescription of the course of treatment, a practitioner shall discuss with the patient, or the patient's parent or guardian if the patient is under 18 years of age, the risks associated with the Schedule II opioid drugs being prescribed. This discussion shall include:

(1) The risks of addiction and overdose associated with Schedule II opioid drugs and the dangers of taking Schedule II opioid drugs with alcohol, benzodiazepines, and other central nervous system depressants;

(2) The reasons why the prescription is necessary;

(3) Alternative treatments that may be available; and

(4) Risks associated with the use of the Schedule II opioid drug being prescribed, specifically that ~~opioids~~ Schedule II opioid drugs are highly addictive, even when taken as prescribed, that there is a risk of developing a physical or psychological dependence on the ~~controlled substance~~ Schedule II opioid drug, and that the risks of taking more opioids than prescribed, or mixing sedatives, benzodiazepines, or alcohol with opioids, can result in fatal respiratory depression.

(c) The discussion as set forth in §16-54-5(b) of this code shall be included in a notation in the patient's medical record.

§16-54-6. Ongoing treatment; referral to pain clinic or pain specialist.

(a) At the time of the issuance of the third prescription for a ~~prescription opioid~~ Schedule II opioid drug the practitioner shall consider referring the patient to a pain clinic or a pain specialist. The practitioner shall discuss the benefits of seeking treatment through a pain clinic or a pain specialist and provide him or her with an understanding of any risks associated by choosing not to pursue that as an option.

(b) If the patient declines to seek treatment from a pain clinic or a pain specialist and opts to remain a patient of the practitioner, and the practitioner continues to prescribe ~~an opioid for pain~~ a Schedule II opioid drug as provided in this code, the practitioner shall:

(1) Note in the patient's medical records that the patient knowingly declined treatment from a pain clinic or pain specialist;

(2) Review, at a minimum of every three months, the course of treatment, any new information about the etiology of the pain, and the patient's progress toward treatment objectives and document the results of that review;

(3) Assess the patient prior to every renewal to determine whether the patient is experiencing problems associated with physical and psychological dependence and document the results of that assessment; and

(4) Periodically make reasonable efforts, unless clinically contraindicated, to either stop the use of the controlled substance, decrease the dosage, try other drugs or treatment modalities in an effort to reduce the potential for abuse or the development of physical or psychological dependence, and document with specificity the efforts undertaken.

§16-54-7. Exceptions.

(a) This article does not apply to a ~~prescription for~~ a patient who is currently in active treatment for cancer, receiving hospice care from a licensed hospice provider or palliative care provider, or is a resident of a long-term care facility.

~~or to any medications that are being prescribed for use in the treatment of substance abuse or opioid dependence.~~

(b) This article does not apply to a patient being prescribed, or ordered, any medication in an inpatient setting at a hospital.

~~(b)~~ (c) Notwithstanding the limitations on the prescribing of a Schedule II opioid drug contained in §16-54-4 of this code, a practitioner may prescribe an initial seven-day supply of an opioid a Schedule II opioid drug to a post-surgery patient immediately following a surgical procedure. Based upon the medical judgment of the practitioner, a subsequent prescription may be prescribed by the practitioner pursuant to the provisions of this code. Nothing in this section authorizes a practitioner to prescribe any medication which he or she is not permitted to prescribe pursuant to their practice act.

~~(e)~~ (d) A practitioner who acquires a patient after January 1, 2018, who is currently being prescribed an opioid a Schedule II opioid drug from another practitioner shall be is required to access the Controlled Substances Monitoring Program Database as set forth in §60A-9-1 et seq. of this code. Any prescription would not be deemed an initial prescription pursuant to the provisions of this section. The practitioner shall otherwise treat the patient as set forth in this code.

~~(e)~~ (e) This article does not apply to an existing practitioner-patient relationship established before January 1, 2018, where there is an established and current opioid treatment plan which is reflected in the patient's medical records.

§16-54-8. Treatment of pain.

(a) When ~~patients seek~~ a patient seeks treatment, ~~for any of the myriad conditions that cause pain,~~ a health care practitioner shall refer or prescribe to the patient any of the following treatment alternatives, as is appropriate based on the practitioner's clinical judgment and the availability of the treatment, before starting a patient on a Schedule II opioid drug: physical therapy, occupational therapy, acupuncture, massage therapy, osteopathic manipulation, chronic pain management program, and chiropractic services, as defined in §30-16-3 of this code.

(b) Nothing in this section should be construed to require that all of the treatment alternatives set forth in §16-54-8(a) of this code are required to be exhausted prior to the patient's receiving a prescription for a Schedule II opioid drug.

(c) At a minimum, an insurance provider who offers an insurance product in this state, the Bureau for Medical Services, and the Public Employees Insurance Agency shall provide coverage for 20 visits per event of physical therapy, occupational therapy, osteopathic manipulation, a chronic pain management program, and chiropractic services, as defined in §30-16-3 of this code, when ordered or prescribed by a health care practitioner. ~~to treat conditions that cause chronic pain.~~

(d) A ~~patient~~ person may seek ~~treatment for~~ physical therapy, occupational therapy, osteopathic manipulation, a chronic pain management program, and chiropractic services, as defined in §30-16-3 of this code, prior to seeking treatment from any other health care practitioner. The licensed health care practitioner providing services pursuant to this section may prescribe within their scope of practice as defined in §16-54-1 of this code. and A health care practitioner referral although permitted is not required as a condition of coverage by the Bureau for Medical Services the Public Employees Insurance Agency, and any insurance provider who offers an insurance product in this state. Any

deductible, coinsurance, or copay required for any of these services may not be greater than the deductible, coinsurance, or copay required for a primary care visit.

(e) Nothing in this section precludes a practitioner from simultaneously prescribing a Schedule II opioid drug and prescribing or recommending any of the procedures set forth in §16-54-8(a) of this code.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 677**), and there were—yeas 80, nays 17, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Angelucci, Barrett, Cadle, Caputo, Diserio, Doyle, Estep-Burton, Fluharty, Hansen, Lavender-Bowe, Longstreth, McGeehan, Robinson, C. Thompson, Walker, Williams and Zukoff.

Absent and Not Voting: Ellington, Rohrbach and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2768) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 2849, Establishing different classes of pharmacy technicians.

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

On page three, section twelve, line eleven, by striking out the words “also known as tech-check-tech’ and the comma.

And,

On page three, section twelve, line twelve, after the word “necessary’, by inserting the words “and the pharmacist makes the final verification”.

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 678**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Ellington, C. Martin, Rohrbach and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2849) passed.

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

A message from the Senate, by

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

H. B. 2934, West Virginia Lottery Interactive Wagering Act.

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

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

“ARTICLE 22E. WEST VIRGINIA LOTTERY INTERACTIVE WAGERING ACT.

§29-22E-1. Short title.

This article shall be known and may be cited as the West Virginia Lottery Interactive Wagering Act.

§29-22E-2. State authorization of interactive wagering at licensed racetrack facilities and historic resort hotel; legislative findings, and declarations.

(a) Operation of West Virginia Lottery interactive wagering. — Notwithstanding any provision of law to the contrary, the operation of interactive wagering and ancillary activities are only lawful when conducted in accordance with the provisions of this article and rules of the commission.

(b) Legislative findings. —

(1) The Legislature finds that the operation of the four racetracks and the historic resort hotel in this state play a critical role in the economy of this state, and such constitutional lotteries are rightfully authorized as state enterprises consistent with the rights and powers granted to the states under the Tenth Amendment of the United States Constitution. The federal government is a government of limited and enumerated powers, and powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved for the states and its respective citizens.

(2) The Legislature finds that section 36, article VI of the Constitution of the State of West Virginia grants the state the exclusive right to lawfully own and operate a lottery in this state. Authorization of wagering on any constitutional lottery within West Virginia is within the state's sovereign rights as a state to act in the best interest of its citizens.

(3) The Legislature finds that it is in the best interests of the State of West Virginia for the state to operate a lottery in the form of interactive wagering and that it is the intent of the Legislature to authorize interactive wagering within the state and through compacts with other approved jurisdictions.

(4) The Legislature finds that illegal interactive wagering channels operating throughout the United States pose a critical threat to the safety and welfare of the citizens of West Virginia and that creating civil and criminal penalties to prosecute illegal operators, while transferring this black market demand into a secure and highly regulated environment, will protect the public and positively benefit state revenues and the state's economy.

(5) The Legislature finds that the most effective and efficient manner in which the state can operate and regulate the forms of lottery authorized by the provisions of this article is to limit the

number of authorized operators to those who are licensed, pursuant to the provisions of §29-22A-1 et seq. of this code, and to facilities licensed to operate video lottery terminals, pursuant to the provisions of §29-25-1 et seq. of this code.

(6) The Legislature finds that the granting of licenses pursuant to the provisions of this article, while maintaining all ownership rights and exercising control through strict regulation of all West Virginia Lottery interactive wagering authorized by the provisions of this article, constitutes an appropriate exercise by the Legislature of the power granted it by the provisions of section 36, article VI of the Constitution of the State of West Virginia.

(7) The Legislature finds that the operation of West Virginia Lottery interactive wagering at racetracks, licensed pursuant to the provisions of §29-22A-1 et seq. of this code, and at a historic resort hotel, licensed pursuant to the provisions of §29-25-1 et seq. of this code, serves to protect, preserve, promote, and enhance the tourism industry of the state as well as the general fiscal wellbeing of the state and its subdivisions.

§29-22E-3. Definitions.

For the purposes of this article, the following terms have the meanings ascribed to them in this section:

(1) 'Adjusted gross interactive wagering receipts' means an operator's gross interactive wagering receipts from West Virginia Lottery interactive wagering, less winnings paid to wagers in such games.

(2) 'Commission' or 'State Lottery Commission' means the West Virginia Lottery Commission, created by §29-22-1 et seq. of this code.

(3) 'Director' means the Director of the West Virginia State Lottery Commission, appointed pursuant to §29-22-6 of this code.

(4) 'Gaming' or 'interactive gaming' means wagering on any authorized interactive game. Authorized interactive games are computerized or virtual versions of any game of chance or digital simulation thereof, including, but not limited to, casino themed slot simulations, table games, and other games approved by the commission.

(5) 'Government' means any governmental unit of a national, state, or local body exercising governmental functions, other than the United States Government.

(6) 'Gross interactive wagering receipts' means the total gross receipts received by a licensed gaming facility from interactive wagering.

(7) 'Interactive gaming operator' or 'operator' means a licensed gaming facility which has elected to operate authorized West Virginia Lottery interactive wagering activities or an interactive gaming system on behalf of or in cooperation with an interactive gaming licensee.

(8) 'Interactive gaming provider' or 'management services provider' means an interactive gaming licensee or an interactive gaming operator with a valid permit acting on behalf of or in partnership with an interactive gaming licensee.

(9) 'Interactive wagering account' means a financial record established by a licensed gaming facility for an individual patron in which the patron may deposit and withdraw funds for interactive

wagering and other authorized purchases, and to which the licensed gaming facility may credit winnings or other amounts due to that patron or authorized by that patron.

(10) 'Interactive wagering agreement' means a written agreement between the commission and one or more other governments whereby persons who are physically located in a signatory jurisdiction may participate in interactive wagering conducted by one or more operators licensed by the signatory governments.

(11) 'Interactive wagering fund' means the special fund in the State Treasury, created in §29-22E-17 of this code.

(12) 'License' means any license, applied for or issued by the commission under this article, including, but not limited to:

(A) A license to act as agent of the commission in operating West Virginia Lottery interactive wagering at a licensed gaming facility (operator license or West Virginia Lottery interactive wagering license);

(B) A license to supply a gaming facility, licensed under this article, to operate interactive wagering with interactive wagering equipment or services necessary for the operation of interactive wagering (supplier license); or

(C) A license to be employed at a racetrack or gaming facility, licensed under this article, to operate West Virginia Lottery interactive wagering when the employee works in a designated gaming area that has interactive wagering or performs duties in furtherance of or associated with the operation of interactive wagering at the licensed gaming facility (occupational license).

(13) 'Licensed gaming facility' or 'gaming facility' means a designated area on the premises of an existing historic resort hotel, pursuant to §29-25-1 *et seq.* of this code, or the facility of an entity authorized to operate racetrack video lottery machines, pursuant to §29-22A-1 *et seq.* of this code, licensed under this article, to conduct West Virginia Lottery interactive wagering.

(14) 'Lottery' means the public gaming systems or games regulated, controlled, owned, and operated by the State Lottery Commission in the manner provided by general law, as provided in this article, and in §29-22-1 *et seq.*, §29-22A-1 *et seq.*, §29-22B-1 *et seq.*, §29-22C-1 *et seq.*, §29-22D-1 *et seq.*, and §29-25-1 *et seq.* of this code.

(15) 'National criminal history background check system' means the criminal history record system maintained by the Federal Bureau of Investigation, based on fingerprint identification or any other method of positive identification.

(16) 'Wager' means a sum of money or thing of value risked on an uncertain occurrence.

(17) 'West Virginia Lottery interactive wagering' or 'interactive wagering' or 'interactive gaming' means the placing of wagers remotely and in real time on any authorized interactive game with any interactive gaming provider, using any communications technology, by means of any electronic or mobile device or other interface capable of providing a means of input and output. The term does not include:

(A) Pari-mutuel betting on the outcome of horse or dog races, authorized by §19-23-12a and §19-23-12d of this code;

(B) Lottery games of the West Virginia State Lottery, authorized by §29-22-1 *et seq.* of this code;

(C) Racetrack video lottery, authorized by §29-22A-1 et seq. of this code;

(D) Limited video lottery, authorized by §29-22B-1 et seq. of this code;

(E) Racetrack table games, authorized by §29-22C-1 et seq. of this code;

(F) Video lottery and table games, authorized by §29-25-1 et seq. of this code;

(G) Sports wagering, authorized by §29-22D-1 et seq.; and

(H) Daily Fantasy Sports (DFS).

(18) 'West Virginia Lottery interactive wagering license' means authorization granted under this article by the commission to a gaming facility that is already licensed under §29-22A-1 et seq. or §29-25-1 et seq. of this code, which permits the gaming facility as an agent of the commission to operate West Virginia Lottery interactive wagering on the grounds where video lottery is conducted by the licensee or through any other authorized interactive platform developed by the gaming facility. This term is synonymous with 'operator's license.'

§29-22E-4. Commission duties and powers.

(a) In addition to the duties set forth elsewhere in this article, and in §29-22-1 et seq., §29-22A-1 et seq., §29-22B-1 et seq., §29-22C-1 et seq., §29-22D-1 et seq., and §29-25-1 et seq. of this code, the commission shall have the authority to regulate interactive wagering and the conduct of interactive gaming.

(b) The commission shall examine the regulations implemented in other states where interactive wagering is conducted and shall, as far as practicable, adopt a similar regulatory framework through promulgation of rules.

(c) The commission has the authority, pursuant to §29A-1-1 et seq. and §29A-3-1 et seq. of this code, to promulgate or otherwise enact any legislative, interpretive, and procedural rules the commission considers necessary for the successful implementation, administration, and enforcement of this article. Rules proposed by the commission before July 1, 2020, may be promulgated as emergency rules pursuant to §29A-3-15 of this code.

(1) Rules promulgated by the commission may include, but are not limited to, those governing the acceptance of wagers on interactive games; maximum wagers which may be accepted by an operator from any one patron on any one interactive game; method of accounting to be used by operators; types of records which shall be kept; use of credit and checks by patrons; type of system for wagering; protections for patrons placing wagers; and promotion of social responsibility, responsible gaming, and inclusion of the statement, 'If you or someone you know has a gambling problem and wants help, call 1-800 GAMBLER', in every designated area approved for interactive wagering and on any mobile application or other digital platform used to place wagers.

(2) The commission shall establish minimum internal control standards (MICS) and approve minimum internal control standards proposed by licensed operators for administration of interactive wagering operations, interactive wagering equipment and systems, or other items used to conduct interactive wagering, as well as maintenance of financial records and other required records.

(d) The commission shall determine the eligibility of a person to hold or continue to hold a license, shall issue all licenses, and shall maintain a record of all licenses issued under this article. The

commission may accept applications, evaluate qualifications of applicants, and undertake initial review of licenses prior to promulgation of emergency rules upon the effective date of this article.

(e) The commission shall levy and collect all fees, surcharges, civil penalties, and weekly tax on adjusted gross interactive wagering receipts imposed by this article, and deposit all moneys into the interactive wagering fund, except as otherwise provided under this article.

(f) The commission may sue to enforce any provision of this article or any rule of the commission by civil action or petition for injunctive relief.

(g) The commission may hold hearings, administer oaths, and issue subpoenas or subpoenas duces tecum: *Provided*, That all hearings shall be conducted pursuant to the provisions of the State Administrative Procedures Act, §29A-2-1 *et seq.* of this code and the Lottery Administrative Appeal Procedures, W.Va. CSR §179-2-1 *et seq.*

(h) The commission may exercise any other powers necessary to effectuate the provisions of this article and the rules of the commission.

§29-22E-5. Licenses required.

(a) No person may engage in any activity in connection with West Virginia Lottery interactive wagering in this state unless all necessary licenses have been obtained in accordance with this article and rules of the commission.

(b) The commission may not grant a license until it determines that each person who has control of the applicant meets all qualifications for licensure. The following persons are considered to have control of an applicant:

(1) Each person associated with a corporate applicant, including any corporate holding company, parent company, or subsidiary company of the applicant who has the ability to control the activities of the corporate applicant or elect a majority of the board of directors of that corporation; this does not include any bank or other licensed lending institution which holds a mortgage or other lien acquired in the ordinary course of business;

(2) Each person associated with a noncorporate applicant who directly or indirectly holds a beneficial or proprietary interest in the applicant's business operation, or who the commission otherwise determines has the ability to control the applicant; and

(3) Key personnel of an applicant, including any executive, employee, or agent, having the power to exercise significant influence over decisions concerning any part of the applicant's business operation.

(c) *License application requirements.* — All applicants for any license issued under this article shall submit an application to the commission in the form the commission requires and submit fingerprints for a national criminal records check by the Criminal Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation. The fingerprints shall be furnished by all persons required to be named in the application and shall be accompanied by a signed authorization for the release of information by the Criminal Investigation Bureau and the Federal Bureau of Investigation. The commission may require additional background checks on licensees when they apply for annual license renewal, and any applicant convicted of any disqualifying offense shall not be licensed.

(d) Each interactive wagering licensee, licensed supplier, or a licensed management services provider shall display the license conspicuously in its place of business or have the license available for inspection by any agent of the commission or any law-enforcement agency.

(e) Each holder of an occupational license shall carry the license and have some indicia of licensure prominently displayed on his or her person when present in a licensed gaming facility at all times, in accordance with the rules of the commission.

(f) Each person licensed under this article shall give the commission written notice within 30 days of any change to any information provided in the licensee's application for a license or renewal.

(g) No commission employee may be an applicant for any license issued under this article nor may any employee of any such licensee directly or indirectly hold an ownership or a financial interest in any West Virginia Lottery interactive wagering license.

§29-22E-6. Operator license; West Virginia interactive wagering operators.

(a) In addition to the casino games permitted pursuant to the provisions of §29-22A-1 et seq., §29-22C-1 et seq., and §29-25-1 et seq. of this code, a licensed gaming facility may operate West Virginia Lottery interactive wagering upon the approval of the commission, and the commission shall have the general responsibility for the implementation of this article and all other duties specified in §29-22-1 et seq., §29-22A-1 et seq., §29-22C-1 et seq., §29-22D-1 et seq., and §29-25-1 et seq. of this code, the provisions of this article, and applicable rules.

(b) All interactive wagering authorized by this article shall be West Virginia Lottery games owned by the State of West Virginia. An operator license granted by the commission pursuant to this article grants licensees lawful authority to conduct West Virginia Lottery interactive wagering within the terms and conditions of the license and any rules promulgated under this article.

(c) Interactive wagering licenses. — The commission may issue up to five licenses to operate West Virginia Lottery interactive wagering in accordance with the provisions of this article. No more than five licenses to operate a gaming facility with West Virginia Lottery interactive wagering shall be permitted in this state.

(d) Grant of license. — Upon application by a gaming facility and payment of a \$250,000 application fee, the commission shall immediately grant a West Virginia Lottery interactive wagering license to an operator that provides for the right to conduct West Virginia Lottery interactive wagering: *Provided*, That the applicant must hold a valid racetrack video lottery license issued by the commission, pursuant to §29-22A-1 et seq. of this code, or a valid license to operate a gaming facility, issued by the commission pursuant to §29-25-1 et seq. of this code, and otherwise meet the requirements for licensure under the provisions of this article and the rules of the commission. This license shall be issued for a five-year period, and may be renewed for five-year periods upon payment of a \$100,000 renewal fee, as long as an operator continues to meet all qualification requirements.

(e) Location. — A West Virginia Lottery interactive wagering license authorizes the operation of West Virginia Lottery interactive wagering at approved locations and through any mobile application or other digital platforms approved by the commission.

(f) Management service contracts. —

(1) Approval. — A West Virginia Lottery interactive wagering licensee may not enter into any management services contract that would permit any person other than the licensee to act as the commission's agent in operating West Virginia Lottery interactive wagering unless the management

service contract: (A) Is with a person licensed under this article to provide management services; (B) is in writing; and (C) has been approved by the commission.

(2) *Material change.* — The West Virginia Lottery interactive wagering licensee shall submit any material change in a management services contract, previously approved by the commission, to the commission for its approval or rejection before the material change may take effect.

(3) *Other commission approvals and licenses.* — The duties and responsibilities of a management services provider under a management services contract may not be assigned, delegated, subcontracted, or transferred to a third party without the prior approval of the commission. Third parties must be licensed as a management services provider under this article before providing services.

(g) *Expiration date and renewal.* —

(1) A licensed operator shall submit to the commission such documentation or information as the commission may require demonstrating to the satisfaction of the director that the licensee continues to meet the requirements of the law and rules. Required documentation or information shall be submitted no later than five years after issuance of an operator license and every five years thereafter, or within lesser periods based on circumstances specified by the commission.

(2) If the licensee fails to apply to renew its license issued pursuant to §29-22A-1 *et seq.* or §29-25-1 *et seq.* of this code prior to expiration, the commission shall renew its license under this article at the time the expired license is renewed as long as the licensee was operating in compliance with applicable requirements in the preceding license year.

(h) *Surety bond.* — A West Virginia Lottery interactive wagering licensee shall execute a surety bond in an amount and in the form approved by the commission, to be given to the state, to guarantee the licensee faithfully makes all payments in accordance with the provisions of this article and rules promulgated by the commission.

(i) *Audits.* — Upon application for a license and annually thereafter, a West Virginia Lottery interactive wagering licensee shall submit to the commission an annual audit of the financial transactions and condition of the licensee's total operations prepared by a certified public accountant in accordance with generally accepted accounting principles and applicable federal and state laws.

(j) *Commission office space.* — A West Virginia Lottery interactive wagering licensee shall provide suitable office space at the interactive wagering facility, at no cost, for the commission to perform the duties required of it by this article and the rules of the commission.

(k) *Facility qualifications.* — A West Virginia Lottery interactive wagering licensee shall demonstrate that its gaming facility with West Virginia Lottery interactive wagering will: (1) Be accessible to disabled individuals, in accordance with applicable federal and state laws; (2) be licensed in accordance with this article, and all other applicable federal, state, and local laws; and (3) meet any other qualifications specified in rules adopted by the commission. Notwithstanding any provision of this code or any rules promulgated by the Alcohol Beverage Control Commissioner to the contrary, vacation of the premises after service of beverages ceases is not required for any licensed gaming facility.

§29-22E-7. Management services providers; license requirements.

(a) *License.* — The holder of a license to operate West Virginia Lottery interactive wagering may contract with an entity to conduct that operation in accordance with the rules of the commission. That

entity shall obtain a license as a management services provider prior to the execution of any such contract, and such license shall be issued pursuant to the provisions of this article and any rules promulgated by the commission.

(b) License qualifications and fee. — Each applicant for a management services provider license shall meet all requirements for licensure and pay a nonrefundable license and application fee of \$100,000. The commission may adopt rules establishing additional requirements for an authorized management services provider. The commission may accept licensing by another jurisdiction, that it specifically determines to have similar licensing requirements, as evidence the applicant meets authorized management services provider licensing requirements.

(c) Renewal. — Management services provider licenses shall be renewed annually to any licensee who continues to be in compliance with all requirements and who pays the annual renewal fee of \$100,000.

(d) Any entity or individual who shares in revenue, including any affiliate operating under a revenue share agreement, shall be licensed under this section.

§29-22E-8. Suppliers; license requirements.

(a) Supplier license. —

(1) The commission may issue a supplier license to a person to sell or lease interactive wagering equipment, systems, or other gaming items necessary to conduct interactive wagering, and offer services related to such equipment or other gaming items to a West Virginia Lottery interactive wagering licensee while the license is active. The commission may establish the conditions under which the commission may issue provisional licenses, pending completion of final action on an application.

(2) The commission may adopt rules establishing additional requirements for a West Virginia Lottery interactive wagering supplier and any system or other equipment utilized for wagering. The commission may accept licensing by another jurisdiction, that it specifically determines to have similar licensing requirements, as evidence the applicant meets West Virginia Lottery interactive wagering supplier licensing requirements.

(b) Supplier specifications. — An applicant for a supplier license shall demonstrate that the equipment, system, or services that the applicant plans to offer to the interactive wagering licensee conform to standards established by the commission and applicable state law. The commission may accept approval by another jurisdiction, that it specifically determines have similar equipment standards, as evidence the applicant meets the standards established by the commission and applicable state law.

(c) License application and renewal fees. — Applicants shall pay to the commission a nonrefundable license and application fee in the amount of \$10,000. After the initial one-year term, the commission shall renew supplier licenses annually thereafter. Renewal of a supplier license will be granted to any renewal applicant who has continued to comply with all applicable statutory and regulatory requirements, upon submission of the commission issued renewal form and payment of a \$10,000 renewal fee.

(d) Inventory. — A licensed interactive wagering supplier shall submit to the commission a list of all interactive wagering equipment and services sold, delivered to, or offered to a West Virginia Lottery interactive wagering licensee in this state, as required by the commission, all of which must be tested and approved by an independent testing laboratory approved by the commission. An interactive

wagering licensee may continue to use supplies acquired from a licensed interactive wagering supplier, even if a supplier's license expires or is otherwise cancelled, unless the commission finds a defect in the supplies.

§29-22E-9. Occupational licenses.

(a) All persons employed to be engaged directly in interactive wagering-related activities, or otherwise conducting or operating interactive wagering, shall be licensed by the commission and maintain a valid occupational license at all times and the commission shall issue such license to be employed in the operation of interactive wagering to a person who meets the requirements of this section.

(b) An occupational license to be employed by a gaming facility with West Virginia Lottery interactive wagering permits the licensee to be employed in the capacity designated by the commission while the license is still active. The commission may establish, by rule, job classifications with different requirements to recognize the extent to which a particular job has the ability to impact the proper operation of West Virginia Lottery interactive wagering.

(c) Application and fee. — Applicants shall submit any required application forms established by the commission and pay a nonrefundable application fee of \$100. The fee may be paid on behalf of an applicant by the employer.

(d) Renewal fee and form. — Each licensed employee shall pay to the commission an annual license fee of \$100 by June 30 of each year. The fee may be paid on behalf of the licensed employee by the employer. In addition to a renewal fee, each licensed employee shall annually submit a renewal application on the form required by the commission.

§29-22E-10. License prohibitions.

(a) The commission may not grant any license, pursuant to the provisions of this article, if evidence satisfactory to the commission exists that the applicant:

(1) Has knowingly made a false statement of a material fact to the commission;

(2) Has been suspended from operating a gambling game, gaming device, or gaming operation, or had a license revoked by any governmental authority responsible for regulation of gaming activities;

(3) Has been convicted of a gambling-related offense, a theft or fraud offense, or has otherwise demonstrated, either by a police record or other satisfactory evidence, a lack of respect for law and order; or

(4) Is a company or individual who has been directly employed by any illegal or offshore book that serviced the United States, or otherwise accepted black market wagers from individuals located in the United States.

(b) The commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license:

(1) If the applicant or licensee has not demonstrated to the satisfaction of the commission financial responsibility sufficient to adequately meet the requirements of the proposed enterprise;

(2) If the applicant or licensee is not the true owner of the business or is not the sole owner and has not disclosed the existence or identity of other persons who have an ownership interest in the business; or

(3) If the applicant or licensee is a corporation which sells more than five percent of a licensee's voting stock, or more than five percent of the voting stock of a corporation which controls the licensee, or sells a licensee's assets, other than those bought and sold in the ordinary course of business, or any interest in the assets, to any person not already determined by the commission to have met the qualifications of a licensee under this article.

(c) In the case of an applicant for an interactive wagering license, the commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if an applicant has not met the requirements of this section or any other provision of this article.

§29-22E-11. Interactive wagering house rules; posting of rules.

(a) Each operator shall adopt comprehensive house rules for game play governing interactive wagering transactions with its patrons. These comprehensive rules will be published as part of the minimum internal control standards. The rules shall specify the amounts to be paid on winning wagers and the effect of schedule changes. House rules shall be approved by the commission prior to implementation.

(b) The house rules, together with any other information the commission deems appropriate, shall be conspicuously displayed and included in the terms and conditions of the interactive wagering system. Copies shall be made readily available to patrons.

(c) The commission shall license and require the display of West Virginia Lottery game logos on interactive wagering platforms and any locations the commission considers appropriate.

§29-22E-12. Operator duties; interactive wagering operations at a licensed gaming facility.

(a) General. — All operators licensed under this article to conduct West Virginia Lottery interactive wagering shall:

(1) Employ an interactive gaming system and interactive gaming platform which manages, conducts, and records interactive games and the wagers associated with interactive games, as well as any interactive gaming platforms authorized by the commission. System requirements and specifications shall be developed according to industry standards and implemented by the commission as part of the minimum internal control standards;

(2) Promptly report to the commission any facts or circumstances related to the operation of a West Virginia Lottery interactive wagering licensee which constitute a violation of state or federal law and immediately report any suspicious betting over a threshold set by the operator that has been approved by the commission to the appropriate state or federal authorities;

(3) Conduct all interactive wagering activities and functions in a manner which does not pose a threat to the public health, safety, or welfare of the citizens of this state and does not adversely affect the security or integrity of the West Virginia Lottery;

(4) Hold the commission and this state harmless from and defend and pay for the defense of any and all claims which may be asserted against a licensee, the commission, the state, or employees thereof, arising from the licensee's actions or omission while acting as an agent of the commission operating West Virginia Lottery interactive wagering pursuant to this article;

(5) Assist the commission in maximizing interactive wagering revenues; and

(6) Keep current in all payments and obligations to the commission.

(b) Duties. — All West Virginia Lottery interactive wagering licensees shall:

(1) Acquire West Virginia Lottery interactive wagering equipment by purchase, lease, or other assignment and provide a secure location for the placement, operation, and play of interactive wagering gaming equipment;

(2) Prevent any person from tampering with or interfering with the operation of any West Virginia Lottery interactive wagering;

(3) Ensure that West Virginia Lottery interactive wagering conducted at a gaming facility is within the sight and control of designated employees of the licensee and such wagering at the facility or otherwise available by the licensee is conducted under continuous observation by security equipment in conformity with specifications and requirements of the commission;

(4) Ensure that West Virginia Lottery interactive wagering occurs only in the specific locations within designated gaming areas approved by the commission or using a commission approved mobile application or other digital platform that utilizes communications technology to accept wagers originating within this state, or on an interactive wagering device. West Virginia Lottery interactive wagering shall only be relocated or offered in additional authorized manners in accordance with the rules of the commission;

(5) Maintain sufficient cash and other supplies to conduct interactive wagering at all times; and

(6) Maintain daily records showing the gross interactive wagering receipts and adjusted gross interactive wagering receipts of the licensee from West Virginia Lottery interactive wagering and shall timely file with the commission any additional reports required by rule or by other provisions of this code.

§29-22E-13. Posting of betting limits.

An interactive wagering licensee shall conspicuously post a sign at each West Virginia Lottery interactive wagering location and on all interactive gaming platforms indicating the minimum and maximum wagers permitted at that location and shall comply with the same.

§29-22E-14. Interactive wagering agreements with other governments.

(a) On behalf of the State of West Virginia, the commission is authorized to:

(1) Enter into interactive wagering agreements with other governments whereby persons who are physically located in a signatory jurisdiction may participate in interactive wagering conducted by one or more operators licensed by the signatory governments; and

(2) Take all necessary actions to ensure that any interactive wagering agreement entered into, pursuant to this section, becomes effective.

(b) The rules adopted by the commission pursuant to this section may include provisions prescribing:

(1) The form, length, and terms of an agreement entered into by the commission and another government, including, but not limited to, provisions relating to how: Taxes are to be treated by this state and another government; revenues are to be shared and distributed; and disputes with patrons are to be resolved;

(2) The information to be furnished to the commission by a government that proposes to enter into an agreement with this state pursuant to this section;

(3) The information to be furnished to the commission to enable the commission and director to carry out the purposes of this section;

(4) The manner and procedure for hearings conducted by the commission pursuant to this section, including any special rules or notices; and

(5) The information required to be furnished to the commission to support any recommendations made to the commission, pursuant to this section.

(c) The commission may not enter into any interactive wagering agreement, pursuant to this section, unless the agreement includes provisions that:

(1) Account for the sharing of revenues by this state and another government;

(2) Permit the effective regulation of interactive wagering by this state, including provisions relating to licensing of persons, technical standards, resolution of disputes by patrons, requirements for bankrolls, enforcement, accounting, and maintenance of records;

(3) Require each government that is a signatory to the agreement to prohibit operators of interactive wagering, management or other service providers, or suppliers, manufacturers or distributors of interactive wagering systems from engaging in any activity permitted by the interactive wagering agreement unless they are licensed in this state or in a signatory jurisdiction with similar requirements approved by the commission;

(4) No variation from the requirements of the interactive wagering agreement is permitted for any signatory government without a lack of opposition by this state and all signatory governments;

(5) Prohibit any subordinate or side agreements among any subset of governments that are signatories to the agreement unless it relates exclusively to the sharing of revenues; and

(6) Require the government to establish and maintain regulatory requirements governing interactive wagering that are consistent with the requirements of this state in all material respects if the interactive wagering agreement allows persons physically located in this state to participate in interactive wagering conducted by another government or an operator licensed by another government.

§29-22E-15. Authorization of interactive wagering in this state; requirements.

(a) An operator shall accept wagers on interactive games authorized under this article from persons physically present in a licensed gaming facility where authorized interactive wagering occurs. A person placing a wager shall be at least 21 years of age.

(b) An operator may accept wagers from an individual physically located within this state using a mobile or other digital platform or an interactive wagering device, approved by the commission,

through the patron's interactive wagering account. A person placing a wager shall be at least 21 years of age.

(c) An operator may accept wagers from an individual physically located in a state or jurisdiction with which the commission has entered into an interactive wagering agreement using a mobile or other digital platform or an interactive wagering device through the patron's interactive wagering account, so long as the device or platform is approved by the commission and all other requirements of the agreement are satisfied.

(d) The commission or operator may ban any person from entering a gaming area of a gaming facility conducting interactive wagering or the grounds of a gaming facility licensed under this article or from participating in the play or operation of any West Virginia Lottery interactive wagering. A log of all excluded players shall be kept by the commission and each licensee, and no player on the commission's exclusion list or the licensed operator's exclusion list shall wager on any West Virginia Lottery interactive wagering under this article.

(e) The commission shall promulgate rules implementing the provisions of §29-22E-15(a) and §29-22E-15(b) of this code by interpretive rule and minimum internal control standards.

(f) The commission shall conduct all interactive wagering pursuant to the provisions of this article, and such gaming activities shall be deemed to occur at the licensed gaming facilities authorized to conduct interactive wagering.

(g) No licensed gaming facility employee may place a wager on any interactive wagering at the employer's facility or through any other mobile application or digital platform of their employer.

(h) No commission employee may knowingly wager or be paid any prize from any wager placed at any licensed gaming facility with West Virginia Lottery interactive wagering within this state or at any facility outside this jurisdiction that is directly or indirectly owned or operated by a West Virginia interactive wagering licensee.

§29-22E-16. Interactive wagering revenues; accounting for the state's share of revenue imposed for the privilege of offering West Virginia Lottery interactive wagering; limitation of other taxes; recoupment for improvements.

(a) Imposition and rate of assessment. — For the privilege of holding a license to operate interactive wagering under this article, the state shall impose and collect 15 percent of the licensee's adjusted gross interactive wagering receipts from the operation of West Virginia Lottery interactive wagering (hereinafter 'privilege tax' or 'tax'). The accrual method of accounting shall be used for purposes of calculating the amount of the tax owed by the licensee.

(b) Operator revenue reports and payment of privilege tax. —

(1) The tax levied and collected pursuant to §29-22E-16(a) of this code is due and payable to the commission in weekly installments on or before the Wednesday following the calendar week in which the adjusted gross interactive wagering receipts were received and the tax obligation was accrued.

(2) The licensed operator shall complete and submit the return for the preceding week by electronic communication to the commission, on or before Wednesday of each week, in the form prescribed by the commission that provides:

(A) The total gross interactive wagering receipts and adjusted gross interactive wagering receipts from operation of West Virginia Lottery interactive wagering during that week;

(B) The tax amount for which the interactive wagering licensee is liable; and

(C) Any additional information necessary in the computation and collection of the tax on adjusted gross interactive wagering receipts required by the commission.

(3) The tax amount shown to be due shall be remitted by electronic funds transfer simultaneously with the filing of the return. All moneys received by the commission pursuant to this section shall be deposited in the interactive wagering fund in accordance with the provisions of this article.

(c) *Privilege tax obligation imposed by this section is in lieu of other taxes.* — With the exception of the ad valorem property tax collected under chapter 11A of this code, the privilege tax on adjusted gross interactive wagering receipts imposed by this section is in lieu of all other state and local taxes and fees imposed on the operation of, or the proceeds from operation of, West Virginia Lottery interactive wagering, except as otherwise provided in this section. The consumers sales and services tax imposed pursuant to §11-15-1 *et seq.* of this code, the use tax imposed by §11-15A-1 *et seq.* of this code and any similar local tax imposed at the municipal or county level, shall not apply to the licensee's gross receipts from any West Virginia Lottery interactive wagering or to the licensee's purchase of interactive wagering equipment, supplies, or services directly used in operation of the interactive wagering authorized by this article.

(d) Acquisition of any system or wagering equipment and other items related to the operation of West Virginia interactive wagering shall be considered 'facility modernization improvements' eligible for recoupment as defined in §29-22A-10(b)(2) and §29-25-22(c) of this code.

(e) *Prohibition on credits.* — Notwithstanding any other provision of this code to the contrary, no credit may be allowed against the privilege tax obligation imposed by this section or against any other tax imposed by any other provision of this code for any investment in gaming equipment or for any investment in or improvement to real property that is used in the operation of West Virginia Lottery interactive wagering.

§29-22E-17. West Virginia Lottery Interactive Wagering Fund; distribution of funds.

(a) The special fund in the State Treasury known as the West Virginia Lottery Interactive Wagering Fund is hereby created and all moneys collected under this article by the commission shall be deposited with the State Treasurer to the West Virginia Lottery Interactive Wagering Fund. The fund shall be an interest-bearing account with all interest or other return earned on the money of the fund credited to and deposited in the fund. All expenses of the commission incurred in the administration and enforcement of this article shall be paid from the interactive wagering fund pursuant to §29-22E-17(b) of this code.

(b) The commission shall deduct an amount sufficient to reimburse its actual costs and expenses incurred in administering interactive wagering at licensed gaming facilities from the gross deposits into the interactive wagering fund. The amount remaining after the deduction for administrative expenses is the net profit.

(1) *Administrative allowance.* — The commission shall retain up to 15 percent of gross deposits for the fund operation and its administrative expenses: *Provided*, That in the event that the percentage allotted for operations and administration generates a surplus, the surplus shall be allowed to accumulate but may not exceed \$250,000. On a monthly basis, the director shall report any surplus in excess of \$250,000 to the Joint Committee on Government and Finance and remit the entire amount of those surplus funds in excess of \$250,000 to the State Treasurer which shall be allocated as net profit.

(2) Distribution to pension plan for racing association employees. — In each fiscal year, the Lottery Commission shall deposit one-quarter of a percent of the net profit into each of the four special funds established by the Racing Commission, pursuant to §29-22A-10 and §29-22C-27 of this code, to be used for payment into the pension plan for the employees of the licensed racing associations in this state.

(3) Distribution of net profit. — In each fiscal year, remaining net profit shall be deposited into the State Lottery Fund created by §29-22-18 of this code unless otherwise required by this code.

§29-22E-18. Law enforcement.

Notwithstanding any provision of this code to the contrary, the commission shall, by contract or cooperative agreement with the West Virginia State Police, arrange for those law-enforcement services uniquely related to interactive wagering, as such occurs at facilities of the type authorized by this article, that are necessary to enforce the provisions of this article that are not subject to federal jurisdiction: *Provided*, That the State Police shall only have exclusive jurisdiction over offenses committed on the grounds of a licensed gaming facility that are offenses relating to interactive wagering.

§29-22E-19. Civil penalties.

(a) The commission may impose, on any person who violates the provisions of this article, a civil penalty not to exceed \$50,000 for each violation. Such penalty shall be imposed on all individuals and is not limited to individuals licensed under this article.

(b) The provisions of §29A-5-1 *et seq.* of this code apply to any civil penalty imposed pursuant to the provisions of this section.

§29-22E-20. Crimes and penalties related to unauthorized interactive wagering operations.

(a) Any person, other than a licensee under this article, who engages in accepting, facilitating, or operating an interactive wagering operation is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000 or confined in jail for not more than 90 days, or both fined and confined.

(b) Notwithstanding the penalty provisions of §29-22E-20(a) of this code, any person convicted of a second violation of §29-22E-20(a) of this code is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$50,000, or confined in jail for not more than six months, or both fined and confined.

(c) Notwithstanding the penalty provisions of §29-22E-20(a) or §29-22E-20(b) of this code, any person convicted of a third or subsequent violation of §29-22E-20(a) of this code is guilty of a felony, and upon conviction thereof, shall be fined not less than \$25,000 nor more than \$100,000 or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and confined.

§29-22E-21. Crimes and penalties related to authorized interactive wagering operation.

(a) An interactive wagering licensee is guilty of unlawful operation and is guilty of a misdemeanor when:

(1) The licensee operates West Virginia Lottery interactive wagering without authority of the commission to do so;

(2) The licensee operates West Virginia Lottery interactive wagering in any location or by any manner that is not approved by the commission;

(3) The licensee knowingly conducts, carries on, operates, or allows any interactive wagering to occur on premises or through any other device if equipment or material has been tampered with, or exposed to conditions in which it will be operated in a manner designed to deceive the public;

(4) The licensee employs an individual who does not hold a valid occupational license in a position for which a license is required or otherwise allows an individual to perform duties for which such license is required or continues to employ an individual after the employee's occupational license is no longer valid;

(5) The licensee acts or employs another person to act as if he or she is not an agent or employee of the licensee in order to encourage participation in West Virginia Lottery interactive wagering;

(6) The licensee knowingly permits an individual under the age of 21 to enter or remain in a designated gaming area or to engage in interactive wagering; or

(7) The licensee exchanges tokens, chips, electronic media, or other forms of credit used for wagering for anything of value except money or credits applied to an interactive wagering account at a gaming facility or through a digital or electronic platform authorized under this article.

(b) A person is guilty of a felony when:

(1) A person changes or alters the normal outcome of any game played on a mobile or other digital platform, including any interactive gaming system used to monitor the same or the way in which the outcome is reported to any participant in the game;

(2) The person manufactures, sells, or distributes any device that is intended by that person to be used to violate any provision of this article or the interactive wagering laws of any other state;

(3) The person claims, collects, or takes anything of value from a gaming facility offering West Virginia Lottery interactive wagering with intent to defraud or attempts such action without having made a wager in which such amount or value is legitimately won or owed;

(4) The person knowingly places a wager using counterfeit currency or other counterfeit form of credit for wagering at a gaming facility or through a digital or electronic platform offering West Virginia Lottery interactive wagering; or

(5) The person, not a licensed gaming facility under this article or an employee or agent of a gaming facility licensed under this article acting in furtherance of the licensee's interest, has in his or her possession on grounds owned by the gaming facility licensed under this article or on grounds contiguous to the licensed gaming facility, any device intended to be used to violate a provision of this article or any rule of the commission.

(c) Any person who violates any provision of §29-22E-21(a) of this code is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in jail for not more than six months, or both fined and confined, except any violation that is not committed by a natural person may result in a fine of not more than \$25,000.

(d) Any person who violates any provision of §29-22E-21(b) of this code is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$10,000, or confined in a

state correctional facility for not less than one year nor more than five years, or both fined and confined.

(e) With regard to §29-22E-21(b) of this code, each West Virginia interactive wagering licensee shall post notice of the prohibitions and penalties of this section in a manner determined by the rules of the commission.

§29-22E-22. Preemption.

No local law or rule providing any penalty, disability, restriction, regulation, or prohibition for operating a gaming facility with West Virginia Lottery interactive wagering or supplying a licensed gaming facility may be enacted, and the provisions of this article preempt all regulations, rules, ordinances, and laws of any county or municipality in conflict with this article.

§29-22E-23. Exemption from federal law.

Pursuant to Section 2 of Chapter 1194, 64 Stat. 1134, 15 U.S.C. § 1172, approved January 2, 1951, the State of West Virginia, acting by and through duly elected and qualified members of the Legislature, does declare and proclaim that the state is exempt from Chapter 1194, 64 Stat. 1134, 15 U.S.C. § 1171 to § 1178.

§29-22E-24. Shipment of gambling devices.

All shipments of gambling devices including any interactive wagering devices or related materials to licensed gaming facilities in this state are legal shipments of gambling devices into the State of West Virginia, as long as the registering, recording, and labeling of which have been completed by the supplier thereof in accordance with Chapter 1194, 64 Stat. 1134, 15 U.S.C. § 1171 to § 1178.”

And,

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

H. B. 2934 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §29-22E-1, §29-22E-2, §29-22E-3, §29-22E-4, §29-22E-5, §29-22E-6, §29-22E-7, §29-22E-8, §29-22E-9, §29-22E-10, §29-22E-11, §29-22E-12, §29-22E-13, §29-22E-14, §29-22E-15, §29-22E-16, §29-22E-17, §29-22E-18, §29-22E-19, §29-22E-20, §29-22E-21, §29-22E-22, §29-22E-23, and §29-22E-24, all relating to permitting interactive wagering authorized as West Virginia Lottery interactive wagering activities; providing legislative findings; defining terms; detailing duties and powers of the West Virginia Lottery Commission; providing rule-making authority and emergency rule-making authority; requiring commission to levy and collect all fees, surcharges, civil penalties, and weekly tax on adjusted gross interactive wagering receipts and deposit them into the West Virginia Lottery Interactive Wagering Fund; limiting licensees who may offer interactive wagering to existing racetrack casinos and the casino in a historic resort hotel; providing for four types of licenses to be issued related to interactive wagering; establishing license requirements and prohibitions; authorizing licensing fees; requiring adoption and posting of house rules; defining duties of an operator conducting interactive wagering; requiring the posting of betting limits; authorizing interactive wagering agreements with other governments; providing powers and duties of commission and operators; limiting certain activities of employees; authorizing the West Virginia Lottery to levy and collect a privilege tax in the amount of 15 percent of adjusted gross interactive wagering receipts; requiring reports and submission of taxes; clarifying that tax is in lieu of certain other taxes; providing that certain expenditures related to interactive wagering are facility modernization improvements eligible for recoupment; providing that credits are not allowed against the privilege tax; creating the West Virginia Lottery Interactive Wagering Fund; authorizing the West Virginia Lottery to collect an

administrative allowance from gross interactive wagering receipts; providing for distribution of moneys deposited in the West Virginia Lottery Interactive Wagering Fund; authorizing certain agreements between the West Virginia Lottery and law enforcement; imposing civil penalties for certain violations, and exceptions thereto; prohibiting unauthorized interactive wagering in this state; establishing crimes related to unauthorized interactive wagering and imposing criminal penalties; establishing crimes related to authorized interactive wagering and imposing criminal penalties; preempting provisions from state and local law; and establishing certain exemptions from federal law.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 679**), and there were—yeas 78, nays 18, absent and not voting 4, with the nays and absent and not voting being as follows:

Nays: Boggs, Butler, Cowles, Fast, Hollen, D. Jeffries, J. Kelly, Kessinger, Kump, Linville, P. Martin, Pack, Paynter, Rowan, Summers, Toney, Worrell and Hanshaw (Mr. Speaker).

Absent and Not Voting: Ellington, C. Martin, Rohrbach and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2934) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 2982, Amending and updating the laws relating to auctioneers.

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

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

“ARTICLE 2C. AUCTIONEERS.

§19-2C-1. Definitions.

For the purposes of this article:

(a) ‘Absolute auction’ means the sale of real or personal property at auction whereby every item offered from the block is sold to the highest bidder without reserve and without the requirements of a minimum bid or other conditions which limit the sale other than to the highest bidder.

(b) ‘Auctioneer’ means a person who sells goods or real estate at public auction for another on commission or for other compensation. ~~The term ‘auctioneer’ does not include:~~

~~(1) Persons conducting sales at auctions conducted by or under the direction of any public authority or pursuant to any judicial order or direction or to any sale required by law to be at auction;~~

~~(2) The owner of any real or personal property when personally sold at auction by the owner and the owner has not personally conducted an auction within the previous twelve-month period;~~

~~(3) Persons conducting sales pursuant to a deed of trust;~~

~~(4) Fiduciaries of estates when selling real or personal property of the estate;~~

~~(5) Persons conducting sales on behalf of charitable, religious, fraternal or other nonprofit organizations; and~~

~~(6) Persons properly licensed pursuant to the provisions of article forty, chapter thirty of this code when conducting an auction, any portion of which contains any leasehold or any estate in land whether corporeal or incorporeal, freehold or nonfreehold, when the person is retained to conduct an auction by a receiver or trustee in bankruptcy, a fiduciary acting under the authority of a deed of trust or will, or a fiduciary of a decedent's estate: *Provided*, That nothing contained in this article exempts persons conducting sales at public markets from the provisions of article two-a of this chapter, where the sale is confined solely to livestock, poultry and other agriculture and horticulture products~~

~~(b)~~ (c) 'Commissioner' means the Commissioner of Agriculture of West Virginia.

~~(c)~~ (d) 'Department' means the West Virginia Department of Agriculture.

~~(d)~~ (e) 'Escrow account' means a separate custodial or trust fund account maintained by the auctioneer.

(f) 'Estate auction' means the sale at auction of property of a specified deceased person or the property of a specified living person's estate. Estate auctions may contain property other than that of the specified living or deceased person. However, the inclusion of additional property must be included in all advertising and auction announcements.

(g) 'In this state' means that an auction satisfies one of the following criteria:

(1) The auctioneer performed the auction within the borders of the State of West Virginia;

(2) The auctioneer is selling items for a person located in the State of West Virginia;

(3) The auctioneer is auctioning real or personal property located in the State of West Virginia;

(4) The auctioneer delivers purchased property to a location in the State of West Virginia; or

(5) The auctioneer is otherwise subject to the laws, including taxation authority, of the State of West Virginia.

~~(e)~~ (h) 'Public auction' or 'auction' means any public sale of real or personal property in any manner, whether in-person, via written offers or bids, or online, when offers or bids are made by prospective purchasers and the property sold to the highest bidder.

§19-2C-2. License required; exceptions.

~~(a) After June 30, 1974, no~~ Except as provided in subsection (b) of this section, no person shall conduct an auction as an auctioneer in this state unless he or she shall have first obtained from the commissioner a license therefor.

(b) The provisions of this section do not apply to:

(1) Persons conducting sales at auctions conducted by or under the direction of any public authority or pursuant to any judicial order or direction or to any sale required by law to be at auction;

(2) The owner of any real or personal property when personally sold at auction by the owner and the owner has not personally conducted an auction within the previous 12-month period;

(3) Persons conducting sales pursuant to a deed of trust;

(4) Fiduciaries of estates when selling real or personal property of the estate;

(5) Persons conducting sales without compensation on behalf of charitable, religious, fraternal, or other nonprofit organizations: *Provided*, That the commissioner shall promulgate rules to limit the number of charitable auctions an exempt person may perform in a 12-month period;

(6) Persons properly licensed pursuant to the provisions in §30-40-1 *et seq.* of this code when conducting an auction, any portion of which contains any leasehold or any estate in land whether corporeal or incorporeal, freehold or nonfreehold, when the person is retained to conduct an auction by a receiver or trustee in bankruptcy, a fiduciary acting under the authority of a deed of trust or will, or a fiduciary of a decedent's estate: *Provided*, That nothing contained in this article exempts persons conducting sales at public markets from the provisions of §19-2A-1 *et seq.* of this code, where the sale is confined solely to livestock, poultry, and other agriculture and horticulture products; and

(7) Persons listing items online for sale via a platform that establishes a fixed time for the conclusion of the sale without extension: *Provided*, That the commissioner may further define this exemption in legislative rules.

§19-2C-3. Procedure for license; Department of Agriculture as statutory agent for licensees.

(a) An applicant for an auctioneer license shall:

(1) Apply on forms prescribed by the commissioner;

(2) Pay a nonreturnable application fee and a license fee; and, upon successful completion of the application process, a license fee; and

(3) File a bond as required by this article.

(b) The commissioner shall, within 30 days after the receipt of an application, notify the applicant of his or her eligibility to be examined at the next regularly scheduled examination, as well as the date of the examination.

(c) If the license is denied, the commissioner shall refund the license fee submitted with the application to the applicant.

(d) All licenses expire on ~~December 31~~ June 30 of each year: *Provided*, That an auctioneer may continue to perform auctions for up to 30 days after June 30, so long as he or she has submitted the required paperwork to renew his or her auctioneer license: *Provided, however*, That licenses issued in 2019 shall continue to be active through June 30, 2020. A license may be renewed upon the payment of the annual renewal fee within 60 days of the expiration date. Renewals received more than 60 days after the expiration date are subject to a late renewal fee in addition to the annual renewal fee.

(e) A license that has been expired for more than two years cannot be renewed until the auctioneer or apprentice auctioneer takes the written and oral examination, pays the examination fee and complies with the other requirements of this article.

(f) Where an auctioneer or apprentice auctioneer requires a duplicate or replacement license or a license reflecting a change in information, the auctioneer or apprentice auctioneer shall submit the fee with the request.

(g) The State Department of Agriculture is the agent for the purpose of service of process on a licensed auctioneer for any action occasioned by the performance of the duties of the auctioneer. Every licensed auctioneer, by virtue of his or her application for a license, shall be considered to have consented to the statutory agency.

§19-2C-5. Requirements for auctioneer license; duties of licensee.

(a) A person seeking an auctioneer license shall submit satisfactory evidence to the commissioner showing that he or she:

(1) Has successfully completed the written and oral examinations required by this article;

(2) Has a good reputation;

~~He or she~~ (3) Is of trustworthy character;

(4) Has met the apprenticeship requirements set forth in this article, if applicable;

(5) Is a citizen of the United States; and

(6) Has a general knowledge of the auctioneering profession and the principles involved in conducting an auction.

(b) A licensee shall:

(1) Promptly produce for inspection his or her license at all sales conducted by or participated in by the licensee when requested to do so by any person; and

(2) Keep complete and accurate records of all transactions engaged in for a period of three years from the date on which the sale was completed.

(c) For the purposes of this section, the term 'record' includes, but is not limited to:

(1) Copies of signed contracts, including the names of buyers and their addresses;

(2) Clerk sheets showing items sold, including buyers numbers or names, and the selling prices; and

(3) Final settlement papers.

(d) The records of the auctioneer shall be open to inspection by the commissioner or his or her authorized representative.

(e) A person who has an auctioneer license is considered to be a professional in his or her trade.

§19-2C-5a. Examinations of applicants. ~~excuse for illness~~

(a) Examinations shall be held ~~in April and October~~ of a minimum of two times each year, at a time and place to be designated by the commissioner or his or her authorized representative.

(b) An individual auctioneer applicant may take the examination for auctioneer or apprentice auctioneer at the regularly scheduled time and place.

(c) The apprentice auctioneer's examination shall consist of a written examination.

(d) The auctioneer's examination shall consist of both a written and oral examination. The passing grade for any written or oral examination shall be 70 percent out of 100 percent. The oral portion will be scored by the commissioner or his or her authorized representative.

(e) If the applicant fails either the written or oral portion of the examination, no license will be issued and he or she may not be administered the examination again until the next regularly scheduled examination date.

~~(f) A person who has an auctioneer license is considered to be a professional in his or her trade~~

~~(g)~~(f) Only one notice of the examination will be mailed or emailed to the applicant at the address given on the application. If the applicant fails to appear for an examination, except as provided in this subsection, a new application and a new fee shall be required. No fee will be returned, except when the applicant fails to take the examination because of illness evidenced by a doctor's certificate sent to the commissioner. If excused because of illness, the applicant shall be admitted to the next scheduled examination without paying an additional fee. No applicant may be excused from taking the scheduled examination for any reason other than illness, unless in the judgment of the commissioner the applicant would suffer undue hardship by not being excused.

~~(h)~~(g) An examination fee and any other fees required by this article, shall be collected from each person taking an examination. If the applicant has previously paid the examination fee and successfully completed the apprentice auctioneer's examination, no additional examination fee will be required to take the auctioneer's examination.

~~(i)~~(h) If the commissioner determines that an applicant does not qualify for a license, he or she shall notify the applicant by certified mail. The notice shall state:

(1) The reason for the refusal to grant a license; and

(2) The applicant's right to appeal the commissioner's decision within 20 days of receipt of the notice.

~~(j)~~(i) An examination is not required for the renewal of a license, unless the license has been revoked or suspended, or has expired. If the license was revoked or suspended, then the commissioner may require a person to take and pass a written or oral examination. If a license has been expired for more than two years and was not revoked or suspended, then the applicant is required to take and pass any written and oral examinations required by the commissioner.

§19-2C-5b. Background checks required.

(a) A person applying for a license pursuant to §19-2C-5, §19-2C-6, or §19-2C-6c of this code may be required to submit to a state and national criminal history record check. The criminal history

record check shall be based on fingerprints submitted to the West Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.

(b) The applicant shall meet all requirements necessary to accomplish the state and national criminal history record check, including:

(1) Submitting fingerprints for the purposes set forth in this subsection; and

(2) Authorizing the board, the West Virginia State Police, and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for a license.

(c) The results of the state and national criminal history record check may not be released to or by a private entity except:

(1) To the individual who is the subject of the criminal history record check;

(2) With the written authorization of the individual who is the subject of the criminal history record check; or

(3) Pursuant to a court order.

(d) The criminal history record check and related records are not public records for the purposes of chapter 29B of this code.

(e) The applicant shall pay the actual costs of the fingerprinting and criminal history record check.

(f) The commissioner may not disqualify an applicant for initial licensure, certification or registration because of a prior criminal conviction that has not been reversed unless that conviction is for a crime that bears a rational nexus to the occupation requiring licensure.

(g) The commissioner may not use crimes involving moral turpitude in making licensure, certification or registration determinations.

(h) If an applicant is disqualified for licensure, certification or registration because of a criminal conviction that has not been reversed, the commissioner shall afford the applicant the opportunity to reapply for licensure, certification or registration after the expiration of five years from the date of conviction or date of release from the penalty that was imposed, whichever is later, if the individual has not been convicted of any other crime during that period of time: *Provided*, That convictions for violent or sexual offenses or offenses shall subject an individual to a longer period of disqualification, to be determined by the individual board or licensing authority.

(i) An individual with a criminal record who has not previously applied for licensure, certification or registration may petition the commissioner at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license or other authorization. This petition shall include sufficient details about the individual's criminal record to enable the commissioner to identify the jurisdiction where the conviction occurred, the date of the conviction and the specific nature of the conviction. The commissioner shall inform the individual of his or her standing within 60 days of receiving the petition from the applicant. The licensing authority may charge a fee to recoup its costs for each petition.

(j) Nothing in this section alters the standards and procedures the commissioner uses for evaluating licensure, certification or registration renewals.

(k) The commissioner shall propose rules or amendments to existing rules for legislative approval to comply with the provisions of this section. These rules or amendments to rules shall be proposed pursuant to the provisions of §29A-3-1 et seq. of this code within the applicable time limit to be considered by the Legislature during its regular session in the year 2020.

(l) The provisions of this section, enacted during the 2019 Regular Session of the Legislature, shall not apply to current licensees who maintain active licensure, but shall apply to individuals currently holding an apprentice auctioneer license who are applying for an auctioneer license, or to any current license holder whose license lapses and who is required to reapply.

§19-2C-6. Requirements for apprentice auctioneer license.

(a) A person seeking an apprentice auctioneer license shall furnish to the commissioner, on forms provided by the commissioner, satisfactory proof that he or she:

- (1) Has a good reputation;
- (2) Is a trustworthy character;
- (3) Is a citizen of the United States; and

(4) Has taken and passed a written examination relating to the skills and knowledge of the statutes and rules governing auctioneers.

(b) An apprentice auctioneer may take the examination to become an auctioneer after completing one of the following:

- (1) Serving a two-year apprenticeship under a licensed auctioneer; or

(2) Attending a nationally accredited graduate school of auctioneering, approved by the commissioner, and serving an apprenticeship of six months.

(c) Before an apprentice auctioneer may take the auctioneer's examination, the apprentice auctioneer shall conduct at least six auction sales under the direct supervision of the sponsoring auctioneer. The commissioner may waive the requirements of this section, on an individual basis, upon the presentation of written evidence that the applicant has educational training or exceptional experience in the auctioneering profession and that the applicant has been unable to obtain sponsorship by a licensed auctioneer: *Provided*, That the commissioner may not waive apprenticeship requirements for an applicant without the concurrence of the board of review.

(d) When an apprentice auctioneer is discharged or terminates his or her employment with an auctioneer for any reason, the auctioneer shall immediately provide written notification to the commissioner. No discharged or terminated apprentice auctioneer may thereafter perform any acts under the authority of his or her license until the apprentice auctioneer receives a new license bearing the name and address of his or her new employer. No more than one license may be issued to an apprentice auctioneer for the same period of time.

(e) The commissioner may not issue an apprentice auctioneer license until bond has been filed. All apprentice auctioneer licenses expire on ~~December 31~~ June 30 of each year, but are renewable upon the payment of the annual fee: *Provided*, That an apprentice auctioneer may continue to perform auctions for up to 20 days after June 30, so long as he or she has submitted the required paperwork to renew his or her apprentice auctioneer license: *Provided, however*, That licenses issued in 2019 shall continue to be active through June 30, 2020.

(f) A person cannot be licensed as an apprentice auctioneer for more than three years without applying for an auctioneer license. Should an apprentice auctioneer allow the three year limit to lapse, then the apprentice auctioneer shall be required to take the apprentice examination and meet all the requirements of this article.

§19-2C-6a. Investigation of complaints; board of review.

(a) The Department of Agriculture may, upon its own action, and shall upon the verified written complaint of any person, investigate the actions of any auctioneer, apprentice auctioneer, any applicant for an auctioneer's or apprentice auctioneer's license, or any person who assumes to act in that capacity, if the complaint, together with other evidence presented in connection with it, establishes probable cause. Upon verification of the complaint, the department shall present the complaint to the board of review. The board of review shall consider all of the facts of the complaint and recommend a course of action to the commissioner.

(b) The board of review shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall consist of three members, each appointed for a staggered three-year term. Two members of the board of review shall be licensed auctioneers in West Virginia and residents of this state and shall have been licensed and been practicing the profession of auctioneering for five years immediately preceding their appointment. The third member shall be a lay person from the commercial or agricultural community who has utilized services of auctioneers for at least three years. No more than ~~one~~ two board member ~~members~~ shall be from any one congressional district and no more than two members shall be from the same political party. Board members shall receive no compensation for their service on the board, but shall be entitled to receive reimbursement for expenses in accordance with the Department of Agriculture travel regulations. ~~During the establishment of the board one member shall be appointed for a three year term, one member for a two year term and one member for a one year term. The first year of each term expires on January 1, 1992, and subsequently on January 1, of each year~~ There shall be no limit on the number of consecutive terms a member may serve on the board. The Governor is authorized to fill a vacancy when it occurs on the board for any reason. An appointment to fill a vacancy shall be for the remainder of the existing term of the vacant position.

§19-2C-6c. Procedure for obtaining reciprocal or nonresident auctioneer's and apprentice auctioneer's license.

(a) To qualify for a ~~nonresident~~ license by reciprocity, the applicant must show evidence of licensing in another state for a period of one year preceding the date of application. The licensing may have been as an apprentice auctioneer or as an auctioneer. Provided this qualification is met and the applicant meets all the other requirements as required by this article and by regulation, he or she shall be licensed either as an apprentice auctioneer or as an auctioneer, based on a nonresident license, as the case may be.

(b) When an applicant's resident state has no licensing law for auctioneers or the applicant's resident state has no written or oral examination associated with its licensing requirements, the Department of Agriculture shall require proof that the applicant has been a practicing auctioneer for a period of two years preceding the date of application. The proof shall be in the form of sale bills, contracts, sale permits and other such evidence acceptable to the commissioner. Provided this qualification is met, and the applicant meets other requirements for licensing as required by the statutes and regulations, the applicant shall be admitted to the next scheduled written and oral examination for auctioneers without being required to first serve an apprenticeship.

§19-2C-8. Penalties.

(a) *Criminal penalties.* — Any person, firm, association or corporation violating a provision of this article or the rules, is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$250 nor more than \$500 for the first offense, and not less than \$500 nor more than \$1,000 for the second and subsequent offenses. Magistrates have concurrent jurisdiction with circuit courts to enforce the provisions of this article.

(b) *Civil penalties.* — Any person violating a provision of this article or the rules, may be assessed a civil penalty by the commissioner.

(1) In determining the amount of the civil penalty, the commissioner shall give due consideration to the history of previous violations by the person, the seriousness of the violation, and the demonstrated good faith of the person charged in attempting to achieve compliance with this article before and after written notification of the violation. The commissioner may assess a penalty of not more than ~~\$200~~ \$500 for each a first offense, and not more than \$1,000 for a each second and subsequent offense. ~~The civil penalty is payable to the State of West Virginia and is collectible in any manner provided for collection of debt. If any person liable to pay the civil penalty neglects or refuses to pay the penalty, the amount of the civil penalty, together with interest at ten percent, is a lien in favor of the State of West Virginia upon the property, both real and personal, of the person after the same has been entered and docketed to record in the county where the property is situated. The clerk of the county, upon receipt of the certified copy of the lien, shall enter it to record without requiring the payment of costs as a condition precedent to recording~~

(2) In addition to a penalty assessed against an unlicensed auctioneer for practicing without the required license, the commissioner may assess penalties against an unlicensed auctioneer for violations of the provisions of this article that would have applied to the individual's conduct had he or she held the required license.

(3) The civil penalty is payable to the State of West Virginia and is collectible in any manner provided for collection of debt. If any person liable to pay the civil penalty neglects or refuses to pay the penalty, the amount of the civil penalty, together with interest at 10 percent, is a lien in favor of the State of West Virginia upon the property, both real and personal, of the person after the same has been entered and docketed to record in the county where the property is situated. The clerk of the county, upon receipt of the certified copy of the lien, shall enter it to record without requiring the payment of costs as a condition precedent to recording.

(c) No state court may allow for the recovery of damages for any administrative action taken if the court finds that there was probable cause for such action.

§19-2C-8a. Revocation.

In addition to the penalties in section eight of this article, the commissioner may, by order, suspend, deny or revoke any license granted hereunder for any violation of this article or the rules and regulations promulgated hereunder or for any of the following reasons:

(a) Obtaining a license through false or fraudulent representation;

(b) Making any substantial misrepresentation in any application for an auctioneer's or apprentice auctioneer's license;

(c) Engaging in a continued or flagrant course of misrepresentation or for making false promises through an agent, advertisement or otherwise;

(d) Failing to account for or remit within a reasonable time any money belonging to others that comes into his or her possession;

(e) Being convicted in any court of competent jurisdiction of this state or any other state of a criminal offense involving moral turpitude or a felony; or for failing to notify the department of any such conviction within 15 days of conviction;

(f) Violating any other laws related to the conduct of auctions or auctioneering;

~~(f)~~(g) Engaging in any conduct of an auctioneer which demonstrates dishonesty or incompetency;

~~(g)~~(h) Engaging in any other conduct that constitutes fraudulent or dishonest dealing; ~~and~~

(i) Engaging in any other unethical conduct in the contexts of his or her work as an auctioneer;
and

~~(h)~~(j) Acting as an attorney for a client.

Any auctioneer or apprentice auctioneer who has had his or her license suspended or revoked shall not be issued another such license until a period not to exceed two years has elapsed from the date of revocation. The commissioner may also require the successful completion of the examinations required for an auctioneer's license or an apprentice auctioneer's license.

§19-2C-9. Written contracts.

(a) No person may act as an auctioneer on the sale at public auction of any goods, wares, merchandise or of any other property, real or personal, until he or she has entered into a written contract in duplicate with the owner or consignor of the property to be sold. No apprentice auctioneer may be authorized to enter into a contract without the written consent of his or her sponsoring auctioneer. All contracts shall be in the name of and on behalf of the sponsoring auctioneer.

(b) The written contract shall:

(1) State the terms and conditions upon which the auctioneer receives or accepts the property for sale at auction;

(2) Be between the auctioneer and the seller;

(3) Be made in duplicate;

(4) Be retained by the auctioneer for a period of three years from the date of final settlement;

(5) Be furnished to each person that entered into the contract;

(6) State that an apprentice auctioneer may not contract directly with a client but only through his or her sponsoring auctioneer;

(7) State that an apprentice auctioneer may not engage in a sale with an auctioneer by whom he or she is not sponsored without first obtaining the written consent of his or her sponsoring auctioneer;

(8) Have a prominent statement indicating that the auctioneer is licensed by the Department of Agriculture and is bonded in favor of the State of West Virginia; and

(9) Include the following information:

(A) The name, address and phone number of the owner of the property to be sold or the consignor;

(B) The date of the auction or a termination date of the contract;

(C) The terms and conditions of the auction;

(D) The location of the auction;

(E) The date the owner or consignor is to be paid;

(F) A statement establishing the responsibility for bad checks, debts and unpaid auction items;

(G) A detailed list of all fees to be charged by the auctioneer, including commissions, rentals, advertising and labor;

(H) A statement of the auctioneer's policy regarding absentee bidding;

(I) A statement above the owner's signature line: 'I have read and accept the terms of the contract'; and

(J) A statement indicating that an explanation of settlement of the auction, or settlement sheet, will be provided to the owner or consignor at the end of the auction.

(c) As a condition of entering into a contract, the auctioneer shall be provided with proof or certificate of ownership for all titled property, or assurances of ownership for all other property. The auctioneer shall have such proof or certificate of ownership with him or her at the time the auction is held.

(d) Notwithstanding the provisions of subsection (a) of this section, an auctioneer may conduct an auction on behalf of an auction house or other business entity without having entered into a contract directly with the seller of the auctioned goods, so long as the following conditions are satisfied:

(1) The auction house or business must have a written contract with both the seller of the goods and the auctioneer;

(2) The contract between the auction house or business entity must satisfy all the requirements set forth in subsection (b) of this section; and

(3) The auction house or business entity must file with the commissioner a bond satisfying the requirements of §19-2C-4 of this code.

(e) By entering into contracts with sellers of property pursuant to this section, the owners and partners of any auction house or business entity agree to submit to the jurisdiction of the commissioner and the Board of Review and are subject to the penalties set forth in §19-2C-8 of this code.

§19-2C-10. Advertising.

In advertising an auction sale by any licensed auctioneer, the principal auctioneer or auctioneers who physically conduct the sale shall be listed prominently in such advertising as used by said

auctioneer or auctioneers. The individual auctioneer or auctioneers who conduct the sale shall be the person or persons who call for, accept and close bids on the majority of items offered for sale.

Any apprentice auctioneer who advertises, as provided in this section, shall indicate in his or her advertisement the name of the sponsoring auctioneer under whom he or she is licensed.

The auctioneer's name and license number shall be displayed in equal prominence with the name of the apprentice auctioneer and license number in such advertisement.

Nothing in the provisions of this article shall be construed so as to prohibit any other auctioneer, licensed pursuant to this article, from assisting with any auction, notwithstanding the failure to list the name of the other auctioneer in any advertising associated with such auction.

It is unlawful to conduct or advertise that an auction is absolute if minimum opening bids are required or other conditions are placed on the sale that limit the sale other than to the highest bidder.

No property other than the property of a specified deceased person or the property of a specified living person's estate may be sold at auction if the auction is conducted or advertised only as an estate auction. However, property other than that of the specified estate may be sold at the sale if all advertisements for the sale specify that items will be sold that do not belong to the estate and those items are identified at the sale."

And,

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

Com. Sub. for H. B. 2982 - "A Bill to amend and reenact §19-2C-1, §19-2C-2, §19-2C-3, §19-2C-5, §19-2C-5a, §19-2C-6, §19-2C-6a, §19-2C-6c, §19-2C-8, §19-2C-8a, §19-2C-9, and §19-2C-10 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §19-2C-5b, all relating to amending and updating the laws relating to auctioneers by providing for definitions; providing for certain exemptions to license requirements; providing for additional rulemaking authority; providing for June 30 as the date all licenses expire; establishing certain conditions for auctioneers to continue working after license expiration; providing for record retention requirements; providing for exams held a minimum of two times each year; providing for applicants for auctioneer licenses to submit to background checks; providing for authorization to conduct and use information relating to background checks; providing for confidentiality of background checks; establishing certain conditions for apprentice auctioneers to continue working after license expiration; adjusting residency requirements for members of the board of review; eliminating certain outdated language; providing for reciprocal licensure; increasing civil penalties for violations of this article; increasing penalties commissioner may be assessed against an unlicensed auctioneer; providing for additional circumstances to suspend, deny, or revoke a license; providing for written contracts with auctioneers and owners of property; providing for auction houses and business entities to enter into contracts with auctioneers and owners of property; and providing for certain unlawful advertising practices."

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 680**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Ellington, Rohrbach, Steele and Worrell.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2982) passed.

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

A message from the Senate, by

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

H. B. 3144, North Central Appalachian Coal Severance Tax Rebate Act.

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

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

“ARTICLE 13EE. COAL SEVERANCE TAX REBATE.

§11-13EE-1. Findings and purpose.

The Legislature finds that the encouragement of economic growth and development in this state is in the public interest and promotes the general welfare of the people of this state. In order to encourage capital investment in the coal industry in this state and thereby increase economic development, there is hereby provided a coal severance tax rebate.

§11-13EE-2. Definitions.

(a) *General.* When used in this article, or in the administration of this article, terms defined in subsection (b) shall 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.

(b) *Terms defined.*

(1) ‘Affiliated group’ means one or more chains of corporations, limited liability entities, or partnerships, or any combination thereof, connected through the ownership of stock or ownership interests with a common parent which is a corporation, limited liability entity, or partnership, but only if the common parent owns directly, or indirectly, a controlling interest in each of the members of the group.

(2) ‘Business’ means and is limited to the activity of producing coal for sale, profit or commercial use including coal preparation and processing.

(3) ‘Capital investment in new machinery, equipment, or improvements to real property’ means:

(A) Tangible personal property in the form of machinery and equipment that is purchased on or after the effective date of this article and placed in service for direct use in the production of coal, when the original or first use of the machinery or equipment commences in this state on or after the effective date of this article;

(B) Tangible personal property in the form of machinery and equipment that is leased by the taxpayer and placed in service for direct use in the production of coal by the taxpayer on or after the effective date of this article, if the original or first use of the machinery or equipment commences in this state, with the taxpayer, on or after the effective date of this article and the machinery or equipment is depreciable, or amortizable, for federal income tax purposes and has a useful life of five or more years for federal income tax purposes;

(C) Improvements to real property having a useful life or 5 or more years, that are depreciable or amortizable for federal income tax purposes, purchased on or after the effective date of this article, if the original or first use of such improvements commences in this state on or after the effective date of this article and the improvements are placed in service for direct use in the production of coal.

(4) 'Coal mine' or 'mine' includes:

(A) A 'surface mine', or 'surface mining operation' which means:

(i) Activities conducted on the surface of lands for the removal of coal, or, subject to the requirements of §11-13EE-14 of this code, surface operations and surface impacts incident to an underground coal mine, including the drainage and discharge from the mine. The activities include: Excavation for the purpose of obtaining coal, including, but not limited to, common methods as contour, strip, auger, mountaintop removal, box cut, open pit and area mining; the uses of explosives and blasting; reclamation; in situ distillation or retorting, leaching or other chemical or physical processing; the cleaning, concentrating or other processing or preparation and loading of coal for commercial purposes at or near the mine site; and

(ii) The areas upon which the above activities occur or where the activities disturb the natural land surface. The areas also include any adjacent land, the use of which is incidental to the activities; all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of the activities and for haulage; and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to the activities: *Provided*, That the activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 and two-thirds percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal prospecting. Surface mining does not include any of the following:

(I) Coal extraction authorized pursuant to a government-financed reclamation contract;

(II) Coal extraction authorized as an incidental part of development of land for commercial, residential, industrial or civic use; or

(III) The reclamation of an abandoned or forfeited mine by a no cost reclamation contract; and

(B) An 'underground mine' which includes the shafts, slopes, drifts or inclines connected with, or intended in the future to be connected with, excavations penetrating coal seams or strata, which excavations are ventilated by one general air current or divisions thereof, and connected by one general system of mine haulage over which coal may be delivered to one or more points outside the mine, and the surface structures or equipment connected or associated therewith which contribute directly or indirectly to the mining, preparation or handling of coal.

(5) 'Coal mining operation' includes the mine and the coal preparation and processing plant.

(6) 'Coal preparation and processing plant' means any facility (excluding underground mining operations) which prepares coal by one or more of the following processes: breaking, crushing, screening, wet or dry cleaning, and thermal drying.

(7) 'Coal production' means the privilege of severing, extracting, reducing to possession and producing coal for sale, profit or commercial use and includes the processing of coal at a coal preparation and processing plant.

(8) 'Commissioner' or 'Tax Commissioner' are used interchangeably herein and mean the Tax Commissioner of the State of West Virginia, or his or her delegate.

(9) 'Controlled group' means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least 50 percent of the voting power of all classes of stock of each of the corporations is owned, directly or indirectly, by one or more of the corporations; and the common parent owns directly stock possessing at least 50 percent of the voting power of all classes of stock of at least one of the other corporations.

(10) 'Controlling interest' means:

(A) For a corporation, either more than 50 percent ownership, directly or indirectly, of the total combined voting power of all classes of stock of the corporation, or more than 50 percent ownership, directly or indirectly, of the beneficial ownership interest in the voting stock of all classes of stock of the corporation;

(B) For a partnership, association, trust or other entity other than a limited liability company, more than 50 percent ownership, directly or indirectly, of the capital, profits, or beneficial interest in the partnership, association, trust, or other entity;

(C) For a limited liability company, either more than 50 percent ownership, directly or indirectly, of the total membership interest of the limited liability company, or more than 50 percent ownership, directly or indirectly, of the beneficial ownership interest in the membership interest of the limited liability company.

(11) 'Corporation' means any corporation, joint-stock company or association, and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.

(12) 'Delegate' used in the phrase 'or his delegate', when used in reference to the Tax Commissioner, means any officer or employee of the State Tax Department duly authorized by the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article.

(13) 'Directly used or consumed in the production of coal' means used or consumed in those activities or operations which constitute an integral and essential part of the production of coal, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to the production of coal.

(A) Uses of tangible personal property or improvements to real property which constitute direct use or consumption in the production of coal include only:

(i) New machinery, equipment, or improvements to real property that are depreciable, or amortizable, and have a useful life of five or more years for federal income tax purposes, and that are directly used in the production of coal in this state;

(ii) Transportation of coal within the coal mine from the coal face or coal deposit to the exterior of the mine or to a point where the extracted coal is transported away from the mine;

(iii) Directly and physically recording the flow of coal during the production of coal including those coal treatment processes specified in §11-13A-4 of this code;

(iv) Safety equipment and apparatus directly used in the production of coal, or to secure the safety of mine personnel in direct use in the production of coal;

(v) Controlling or otherwise regulating atmospheric conditions required for the production of coal;

(vi) Transformers, pumps, rock dusting equipment and other property used to supply electricity or water, or to supply or apply rock dust directly used in the production of coal;

(vii) Storing, removal or transportation of economic waste, including coal gob, resulting from the production of coal;

(viii) Engaging in pollution control or environmental quality or protection activity directly relating to the production of coal; or

(ix) Otherwise using as an integral and essential part of the production of coal.

(B) Uses of tangible personal property or improvements to real property which do not constitute direct use or consumption in the production of coal include, but are not limited to:

(i) Heating and illumination of office buildings;

(ii) Janitorial or general cleaning activities;

(iii) Personal comfort of personnel: *Provided*, That safety equipment and apparatus directly used in the production of coal or to secure the safety of mine personnel is direct use in the production of coal when the tangible personal property is depreciable, or amortizable, for federal income tax purposes and has a useful life of five or more years for federal income tax purposes when it is placed in service or use;

(iv) Production planning, scheduling of work or inventory control;

(v) Marketing, general management, supervision, finance, training, accounting and administration;

(vi) Measuring or determining weight, and ash content, water content and other physical and chemical characteristics of the coal after production;

(vii) An activity or function incidental or convenient to the production of coal, rather than an integral and essential part of these activities.

(14) 'Eligible taxpayer' means:

(A) Any person who pays the tax imposed by §11-13A-3 of this code on the privilege of producing coal for sale, profit or commercial use for at least two years before the capital investment in new machinery, equipment, or improvements to real property is placed in service or use in this state; or

(B) A taxpayer that has experienced a change in business composition through merger, acquisition, split-up, spin-off or other ownership changes or changes in the form of the business organization from limited liability company to C corporation, or partnership, or from one form of business organization to a different form of business organization, may constitute an eligible taxpayer if the entity currently operating in this state was operating in a different form of business organization in this state at least two years before the capital investment in new machinery, equipment, or improvements to real property is placed in service or use in this state. In the case of business composition change through merger, acquisition, split-up, spin-off or other ownership changes the current business may constitute an eligible taxpayer if at least 50 percent of the business assets of such component were actively and directly used in coal production activity in this state for such two-year period. If less than 50 percent of the assets of the current entity were not actively and directly used in coal production activity in this state for such two-year period, then the current entity resulting from a business composition change through merger, acquisition, split-up, spin-off or other ownership shall not constitute an eligible taxpayer.

(15) 'Includes' and 'including' when used in a definition contained in this article, shall not be deemed to exclude other things otherwise within the generally understood meaning of the term defined.

(16) 'Original use' means the first use to which the property is put by anyone.

(17) 'Partnership' includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, operation or venture is carried on, which is taxed under Subchapter K of the Internal Revenue Code, as defined in §11-24-3 of this code, and which is not a trust or estate, a corporation or a sole proprietorship. The term 'partner' includes a member in such a syndicate, group, pool, joint venture or other unincorporated organization taxed under Subchapter K of the Internal Revenue Code.

(18) 'Person' includes any natural person, corporation, partnership, limited liability company or other business entity.

(19) 'Production of coal' means the privilege of severing, extracting, reducing to possession and producing coal for sale, profit or commercial use and includes the processing of coal at the coal preparation and processing plant.

(20) 'Property' means new machinery, equipment, or improvements to real property that are depreciable or amortizable for federal income tax purposes and that have a useful life of five or more years for federal income tax purposes.

(21) 'Property purchased or leased for business expansion' means:

(A) *Included property.* Except as provided in subparagraph (B), the term 'property purchased or leased for business expansion' means tangible personal property, or improvements to real property but only if the property was purchased, or leased and placed in service or use by the taxpayer in West Virginia. This term includes only:

(i) Tangible personal property placed in service or use by the taxpayer on or after the effective date of this article, with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the personal or corporation net income tax liability of the business, or its equity owners, under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, and which has a useful economic life at the time the property is placed in service or use in this state, of five or more years.

(ii) Tangible personal property acquired by written lease having a primary term of 5 years or more, that is depreciable or amortizable by the lessor, or lessee, for federal income tax purposes and that has a useful life of five or more years for federal income purposes when it is placed in service or use, and when the lease commences and was executed by the parties thereto on or after the effective date of this article, if used as a component part of a new or expanded coal mining operation in this state shall be included within this definition.

(iii) Improvements to real property having a useful life of five or more years, that are depreciable or amortizable for federal income tax purposes, purchased on or after the effective date of this article, if the original or first use of such improvements commences in this state on or after the effective date of this article and the improvements are placed in service as a component part of a new or expanded coal mining operation in this state.

(B) Excluded property. -The term 'property purchased or leased for business expansion' shall not include:

(i) Machinery and equipment owned or leased by the taxpayer and improvements to real property owned by a taxpayer for which credit was taken or is claimed under any other article of this chapter;

(ii) Repair costs, including materials used in the repair, unless for federal income tax purposes, must be capitalized and not expensed;

(iii) Motor vehicles licensed by the West Virginia Division of Motor Vehicles;

(iv) Airplanes;

(v) Off-premise transportation equipment;

(vi) Machinery, equipment, or improvements to real property that are primarily used outside this state;

(vii) Machinery, equipment, or improvements to real property that are acquired incident to the purchase of the stock or assets of the seller; and

(viii) Used machinery, equipment, or improvements to real property.

(C) Purchase date. New machinery, equipment, or improvements to real property shall be deemed to have been purchased prior to a specified date only if:

(i) The machinery, equipment, or improvements to real property were owned by the taxpayer prior to the effective date of this article or were acquired by the taxpayer pursuant to a binding purchase contract which was in effect prior to the effective date of this article; or

(ii) In the case of leased machinery and equipment, there was a binding written lease or contract to lease identifiable machinery or equipment in effect prior to the effective date of this article.

(22) 'Purchase' means any acquisition of new machinery, equipment, or improvements to real property, but only if:

(A) The property or the improvement to the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under Section 267 or 707 (b) of the United States Internal Revenue Code, as defined in §11-24-3 of this code;

(B) The property or the improvement to the property is not acquired by one component member of a controlled group from another component member of the same controlled group; and

(C) The basis of the property or improvements to property for federal income tax purposes, in the hands of the person acquiring it, is not determined:

(i) In whole or in part by reference to the federal adjusted basis of the property or the improvements to property in the hands of the person from whom it was acquired; or

(ii) Under Section 1014 (e) of the United States Internal Revenue Code.

(23) 'Qualified coal mining activity' means any business or other activity subject to the tax imposed by §11-13A-3 of this code on the privilege of severing, extracting, reducing to possession and producing coal for sale, profit or commercial use including the treatment process described as mining in §11-13A-4(a)(1) of this code.

(24) 'Qualified investment' means capital investment in new machinery, equipment, or improvements to real property directly used in the production of coal in this state that is depreciable, or amortizable, for federal income tax purposes and has a useful life for federal income tax purposes of five or more years when it is placed in service or use in this state.

(25) 'Rebate' means the amount of rebate allowable under §11-13EE-3 of this code.

(26) 'Related person' means:

(A) A corporation, partnership, association or trust controlled by the taxpayer;

(B) An individual, corporation, partnership, association, or trust that is in control of the taxpayer;

(C) A corporation, partnership, association, or trust controlled by an individual, corporation, partnership, association, or trust that is in control of the taxpayer; or

(D) A member of the same controlled group as the taxpayer.

For purposes of this subdivision, the term 'control', with respect to a corporation, means ownership, directly or indirectly, of stock possessing 50 percent or more of the total combined voting power of all classes of the stock of the corporation entitled to vote. 'Control' with respect to a trust, means ownership, directly or indirectly, of 50 percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association, or of a beneficial interest in a trust is determined in accordance with the rules for constructive ownership of stock provided in section 267 (c) of the United States Internal Revenue Code, other than paragraph (3) of that section.

(27) 'State portion of severance taxes paid' means the portion of severance taxes due under §11-13A-3 of this code when computed at the 4.65 percent rate of tax.

(28) 'Tangible personal property' means, and is limited to, new machinery and equipment that is depreciable, or amortizable, for federal income tax purposes and that has a useful life of five or more years for federal income tax purposes when it is placed in service or use in this state.

(29) 'Taxpayer' means any person exercising the privilege of severing, extracting, reducing to possession, and producing coal for sale, profit, or commercial use coal, which privilege is taxable under §11-13A-3 of this code.

(30) 'This code' means the Code of West Virginia, 1931, as amended.

(31) 'This state' means the State of West Virginia.

(32) 'United States Internal Revenue Code' or 'Internal Revenue Code' means the Internal Revenue Code as defined in §11-24-3 of this code.

§11-13EE-3. Rebate allowable.

(a) *Rebate allowable.* Eligible taxpayers shall be allowed a rebate for a portion of state severance taxes imposed by §11-13A-3 of this code on the privilege of severing, extracting, reducing to possession and producing coal for sale, profit, or commercial use that is attributable to the increase in the production of coal that is attributable to and the consequence of the taxpayer's capital investment in new machinery, equipment, or improvements to real property used at the coal mine, or coal preparation and processing facility. The amount of this rebate shall be determined and applied as hereinafter provided in this article.

(b) *Amount of rebate.* The amount of rebate allowable is determined by multiplying the amount of the taxpayer's capital investment in new machinery, equipment, or improvements to real property directly used in the production of coal at a coal mining operation in this state by 35 percent. The product of this computation establishes the maximum amount of rebate allowable under this article for the capital investment in new machinery, equipment, or improvements to real property.

(c) *Application of rebate amount.* The amount of rebate allowable is determined by applying the rebate amount determined in subsection (b) of this section against 80 percent of the state portion of the severance tax paid on the privilege of severing, extracting, reducing to possession, and producing coal for sale, profit, or commercial use that is directly attributable to the increased production of coal at the mine due to taxpayer's capital investment in new machinery, equipment, or improvements to real property at the mine or coal processing and preparation plant.

(d) The amount of severance tax attributable to the increase in coal production at a mine due to the capital investment in new machinery, equipment, or improvements to real property shall be determined by comparing (1) the state portion of the severance tax due under §11-13A-3 of this code on coal produced from the mine during calendar year 2018, or if the taxpayer has produced coal for five years at the mine at which its capital investment in new machinery, equipment, or improvements to real property are placed in service or use the average of the state portion of the severance tax due under §11-13A-3 of this code on coal produced from the mine during the five year period ending on December 31, 2018, whichever is less, before allowance of any tax credits, except as provided in subsection (e) of §11-13-EE-3 of this code (2) with the state severance tax due on coal produced at the mine during the then current calendar year in which the rebate amount is claimed, before allowance for any tax credits. When the amount in (2) of this section is greater than the amount in (1) of this section, the difference is the amount of state severance tax due to the increase in coal production at the mine that is attributable to the capital investment in new machinery, equipment, or improvements to real property: *Provided*, That when the producer of the coal operates more than one mine in this state, or is a member of a controlled or affiliated group that operates one or more coal mines in this state, no credit shall be allowed unless the total coal production from all mines operated by the taxpayer or by members of the affiliated or controlled group in this state has increased: *Provided, however*, That in no case shall the severance tax attributable to any mine other than the specific mine at which capital investment in new machinery, equipment, or improvements to real property is directly used in a coal mining operation has been placed in service or use be offset by this rebate.

(e) When the eligible taxpayer is a new business that has produced coal in this state for two years before making the capital investment in new machinery, equipment, or improvements to real property then, for purposes of subdivision (1) in subsection (d) of this section, the base shall be the average amount of state severance tax due under §11-13A-3 of this code on coal produced in this state during this two-year period.

(f) No rebate shall be allowed under this article when credit is claimed under any other article of this chapter for capital investment in the new machinery, equipment, or improvements to real property. No credit shall be allowed under any other article of this chapter when rebate is allowed under this article for the capital investment in new machinery, equipment, or improvements to real property.

§11-13EE-4. Information required to determine amount of rebate allowable.

(a) A taxpayer claiming rebate under this article who operates more than one coal mine in this state shall provide a schedule with the annual severance tax return filed under §11-13A-1 *et seq.* of this code that shows, for each coal mine, the number of tons of coal produced and the gross value of the coal produced at each mine during the taxable year.

(b) When a taxpayer claiming rebate under this article is a member of an affiliated or controlled group, as the case may be, that operates more than one coal mine in this state the group shall provide a schedule with its annual severance tax return filed under §11-13A-1 *et seq.* of this code for the taxable year that shows for each coal mine operated in this state by the affiliated or controlled group, as the case may be, the number of tons of coal produced at each mine and the gross value of the coal produced at each mine during the taxable year.

§11-13EE-5. Claim for rebate.

(a) After the severance taxes due for the taxable year are paid, a taxpayer may file a claim under this article for rebate of up to 80 percent of the state portion of the additional severance taxes paid under §11-13A-3 of this code that are directly attributable to the taxpayer's capital investment in new machinery, equipment, or improvements on real property placed in service or use during that taxable year as set forth in §11-13EE-3 of this code.

(b) When the amount of rebate claimed exceeds 80 percent of the additional state severance tax paid as provided in subsection (a) of this section, the unused portion of the rebate amount may be carried forward and rebated by the Tax Commissioner after severance taxes due in subsequent years are paid: *Provided*, That the carryforward period may not exceed 10 years from the date the capital investment in new machinery, equipment, or improvements to real property is placed in service or use in this state.

§11-13EE-6. Suspension of payment of rebate.

(a) No rebate may be paid under this article when the taxpayer, or any member of the taxpayer's combined or affiliated group, as the case may be, is delinquent in the payment of severance taxes imposed pursuant to §11-13A-3 of this code and any local, state, or federal tax or fee until such time as the delinquency is cured.

(b) For purposes of this section, a taxpayer is not delinquent if the taxpayer is contesting an assessment in the Office of Tax Appeals or in any court of this state or of the appropriate federal agency or court, or is complying with the terms of any payment plan agreement.

(c) In the case of a taxpayer that files a combined tax return as a member of a unitary group, no rebate under this article that is earned by one member of the combined group, but not fully used by or allowed to that member, may be claimed, in whole or in part, by another member of the group.

§11-13EE-7. Burden of proof; application required; failure to make timely application.

(a) *Burden of proof.* The burden of proof is on the taxpayer to establish by clear and convincing evidence that the taxpayer is entitled to the benefits allowed by this article.

(b) *Application for rebate required.*

(1) Notwithstanding any provision of this article to the contrary, no rebate shall be paid under this article for any capital investment in new machinery, equipment, or improvements to real property placed in service or use until the person asserting a claim for the allowance of rebate under this article makes written application to the Tax Commissioner for allowance of rebate as provided in this section.

(2) An application for rebate shall be filed, in the form prescribed by the Tax Commissioner, no later than the last day for filing the severance tax return, determined by including any authorized extension of time for filing the return, for the taxable year in which the machinery, equipment, or improvements to which the rebate relates is placed in service or use and all information required by the form is provided.

(3) A separate application for rebate is required for each taxable year during which the taxpayer places new machinery, equipment, or improvements in service or use in a mine or coal preparation and processing facility in this state.

(c) *Failure to make timely application.* — The failure to timely apply for the rebate results in the forfeiture of 25 percent of the rebate amount otherwise allowable under this article. This penalty applies annually until the application is filed.

§11-13EE-8. Identification of capital investment property.

Every taxpayer who claims a rebate pursuant to the provisions of this article shall maintain sufficient records to establish the following facts for each item of qualified investment property:

(1) Its identity;

(2) Its actual or reasonably determined cost;

(3) Its useful life for federal income tax purposes;

(4) The month and taxable year in which it was placed in service;

(5) The amount of rebate claimed; and

(6) The date it was disposed of or otherwise ceased to be qualified capital investment property.

§11-13EE-9. Failure to keep records of capital investment property.

A taxpayer who does not keep the records required for identification of investment credit property is subject to the following rules:

(1) A taxpayer is treated as having disposed of, during the taxable year, any machinery, equipment or improvements to real property that the taxpayer cannot establish was still on hand, in this state, at the end of that year.

(2) If a taxpayer cannot establish when capital investment in new machinery, equipment, or improvements to real property was reported for purposes of claiming this credit during the taxable year, or the machinery, equipment, or improvements to real property were placed in service or use, the taxpayer is treated as having placed it in service or use in the most recent prior taxable year in which similar machinery, equipment, or improvements to real property were placed in service or use, unless the taxpayer can establish that the machinery, equipment, or improvements to real property were placed in service or use in the most recent taxable year is still on hand. In that event, the taxpayer will be treated as having placed the returned machinery, equipment, or improvements to real property in service or use in the next most recent taxable year.

§11-13EE-10. Transfer of qualified investment property to successors.

(a) *Mere change in form of business.* Machinery, equipment, or improvements to real property may not be treated as disposed of under §11-13EE-9 of this code, by reason of a mere change in the form of conducting the business as long as the machinery, equipment, or improvements to real property is retained in the successor business in this state, and the transferor business retains a controlling interest in the successor business. In this event, the successor business is allowed to claim the rebate amount of credit still available with respect to the machinery and equipment transferred, and the transferor business may not be required to redetermine the amount of rebate allowed in earlier years.

(b) *Transfer or sale to successor.* Machinery, equipment, or improvements to real property is not treated as disposed of under §11-13EE-11 of this code by reason of any transfer or sale to a successor business which continues to operate machinery, equipment, or improvements to real property at the mine in this state at which the machinery, equipment, or improvements to real property were first placed in service or use. Upon transfer or sale, the successor shall acquire the amount of rebate, if any, that remains available under this article, and the transferor business is not required to redetermine the amount of rebate allowed in earlier years.

§11-13EE-11. Recapture of rebate; recapture tax imposed.

(a) *When recapture tax applies.*

(1) Any person who places machinery, equipment, or improvements to real property in service or use for purposes of this credit and who fails to use the machinery, equipment, or improvements to real property for at least five years in the production of coal in this state shall pay the recapture tax imposed by subsection (b) of this section.

(2) This section does not apply when §11-13EE-10 of this code

applies: *Provided*, That, the successor, or the successors, and the person, or persons, who previously claimed credit under this article with respect to the machinery, equipment, or improvements to real property, are jointly and severally liable for payment of any recapture tax subsequently imposed under this section with respect to the machinery, equipment, or improvements to real property used to qualify for rebate under this article.

(b) *Recapture tax imposed.* The recapture tax imposed by this subsection is the amount determined as follows. If the taxpayer prematurely removes machinery, equipment, or improvements to real property placed in service when considered as a class from economic service in the taxpayer's

coal production activity in this state, the taxpayer shall recapture the amount of rebate claimed under this article for the taxable year, and all preceding taxable years, attributable to the machinery, equipment, or improvements to real property which has been prematurely removed from service. The amount of tax due under this subsection is an amount equal to the amount of rebate that is recaptured pursuant to this subsection.

(c) *Payment of recapture tax.* The amount of tax recaptured under this section is due and payable on the day the person's annual return is due for the taxable year, in which this section applies, under §11-13A-1 *et seq.* of this code. When the employer is a partnership, limited liability company or an S corporation for federal income tax purposes, the recapture tax shall be paid by those persons who are partners in the partnership, members in the company, or shareholders in the S corporation, in the taxable year in which recapture tax is imposed under this section.

§11-13EE-12. Interpretation and construction.

(a) No inference, implication, or presumption of legislative construction or intent may be drawn or made by reason of the location or grouping of any particular section, provision, or portion of this article; and no legal effect may be given to any descriptive matter or heading relating to any section, subsection, or paragraph of this article.

(b) The provisions of this article shall be reasonably construed in order to effectuate the legislative intent recited in §11-13EE-1 of this code.

§11-13EE-13. Rebate report.

(a) The Tax Commissioner shall provide to the Joint Committee on Government and Finance by July 1, 2022, and on the first day of July of each year thereafter, a report detailing the amount of rebate claimed pursuant to this article. The report is to include the amount of rebate claimed against the severance tax imposed pursuant to §11-13A-2 of this code.

(b) Taxpayers claiming the rebate shall provide the information the Tax Commissioner may require to prepare the report: *Provided*, That the information provided is subject to the confidentiality and disclosure provisions of §11-10-5d and §11-10-5s of this code.

(c) The Tax Commissioner shall identify any issues he or she has in the administration and enforcement of this rebate and make any suggestions the Commissioner may have for improving the credit or the administration of the rebate.

§11-13EE-14. Rules.

The Tax Commissioner may promulgate such interpretive, legislative, and procedural rules as the commissioner deems to be useful or necessary to carry out the purpose of this article and to implement the intent of the Legislature. The Tax Commissioner may promulgate emergency rules if they are filed in the West Virginia Register before January 1, 2020. All rules shall be promulgated in accordance with the provisions of §29A-3-1 *et seq.* of this code.

§11-13EE-15. Severability.

(a) If any provision of this article or the application thereof is for any reason adjudged by any court of competent jurisdiction to be invalid, the judgment may not affect, impair, or invalidate the remainder of the article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which the judgment shall have been rendered, and the applicability of the provision to other persons or circumstances may not be affected thereby.

(b) If any provision of this article or the application thereof is made invalid or inapplicable by reason of the repeal, or any other invalidation of any statute therein addressed or referred to, such invalidation or inapplicability may not affect, impair, or invalidate the remainder of the article, but shall be confined in its operation to the provision thereof directly involved with, pertaining to, addressing, or referring to the statute, and the application of the provision with regard to other statutes or in other instances not affected by any such repealed or invalid statute may not be abrogated or diminished in any way.

§11-13EE-17. Effective date.

The rebate allowed by this article is allowed for capital investment in new machinery, equipment, or improvements to real property placed in service or use in this state on or after the effective date of this article.”

And,

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

H. B. 3144 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-13EE-1, §11-13EE-2, §11-13EE-3, §11-13EE-4, §11-13EE-5, §11-13EE-6, §11-13EE-7, §11-13EE-8, §11-13EE-9, §11-13EE-10, §11-13EE-11, §11-13EE-12, §11-13EE-13, §11-13EE-14, §11-13EE-15, and §11-13EE-16, all relating generally to Coal Severance Tax Rebate; findings and purpose; defining terms; providing for rebate of severance tax when capital investment made in new machinery, equipment, or improvements to real property directly used in severance of coal, or in coal preparation and processing plants; providing rules and procedures for claiming rebate and transfer to successors; imposing recapture tax in certain circumstance; providing rules for interpretation and construction; requiring periodic rebate reports; authorizing rulemaking; and providing for severability and effective date.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 681**), and there were—yeas 84, nays 13, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Angelucci, Bates, S. Brown, Caputo, Diserio, Doyle, Fleischauer, Fluharty, Hansen, Lavender-Bowe, Pushkin, Sponaugle and Walker.

Absent and Not Voting: Ellington, Rohrbach and Steele.

So, a majority of the members elected to the House having voted in the affirmative, the Speaker declared the bill (H. B. 3144) passed.

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

The House then returned to further consideration of **Com. Sub. for S. B. 487**, Relating to admissibility of health care staffing requirements in litigation.

On motion of Delegate Summers, the House of Delegates refused to recede from its amendment and requested the Senate to agree to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses.

Whereupon,

The Speaker appointed as conferees on the part of the House of Delegates the following:

Delegates Capito, Foster and Lovejoy.

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

Resolutions Introduced

Delegates Walker, Angelucci, Bates, S. Brown, Byrd, Doyle, Estep-Burton, Fleischauer, Fluharty, Hansen, Hornbuckle, Longstreth, Miller, Pushkin, Pyles, Robinson, Rowe, Skaff, Staggers, Tomblin, Williams and Zukoff offered the following resolution, which was read by its title and referred to the Committee on Health and Human Resources then Rules:

H. R. 22 - "Urging the West Virginia House of Delegates to affirm its support of the protections for West Virginia consumers with preexisting conditions and other patient protections in the Affordable Care Act; calls on Attorney General Morrisey to withdraw from the lawsuit; and calls on the West Virginia Legislature to pass state-level protections in the event these provisions are overturned at the federal level."

Whereas, There are 740,000 individuals living with a preexisting condition in West Virginia—including 90,600 children; and

Whereas, Nearly one out of four West Virginia adults under age 50 (181,000) have anxiety, depression, or other mental health conditions; and

Whereas, There are 26,000 West Virginia cancer survivors under age 60, including adults and children; and

Whereas, Virtually any health condition that a West Virginian had before joining a health plan could lead to a preexisting condition exclusion, denial of coverage, or price increase, including high blood pressure or cholesterol, diabetes, asthma, and obesity; and

Whereas, There were 540,000 West Virginians enrolled in Medicaid/CHIP in October 2018; and

Whereas, There are more than 410,000 West Virginians enrolled in Medicare; and

Whereas, Attorneys General from 18 states including West Virginia have filed suit in the United States District Court for the Northern District of Texas, arguing that the Affordable Care Act is unconstitutional; and

Whereas, This lawsuit puts protections for West Virginians with preexisting conditions at risk in the event they need to purchase their own coverage and the 154,000 West Virginians enrolled (as of December 2018) in the Medicaid Expansion could lose coverage, and threatens all West Virginians who benefit from improvements to Medicare, including reduced costs to seniors for prescription drugs; and

Whereas, On June 7, 2018, the United States Department of Justice refused to defend the constitutionality of the Affordable Care Act, despite the well-established duty of the department to defend federal statutes where reasonable arguments can be made in their defense.

Resolved by the House of Delegates:

That the West Virginia House of Delegates affirm its support of the protections for West Virginia consumers with preexisting conditions and other patient protections in the Affordable Care Act; and calls on Attorney General Morrisey to withdraw from the lawsuit; and calls on the West Virginia Legislature to pass state-level protections in the event these provisions are overturned at the federal level.

Further Resolved, That the Clerk of the House of Delegates is hereby directed to forward a copy of this resolution to the President of the West Virginia Senate, the Attorney General, and the Governor of West Virginia.

Delegates Sypolt, Rowan, Boggs, Linville, Longstreth, Lovejoy, C. Martin, P. Martin and Pyles offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 100 - "Whereas, West Virginia currently is suffering a child welfare crisis that is leaving over seven thousand children in the foster care system."

Whereas, West Virginia is suffering from a drug epidemic that is exacerbating the child welfare crisis; and

Whereas, The overall goal is for children in the foster care system to be reunified with their birth parents; however there remains a large portion whose parental rights have been terminated thus leaving the children eligible for adoption; and

Whereas, Only 27% of those discharged from foster care in 2017 were adopted; and

Whereas, Increased adoption from foster care is an opportunity to decrease the number of young people left to spend much of their youth in unstable and less than ideal living arrangements; and

Whereas, West Virginia should review national best practices to ensure its policy create an environment which leads to successful permanent placements; therefore, be it

Resolved by the Legislature of West Virginia:

That the West Virginia House of Delegates conduct a study to better understand the potential that adoption could have in addressing the critical need for improving child welfare in West Virginia; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2020, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

When children being discharged from the foster care system cannot be reunified with their birth parent it is important to ensure that the adoptive system can adequately provide permanent family placement.

Delegates Rowan, Rohrbach, Boggs, Graves, Longstreth, Lovejoy, Malcolm, C. Martin, P. Martin, Pyles, Sypolt and Toney offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 101 - "Requesting the Joint Committee on Government and Finance study issues relating to the state funding of local senior centers, and their ability to provide in-home care services to the elderly population of West Virginia."

Whereas, Approximately twenty percent of the population of West Virginia is aged sixty-five or older; and

Whereas, Many elderly persons in West Virginia rely on state funded providers for assistance, whether in an institutional setting or through in-home care services; and

Whereas, Such services provided by in-home care providers can include grooming and hygiene, mobility assistance, light housekeeping, transportation, or nutrition care; and

Whereas, In-home care can provide West Virginia's elderly population with numerous advantages such as remaining close to family, increasing comfort, and lowering costs; and

Whereas, Many of the aforementioned services are provided by county level aging providers which are located throughout the state; and

Whereas, County providers are currently not receiving sufficient funding to properly address the demand, and increasing costs of providing in-home services for the elderly population of West Virginia; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the funding of local senior centers in an effort to increase the ability of these centers to provide adequate care to West Virginia's aging population, in particular in-home services; and, be it

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

Delegates Rowan, Boggs, Rohrbach, Graves, Longstreth, Lovejoy, Malcolm, C. Martin, P. Martin, Pyles and Sypolt offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 102 - "Requesting the Joint Committee on Government and Finance to study the feasibility of including victims of financial exploitation as persons who are eligible for an award from the West Virginia Crime Victims Compensation Fund, especially persons who are elderly, incapacitated or who have been deemed protected persons, and the possibility of coordinating with the federal Victims of Crime Act program to obtain funds for such awards."

Whereas, Many persons in West Virginia are victims of financial exploitation, the fastest growing silent crime of the 21st century; and

Whereas, In many cases the perpetrator of the financial exploitation drains the victim of his or her life savings, income and real and personal property, leaving that victim subject to evictions, homelessness, hunger and destitution; and

Whereas, West Virginia has a Crime Victims Compensation Fund that grants awards to victims of crimes that result in physical harm; and

Whereas, The federal Victims of Crimes Act and other states have extended crime victims compensation awards to victims of financial exploitation; and

Whereas, Even the smallest award from the Crime Victims Compensation Fund would assist vulnerable victims of financial exploitation in keeping their housing, property and dignity without resorting to assistance from public programs; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the feasibility of including victims of financial exploitation as persons who are eligible for an award from the West Virginia Crime Victims Compensation Fund, especially persons who are elderly, incapacitated or who have been deemed protected persons, and the possibility of coordinating with the federal Victims of Crime Act program to obtain funds for such awards; and, be it.

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2020, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

Delegates Graves, Rowan, Lovejoy, C. Martin and Sypolt offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 103 - "Requesting the Joint Committee on Government and Finance research issues relating to providing a process to support and assist 'Grandfamilies' in West Virginia."

Whereas, 35,393 West Virginian children under the age of 18 live with grandparents; and

Whereas, 21,304 grandparents are householders responsible for their grandchildren who live with them; and

Whereas, 46.5% of these grandparents are in the workforce; and

Whereas, 20.9% of these grandparents are in poverty; and

Whereas, Federal and state public benefits programs can help with income, food, healthcare, home energy, and other needs for eligible grandfamilies; therefore, be it

Whereas, There should be an immediate and appropriate process that would enable grandparents in grandfamily arrangements to easily gain access to financial and emotional support, respective forms for assistance programs, and leadership tools for grandfamilies.

Resolved by the Legislature of West Virginia:

That the Committee on Government and Finance is hereby requested to study the feasibility of the West Virginia Department of Health and Human Resources to develop a process where a victim who has had accessories or devices withheld from him or her by a caregiver can report the matter to

Adult Protective Services as abuse, neglect or financial exploitation and get immediate relief through the return of the subject accessories or devices; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2020, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

Delegates Rowan, Graves, Lovejoy, Pyles and Sypolt offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 104 - "Requesting study of child custody models that various states have adopted."

Whereas, West Virginia's current custody laws provide for the best interest of the child; and

Whereas, Other states have adopted a presumption that shared parenting is in the best interest of the child; and

Whereas, The intensity and quality of parental care significantly impacts a child's welfare; and

Whereas, Many studies have been performed on this issues which should be reviewed and considered by the West Virginia Legislature; therefore, be it

Resolved by the Legislature of West Virginia:

That the West Virginia House of Delegates conduct a study of child custody models to better understand and facilitate child custody laws in the state of West Virginia; therefore, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2020, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

Delegates Boggs, Rowan, Graves, Longstreth, Lovejoy, Malcolm, C. Martin, P. Martin, Pyles, Sypolt and Toney offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 105 - "Requesting the Joint Committee on Government and Finance study issues relating to providing a process to assist persons have had caregivers withhold accessories or devices that assist the person in caring for themselves, making legal or health care decisions or communicating with others."

Whereas, Many persons in West Virginia are elderly or incapacitated and depend upon eyeglasses, hearing aids, canes, braces, telephones, computers or other such accessories or devices to maintain their independence, make legal or health care decisions or communicate with other persons; and

Whereas, Certain caregivers of elderly or incapacitated persons often withhold such accessories or devices from their wards, thereby depriving them of their independence, their ability to make decisions affecting health or legal matters, isolating them from friends or family, and resulting in the person's total dependence upon the caregivers; and

Whereas, In many cases such actions could constitute abuse, neglect or financial exploitation of a person by the alleged caregiver; and

Whereas, The West Virginia Department of Health and Human Services has an obligation, through Adult Protective Services, to thoroughly investigate complaints regarding abuse, neglect and financial exploitation of certain adults; and

Whereas, The withholding of accessories and devices from elderly or incapacitated persons by caregivers to the extent that it deprives a person of his or her independence, affects their ability to make legal or health care decisions or impedes their opportunity to communicate with other persons should be deemed abuse, neglect or financial exploitation; and

Whereas, There should be an immediate and appropriate process that would enable a person, or someone acting on behalf of such person, to report to Adult Protective Services the withholding of accessories or devices to an elderly or incapacitated person and to assist in obtaining or retrieving the same; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the feasibility of the West Virginia Department of Health and Human Resources to develop a process where a victim who has had accessories or devices withheld from him or her by a caregiver can report the matter to Adult Protective Services as abuse, neglect or financial exploitation and get immediate relief through the return of the subject accessories or devices; and be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2020, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

Delegates Rowan, Graves, Longstreth, Lovejoy, Malcolm, C. Martin, P. Martin, Pyles and Sypolt offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 106 - "Requesting the Joint Committee on Government and Finance study and analyze the impact of human trafficking in West Virginia and ways to ensure its prevention as well as the treatment of victims."

Whereas, Human trafficking is an under-reported crime in West Virginia that affects hundreds of children and families throughout the state; and

Whereas, Victims, who may or may not be identified as survivors of human trafficking, need a broad spectrum of trauma informed care and services from trained professionals and service providers; and

Whereas, Prevention of victimization is important to reducing the physical and emotional damage inflicted by perpetrators of labor and sex trafficking; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study and analyze the impact of human trafficking in West Virginia and ways to ensure its prevention as well as the treatment of victims; and, be it

Further Resolved, That the study include an examination of the lasting and damaging impacts of human trafficking on the children, youth and families of West Virginia; and be it

Further Resolved, That the study examine the gaps in victim services, such as housing for victims, including minors who are not falling within scope of current DHHR programs, the needs of law enforcement to better identify victims of human trafficking, particularly youth and runaway victims, and consider the resources known as soft interviewing room facilities for victims and resources to support the timely investigation of trafficking cases; and be it

Further Resolved, That the study consider that with the rise in grand-families, many elder guardians are not well versed in the hazards of technology and social media, and thus may not be aware of the victimization and grooming of children and adolescents that takes place by perpetrators of human trafficking and sexual abuse; and be it

Further Resolved, That the study seek best practices related to training and education of a variety of service providers and community resources, especially those who are mandated reporters, so they recognize the signs of human trafficking and can appropriately report and potentially intervene on behalf of young victims; and be it

Further Resolved, That the study look at methods to determine best practices in prevention through age-appropriate education of children and teens related to developing healthy relationships, understanding self-worth and building self-esteem to help all children and teens avoid victimization; and be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2020, on its findings, conclusions, and recommendations together with any drafts of any legislation necessary to effectuate its recommendations; and be it

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

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

H. C. R. 107 - "Requesting the Joint Committee on Government and Finance study the issue of domestic animals trespassing on the property on another."

Whereas, The Legislature is committed to protecting the private property rights of land owners in this state; and

Whereas, Domestic animals at times leave the property of their owner and enter upon the land of other land owners in this state; and

Whereas, Current state law does not provide protection to individuals to recover domestic animals that trespass on the property of another; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the issue of domestic animals trespassing on the property on another, including the possibility of enacting legislation to provide protections to owners of domestic animals to recover domestic animals that trespass on the property of another; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2020, on its findings, conclusion, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

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

H. C. R. 109 - "Requesting the Joint Committee on Government and Finance study commercial guided bear hunting in the State of West Virginia."

Whereas, Commercial guided bear hunting enterprises afford bear hunters the ability to host groups of individuals on guided bear hunts to showcase their unique methods of hunting, while allowing a wider segment of the population to enjoy the sport of bear hunting; and

Whereas, Commercial guided bear hunting would create economic opportunities for bear hunters in the state that do not exist currently; and

Whereas, Commercial bear hunters in the state have voiced concerns that commercial bear hunting may negatively affect the sport of bear hunting in the state; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study commercial guided bear hunting, including the possibility of enacting legislation to permit commercial guided bear hunting in West Virginia; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2020, on its findings, conclusion, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

Special Calendar

Unfinished Business

Com. Sub. for S. C. R. 4, US Marine Corps Lt. Col. Dennis Ray Blankenship Memorial Road; coming up in regular order, as unfinished business, was reported by the Clerk.

On motion of Delegate Summers the resolution was amended on page one, by striking out the entire resolution and inserting in lieu of the following:

“Requesting the Division of Highways name a portion of State Route 16 from milepost 22.85 to milepost 26.7 in McDowell County, the ‘U.S. Marine Corps Lt. Col. Dennis Ray Blankenship Memorial Road’.”

Whereas, Dennis Ray Blankenship was born January 8, 1938, in Bartley, McDowell County, West Virginia; and

Whereas, Dennis Ray Blankenship served in the United States Marine Corps during the Vietnam War and reached the rank of Lieutenant Colonel; and

Whereas, Lt. Col. Dennis Ray Blankenship was highly decorated for his conspicuous gallantry and intrepidity in action, and was awarded the Silver Star; and

Whereas, Naming a portion of road in McDowell County is an appropriate recognition of his service and sacrifice for his country, his state, his community, and McDowell County; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name a portion of State Route 16 from milepost 22.85 to milepost 26.7 in McDowell County, the “U.S. Marine Corps Lt. Col. Dennis Ray Blankenship Memorial Road”; and, be it

Further Resolved, That the Division of Highways is requested to have made and be placed signs identifying the road as the “U.S. Marine Corps Lt. Col. Dennis Ray Blankenship Memorial Road”; and, be it

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

The resolution, as amended, was then adopted.

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

Com. Sub. for S. C. R. 40, US Army CPL Roy E. Clark Memorial Bridge; coming up in regular order, as unfinished business, was reported by the Clerk.

On motion of Delegate Summers, the resolution was amended on page one, by striking out the entire resolution and inserting in lieu of the following:

“Requesting the Division of Highways name bridge number 2657, S-242(17), (40A030), located on West Virginia Route 34 within the city limits of Hurricane, in Putnam County, the ‘U.S. Army CPL Roy E. Clark Memorial Bridge’.”

Whereas, Roy Edward Clark was born March 22, 1946, in Culloden, West Virginia, the son of Lawrence Willard Clark and Mazy Ann Woodard; and

Whereas, Roy E. Clark graduated from Hurricane High School in 1966, where he was known by his friends as a kind, humble, honest, and caring young man; Roy loved athletics and was a member of both the basketball and track teams; and

Whereas, After graduating high school, Roy E. Clark served with the U.S. Army in Vietnam, Company C, 5th Battalion, 46th Infantry, 198th Infantry Brigade; and

Whereas, On May 24, 1969, CPL Roy E. Clark was mortally wounded when his company came under heavy enemy fire near the village of Trà Vinh, Vietnam; with complete disregard for his own safety, CPL Roy E. Clark continued to expose himself to intense enemy fire, laying down a suppressive fire that provided cover to his comrades, enabling them to reach a safe position; and

Whereas, CPL Roy E. Clark was posthumously awarded the Bronze star with “V” for valor for saving the lives of many of his fellow soldiers through his timely and courageous actions; and

Whereas, It is fitting that an enduring memorial be established to commemorate CPL Roy E. Clark and his sacrifice for his state and country; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways name bridge number 2657, S-242(17), (40A030), located on West Virginia Route 34 within the city limits of Hurricane, in Putnam County, the ‘U.S. Army CPL Roy E. Clark 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 CPL Roy E. Clark Memorial Bridge’; and, be it

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

The resolution, as amended, was then adopted.

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

Third Reading

Com. Sub. for S. J. R. 5, Clarification of the Judiciary’ Role in Impeachment Proceedings Amendment; on third reading, coming up in regular order, was read a third time.

On the adoption of the resolution, the yeas and nays were taken (**Roll No. 682**), and there were—yeas 54, nays 41, absent and not voting 5, with the nays and absent and not voting being as follows:

Yeas: Anderson, Azinger, Bibby, Butler, Cadle, Capitol Cooper, Cowles, Criss, Dean, Espinosa, Fast, Foster, Graves, Hamrick, Hanna, Hardy, Harshbarger, Higginbotham Hill, Hollen, Hott, Householder, Howell, D. Jeffries, J. Jeffries, Jennings, D. Kelly, J. Kelly, Kessinger, Kump, Linville, Malcolm, Mandt, C. Martin, P. Martin, Maynard, McGeehan, Pack, Paynter, Phillips, Porterfield, Queen, Rowan, Shott, Storch, Summers, Sypolt, Toney, Waxman, Westfall, Wilson, Worrell and Hanshaw (Mr. Speaker).

Nays: Angelucci, Barrett, Bates, Boggs, N. Brown, S. Brown, Byrd, Campbell, Canestraro, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Hornbuckle, Lavender-Bowe, Longstreth, Lovejoy, Miley, Miller, Pethtel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Skaff, Sponaule, Staggers, Swartzmiller, C. Thompson, R. Thompson, Tomblin, Walker, Williams and Zukoff.

Absent and Not Voting: Atkinson, Ellington, Nelson, Rohrbach and Steele.

So, two thirds of the members elected to the House of Delegates not having voted in the affirmative, the Speaker declared the resolution (Com. Sub. for S. J. R. 5) rejected.

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

S. B. 677, Supplemental appropriation to Division of Health and Division of Human Services; on third reading, coming up in regular order, was read a third time.

Delegate Cowles requested to be excused from voting on S. B. 677 under the provisions of House Rule 49.

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 683**), and there were—yeas 93, nays 4, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Butler, Jennings, Malcolm and McGeehan.

Absent and Not Voting: Ellington, Rohrbach and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 677) passed.

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

On this question, the yeas and nays were taken (**Roll No. 684**), and there were—yeas 95, nays 2, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Butler and McGeehan.

Absent and Not Voting: Ellington, Rohrbach and Steele.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 677) takes effect from its passage.

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

S. B. 678, Supplemental appropriation from State Excess Lottery Revenue Fund to Office of Technology; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 685**), and there were—yeas 93, nays 4, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: McGeehan, Paynter, Porterfield and Worrell.

Absent and Not Voting: Ellington, Rohrbach and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 678) passed.

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

On this question, the yeas and nays were taken (**Roll No. 686**), and there were—yeas 93, nays 4, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: McGeehan, Paynter, Porterfield and Worrell.

Absent and Not Voting: Ellington, Rohrbach and Steele.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 678) takes effect from its passage.

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

S. B. 679, Supplemental appropriation to Division of Finance; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 687**), and there were—yeas 94, nays 3, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Butler, McGeehan and Paynter.

Absent and Not Voting: Ellington, Rohrbach and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 679) passed.

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

On this question, the yeas and nays were taken (**Roll No. 688**), and there were—yeas 95, nays 2, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: McGeehan and Paynter.

Absent and Not Voting: Ellington, Rohrbach and Steele.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 679) takes effect from its passage.

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

S. B. 680, Supplemental appropriations to various divisions in DMAPS; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 689**), and there were—yeas 95, nays 2, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: McGeehan and Paynter.

Absent and Not Voting: Ellington, Rohrbach and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 680) passed.

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

On this question, the yeas and nays were taken (**Roll No. 690**), and there were—yeas 95, nays 2, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: McGeehan and Paynter.

Absent and Not Voting: Ellington, Rohrbach and Steele.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 680) takes effect from its passage.

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

S. B. 681, Supplemental appropriation from Lottery Net Profits to Educational Broadcasting Authority; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 691**), and there were—yeas 85, nays 12, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Butler, Fast, Foster, Hollen, D. Jeffries, J. Jeffries, Kessinger, Malcolm, P. Martin, McGeehan, Paynter and Porterfield.

Absent and Not Voting: Ellington, Rohrbach and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 681) passed.

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

On this question, the yeas and nays were taken (**Roll No. 692**), and there were—yeas 86, nays 11, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Butler, Fast, Hollen, Howell, D. Jeffries, Kessinger, C. Martin, P. Martin, McGeehan, Paynter and Porterfield.

Absent and Not Voting: Ellington, Rohrbach and Steele.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 681) takes effect from its passage.

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

In the absence of objection, the House then returned to further consideration of Com. Sub. for S. B. 405.

Delegate Summers moved to reconsider the vote requesting conference, which motion prevailed.

Whereupon,

Delegate Summers asked unanimous consent to withdraw the motion requesting conference, which consent was not given, objection being heard.

On motion of Delegate Summers, the motion was then withdrawn.

On motion of Delegate Summers, the House of Delegates then refused to concur in the Senate amendment and requested the Senate to recede therefrom.

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

At 1:35 p.m., the House of Delegates recessed until 3:30 p.m.

* * * * *

Afternoon Session

* * * * *

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

Messages from the Senate

A message from the Senate, by

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

Com. Sub. for S. B. 352, Relating to Division of Corrections and Rehabilitation acquiring and disposing of services, goods, and commodities.

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

Com. Sub. for S. B. 352 - "A Bill to amend and reenact §15A-3-14 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §15A-3-14a, all relating to the Division of Corrections and Rehabilitation acquiring and disposing of services, goods, and commodities; clarifying notice requirements; allowing the division to require surety; expanding acceptable forms of surety; allowing the division to utilize best value procurement; providing exception; establishing procedure for best value procurement; allowing for direct award procurement; establishing procedure for direct award procurement; allowing the division to run criminal background checks, financial background checks, licensing background checks, and credit checks to determine eligibility for award of contract; enumerating grounds upon which division shall disqualify vendors from being awarded a contract or having contract renewed; limiting disclosure under Freedom of Information Act of records obtained in response to solicitations for bids and records relating to solicitations for, or purchases of, items related to safe and secure running of any facility under jurisdiction of commissioner of division; creating special revenue fund; and providing for methods of disposition of surplus property owned by the division."

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 693**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

Absent and Not Voting: Cooper, Ellington, Fluharty, Rodighiero, Staggers and Steele.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 352) passed.

A message from the Senate, by

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

Com. Sub. for S. B. 398, Relating to compensation for senior judges.

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

Com. Sub. for S. B. 398 - "A Bill to amend and reenact §5-10-48 of the Code of West Virginia, 1931, as amended; to amend and reenact §50-1-6a of said code; and to amend and reenact §51-9-10 of said code, all relating to compensation for senior judicial officers; providing that senior judges, justices, and magistrates may receive per diem compensation for temporary assignments while receiving retirement benefits, subject to certain limitations; setting forth legislative findings; limiting the per diem rate of compensation that may be paid to senior judges and justices for each day served; providing that the combined total of per diem compensation and retirement benefits paid to a senior judge or justice during a single calendar year may not exceed the annual salary of a sitting circuit judge; limiting the per diem rate of compensation that may be paid to senior magistrates for each day served; providing that the combined total of per diem compensation and retirement benefits paid to a senior magistrate during a single calendar year may not exceed the annual salary of a sitting magistrate; providing an exception to the limitation on the combined total of per diem compensation and retirement benefits paid to a senior judge, justice, or magistrate in a calendar year, if the Chief Justice of the Supreme Court of Appeals enters an administrative order certifying that certain circumstances necessitate extended assignment of such judge, justice, or magistrate; providing that extended assignment of senior judges or justices must not be utilized in a manner to threaten the qualified status of the Judges' Retirement System under certain provisions of the Internal Revenue Code; requiring that administrative orders regarding extended assignment of a senior judge, justice, or magistrate be submitted to the State Auditor and the State Treasurer; providing that senior judges, justices, and magistrates may be reimbursed for actual and necessary expenses incurred in the performance of their duties; and requiring the State Treasurer to petition the West Virginia Supreme Court of Appeals for a writ of prohibition prohibiting the State Auditor from issuing warrants to authorize payment of compensation to senior judges and justices above statutory limitations."

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 694**), and there were—yeas 79, nays 18, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Angelucci, Barrett, Bates, S. Brown, Campbell, Canestraro, Caputo, Diserio, Fleischauer, Fluharty, Longstreth, Lovejoy, Miley, Robinson, Sponaugle, C. Thompson, Walker and Zukoff.

Absent and Not Voting: Cooper, Ellington and Staggers.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 398) passed.

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

On this question, the yeas and nays were taken (**Roll No. 695**), and there were—yeas 88, nays 10, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Barrett, S. Brown, Campbell, Estep-Burton, Fleischauer, Fluharty, Pushkin, Robinson, Sponaugle and Walker.

Absent and Not Voting: Cooper and Ellington.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 398) takes effect from its passage.

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

A message from the Senate, by

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

S. B. 635, Relating generally to coal mining activities.

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

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

“CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2A. OFFICE OF COALFIELD COMMUNITY DEVELOPMENT.

§5B-2A-5. Powers and duties.

The office has and may exercise the following duties, powers, and responsibilities:

~~(1) To establish a procedure for developing a community impact statement as provided in section six of this article and to administer the procedure so established;~~

(2) (1) To establish a procedure for determining the assets that could be developed in and maintained by the community to foster its long-term viability as provided in §5B-2A-8 of this code and to administer the procedure so established;

(3) (2) To establish a procedure for determining the land and infrastructure needs in the general area of the surface mining operations as provided in §5B-2A-9 of this code and to administer the procedure so established;

(4) (3) To establish a procedure to develop action reports and annual updates as provided in §5B-2A-10 of this code and to administer the procedure so established;

(5) (4) To determine the need for meetings to be held among the various interested parties in the communities impacted by surface mining operations and, when appropriate, to facilitate the meetings;

~~(6)~~ (5) To establish a procedure to assist property owners in the sale of their property as provided in §5B-2A-11 of this code and to administer the procedure so established;

~~(7)~~ (6) In conjunction with the department, to maintain and operate a system to receive and address questions, concerns, and complaints relating to surface mining; and

~~(8)~~ (7) On its own initiative or at the request of a community in close proximity to a mining operation, or a mining operation, offer assistance to facilitate the development of economic or community assets. Such assistance shall include the preparation of a master land use plan pursuant to the provisions of §5B-2A-9 of this code.

§5B-2A-6. Community impact statement review.

~~(a)(1) The office shall, no less frequently than quarterly, either consult with representatives of the department's Office of Mining and Reclamation or review the department's permit application database(s) to determine whether newly proposed surface mines or significant modifications to existing surface mining operations may present opportunities for mine operators to cooperate with local landowners and local governmental officials to mine and reclaim properties so as to develop community assets or secure developable land and infrastructure pursuant to this article. The operator shall develop a community impact statement, as described in this section, which shall be submitted to the office within sixty days of the filing of a surface mining application pursuant to the provisions of article three, chapter twenty two of this code. Failure to submit a community impact statement to the office shall be considered a violation under the provisions of section seventeen of said article; and~~

~~(2) The operator shall provide copies of the community impact statement to the department's Office of Mining Reclamation and Office of Explosives and Blasting and to the county commissions, county clerks' offices and local, county or regional development or redevelopment authorities of the areas to be affected by the surface mining operations.~~

~~(b) The community impact statement, where practicable, shall not be a highly technical or legalistic document, but shall be written in a clear and concise manner understandable to all citizens. The community impact statement shall include the following:~~

~~(1) The amount and location of land to be mined or used in the actual mining operations;~~

~~(2) The expected duration of the mining operations in each area of the community;~~

~~(3) The extent of anticipated mining-related property acquisitions, to the extent that such acquisitions are known or knowable;~~

~~(4) The intentions of the surface and mineral owners relative to the acquired property, to the extent that such intentions are known or knowable;~~

~~(5) A statement of the post-mining land use for all land within the permit boundary;~~

~~(6) The intended blasting plan and the expected time and duration it will affect each community;~~

~~(7) Information concerning the extent and nature of valley fills and the watersheds to be affected;~~

~~(8) Economic information, such as the number of jobs created and annual coal production resulting from the surface mining operation, the anticipated life of the mining operation and such other information as may be deemed appropriate; and~~

~~(9) An acknowledgment of the recommendations of any approved master land use plan that pertains to the land proposed to be mined, including an acknowledgment of the infrastructure components needed to accomplish the designated post mine land use required by the plan.~~

~~(c) Where the operator makes any significant revision to the permit application under section eighteen, article three, chapter twenty two of this code, which revision substantially affects any of the information provided in subsection (b) of this section, the operator shall revise the affected provisions of its community impact statement and shall submit such revisions as set forth in subsection (a) of this section.~~

~~(d) Within thirty days of receipt of a community impact statement pursuant to subdivision (2), subsection (a) of this section or a revised community impact statement pursuant to subsection (c) of this section, the local, county or regional development or redevelopment authorities of the areas to be affected by the surface mining operations shall provide a written acknowledgment of the receipt of this community impact statement or revised community impact statement to the department's Division of Mining Reclamation, to the county commission or county commissions and to the office.~~

~~(e) (b) The provisions of this section shall apply as follows: to all surface mining permit applications granted after July 1, 2018.~~

~~(1) To all surface mining permits granted after June 11, 1999; and~~

~~(2) At the first renewal date of all previously issued permits: *Provided*, That the permittee shall be afforded ninety days from said date to comply with the provisions of this section.~~

§5B-2A-8. Determining and developing needed community assets.

(a) The office shall determine the community assets that may be developed by the community, county, or region to foster its viability when surface mining operations are completed.

(b) Community assets to be identified pursuant to subsection (a) of this section may include the following:

(1) Water and wastewater services;

(2) Developable land for housing, commercial development, or other community purposes;

(3) Recreation facilities and opportunities; and

(4) Education facilities and opportunities.

~~(c) The operator shall be required to prepare and submit to the office the information set forth in this subsection as follows:~~

~~(1) A map of the area for which a permit under article three, chapter twenty two of this code is being sought or has been obtained;~~

~~(2) The names of the surface and mineral owners of the property to be mined pursuant to the permit; and~~

~~(3) A statement of the post mining land use for all land which may be affected by the mining operations.~~

~~(d)~~ (c) In determining the nature and extent of the needed community assets, the office shall consider at least the following:

- (1) An evaluation of the future of the community once mining operations are completed;
- (2) The prospects for the long-term viability of any asset developed under this section;
- (3) The desirability of foregoing some or all of the asset development required by this section in lieu of the requirements of §5B-2A-9 of this code; and
- (4) The extent to which the community, local, state, or the federal government may participate in the development of assets the community needs to assure its viability.

§5B-2A-9. Securing developable land and infrastructure.

(a) The office shall determine the land and infrastructure needs in the general area of the surface mining operations- for which it makes the determination authorized in §5B-2A-6 of this code.

(b) For the purposes of this section, the term 'general area' shall mean the county or counties in which the mining operations are being conducted or any adjacent county.

(c) To assist the office, the operator, upon request by the office, shall be required to prepare and submit to the office the information set forth in this subsection as follows:

(1) A map of the area for which a permit under §22-3-1 *et seq.* of this code is being sought or has been obtained;

(2) The names of the surface and mineral owners of the property to be mined pursuant to the permit; and

(3) A statement of the post-mining land use for all land which may be affected by the mining operations.

(d) In making a determination of the land and infrastructure needs in the general area of the mining operations, the office shall consider at least the following:

(1) The availability of developable land in the general area;

(2) The needs of the general area for developable land;

(3) The availability of infrastructure, including, but not limited to, access roads, water service, wastewater service, and other utilities;

(4) The amount of land to be mined and the amount of valley to be filled;

(5) The amount, nature, and cost to develop and maintain the community assets identified in §5B-2A-8 of this code; and

(6) The availability of federal, state, and local grants and low-interest loans to finance all or a portion of the acquisition and construction of the identified land and infrastructure needs of the general area.

(e) In making a determination of the land and infrastructure needs in the general area of the surface mining operations, the office shall give significant weight to developable land on or near existing or planned multilane highways.

(f) The office may secure developable land and infrastructure for a Development Office or county through the preparation of a master land use plan for inclusion into a reclamation plan prepared pursuant to the provisions of §22-3-10 of this code. No provision of this section may be construed to modify requirements of §22-3-1 *et seq.* of this code.

(1) The county commission or other governing body for each county in which there are surface mining operations that are subject to this article shall determine land and infrastructure needs within their jurisdictions through the development of a master land use plan which incorporates post-mining land use needs, including, but not limited to, renewable and alternative energy uses, residential uses, highway uses, industrial uses, commercial uses, agricultural uses, public facility uses, or recreational facility uses. A county commission or other governing body of a county may designate a local, county, or regional development or redevelopment authority to assist in the preparation of a master land use plan. A county commission or other governing body of a county may adopt a master land use plan developed after July 1, 2009, only after a reasonable public comment period.

(2) Upon the request of a county or designated development or redevelopment authority, the office shall assist the county or development or redevelopment authority with the development of a master land use plan.

(3)(A) The Department of Environmental Protection and the Office of Coalfield Community Development shall review master land use plans existing as of July 1, 2009. If the office determines that a master land use plan complies with the requirements of this article and the rules promulgated pursuant to this article, the office shall approve the plan on or before July 1, 2010.

(B) Master land use plans developed after July 1, 2009, shall be submitted to the department and the office for review. The office shall determine whether to approve a master land use plan submitted pursuant to this subdivision within three months of submission. The office shall approve the plan if it complies with the requirements of this article and the rules promulgated pursuant to this article.

(C) The office shall review a master land use plan approved under this section every three years. No later than six months before the review of a master land use plan, the county or designated development or redevelopment authority shall submit an updated master land use plan to the department and the office for review. The county may submit its updated master land use plan only after a reasonable public comment period. The office shall approve the master land use plan if the updated plan complies with the requirements of this article and the rules promulgated pursuant to this article.

(D) If the office does not approve a master land use plan, the county or designated development or redevelopment authority shall submit a supplemental master land use plan to the office for approval.

(4) The required infrastructure component standards needed to accomplish the designated post-mining land uses identified in a master land use plan shall be developed by the county or its designated development or redevelopment authority. These standards must be in place before the respective county or development or redevelopment authority can accept ownership of property donated pursuant to a master land use plan. Acceptance of ownership of such property by a county or development or redevelopment authority may not occur unless it is determined that: ~~(i) The property use is compatible with adjacent land uses; (ii) the use satisfies the relevant county or~~

~~development or redevelopment authority's anticipated need and market use; (iii) the property has in place necessary infrastructure components needed to achieve the anticipated use; (iv) the use is supported by all other appropriate public agencies; (v) the property is eligible for bond release in accordance with section twenty three, article three, chapter twenty two of this code; and (vi) the use is feasible. Required infrastructure component standards require approval of the relevant county commission, commissions or other county governing body before such standards are accepted. County commission or other county governing body approval may be rendered only after a reasonable public comment period;~~

(A) The property use is compatible with adjacent land uses;

(B) The use satisfies the relevant county or development or redevelopment authority's anticipated need and market use;

(C) The property has in place necessary infrastructure components needed to achieve the anticipated use;

(D) The use is supported by all other appropriate public agencies;

(E) The property is eligible for bond release in accordance with §22-3-23 of this code; and

(F) The use is feasible.

Required infrastructure component standards require approval of the relevant county commission, commissions, or other county governing body before such standards are accepted. County commission or other county governing body approval may be rendered only after a reasonable public comment period.

(5) The provisions of this subsection shall not take effect until legislative rules are promulgated pursuant to ~~paragraph (C), subdivision (1), subsection (c), section twenty three, article three, chapter twenty two~~ of this code governing bond releases which assure sound future maintenance by the local or regional economic development, redevelopment, or planning agencies.

CHAPTER 11. TAXATION.

ARTICLE 28. POST-COAL MINE SITE BUSINESS CREDIT.

§11-28-1. Definitions.

For purposes of this article:

'Business entity' or 'person' means an individual, firm, sole proprietorship, partnership, corporation, association, or other entity entitled to a post-coal mine site business credit.

'Coal mining operation' means the business of developing, producing, preparing, or loading bituminous coal, subbituminous coal, anthracite, or lignite.

'Post-coal mine site' means property that has remained undeveloped for business purposes, subsequent to coal mining operations on the property within the bonded area of the last issued coal mine permit.

'Principal place of business' means the physical location from which the entity's direction, control, and coordination of the operations of the business are primarily exercised, with consideration given, but not limited to:

(1) The physical location at which the primary executive and administrative headquarters of the entity is located; and

(2) From which the management of overall operations of the entity is directed.

'Undeveloped for business purposes' means land has been previously used for coal mining operations and has not been built or developed for use for other activities in the commercial or manufacturing sectors of the economy.

§11-28-2. Eligibility for credit.

For those tax years beginning on or after January 1, 2020, a business entity will be allowed a credit against certain taxes imposed by this chapter, as described in §11-28-3 of this code, if the business entity meets the following requirements:

(1) The entity is a corporation, small business corporation, limited liability company, partnership, or unincorporated business entity as defined in this code that also has a principal place of business in the state;

(2) The entity employs at the post-coal mine site a minimum of 10 full-time (32 hours a week or more) employees; and

(3) The entity's principal place of business is located on a post-coal mine site within this state.

§11-28-3. Application of credit.

(a) Amount of credit. — For those tax years beginning on or after January 1, 2020, an eligible business entity will be allowed a tax credit in the amount of 50 percent of that entity's capital expenditures (as defined in Section 263 of the United States Internal Revenue Code of 1986, as amended) at the post-coal mine site for the first five taxable years during which the entity's principal place of business is located on the post-coal mine site within this state. The dollar amount of the credit claimed by an eligible business entity may not exceed the amount of 50 percent of the entity's state income tax for a single year.

(b) Application of annual credit allowance. — The credit created by this article is allowed as a credit against the taxpayer's state tax liability applied as provided in subdivisions (1) and (2) of this subsection, and in that order.

(1) Corporation net income taxes. — Any credit is first applied to reduce the taxes imposed by §11-24-1 et seq. of this code for the taxable year.

(2) Personal income taxes. — After application of §11-28-3(b)(1) of this code, any unused credit is next applied as follows:

(A) If the person making the qualified investment is an electing small business corporation (as defined in Section 1361 of the United States Internal Revenue Code of 1986, as amended), a partnership or a limited liability company that is treated as a partnership for federal income tax purposes, then any unused credit (after application of §11-28-3(b)(1) of this code) is allowed as a

credit against the taxes imposed by §11-21-1 et seq. of this code on the income from business or other activity subject to tax under §11-23-1 et seq. of this code.

(B) Electing small business corporations, limited liability companies, partnerships, and other unincorporated organizations shall allocate the credit allowed by this article among its members in the same manner as profits and losses are allocated for the taxable year.

(3) A credit is not allowed under this section against any employer withholding taxes imposed by §11-21-1 et seq. of this code.

(c) Unused credit. — A carryback to a prior taxable year is not allowed for the amount of any unused portion of any annual credit allowance. If the amount of the allowable credit exceeds the taxpayer's tax liability for the taxable year, the amount which exceeds the tax liability may be carried over and applied as a credit against the tax liability of the taxpayer pursuant to §11-21-1 et seq. or §11-24-1 et seq. of this code for each of the next 10 taxable years following the year of creation of the tax credit unless sooner used.

(d) Eligibility requirements. — Those businesses that benefit from other state economic development programs or incentives that result in a reduction of their income tax liability due shall not be eligible for this tax credit.

(e) Rule-making authority. — The State Tax Division shall promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code. These rules shall include, at a minimum, forms for use in claiming the credit authorized in this article, administration of the credit authorized in this article, and any other matter seen necessary by the State Tax Division for the administration of this article.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 3. SURFACE AND COAL MINING RECLAMATION ACT.

§22-3-14. General environmental protection performance standards for the surface effects of underground mining; application of other provisions of article to surface effects of underground mining.

(a) The director shall promulgate separate rules directed toward the surface effects of underground coal mining operations, embodying the requirements in subsection (b) of this section: *Provided*, That in adopting such rules, the director shall consider the distinct difference between surface coal mines and underground coal mines in West Virginia. Such rules may not conflict with or supersede any provision of the federal or state coal mine health and safety laws or any rule issued pursuant thereto.

(b) Each permit issued by the director pursuant to this article and relating to underground coal mining shall require the operation at a minimum to:

(1) Adopt measures consistent with known technology in order to prevent subsidence causing material damage to the extent technologically and economically feasible, maximize mine stability and maintain the value and reasonably foreseeable use of overlying surface lands, except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner: *Provided*, That this subsection does not prohibit the standard method of room and pillar mining;

(2) Seal all portals, entryways, drifts, shafts, or other openings that connect the earth's surface to the underground mine workings when no longer needed for the conduct of the mining operations in

accordance with the requirements of all applicable federal and state law and rules promulgated pursuant thereto;

(3) Fill or seal exploratory holes no longer necessary for mining and maximize to the extent technologically and economically feasible, if environmentally acceptable, return of mine and processing waste, tailings, and any other waste incident to the mining operation to the mine workings or excavations;

(4) With respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine workings or excavations, stabilize all waste piles created by the operator from current operations through construction in compacted layers, including the use of incombustible and impervious materials, if necessary, and assure that any leachate therefrom will not degrade surface or groundwaters below water quality standards established pursuant to applicable federal and state law and that the final contour of the waste accumulation will be compatible with natural surroundings and that the site is stabilized and revegetated according to the provisions of this section;

(5) Design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards and criteria developed pursuant to §22-3-13 of this ~~article~~ code, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, and solid wastes and used either temporarily or permanently as dams or embankments;

(6) Establish on regraded areas and all other disturbed areas a diverse and permanent vegetative cover capable of self-regeneration and plant succession and at least equal in extent of cover to the natural vegetation of the area within the time period prescribed in §22-3-13(b)(20) of this ~~article~~ code;

(7) Protect off-site areas from damages which may result from such mining operations;

(8) Eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public;

(9) Minimize the disturbance of the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quantity and the quality of water in surface and groundwater systems both during and after mining operations and during reclamation by: (A) Avoiding acid or other toxic mine drainage by such measures as, but not limited to: (i) Preventing or removing water from contact with toxic producing deposits; (ii) treating drainage to reduce toxic content which adversely affects downstream water before being released to water courses; and (iii) casing, sealing, or otherwise managing boreholes, shafts, and wells to keep acid or other toxic drainage from entering ground and surface waters; and (B) conducting mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event shall the contributions be in excess of requirements set by applicable state or federal law, and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines: *Provided*, That in recognition of the distinct differences between surface and underground mining the monitoring of water from underground coal mine workings shall be in accordance with the provisions of the Clean Water Act of 1977;

(10) With respect to other surface impacts of underground mining not specified in this subsection, including the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities, operate in accordance with the standards established under §22-3-13 of this code for such effects which result from surface-mining operations:

Provided, That the director shall make such modifications in the requirements imposed by this subdivision as are necessary to accommodate the distinct difference between surface and underground mining in West Virginia;

(11) To the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, aquatic life, wildlife, and related environmental values, and achieve enhancement of such resources where practicable; and

(12) Unless otherwise permitted by the director and in consideration of the relevant safety and environmental factors, locate openings for all new drift mines working in acid producing or iron producing coal seams in a manner as to prevent a gravity discharge of water from the mine.

(c) In order to protect the stability of the land, the director shall suspend underground mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if he or she finds imminent danger to inhabitants of the urbanized areas, cities, towns, or communities.

(d) The provisions of this article relating to permits, bonds, insurance, inspections, reclamation and enforcement, public review, and administrative and judicial review are also applicable to surface operations and surface impacts incident to an underground mine with such modifications by rule to the permit application requirements, permit approval, or denial procedures and bond requirements as are necessary to accommodate the distinct difference between surface mines and underground mines in West Virginia.

(e) The secretary shall promulgate for review and consideration by the West Virginia Legislature during the regular session of the Legislature, 2020, revisions to legislative rules (38 CSR 2) pertaining to surface owner protection from material damage due to subsidence under this article. The secretary shall specifically consider adoption of the federal standards codified at 30 C.F.R. § 817.121.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-10. Water Quality Management Fund established; permit application fees; annual permit fees; dedication of proceeds; rules.

(a) The special revenue fund designated the Water Quality Management Fund established in the State Treasury on July 1, 1989, is hereby continued.

(b) The permit application fees and annual permit fees established and collected pursuant to this section; any interest or surcharge assessed and collected by the secretary; interest accruing on investments and deposits of the fund; and any other moneys designated by the secretary shall be deposited into the Water Quality Management Fund. The secretary shall expend the proceeds of the Water Quality Management Fund for the review of initial permit applications, renewal permit applications, and permit issuance activities.

(c) The secretary shall propose for promulgation, legislative rules in accordance with the provisions of §29A-1-1 *et seq.* of this code, to establish a schedule of application fees for all applications except for surface coal mining operations as defined in §22-3-13 of this code. The appropriate fee shall be submitted by the applicant to the department with the application filed pursuant to this article for any state water pollution control permit or national pollutant discharge elimination system permit. The schedule of application fees shall be designed to establish reasonable categories of permit application fees based upon the complexity of the permit application review process required by the department pursuant to the provisions of this article and the rules promulgated under this article: *Provided*, That no initial application fee may exceed \$15,000 for any

facility nor may any permit renewal application fee exceed \$5,000. The department may not process any permit application pursuant to this article until the required permit application fee has been received.

(d) The secretary shall propose for promulgation legislative rules in accordance with the provisions of §29A-1-1 *et seq.* of this code, to establish a schedule of permit fees to be assessed annually upon each person holding a state water pollution control permit or national pollutant discharge elimination system permit issued pursuant to this article except for permits held by surface coal mining operations as defined in §22-3-1 *et seq.* of this ~~chapter~~ code. Each person holding a permit shall pay the prescribed annual permit fee to the department pursuant to the rules promulgated under this section: *Provided*, That no person holding a permit for a home aerator of ~~six hundred~~ 600 gallons and under shall be required to pay an annual permit fee. The schedule of annual permit fees shall be designed to establish reasonable categories of annual permit fees based upon the relative potential of categories or permits to degrade the waters of the state: *Provided, however*, That no annual permit fee may exceed \$5,000. The secretary may declare any permit issued pursuant to this article void when the annual permit fee is more than ~~ninety~~ 90 days past due pursuant to the rules promulgated under this section. Voiding of the permit will only become effective upon the date the secretary mails, by certified mail, written notice to the permittee's last known address notifying the permittee that the permit has been voided.

(e) The secretary shall file a quarterly report with the Joint Committee on Government and Finance setting forth the fees established and collected pursuant to this section.

(f) On July 1, 2002, and each year thereafter, a \$1,000 fee shall be assessed for permit applications and renewals submitted pursuant to this article for surface coal mining operations, as defined in §22-3-1 *et seq.* of this code. On July 1, 2002, and each year thereafter, a \$500 fee shall be assessed for application for permit modifications submitted pursuant to this article for surface coal mining operations, as defined in §22-3-1 *et seq.* of this code. Beginning July 1, 2002 and every year thereafter, an annual permit fee shall be assessed on the issuance anniversary dates of all permits issued pursuant to this article for surface coal mining operations as defined in §22-3-1 *et seq.* of this code. The annual permit fee shall be collected as follows: ~~Five hundred dollars~~ \$500 for the fiscal year beginning on July 1, 2002, and \$1,000 for each fiscal year thereafter. For all other categories of permitting actions pursuant to this article related to surface coal mining operations, the secretary shall propose for promulgation legislative rules in accordance with the provisions of §29A-1-1 *et seq.* of this code to establish a schedule of permitting fees.

ARTICLE 30. THE ABOVEGROUND STORAGE TANK ACT.

§22-30-3. Definitions.

For purposes of this article:

(1) 'Aboveground storage tank' or 'tank' or 'AST' means a device made to contain an accumulation of more than ~~one thousand three hundred twenty~~ 1,320 gallons of fluids that are liquid at standard temperature and pressure, which is constructed primarily of nonearthen materials, including concrete, steel, plastic, or fiberglass reinforced plastic, which provide structural support, more than ~~ninety percent~~ 90 percent of the capacity of which is above the surface of the ground, and includes all ancillary pipes and dispensing systems up to the first point of isolation. The term includes stationary devices which are permanently affixed, and mobile devices which remain in one location on a continuous basis for ~~three hundred sixty five~~ 365 or more days. A device meeting this definition containing hazardous waste subject to regulation under 40 C. F. R. Parts 264 and 265, exclusive of tanks subject to regulation under 40 C. F. R. § 265.201 is included in this definition but is not a

regulated tank. Notwithstanding any other provision of this code to the contrary, the following categories of devices are not subject to the provisions of this article:

(A) Shipping containers that are subject to state or federal laws or regulations governing the transportation of hazardous materials, including, but not limited to, railroad freight cars subject to federal regulation under the Federal Railroad Safety Act, 49 U. S. C. §§20101-2015, as amended, including, but not limited to, federal regulations promulgated thereunder at 49 C. F. R. Parts §§172, 173, or 174;

(B) Barges or boats subject to federal regulation under the United States Coast Guard, United States Department of Homeland Security, including, but not limited to, federal regulations promulgated at 33 C. F. R. 1, *et seq.* or subject to other federal law governing the transportation of hazardous materials;

(C) Swimming pools;

(D) Process vessels;

(E) Devices containing drinking water for human or animal consumption, surface water or groundwater, demineralized water, noncontact cooling water, or water stored for fire or emergency purposes;

(F) Devices containing food or food-grade materials used for human or animal consumption and regulated under the Federal Food, Drug and Cosmetic Act (21 U. S. C. §301-392);

(G) Except when located in a zone of critical concern, a device located on a farm, the contents of which are used exclusively for farm purposes and not for commercial distribution;

(H) Devices holding wastewater that is being actively treated or processed (e.g., clarifier, chlorine contact chamber, batch reactor, etc.);

(I) Empty tanks held in inventory or offered for sale;

(J) Pipeline facilities, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979, or an intrastate pipeline facility regulated by the West Virginia Public Service Commission or otherwise regulated under any state law comparable to the provisions of either the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979;

(K) Liquid traps, atmospheric and pressure vessels, or associated gathering lines related to oil or gas production and gathering operations;

(L) Electrical equipment such as transformers, circuit breakers, and voltage regulator transformers;

(M) Devices having a capacity of ~~two hundred ten~~ 210 barrels or less, containing brine water or other fluids produced in connection with hydrocarbon production activities, that are not located in a zone of critical concern; and

(N) Devices having a capacity of 10,000 gallons or less, containing sodium chloride or calcium chloride water for roadway snow and ice pretreatment, that are not located in a zone of critical concern: *Provided*, That all such devices exempted under subdivisions (M) and (N) of this subdivision must still meet the registration requirements contained in §22-30-4 of this code, the notice

requirements contained in §22-30-10 of this code, and the signage requirements contained in §22-30-11 of this code.

(2) 'Department' means the West Virginia Department of Environmental Protection.

(3) 'First point of isolation' means the valve, pump, dispenser, or other device or equipment on or nearest to the tank where the flow of fluids into or out of the tank may be shut off manually or where it automatically shuts off in the event of a pipe or tank failure.

(4) 'Nonoperational storage tank' means an empty aboveground storage tank in which fluids will not be deposited or from which fluids will not be dispensed on or after the effective date of this article.

(5) 'Operator' means any person in control of, or having responsibility for, the daily operation of an aboveground storage tank.

(6) 'Owner' means a person who holds title to, controls, or owns an interest in an aboveground storage tank, including the owner immediately preceding the discontinuation of its use. 'Owner' does not mean a person who holds an interest in a tank for financial security unless the holder has taken possession of and operated the tank.

(7) 'Person', 'persons', or 'people' means any individual, trust, firm, owner, operator, corporation, or other legal entity, including the United States government, an interstate commission or other body, the state or any agency, board, bureau, office, department, or political subdivision of the state, but does not include the Department of Environmental Protection.

(8) 'Process vessel' means a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process or in which a biological, chemical, or physical change in the material occurs. This does not include tanks used for storage of materials prior to their introduction into the production process or for the storage of finished products or by-products of the production process.

(9) 'Public groundwater supply source' means a primary source of water supply for a public water system which is directly drawn from a well, underground stream, underground reservoir, underground mine, or other primary sources of water supplies which are found underneath the surface of the state.

(10) 'Public surface water supply source' means a primary source of water supply for a public water system which is directly drawn from rivers, streams, lakes, ponds, impoundments, or other primary sources of water supplies which are found on the surface of the state.

(11) 'Public surface water influenced groundwater supply source' means a source of water supply for a public water system which is directly drawn from an underground well, underground river or stream, underground reservoir, or underground mine, and the quantity and quality of the water in that underground supply source is heavily influenced, directly or indirectly, by the quantity and quality of surface water in the immediate area.

(12) 'Public water system' means:

(A) Any water supply or system which regularly supplies or offers to supply water for human consumption through pipes or other constructed conveyances, if serving at least an average of ~~twenty-five~~ 25 individuals per day for at least ~~sixty~~ 60 days per year, or which has at least ~~fifteen~~ 15 service connections, and shall include:

(i) Any collection, treatment, storage, and distribution facilities under the control of the owner or operator of the system and used primarily in connection with the system; and

(ii) Any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

(B) A public water system does not include a bathhouse located on coal company property solely for the use of its employees or a system which meets all of the following conditions:

(i) Consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(ii) Obtains all of its water from, but is not owned or operated by, a public water system which otherwise meets the definition;

(iii) Does not sell water to any person; and

(iv) Is not a carrier conveying passengers in interstate commerce.

(13) 'Regulated level 1 aboveground storage tank' or 'level 1 regulated tank' means:

(A) An AST located within a zone of critical concern, source water protection area, public surface water influenced groundwater supply source area, or any AST system designated by the secretary as a level 1 regulated tank; or

(B) An AST that contains substances defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as a 'hazardous substance' (42 U. S. C. § 9601(14)); or is on EPA's Consolidated List of Chemicals Subject to the Emergency Planning and Community Right to Know Act (EPCRA), CERCLA, and §112(r) of the Clean Air Act (CAA) (known as the List of Lists) as provided by 40 C. F. R. §§ 355, 372, 302, and 68) in a concentration of one percent or greater, regardless of the AST's location, except ASTs containing petroleum are not level 1 regulated tanks based solely upon containing constituents recorded on the CERCLA lists; or

(C) An AST with a capacity of 50,000 gallons or more, regardless of its contents or location.

(14) 'Regulated level 2 aboveground storage tank' or 'level 2 regulated tank' means an AST that is located within a zone of peripheral concern that is not a level 1 regulated tank.

(15) 'Regulated aboveground storage tank' or 'regulated tank' means an AST that meets the definition of a level 1 or level 2 regulated tank.

(16) 'Release' means any spilling, leaking, emitting, discharging, escaping, or leaching of fluids from an aboveground storage tank into the waters of the state or escaping from secondary containment.

(17) 'Secondary containment' means a safeguard applied to one or more aboveground storage tanks that prevents the discharge into the waters of the state of the entire capacity of the largest single tank and sufficient freeboard to contain precipitation. In order to qualify as secondary containment, the barrier and containment field must be sufficiently impervious to contain fluids in the event of a release, and may include double-walled tanks, dikes, containment curbs, pits, or drainage trench enclosures that safely confine the release from a tank in a facility catchment basin or holding

pond. Earthen dikes and similar containment structures must be designed and constructed to contain, for a minimum of ~~seventy-two~~ 72 hours, fluid that escapes from a tank.

(18) 'Secretary' means the Secretary of the Department of Environmental Protection, or his or her designee.

(19) 'Source water protection area' for a public groundwater supply source is the area within an aquifer that supplies water to a public water supply well within a five-year time of travel, and is determined by the mathematical calculation of the locations from which a drop of water placed at the edge of the protection area would theoretically take five years to reach the well.

(20) 'Zone of critical concern' for a public surface water supply source and for a public surface water influenced groundwater supply source is a corridor along streams within a watershed that warrants detailed scrutiny due to its proximity to the surface water intake and the intake's susceptibility to potential contaminants within that corridor. The zone of critical concern is determined using a mathematical model that accounts for stream flows, gradient and area topography. The length of the zone of critical concern is based on a five-hour time of travel of water in the streams to the intake. The width of the zone of critical concern is ~~one thousand~~ 1,000 feet measured horizontally from each bank of the principal stream and ~~five hundred~~ 500 feet measured horizontally from each bank of the tributaries draining into the principal stream.

(21) 'Zone of peripheral concern' for a public surface water supply source and for a public surface water influenced groundwater supply source is a corridor along streams within a watershed that warrants scrutiny due to its proximity to the surface water intake and the intake's susceptibility to potential contaminants within that corridor. The zone of peripheral concern is determined using a mathematical model that accounts for stream flows, gradient, and area topography. The length of the zone of peripheral concern is based on an additional five-hour time of travel of water in the streams beyond the perimeter of the zone of critical concern, which creates a protection zone of ~~ten~~ 10 hours above the water intake. The width of the zone of peripheral concern is ~~one thousand~~ 1,000 feet measured horizontally from each bank of the principal stream and ~~five hundred~~ 500 feet measured horizontally from each bank of the tributaries draining into the principal stream.

§22-30-24. Powers and duties of secretary.

(a) In addition to the powers and duties prescribed in this chapter or otherwise provided by law, the secretary has the exclusive authority to perform all acts necessary to implement this article.

(b) The secretary may receive and expend money from the federal government or any other sources to implement this article.

(c) The secretary may revoke any registration or certificate to operate for a significant violation of this article or the rules promulgated hereunder.

(d) The secretary may issue orders, assess civil penalties, institute enforcement proceedings, and prosecute violations of this article as necessary.

(e) The secretary, in accordance with this article, may order corrective action to be undertaken, take corrective action, or authorize a third party to take corrective action.

(f) The secretary may recover the costs of taking corrective action, including costs associated with authorizing third parties to perform corrective action. Costs may not include routine inspection and administrative activities not associated with a release.

(g) The secretary shall promulgate for review and consideration by the West Virginia Legislature in the regular session of the Legislature, 2020, legislative rules to incorporate the relevant provisions of this article in the Groundwater Protection Rules for Coal Mining, 38 CSR 2F, for tanks and devices located at coal mining operations.

CHAPTER 22A. MINERS' HEALTH, SAFETY, AND TRAINING.

ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY, AND TRAINING; ADMINISTRATION; ENFORCEMENT.

§22A-1-21. Penalties.

(a) (1) Any operator of a coal mine in which a violation of any health or safety rule occurs or who violates any other provisions of this chapter shall be assessed a civil penalty by the director under subdivision (3) of this subsection, which shall be not more than \$5,000, for each violation, unless the director determines that it is appropriate to impose a special assessment for the violation, pursuant to the provisions of subdivision (2), subsection (b) of this section. Each violation constitutes a separate offense. In determining the amount of the penalty, the director shall consider the operator's history of previous violations, whether the operator was negligent, the appropriateness of the penalty to the size of the business of the operator charged, the gravity of the violation, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation.

(2) Revisions to the assessment of civil penalties shall be proposed as legislative rules in accordance with the provisions of §29A-3-1 *et seq.* of this code.

(3) Any miner who knowingly violates any health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter is subject to a civil penalty assessed by the director under subdivision (4) of this subsection which shall not be more than \$250 for each occurrence of the violation. Any miner issued a violation under this subsection shall either appeal the violation or pay the civil penalty within 30 days after receipt of the violation. Any violation not appealed or paid within 30 days shall become delinquent.

Any civil penalty that becomes delinquent on or after July 1, 2019, and has not been paid shall be deemed a failure by the miner to perform a duty mandated pursuant to this article for purposes of §22A-1-31 of this code.

(4) A civil penalty under subdivision (1) or (2), subsection (a) of this section or subdivision (1) or (2), subsection (b) of this section shall be assessed by the director only after the person charged with a violation under this chapter or rule promulgated pursuant to this chapter has been given an opportunity for a public hearing and the director has determined, by a decision incorporating the director's findings of fact in the decision, that a violation did occur and the amount of the penalty which is warranted and incorporating, when appropriate, an order in the decision requiring that the penalty be paid. Any hearing under this section shall be of record.

(5) If the person against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in the order, the director may file a petition for enforcement of the order in any appropriate circuit court. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall immediately be sent by certified mail, return receipt requested, to the respondent and to the representative of the miners at the affected mine or the operator, as the case may be. The director shall certify and file in the court the record upon which the order sought to be enforced was issued. The court has jurisdiction to enter a judgment enforcing, modifying and enforcing as modified, or setting aside, in whole or in part, the order and decision of

the director or it may remand the proceedings to the director for any further action it may direct. The court shall consider and determine de novo all relevant issues, except issues of fact which were or could have been litigated in review proceedings before a circuit court under §22A-1-20 of this code and, upon the request of the respondent, those issues of fact which are in dispute shall be submitted to a jury. On the basis of the jury's findings the court shall determine the amount of the penalty to be imposed. Subject to the direction and control of the Attorney General, attorneys appointed for the director may appear for and represent the director in any action to enforce an order assessing civil penalties under this subdivision.

(b) (1) Any operator who knowingly violates a health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under §22A-1-15 of this ~~article~~ code, or any order incorporated in a final decision issued under this article, except an order incorporated in a decision under §22A-1-22(a) or §22A-1-22(b) of this ~~article~~ code, shall be assessed a civil penalty by the director under subdivision (5), subsection (a) of this section of not more than \$5,000 and for a second or subsequent violation assessed a civil penalty of not more than \$10,000, unless the director determines that it is appropriate to impose a special assessment for the violation, pursuant to the provisions of subdivision (2) of this subsection.

(2) In lieu of imposing a civil penalty pursuant to the provisions of subsection (a) of this section or subdivision (1) of this subsection, the director may impose a special assessment if an operator violates a health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter and the violation is of serious nature and involves one or more of the following by the operator:

(A) Violations involving fatalities and serious injuries;

(B) Failure or refusal to comply with any order issued under §22A-1-15 of this code;

(C) Operation of a mine in the face of a closure order;

(D) Violations involving an imminent danger;

(E) Violations involving an extraordinarily high degree of negligence or gravity or other unique aggravating circumstances; or

(F) A discrimination violation under §22A-1-22 of this code.

In situations in which the director determines that there are factors present which would make it appropriate to impose a special assessment, the director shall assess a civil penalty of at least \$5,000 and not more than \$10,000.

(c) Whenever a corporate operator knowingly violates a health or safety provision of this chapter or health or safety rules promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under this law or any order incorporated in a final decision issued under this law, except an order incorporated in a decision issued under §22A-1-22(a) or §22A-1-22(b) of this ~~article~~ code, any director, officer, or agent of the corporation who knowingly authorized, ordered or carried out the violation, failure or refusal is subject to the same civil penalties that may be imposed upon a person under subsections (a) and (b) of this section.

(d) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this law or any order or decision issued under this law is guilty of a misdemeanor and, upon conviction

thereof, shall be fined not more than \$10,000 or confined in jail not more than one year, or both fined and confined. The conviction of any person under this subsection shall result in the revocation of any certifications held by the person under this chapter which certified or authorized the person to direct other persons in coal mining by operation of law and bars that person from being issued any license under this chapter, except a miner's certification, for a period of not less than one year or for a longer period as may be determined by the director.

(e) Whoever willfully distributes, sells, offers for sale, introduces, or delivers in commerce any equipment for use in a coal mine, including, but not limited to, components and accessories of the equipment, who willfully misrepresents the equipment as complying with the provisions of this law, or with any specification or rule of the director applicable to the equipment, and which does not comply with the law, specification or rule, is guilty of a misdemeanor and, upon conviction thereof, is subject to the same fine and confinement that may be imposed upon a person under subsection (d) of this section.

(f) Any person who willfully violates any safety standard pursuant to this chapter or a rule promulgated thereunder that causes a fatality or who willfully orders or carries out such violation that causes a fatality is guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000 or confined in a state correctional facility not less than one year and not more than five years, or both fined and ~~imprisoned~~ confined.

(g) There is continued in the Treasury of the State of West Virginia a Special Health, Safety and Training Fund. All civil penalty assessments collected under this section shall be collected by the director and deposited with the Treasurer of the State of West Virginia to the credit of the Special Health, Safety and Training Fund. The fund shall be used by the director who is authorized to expend the moneys in the fund for the administration of this chapter.

§22A-1-35. Mine rescue teams.

(a) The operator shall provide mine rescue coverage at each active underground mine.

(b) Mine rescue coverage may be provided by:

(1) Establishing at least two mine rescue teams which are available at all times when miners are underground; or

(2) Entering into an arrangement for mine rescue services which assures that at least two mine rescue teams are available at all times when miners are underground.

(3) A West Virginia Office of Miners' Health, Safety, and Training Mine Rescue Team ~~may~~ shall serve as a second or backup team for mines within the state and qualify as one of the two teams required under subdivision (1) of this subsection and in accordance with 30 CFR, Part 49.20(4) for all mines with no backup team available within a one-hour drive to the mine. The operator shall contact the office and ~~obtain the state's agreement to serve as a backup team in the form of a written notification signed by the director and this notification shall be kept posted at the mine~~ notify them of the need for mine rescue services beginning July 1, 2019. The director shall utilize surplus funds from the West Virginia Office of Miners' Health, Safety, and Training's special revenue fund to provide backup mine rescue services.

(c) As used in this section, mine rescue teams shall be considered available where teams are capable of presenting themselves at the mine site(s) within a reasonable time after notification of an occurrence which might require their services. Rescue team members will be considered available even though performing regular work duties or while in an off-duty capacity. The requirement that

mine rescue teams be available does not apply when teams are participating in mine rescue contests or providing rescue services to another mine.

(d) In the event of a fire, explosion, or recovery operations in or about any mine, the director is hereby authorized to assign any mine rescue team to said mine to protect and preserve life and property. The director may also assign mine rescue and recovery work to inspectors, instructors, or other qualified employees of the office as he or she deems necessary.

(e) The ground travel time between any mine rescue station and any mine served by that station shall not exceed two hours. To ensure adequate rescue coverage for all underground mines, no mine rescue station may provide coverage for more than ~~seventy~~ 70 mines within the two-hour ground travel limit as defined in this subsection.

(f) Each mine rescue team shall consist of five members and one alternate, who are fully qualified, trained, and equipped for providing emergency mine rescue service. Each mine rescue team shall be trained by a state certified mine rescue instructor.

(g) Each member of a mine rescue team must have been employed in an underground mine for a minimum of one year. For the purpose of mine rescue work only, miners who are employed on the surface but work regularly underground meet the experience requirement. The underground experience requirement is waived for those members of a mine rescue team on the effective date of this statute.

(h) An applicant for initial mine rescue training shall pass, on at least an annual basis, a physical examination by a licensed physician certifying his or her fitness to perform mine rescue work. A record that such examination was taken, together with pertinent data relating thereto, shall be kept on file by the operator and a copy shall be furnished to the director.

(i) Upon completion of the initial training, all mine rescue team members shall receive at least ~~forty~~ 40 hours of refresher training annually. This training shall be given at least four hours each month, or for a period of eight hours every two months, and shall include:

(1) Sessions underground at least once every six months;

(2) The wearing and use of a breathing apparatus by team members for a period of at least two hours, while under oxygen, once every two months;

(3) Where applicable, the use, care, capabilities, and limitations of auxiliary mine rescue equipment, or a different breathing apparatus; and

(4) Mine map training and ventilation procedures.

(j) When engaged in rescue work required by an explosion, fire, or other emergency at a mine, all members of mine rescue teams assigned to rescue operations shall, during the period of their rescue work, be employees of the operator of the mine where the emergency exists, and shall be compensated by the operator at the rate established in the area for such work. In no case shall this rate be less than the prevailing wage rate in the industry for the most skilled class of inside mine labor. During the period of their emergency employment, members of mine rescue teams shall be protected by the workers' compensation subscription of the mine operator.

(k) During the recovery work and prior to entering any mine at the start of each shift, all rescue or recovery teams shall be properly informed of existing conditions and work to be performed by the designated company official in charge.

(1) For every two teams performing rescue or recovery work underground, one six-member team shall be stationed at the mine portal.

(2) Each rescue or recovery team performing work with a breathing apparatus shall be provided with a backup team of equal number, stationed at each fresh air base.

(3) The mine operator shall provide two-way communication and a lifeline or its equivalent at each fresh air base for all mine rescue or recovery teams and no mine rescue team member shall advance more than 1,000 feet in by the fresh air base: *Provided*, That if a life may possibly be saved and existing conditions do not create an unreasonable hazard to mine rescue team members, the rescue team may advance a distance agreed upon by those persons directing the mine rescue or recovery operations: *Provided, however*, That the mine operator shall provide a lifeline or its equivalent in each fresh air base for all mine rescue or recovery teams.

(4) A rescue or recovery team shall immediately return to the fresh air base when the atmospheric pressure of any member's breathing apparatus depletes to ~~sixty~~ 60 atmospheres, or its equivalent.

(l) Mine rescue stations shall provide a centralized storage location for rescue equipment. This storage location may be either at the mine site, affiliated mines, or a separate mine rescue structure. All mine rescue teams shall be guided by the mine rescue apparatus and auxiliary equipment manual. Each mine rescue station shall be provided with at least the following equipment:

(1) Twelve self-contained oxygen breathing apparatuses, each with a minimum of two hours capacity, and any necessary equipment for testing such breathing apparatuses;

(2) A portable supply of liquid air, liquid oxygen, pressurized oxygen, oxygen generating or carbon dioxide absorbent chemicals, as applicable to the supplied breathing apparatuses and sufficient to sustain each team for six hours while using the breathing apparatuses during rescue operations;

(3) One extra, fully charged, oxygen bottle for each self-contained compressed oxygen breathing apparatus, as required under subdivision (1) of this subsection;

(4) One oxygen pump or a cascading system, compatible with the supplied breathing apparatuses;

(5) Twelve permissible cap lamps and a charging rack;

(6) Two gas detectors appropriate for each type of gas which may be encountered at the mines served;

(7) Two oxygen indicators;

(8) One portable mine rescue communication system or a sound-powered communication system. The wires or cable to the communication system shall be of sufficient tensile strength to be used as a manual communication system. The communication system shall be at least ~~one thousand~~ 1,000 feet in length; and

(9) Necessary spare parts and tools for repairing the breathing apparatuses and communication system, as presently prescribed by the manufacturer.

(m) Mine rescue apparatuses and equipment shall be maintained in a manner that will ensure readiness for immediate use. A person trained in the use and care of breathing apparatuses shall inspect and test the apparatuses at intervals not exceeding ~~thirty~~ 30 days and shall certify by

signature and date that the inspections and tests were done. When the inspection indicates that a corrective action is necessary, the corrective action shall be made and recorded by said person. The certification and corrective action records shall be maintained at the mine rescue station for a period of one year and made available on request to an authorized representative of the director.

(n) Authorized representatives of the director have the right of entry to inspect any designated mine rescue station.

(o) When an authorized representative finds a violation of any of the mine rescue requirements, the representative shall take appropriate corrective action in accordance with §22A-1-15 of this ~~article~~ code.

(p) Operators affiliated with a station issued an order by an authorized representative will be notified of that order and that their mine rescue program is invalid. The operators shall have ~~twenty-four~~ 24 hours to submit to the director a revised mine rescue program.

(q) Every operator of an underground mine shall develop and adopt a mine rescue program for submission to the director within ~~thirty~~ 30 days of the effective date of this statute: *Provided*, That a new program need only be submitted when conditions exist as defined in subsection (p) of this section, or when information contained within the program has changed.

(r) A copy of the mine rescue program shall be posted at the mine and kept on file at the operator's mine rescue station or rescue station affiliate and the state regional office where the mine is located. A copy of the mine emergency notification plan filed pursuant to 30 CFR §49.9(a) will satisfy the requirements of subsection (q) of this section if submitted to the director.

(s) The operator shall immediately notify the director of any changed conditions materially affecting the information submitted in the mine rescue program.

§22A-1-43. Hold harmless clause; decision to enter mine.

(a) If any injury or death shall occur to any person who has entered any mine, whether active workings, inactive workings, or abandoned workings, without permission, neither:

(1) The owner of that mine or property; nor

(2) The State of West Virginia or any of its political subdivisions, or any agency operating under color of law thereunder; nor

(3) Any person, organization, or entity involved in any rescue or attempted rescue of such person who has committed an entry without permission, shall be held liable in any court or other forum for such injury or death.

(b) The director is authorized to make the decision on whether a mine is too dangerous, and this decision is not subject to review by a court of this state.

(c) A company shall not be required or ordered to conduct rescue operations.

§22A-1-44. Temporary exemption for environmental regulations.

In the event of an unauthorized entry by any person or persons into any mine whether active workings, inactive workings, or abandoned workings, neither the owner of that mine or property, nor any other person, organization, or entity involved in any rescue or attempted rescue of such person,

may be held liable for any violation of any environmental regulation, if such violation occurred as part of any rescue efforts.

ARTICLE 1A. OFFICE OF MINERS' HEALTH, SAFETY, AND TRAINING; ADMINISTRATION; SUBSTANCE ABUSE.

§22A-1A-1. Substance abuse screening; minimum requirements; standards and procedures for screening.

(a) Every employer of certified persons, as defined in §22A-1-2 of this chapter code, shall implement a substance abuse screening policy and program that shall, at a minimum, include:

(1) A preemployment, ~~ten~~ 10-panel urine test for the following and any other substances as set out in rules adopted by the Office of Miners' Health, Safety, and Training:

- (A) Amphetamines;
- (B) Cannabinoids/THC;
- (C) Cocaine;
- (D) Opiates;
- (E) Phencyclidine (PCP);
- (F) Benzodiazepines;
- (G) Propoxyphene;
- (H) Methadone;
- (I) Barbiturates; and
- (J) Synthetic narcotics.

Split samples shall be collected by providers who are certified as complying with standards and procedures set out in the United States Department of Transportation's rule, 49 C. F. R. Part 40, which may be amended, from time to time, by legislative rule of the Office of Miners' Health, Safety, and Training. Collected samples shall be tested by laboratories certified by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) for collection and testing. Notwithstanding the provisions of this subdivision, the mine operator may implement a more stringent substance abuse screening policy and program;

(2) A random substance abuse testing program covering the substances referenced in subdivision (1) of this subsection. 'Random testing' means that each person subject to testing has a statistically equal chance of being selected for testing at random and at unscheduled times. The selection of persons for random testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with the persons' Social Security numbers, payroll identification numbers, or other comparable identifying numbers; and

(3) Review of the substance abuse screening program with all persons required to be tested at the time of employment, upon a change in the program and annually thereafter.

(b) For purposes of this subsection, preemployment testing shall be required upon hiring by a new employer, rehiring by a former employer following a termination of the employer/employee relationship or transferring to a West Virginia mine from an employer's out-of-state mine to the extent that any substance abuse test required by the employer in the other jurisdiction does not comply with the minimum standards for substance abuse testing required by this article. Furthermore, the provisions of this section apply to all employers that employ certified persons who work in mines, regardless of whether that employer is an operator, contractor, subcontractor or otherwise.

(c) Any employee involved in an accident that results in physical injuries or damage to equipment or property may be subject to a drug test by his or her employer.

~~(e)~~ (d) (1) Every employer shall notify the director, on a form prescribed by the director, within seven days of any of the following:

(A) A Any positive drug or alcohol test of a certified person., ~~whether it be a preemployment test, random test, reasonable suspicion test or post-accident test.~~ However, for purposes of determining whether a drug test is positive the certified employee may not rely on a prescription dated more than one year prior to the date of the drug test result;

(B) The refusal of a certified person to submit a sample;

(C) A certified person possessing a substituted sample or an adulterated sample; or

(D) A certified person submitting a substituted sample or an adulterated sample.

(2) With respect to any certified person subject to a collective bargaining agreement, the employer shall notify the director, on a form prescribed by the director, within seven days of any of the following:

(A) A Any positive drug or alcohol test of a certified person., ~~whether it be a preemployment test, random test, reasonable suspicion test or post-accident test.~~ However, for purposes of determining whether a drug test is positive the certified employee may not rely on a prescription dated more than one year prior to the date of the drug test result;

(B) The refusal of a certified person to submit a sample;

(C) A certified person possessing a substituted sample or an adulterated sample; or

(D) A certified person submitting a substituted sample or an adulterated sample.

(3) When the employer submits the completed notification form prescribed by the director, the employer shall also submit a copy of the laboratory test results showing the substances tested for and the results of the test.

(4) Notice shall result in the immediate temporary suspension of all certificates held by the certified person who failed the screening, pending a hearing before the board of appeals pursuant to §22A-1-2 of this article code.

~~(d)~~ (e) Suspension or revocation of a certified person's certificate as a miner or other miner specialty in another jurisdiction by the applicable regulatory or licensing authority for substance abuse-related matters shall result in the director's immediately and temporarily suspending the certified person's West Virginia certificate until such time as the certified person's certification is reinstated in the other jurisdiction.

(e) (f) The provisions of this article shall not be construed to preclude an employer from developing or maintaining a drug and alcohol abuse policy, testing program, or substance abuse program that exceeds the minimum requirements set forth in this section. The provisions of this article shall also not be construed to require an employer to alter, amend, revise or otherwise change, in any respect, a previously established substance abuse screening policy and program that meets or exceeds the minimum requirements set forth in this section. The provisions of this article shall require an employer to subject its employees who as part of their employment are regularly present at a mine and who are employed in a safety-sensitive position to preemployment and random substance abuse tests: *Provided*, That each employer shall retain the discretion to establish the parameters of its substance abuse screening policy and program so long as it meets the minimum requirements of this article. For purposes of this section, a 'safety-sensitive position' means an employment position where the employee's job responsibilities include duties and activities that involve the personal safety of the employee or others working at a mine.

§22A-1A-2. Board of Appeals hearing procedures.

(a) Any hearing conducted after the temporary suspension of a certified person's certificate pursuant to this article, shall be conducted within ~~sixty~~ 60 days of the temporary suspension. The Board of Appeals shall make every effort to hold the hearing within ~~forty~~ 40 days of the temporary suspension.

(b) All hearings of the Board of Appeals pursuant to this section shall be conducted in accordance with the provisions of §22A-1-31 of this ~~chapter~~ code. In addition to the rules and procedures in §22A-1-31 of this ~~chapter~~ code in hearings under this section, the Board of Appeals may accept as evidence a notarized affidavit of drug testing procedures and results from a Medical Review Officer (MRO) in lieu of live testimony by the MRO. If the Board of Appeals desires testimony in lieu of a notarized affidavit, the MRO may testify under oath telephonically or by an Internet-based program in lieu of physically attending the hearing. The Board of Appeals may suspend the certificate or certificates of a certified person for violation of this article or for any other violation of this chapter pertaining to substance abuse. The Board of Appeals may impose further disciplinary actions for repeat violations. The director shall have the authority to propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to establish the disciplinary actions referenced in this section following the receipt of recommendations from the Board of Coal Mine Health and Safety following completion of the study required pursuant to §22A-6-14 of this ~~chapter~~ code. The legislative rules authorized by this subsection shall not, however, include any provisions requiring an employer to take or refrain from taking any specific personnel action or mandating any employer to establish or maintain an employer-funded substance abuse rehabilitation program.

(c) No person whose certification is suspended or revoked under this section may perform any duties under any other certification issued under this chapter, during the period of the suspension imposed by the Board of Appeals. For all miners determined to have a positive drug or alcohol test as determined pursuant to the provisions of this article, the board shall suspend the miner's certification card(s) for a minimum of six months from the date of the drug test. This six-month minimum suspension shall also apply to miners who enter into a treatment program after testing positive in a drug test administered pursuant to the provisions of this article and are placed under probationary treatment and testing agreements by the board. The director shall promulgate an emergency rule and legislative rule by July 1, 2019, requiring all miners who have a positive drug or alcohol test shall have their miner certification card(s) suspended for a minimum of six months.

(d) Any party adversely affected by a final order or decision issued by the Board of Appeals hereunder is entitled to judicial review thereof pursuant to §29A-5-4 of this code.

ARTICLE 2. UNDERGROUND MINES.**§22A-2-2. Submittal of detailed ventilation plan to director.**

~~(a) A mine operator shall submit a detailed ventilation plan and any addenda to the director for review and comment. The mine operator shall review the plan with the director and address concerns to the extent practicable. The operator shall deliver to the miners' representative employed by the operator at the mine, if any, a copy of the operator's proposed annual ventilation plan at least 10 days prior to the date of submission. The miners' representative, if any, shall be afforded the opportunity to submit written comments to the operator prior to such submission; in addition, the miners' representative, if any, may submit written comments to the director. The director shall submit any concern that is not addressed to the United States Department of Labor—Mine Safety and Health Administration (MSHA) through comments to the plan. The mine operator shall provide a copy of the plan to the director 10 days prior to the submittal of the plan to MSHA. The MSHA-approved plan shall serve as the state-approved plan: Provided, That the MSHA-approved plan shall comply with all provisions of state mining law as set forth in state code or code of state rules.~~

~~(b) (a) The A mine operator shall give the director a copy of the MSHA United States Department of Labor's Mine Safety and Health Administration (MSHA)-approved plan and any addenda as soon as the operator receives the approval from MSHA. The MSHA-approved plan shall serve as the state-approved plan: *Provided*, That the MSHA-approved plan shall comply with all provisions of state mining law as set forth in this code or state rules.~~

~~(c) (b) In the event of an unforeseen situation requiring immediate action on a plan revision, the operator shall submit the proposed revision to the director and the miners' representative, if any, employed by the operator at the mine when the proposed revision is submitted to MSHA. The director shall work with the operator to review and comment on the proposed plan revision to MSHA as quickly as possible.~~

~~(d) (c) Upon approval by MSHA, the plan is enforceable by the director. The approved plan and all revisions and addenda thereto shall be posted on the mine bulletin board and made available for inspection by the miners at that mine for the period of time that they are in effect.~~

§22A-2-12. Instruction of employees and supervision of apprentices; annual examination of persons using approved methane-detecting devices; records of examination; maintenance of methane detectors, etc.

(a) The Office of Miners' Health, Safety, and Training shall prescribe and establish a course of instruction in mine safety and particularly in dangers incident to employment in mines and in mining laws and rules, which course of instruction shall be successfully completed within ~~twelve~~ 12 weeks after any person is first employed as a miner. It is further the duty and responsibility of the Office of Miners' Health, Safety, and Training to see that the course is given to all persons as above provided after their first being employed in any mine in this state. In addition to other enforcement actions available to the director, upon a finding by the director of the existence of a pattern of conduct creating a hazardous condition at a mine, the director shall notify the ~~Board of Miners' Training, Education and Certification~~ Board of Coal Mine Health and Safety, which shall cause additional training to occur at the mine addressing such safety issue or issues identified by the director, pursuant to §22A-7-1 *et seq.* of this ~~chapter~~ code. The Director of the Office of Miners' Health, Safety, and Training is authorized to promulgate emergency and legislative rules in consultation with the Board of Coal Mine Health and Safety establishing a course of instruction.

(b) It is the duty of the mine foreman or the assistant mine foreman of every coal mine in this state to see that every person employed to work in the mine is, before beginning work therein, instructed in the particular danger incident to his or her work in the mine, and furnished a copy of the mining laws and rules of the mine. It is the duty of every mine operator who employs apprentices, as that term is used in §22A-8-3 and §22A-8-4 of this ~~chapter~~ code to ensure that the apprentices are effectively supervised with regard to safety practices and to instruct apprentices in safe mining practices. Every apprentice shall work under the direction of the mine foreman or his or her assistant mine foreman and they are responsible for his or her safety. The mine foreman or assistant mine foreman may delegate the supervision of an apprentice to an experienced miner, but the foreman and his or her assistant mine foreman remain responsible for the apprentice. During the first ~~one hundred twenty~~ 120 days of employment in a mine, the apprentice shall work within sight and sound of the mine foreman, assistant mine foreman, or an experienced miner, and in a location that the mine foreman, assistant mine foreman, or experienced miner can effectively respond to cries for help of the apprentice; Provided, that if the apprentice has completed an approved training program as approved by the Board of Coal Mine Health and Safety, this period may be reduced by an amount not to exceed 30 days. The location shall be on the same side of any belt, conveyor, or mining equipment.

(c) Persons whose duties require them to use an approved methane-detecting device or other approved methane detectors shall be examined at least annually as to their competence by a qualified official from the Office of Miners' Health, Safety, and Training and a record of the examination shall be kept by the operator and the office. Approved methane-detecting devices and other approved methane detectors shall be given proper maintenance and shall be tested before each working shift. Each operator shall provide for the proper maintenance and care of the permissible approved methane-detecting device or any other approved device for detecting methane and oxygen deficiency by a person trained in the maintenance, and, before each shift, care shall be taken to ensure that the approved methane-detecting device or other device is in a permissible condition and maintained according to manufacturer's specifications.

§22A-2-13. Daily inspection of working places; records.

Before the beginning of any shift upon which they shall perform supervisory duties, the mine foreman or his or her assistant shall review carefully and countersign all books and records reflecting the conditions and the areas under their supervision, exclusive of equipment logs, which the operator is required to keep under this chapter. The mine foreman, assistant mine foreman, or fire boss shall visit and carefully examine each working place in which miners will be working at the beginning of each shift before any face equipment is energized and shall examine each working place in the mine at least once every two hours each shift while such miners are at work in such places, and shall direct that each working place shall be secured by props, timbers, roof bolts, or other approved methods of roof support or both where necessary to the end that the working places shall be made safe. The mine foreman or his or her assistants upon observing a violation or potential violation of §22A-2-1 *et seq.* of this ~~chapter~~ code or any regulation or any plan or agreement promulgated or entered into thereunder shall arrange for the prompt correction thereof. The foreman shall not permit any miner other than a certified foreman, fire boss, assistant mine foreman, assistant mine foreman-fire boss or pumper to be on a working section by himself or herself. Should the mine foreman or his or her assistants find a place to be in a dangerous condition, they shall not leave the place until it is made safe, or shall remove the persons working therein until the place is made safe by some competent person designated for that purpose.

He or she shall place his or her initials, time and the date at or near each place he or she examines. He or she shall also record any dangerous conditions and practices found during his or her examination in a book provided for that purpose.

§22A-2-80. Existing regulations to be revised.

By August 31, 2019, all existing rules or regulations under authority of this article shall be revised to reflect the changes enacted during the 2019 Regular Session of the Legislature.

ARTICLE 8. CERTIFICATION OF UNDERGROUND AND SURFACE COAL MINERS.**§22A-8-5. Supervision of apprentices.**

Each holder of a permit of apprenticeship shall be known as an apprentice. Any miner holding a certificate of competency and qualification may have one person working with him or her, and under his or her supervision and direction, as an apprentice, for the purpose of learning and being instructed in the duties and calling of mining. Any mine foreman or fire boss, or assistant mine foreman or fire boss, may have three persons working with him or her under his or her supervision and direction, as apprentices, for the purpose of learning and being instructed in the duties and calling of mining: *Provided*, That a mine foreman, assistant mine foreman, or fire boss supervising apprentices in an area where no coal is being produced or which is outby the working section may have as many as five apprentices under his or her supervision and direction, as apprentices, for the purpose of learning and being instructed in the duties and calling of mining or where the operator is using a production section under program for training of apprentice miners, approved by the ~~Board of Miner Training, Education and Certification~~ Board of Coal Mine Health and Safety.

Every apprentice working at a surface mine shall be at all times under the supervision and control of at least one person who holds a certificate of competency and qualification.

In all cases, it is the duty of every mine operator who employs apprentices to ensure that such persons are effectively supervised and to instruct such persons in safe mining practices. Each apprentice shall wear a red hat which identifies the apprentice as such while employed at or near a mine. No person shall be employed as an apprentice for a period in excess of eight months, except that in the event of illness or injury, time extensions shall be permitted as established by the Director of the Office of Miners' Health, Safety, and Training.

§22A-8-10. Loss of certification for unlawful trespass.

Upon a conviction under the provisions of §61-3B-6 of this code, the certification of any person certified under the provision of §22A-8-1 *et seq.* of this code, including a safety sensitive certification issued pursuant to 56 CSR 19, shall be deemed revoked and person shall be permanently barred from holding a certification under the provisions of §22A-8-1 *et seq.* of this code.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**ARTICLE 3. CRIMES AGAINST PROPERTY.****§61-3-12. Entry of building other than dwelling; entry of railroad, traction or motorcar, steamboat, or other vessel; penalties; counts in indictment.**

If any person shall, at any time, break and enter, or shall enter without breaking, any office, shop, ~~underground coal mine~~, storehouse, warehouse, banking house, or any house or building, other than a dwelling house or outhouse adjoining thereto or occupied therewith, any railroad or traction car, propelled by steam, electricity or otherwise, any steamboat or other boat or vessel, or any commercial, industrial or public utility property enclosed by a fence, wall, or other structure erected with the intent of the property owner of protecting or securing the area within and its contents from unauthorized persons, within the jurisdiction of any county in this state, with intent to commit a felony

or any larceny, he or she shall be deemed guilty of a felony and, upon conviction, shall be confined in a state correctional facility not less than one nor more than 10 years. And if any person shall, at any time, break and enter, or shall enter without breaking, any automobile, motorcar, or bus, with like intent, within the jurisdiction of any county in this state, he or she shall be guilty of a misdemeanor and, upon conviction, shall be confined in jail not less than two nor more than 12 months and be fined not exceeding \$100.

An indictment for burglary may contain one or more counts for breaking and entering, or for entering without breaking, the house or building mentioned in the count for burglary under the provisions of this section and §61-3-11 of this code.

ARTICLE 3B. TRESPASS.

§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 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 confined in a correctional facility not less than five year 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 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 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 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) The terms 'mine', 'active workings', 'inactive workings', and 'abandoned workings' have the same meaning ascribed to such terms as set forth in §22A-1-2 of this code.

(h) 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."

And,

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

S. B. 635 - "A Bill to amend and reenact §5B-2A-5, §5B-2A-6, §5B-2A-8, and §5B-2A-9 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto three new sections, designated §11-28-1, §11-28-2, and §11-28-3; to amend and reenact §22-3-14 of said code; to amend and reenact §22-11-10 of said code; to amend and reenact §22-30-3 and §22-30-24 of said code; to amend and reenact §22A-1-21 and §22A-1-35 of said code; to amend said code by adding thereto two new sections, designated §22A-1-43 and §22A-1-44; to amend and reenact §22A-1A-1 and §22A-1A-2 of said code; to amend and reenact §22A-2-2, §22A-2-12, and §22A-2-13 of said code; to amend said code by adding thereto a new section, designated, §22A-2-80; to amend and reenact §22A-2A-405 of said code; to amend and reenact §22A-8-5 of said code; to amend said code by adding thereto a new section, designated §22A-8-10; to amend and reenact §61-3-12 of said code; and to amend said code by adding thereto a new section, designated §61-3B-6, all relating generally to coal mining activities; eliminating the requirement for submission of the community impact statement; requiring review of new mining activity for submission to the Office of Coalfield Community Development; eliminating requirements for submission of certain additional information; requiring the submission of certain information related to land and infrastructure needs upon request of the Office of Coalfield Community Development; requiring and authorizing the Secretary of the Department of Environmental Protection to promulgate rules relating to mine subsidence protection for dwelling owners; creating a tax credit for post coal mine development; authorizing the Secretary of the Department of Environmental Protection to promulgate rules for permit modification and renewal fees for surface mining operations pursuant to the Water Pollution Control Act; authorizing the Secretary of the Department of Environmental Protection to promulgate rules relating to exemptions pursuant to the Aboveground Storage Tank Act; requiring a miner who was issued an assessment to either pay the fine or appeal a violation within 30 days; requiring the Office of Miners' Health, Safety, and Training Mine Rescue Team be provided to a coal operation where the operation has no mine rescue team available within one hour's drive; permitting employers to drug test an employee involved in an accident that results in physical injuries or damage to equipment or property; requiring miners testing positive for drug use to undergo a mandatory minimum six-month suspension; eliminating timing requirements for submission of a detailed mine ventilation plan to the Director of the Office of Miners' Health, Safety, and Training; authorizing the Director of the Office of Miners' Health, Safety, and Training to promulgate emergency rules for establishing a course of instruction for apprentice miners; requiring apprentice miners to work 90 days in a mine within sight and sound of a mine foreman or assistant foreman; permitting the Director of the Office of Miners' Health, Safety, and Training to decertify miners who fail to perform daily examinations; allowing the Director of the Office of Miners' Health, Safety, and Training to use the employer's tracking data of the designated daily examiner; authorizing the Director of the Office of Miners' Health, Safety, and Training to promulgate rules generally; amending standards for controlling and monitoring exhaust gases for diesel-powered

underground coal mining equipment; allowing certified competent miners to supervise up to two apprentice miners; holding mine owners, the state, and person or entities engaged in rescue operations harmless for injury or death; authorizing a temporary exemption from environmental regulations during rescue operations; revoking certifications of persons convicted of mine trespass; removing underground coal mines from those places subject to the crime of unlawful entry of building other than a dwelling; creating the new criminal misdemeanor and felony offenses of mine trespass; establishing penalties for mine trespass including enhanced penalties for bodily injury or death during rescue operations; authorizing increased liability for damages caused during a mine trespass; and exempting lawful activities under the West Virginia and United States Constitutions, and state and federal law from the operation of the mine trespass criminal statute.”

The further title amendment offered by Delegate Anderson and adopted by the House being as follows:

S. B. 635 - “A Bill to amend and reenact §5B-2A-5, §5B-2A-6, §5B-2A-8, and §5B-2A-9 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto three new sections, designated §11-28-1, §11-28-2, and §11-28-3; to amend and reenact §22-3-14 of said code; to amend and reenact §22-11-10 of said code; to amend and reenact §22-30-3 and §22-30-24 of said code; to amend and reenact §22A-1-21 and §22A-1-35 of said code; to amend said code by adding thereto a new sections, designated §22A-1-43; to amend and reenact §22A-1A-1 and §22A-1A-2 of said code; to amend and reenact §22A-2-2, §22A-2-12, and §22A-2-13 of said code; to amend said code by adding thereto a new section, designated, §22A-2-80; to amend and reenact §22A-8-5 of said code; to amend said code by adding thereto a new section, designated §22A-8-10; to amend and reenact §61-3-12 of said code; and to amend said code by adding thereto a new section, designated §61-3B-6, all relating generally to coal mining activities; eliminating the requirement for submission of the community impact statement; requiring review of new mining activity for submission to the Office of Coalfield Community Development; eliminating requirements for submission of certain additional information; requiring the submission of certain information related to land and infrastructure needs upon request of the Office of Coalfield Community Development; requiring and authorizing the Secretary of the Department of Environmental Protection to promulgate rules relating to mine subsidence protection for dwelling owners; creating a tax credit for post coal mine site development; adding definitions; delineating eligibility for tax credit for post coal mine site development; specifying application of the tax credit for post coal mine site development; authorizing the Secretary of the Department of Environmental Protection to promulgate rules for permit modification and renewal fees for surface mining operations pursuant to the Water Pollution Control Act; authorizing the Secretary of the Department of Environmental Protection to promulgate rules relating to exemptions pursuant to the Aboveground Storage Tank Act; requiring a miner who was issued an assessment to either pay the fine or appeal a violation within 30 days; requiring the Office of Miners’ Health, Safety, and Training Mine Rescue Team be provided to a coal operation where the operation has no mine rescue team available within one hour’s drive; permitting employers to drug test an employee involved in an accident that results in physical injuries or damage to equipment or property; requiring miners testing positive for drug use to undergo a mandatory minimum six-month suspension; eliminating timing requirements for submission of a detailed mine ventilation plan to the Director of the Office of Miners’ Health, Safety, and Training; authorizing the Director of the Office of Miners’ Health, Safety, and Training to promulgate emergency rules for establishing a course of instruction for apprentice miners; requiring apprentice miners to work at least 90 days in a mine within sight and sound of a mine foreman or assistant foreman; permitting the Director of the Office of Miners’ Health, Safety, and Training to decertify miners who fail to perform daily examinations; authorizing the Director of the Office of Miners’ Health, Safety, and Training to promulgate rules generally; holding mine owners, the state, and person or entities engaged in rescue operations harmless for injury or death resulting from mine trespass; authorizing a temporary exemption from environmental regulations during rescue operations; revoking certifications of persons convicted of

mine trespass; removing underground coal mines from those places subject to the crime of unlawful entry of building other than a dwelling; creating the new criminal misdemeanor and felony offenses of mine trespass; establishing penalties for mine trespass including enhanced penalties for bodily injury or death during rescue operations; authorizing increased liability for damages caused during a mine trespass; and exempting lawful activities under the West Virginia and United States Constitutions, and state and federal law from the operation of the mine trespass criminal statute.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 696**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Ellington.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 635) passed.

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

On this question, the yeas and nays were taken (**Roll No. 697**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Ellington.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 635) takes effect from its passage.

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

A message from the Senate, by

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

Com. Sub. for H. B. 2049, Relating to a prime contractor’s responsibility for wages and benefits.

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

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

“ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-4a. Safe Harbor.

(a) An employee, in bringing an action for the underpayment or nonpayment of wages and fringe benefits due upon the employee’s separation of employment as contemplated by §21-5-4 of this code, is not entitled to seek liquidated damages or attorney’s fees from an employer without first making a written demand, as defined in subsection (c) of this section, to the employer seeking the payment of any alleged underpayment or nonpayment as set forth in this section. The written demand shall be mailed or delivered to the employer’s correct address or delivered to the employer’s authorized representative. Upon receiving a written demand, the employer has seven calendar days

from receipt to correct the alleged underpayment or nonpayment of the wages and fringe benefits due. If, after the seven calendar days, the employer has not corrected the alleged underpayment or nonpayment, or otherwise disputes the allegation, the employee shall be allowed to seek liquidated damages and attorney's fees. Nothing in this section prohibits the employee from presenting a claim under this article without making a written demand to the employer.

(b) In a class action lawsuit brought under this article for the underpayment or nonpayment of wages and fringe benefits due upon the employee's separation of employment, participation in the class shall be limited only to those individual employees who have made a written demand on the employer as required in subsection (a) of this section.

(c) For purposes of this section, a 'written demand' means any writing, including email, from or on behalf of an employee stating only that the employer has not paid all of the wages or fringe benefits which the employee is owed.

(d) In order for the employer to be eligible for the protections of this section, the employer shall: (i) Inform its employees through a posted notice maintained in a place accessible to its employees in accordance with §21-5-9 of this code of the employee's obligation to make a written demand in order to preserve the right to seek liquidated damages, attorney's fees, or class action relief; and (ii) furnish to the employee with his or her last paycheck or pay stub a written notice of that obligation together with a mailing address and email address to which the notice may be delivered.

§21-5-7. Prime contractor's responsibility for wages and benefits.

(a) Whenever any person, firm, or corporation shall contract with another for the performance of any work which the prime contracting person has undertaken to perform for another, the prime contractor shall become civilly liable to employees engaged in the performance of work under such the contract for the payment of wages and fringe benefits relating to such work only, exclusive of attorney's fees, interest, liquidated damages, or any other damages of any kind, as provided in §21-5-4(e) of this code, or other applicable law and/or common law, to the extent that the employer of such the employee fails to pay such the wages and fringe benefits: for work performed under the contract with the prime contractor. The employer, and its shareholders, owners, directors, and officers shall be personally and civilly liable to the prime contractor for any sums paid under this section, including attorney's fees.

(b) Any individual or entity seeking redress pursuant to subsection (a) of this section must:

(1) Notify the prime contractor, by certified mail, only that wages or fringe benefits have not been paid within 100 days of the date the wages or fringe benefits become payable to the employee; and

(2) Commence the action within one year of the date the employee delivered notice to the prime contractor pursuant to subdivision (1) of this subsection.

~~*Provided, That such employees have exhausted all feasible remedies contained in this article against such employer, but if the prime contractor has failed to notify the commissioner as required by section sixteen of this article, then the employee shall not be required to exhaust any remedies against the employer: Provided, however, That such employer shall become civilly liable to such prime contractor for any sum of money paid by him under this section.*~~

(c) The employer of the employee to whom wages and/or fringe benefits are owed, shall whenever feasible provide, immediately upon request by the employee or the prime contractor, complete payroll records relating to work performed under the contract with the prime contractor.

(d) Whenever the employee to whom wages and/or fringe benefits are due is represented by a union or other plan administrator, the union or other plan administrator, shall whenever feasible, immediately upon notice of a claim hereunder, cooperate with the employee and the prime contractor to identify and quantify the wages and fringe benefits owed for work performed under the contract with the prime contractor. Further, if the union or agents thereof or other plan administrator, including, but not limited to, third party administrators, trustees, administrators, or employees, become aware that an employer is not timely in the payment of wages and/or fringe benefits, the union or other plan administrator shall immediately notify the affected employee and the prime contractor for whom the affected employee provided work.

(e) A prime contractor must notify the owner and the architect prior to the completion of the contract if any subcontractor has not been paid in full."

And,

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

H. B. 2049 - "A Bill to amend and reenact §21-5-7 of the Code of West Virginia, 1931, as amended, relating to a prime contractor's responsibility for wages and benefits of employees of a subcontractor; establishing personal and civil liability for the employer and its shareholders, owners, directors, and officers to the prime contractor for any sums paid under this section, including attorney's fees; requiring notice to prime contractor by certified mail within 100 days of the missing wages becoming payable to the employee; instituting a one-year statute of limitations; requiring the employer of the employee to whom wages and fringe benefits are owed to whenever feasible provide immediately upon request by the employee or the prime contractor complete payroll records relating to work performed under the contract with the prime contractor; requiring when an employee to whom wages and fringe benefits are due is represented by a union or other plan administrator that the union or other plan administrator must whenever feasible immediately upon notice of a claim cooperate with the employee and the prime contractor to identify and quantify the wages and fringe benefits owed for work performed under the contract with the prime contractor; providing that if the union or its agents or other plan administrator become aware that an employer is not timely in the payment of wages and fringe benefits the union or other plan administrator must immediately notify the affected employee and the prime contractor for whom the affected employee provided work; and providing that a prime contractor must notify the owner and the architect prior to the completion of the contract if any subcontractor has not been paid in full."

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

A message from the Senate, by

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

Com. Sub. for H. B. 2486, Using records of criminal conviction to disqualify a person from receiving a license for a profession or occupation.

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

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

“ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-22. Use of criminal records as disqualification of authorization to practice.

Notwithstanding any other provision of this chapter to the contrary, except for the professions and occupations in §30-2-1 et seq., §30-3-1 et seq., §30-3E-1 et seq., §30-14-1 et seq., §30-18-1 et seq., and §30-29-1 et seq. of this code and where not in conflict with an existing compact or model act:

(a) Boards or licensing authorities referred to in this chapter may not disqualify an applicant for initial licensure, certification or registration because of a prior criminal conviction that has not been reversed unless that conviction is for a crime that bears a rational nexus to the occupation requiring licensure, certification, or registration.

(b) Because the term ‘moral turpitude’ is vague and subject to inconsistent applications, boards or licensing authorities referred to in this chapter when making licensure, certification or registration determination may not rely upon the description of a crime as one of ‘moral turpitude’ unless the underlying crime bears a rational nexus to the occupation requiring licensure, certification, or registration.

(c) If an applicant is disqualified for initial licensure, certification or registration because of a criminal conviction that has not been reversed, the board or licensing authority shall afford the applicant the opportunity to reapply for licensure, certification or registration after the expiration of five years from the date of conviction or date of release from the penalty that was imposed, whichever is later, if the individual has not been convicted of any other crime during that period of time: *Provided*, That convictions for violent or sexual offenses shall subject an individual to a longer period of disqualification, to be determined by the individual board or licensing authority.

(d) An individual with a criminal record who has not previously applied for licensure, certification, or registration may petition a board at any time for a determination of whether the individual’s criminal record will disqualify the individual from obtaining a license or other authorization to practice. This petition shall include sufficient details about the individual’s criminal record to enable the licensing authority to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction. The licensing authority shall inform the individual of his or her standing within 60 days of receiving the petition from the applicant. The licensing authority may charge a fee to recoup its costs for each petition.

(e) Nothing in this section alters the standards and procedures each licensing authority uses for evaluating licensure, certification, or registration renewals.

(f) Every board subject to the provisions of this section shall propose rules or amendments to existing rules for legislative approval to comply with the provisions of this section. These rules or amendments to rules shall be proposed pursuant to the provisions of §29A-3-1 et seq. of this code within the applicable time limit to be considered by the Legislature during its regular session in the year 2020.

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§30-5-11. Registration of pharmacy technicians.

(a) To be eligible for registration as a pharmacy technician to assist in the practice of pharmacist care, the applicant shall:

(1) Submit a written application to the board;

(2) Pay the applicable fees;

(3) Have graduated from high school or obtained a ~~Certificate of General Educational Development (GED)~~ Test Assessing Secondary Completion (TASC) or equivalent;

(4) Have:

(A) Graduated from a competency-based pharmacy technician education and training program as approved by legislative rule of the board;

(B) Completed a pharmacy-provided, competency-based education and training program approved by the board; or

(C) Obtained a national certification as a pharmacy technician and have practiced in another jurisdiction for a period of time as determined by the board.

(5) Have successfully passed an examination developed using nationally recognized and validated psychometric and pharmacy practice standards approved by the board;

(6) Not be an alcohol or drug abuser, as these terms are defined in §27-1A-11 of this code: *Provided*, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a 12-step program or other similar group or process, may be considered;

(7) Not have been convicted of a felony in any jurisdiction within 10 years preceding the date of application for license, which conviction remains unreversed: *Provided*, That any consideration of prior criminal convictions shall be governed by the provisions of §29A-3-1 et seq. of this code.

(8) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted ~~bearing~~ bears a rational nexus to the practice of pharmacist care, which conviction remains unreversed: *Provided*, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code; and

(9) Have fulfilled any other requirement specified by the board in rule.

(b) A person whose license to practice pharmacist care has been denied, revoked, suspended, or restricted for disciplinary purposes in any jurisdiction is not eligible to be registered as a pharmacy technician.

(c) A person registered to assist in the practice pharmacist care issued by the board shall for all purposes be considered registered under this article and may renew pursuant to the provisions of this article.

§30-5-11a. Pharmacy technician trainee qualifications.

(a) To be eligible for registration as a pharmacy technician trainee to assist in the practice of pharmacist care, the applicant shall:

- (1) Submit a written application to the board;
 - (2) Pay the applicable fees;
 - (3) (A) Have graduated from a high school or obtained a ~~Certificate of General Educational Development (GED)~~ Test Assessing Secondary Completion (TASC), or equivalent;
 - (B) Be currently enrolled in a high school competency-based pharmacy technician education and training program;
 - (4) (A) Be currently enrolled in a competency-based pharmacy technician education and training program of a learning institution or training center approved by the board; or
 - (B) Be an employee of a pharmacy in an on-the-job competency-based pharmacy technician training program.
 - (5) Not be an alcohol or drug abuser as these terms are defined in §27-1A-11 of this code: *Provided*, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a 12-step program or other similar group or process, may be considered;
 - (6) Not have been convicted of a felony in any jurisdiction within 10 years preceding the date of application for registration, which conviction remains unreversed: *Provided*, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code;
 - (7) Not have been convicted of a misdemeanor or felony in any jurisdiction which bears a rational nexus to the practice of pharmacist care, which conviction remains unreversed: *Provided*, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code; and
 - (8) Have requested and submitted to the board the results of a fingerprint-based state and a national electronic criminal history records check.
- (b) The rules, authorized duties, and unauthorized prohibitions as set out in §30-5-12 of this code for pharmacy technicians apply to pharmacy technician trainees.
- (c) The board shall promulgate an emergency rule and legislative rule pursuant to §29A-2-1 *et seq.* of this code to authorize the requirements of this section to permit pharmacy technician trainee.

ARTICLE 10. VETERINARIANS.

§30-10-8. Requirements for Veterinary License.

- (a) To be eligible for a license to practice veterinary medicine under the provisions of this article, the applicant must:
- (1) Be of good moral character;
 - (2) (A) Be a graduate of an accredited school approved by the board; or
 - (B) Be a graduate of a foreign veterinary school and hold a certificate of competence issued by a foreign veterinary graduate educational organization as approved by the board;

- (3) Have passed the examinations required by the board;
- (4) Be at least 18 years of age;
- (5) Be a citizen of the United States or be eligible for employment in the United States; and
- ~~(6) Not have been convicted of a crime involving moral turpitude;~~

~~(7)~~ (6) Not have been convicted of a felony under the laws of any jurisdiction within five years preceding the date of application for licensure which conviction remains unreversed: Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code; and

~~(8)~~ (7) Not have been convicted of a misdemeanor or a felony under the laws of any jurisdiction at any time if the offense for which the applicant was convicted related to the practice of veterinary medicine or animal abuse or neglect: Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code.

(b) A person seeking a license under the provisions of this article shall submit an application on a form prescribed by the board and pay all applicable fees.

(c) An applicant from another jurisdiction shall comply with all the requirements of this article.

(d) A license to practice veterinary medicine issued by the board prior to July 1, 2010, shall for all purposes be considered a license issued under this article and may be renewed under this article.

(e) An application for a license to practice veterinary medicine submitted to the board prior to July 1, 2010, shall be considered in conformity with the licensing provisions of this article and the rules promulgated thereunder in effect at the time of the submission of the application.

§30-10-10. Requirements for a registered veterinary technician.

(a) To be eligible for a registration to practice veterinary technology under the provisions of this article, the applicant must:

- (1) Be of good moral character;
- (2) Have a degree in veterinary technology from an accredited school, approved by the board;
- (3) Have passed the examinations required by the board;
- (4) Be at least 18 years of age;
- (5) Be a citizen of the United States or be eligible for employment in the United States; and
- ~~(6) Not have been convicted of a crime involving moral turpitude;~~

~~(7)~~ (6) Not have been convicted of a felony under the laws of any jurisdiction within five years preceding the date of application for registration which conviction remains unreversed: Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code; and

~~(8)~~ (7) Not have been convicted of a misdemeanor or a felony under the laws of any jurisdiction at any time if the offense for which the applicant was convicted related to the practice of veterinary technology or animal abuse or neglect: Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code;

(b) A person seeking registration under the provisions of this article shall submit an application on a form prescribed by the board and pay all applicable fees.

(c) A person registered to practice veterinary technology issued by the board prior to July 1, 2010, shall for all purposes be considered registered under this article and may renew pursuant to the provisions of this article.

ARTICLE 13A. LAND SURVEYORS.

§30-13A-9. Surveying license requirements.

(a) The board shall issue a surveying license to an applicant who meets the following requirements:

(1) Is of good moral character;

(2) Is at least 18 years of age;

(3) Is a citizen of the United States or is eligible for employment in the United States;

(4) Holds a high school diploma or its equivalent; and

~~(5) Has not been convicted of a crime involving moral turpitude; and~~

(5) Has not been convicted of a felony in any jurisdiction within five years preceding the date of application of license which conviction remains unreversed; Provided; That any consideration of prior criminal convictions shall be governed by §30-1-22.

(6) Has completed all of one of the education, experience, and examination requirements set out in §30-13A-8 of this code.

(b) An application for a surveying license shall be made on forms provided by the board and include the following:

(1) Name and address of the applicant;

(2) Applicants education and experience;

(3) Location and date of passage of all the examinations;

(4) Names of five persons for reference, at least three of whom shall be licensees or persons authorized in another jurisdiction to engage in the practice of surveying, and who have knowledge of the applicant's work; and

(5) Any other information the board prescribes.

(c) An applicant shall pay all the applicable fees.

(d) A license to practice surveying issued by the board prior to July 1, 2010, shall for all purposes be considered a license issued under this article: *Provided*, That a person holding a license to practice surveying issued by the board prior to July 1, 2010, must renew the license pursuant to the provisions of this article.

§30-13A-12. Surveyor intern requirements.

(a) To be recognized as a surveyor intern by the board, a person ~~must~~ who meets the following requirements:

(1) Is of good moral character;

(2) Is at least 18 years of age;

(3) Is a citizen of the United States or is eligible for employment in the United States;

(4) Holds a high school diploma or its equivalent;

~~(5) Has not been convicted of a crime involving moral turpitude;~~

(5) Has not been convicted of a felony in any jurisdiction within five years preceding the date of application of license which conviction remains unreversed; *Provided*: That any consideration of prior criminal convictions shall be governed by §30-1-22 of this code.

(6) Has completed one of the education requirements set out in §30-13A-8 of this code; and

(7) Has passed an examination in the fundamentals of land surveying.

(b) A surveyor intern must pass the principles and practice of land surveying examination and the West Virginia examination within 10 years of passing the fundamentals of land surveying examination. If the examinations are not passed within 10 years, then the surveyor intern must retake the fundamentals of land surveying examination.

ARTICLE 20. PHYSICAL THERAPISTS.

§30-20-8. License to practice physical therapy.

(a) To be eligible for a license to engage in the practice of physical therapy, the applicant must:

(1) Submit an application to the board;

(2) Be at least 18 years of age;

(3) Be of good moral character;

(4) Have graduated from an accredited school of physical therapy approved by the Commission on Accreditation in Physical Therapy Education or a successor organization;

(5) Pass a national examination as approved by the board;

(6) Not be an alcohol or drug abuser, as these terms are defined in §27-1A-11 of this code: *Provided*, That an applicant in an active recovery process, which may, in the discretion of the board,

be evidenced by participation in a 12-step program or other similar group or process, may be considered;

(7) Not have been convicted of a felony in any jurisdiction within 10 years preceding the date of application for license which conviction remains unreversed: Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code;

(8) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted related to the practice of physical therapy, which conviction remains unreversed: Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code; and

(9) Has fulfilled any other requirement specified by the board.

(b) A physical therapist shall use the letters 'PT' immediately following his or her name to designate licensure under this article.

(c) A license to practice physical therapy issued by the board prior to July 1, 2010, is considered a license issued under this article: *Provided*, That a person holding a license issued prior to July 1, 2010, must renew the license pursuant to the provisions of this article.

§30-20-10. License to act as a physical therapist assistant.

(a) To be eligible for a license to act as a physical therapist assistant, the applicant must:

(1) Submit an application to the board;

(2) Be at least 18 years of age;

(3) Be of good moral character;

(4) Have graduated from a two-year college level education program for physical therapist assistants which meets the standards established by the Commission on Accreditation in Physical Therapy Education and the board;

(5) Have passed the examination approved by the board for a license to act as a physical therapist assistant;

(6) Not be an alcohol or drug abuser, as these terms are defined in §27-1A-11 of this code: *Provided*, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a 12-step program or other similar group or process, may be considered;

(7) Not have been convicted of a felony in any jurisdiction within 10 years preceding the date of application for license which conviction remains unreversed: Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code;

(8) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted related to the practice of physical therapy, which conviction remains unreversed: Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code; and

~~(9)~~ (9) Meet any other requirements established by the board.

(b) A physical therapist assistant shall use the letters 'PTA' immediately following his or her name to designate licensure under this article.

(c) A license to act as a physical therapist assistant issued by the board prior to July 1, 2010, is considered a license issued under this article: *Provided*, That a person holding a license issued prior to July 1, 2010, must renew the license pursuant to the provisions of this article.

ARTICLE 21. PSYCHOLOGISTS; SCHOOL PSYCHOLOGISTS.

§30-21-7. Qualifications of applicants; exceptions; applications; fee.

(a) To be eligible for a license to engage in the practice of psychology, the applicant must:

(1) Be at least 18 years of age;

(2) Be of good moral character;

(3) Be a holder of a doctor of philosophy degree or its equivalent or a masters degree in psychology from an accredited institution of higher learning, with adequate course study at such institution in psychology, the adequacy of any such course study to be determined by the board;

(4) When the degree held is a doctor of philosophy degree or its equivalent, at least 1,800 hours must be a predoctoral internship in the performance of any of the psychological services described in §30-21-2(e) of this code, including those activities excluded from the definition of the term practice of psychology in said subdivision (e), and, when the degree held is a masters degree, have at least five years' experience subsequent to receiving said degree in the performance of any of the psychological services described in said subdivision (e), including those activities excluded from the definition of the term 'practice of psychology' in said subdivision (e);

(5) Have passed the examination prescribed by the board, which examination shall cover the basic subject matter of psychology and psychological skills and techniques;

(6) ~~Not have been convicted of a felony or crime involving moral turpitude.~~ *Provided*, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code; and

(7) Not, within the next preceding six months, have taken and failed to pass the examination required by subdivision (5), subsection (a) of this section.

(b) The following persons shall be eligible for a license to engage in the practice of psychology without examination:

(1) Any applicant who holds a doctor of philosophy degree or its equivalent from an institution of higher learning, with adequate course study at such institution in psychology and who is a diplomate of the 'American Board of Examiners in Professional Psychology'; and

(2) Any person who holds a license or certificate to engage in the practice of psychology issued by any other state, the requirements for which license or certificate are found by the board to be at least as great as those provided in this article.

(c) Any person who is engaged in the practice of psychology in this state, or is engaged in any of the activities described in §30-21-2(e)(1), 30-21-2(e)(2), or §30-21-2(e)(3) of this code, in this state, on the effective date of this article and has been so engaged for a period of two consecutive years

immediately prior thereto shall be eligible for a license to engage in the practice of psychology without examination and without meeting the requirements of subdivision (4), subsection (a) of this section, if application for such license is made within six months after the effective date of this article and if such person meets the requirements of subdivisions (1), (2), (3) and (6), subsection (a) of this section: *Provided*, That an equivalent of a masters degree in psychology may be considered by the board, only for the purpose of this subsection (c), as meeting the requirements of subdivision (3), subsection (a) of this section.

(d) Any applicant for any such license shall submit an application therefor at such time (subject to the time limitation set forth in subsection (c) of this section), in such manner, on such forms and containing such information as the board may from time to time by reasonable rule and regulation prescribe, and pay to the board an application fee.

ARTICLE 22. LANDSCAPE ARCHITECTS.

§30-22-10. License requirements.

(a) The board shall issue a license to practice under the provisions of this article to an applicant who meets the following requirements:

(1) Is of good moral character;

(2) Is at least 18 years of age;

(3) Is a citizen of the United States or is eligible for employment in the United States;

~~(4) Has not been convicted of a crime involving moral turpitude;~~

~~(5)~~ (4) Has not had his or her application for a license to practice as a landscape architect refused in any state of the United States;

~~(6)~~ (5) Has not had his or her license to practice landscape architecture suspended or revoked in any state of the United States; and

~~(7)~~ (6) Has completed the licensure requirements set out in this article and the rules promulgated hereunder.

(b) The board may issue a license to practice under the provisions of this article to an applicant who does not meet the licensure requirements set out in subdivisions ~~(5) or (6)~~ (4) or (5) of subsection (a) of this section, but who does meet the licensure requirements established by rule by the board.

(c) An application for a license shall be made on forms prescribed by the board.

(d) An applicant shall pay all the applicable fees.

(e) A license to practice landscape architecture issued by the board prior to July 1, 2006, shall for all purposes be considered a license issued under this article: *Provided*, That a person holding a license to practice landscape architecture issued prior to July 1, 2006, must renew the license pursuant to the provisions of this article.

ARTICLE 23. RADIOLOGIC TECHNOLOGISTS.

§30-23-9. Requirements for Radiologic Technology license.

(a) To be eligible for a license to practice Radiologic Technology, the applicant must:

(1) Be of good moral character;

(2) Have a high school diploma or its equivalent;

(3) Have successfully completed an accredited program in Radiologic Technology, as determined by an accreditation body recognized by the board, from a school of Radiologic Technology that has been approved by the board;

(4) Have passed the examination prescribed by the board, which examination shall cover the basic subject matter of Radiologic Technology, skills and techniques; and

(5) Not have been convicted of a felony under the laws of any state or the United States within five years preceding the date of application for licensure, which conviction remains unreversed: Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code; and

(6) Not have been convicted of a misdemeanor or a felony under the laws of any state or the United States at any time if the offense for which the applicant was convicted related to the practice of Medical Imaging, which conviction remains unreversed: Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code.

(b) A person seeking a Radiologic Technology license shall submit an application on a form prescribed by the board and pay the license fee, which fee shall be returned to the applicant if the license application is denied.

(c) A Radiologic Technology license issued by the board prior to July 1, 2009, shall for all purposes be considered a license issued under this article.

§30-23-15. Requirements for Nuclear Medicine Technologist license

(a) To be eligible for a license to practice Nuclear Medicine Technology, the applicant must:

(1) Be of good moral character;

(2) Have a high school diploma or its equivalent;

(3) Not have been convicted of a felony under the laws of any state or the United States within five years preceding the date of application for licensure, which conviction remains unreversed;

(4) Not have been convicted of a misdemeanor or felony under the laws of any state or the United States if the offense for which the applicant was convicted related to the practice of Medical Imaging, which conviction remains unreversed: Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code;

(5) Meet one of the following qualifications:

(A) Have a baccalaureate or associate degree in one of the physical or biological sciences pertaining to the Medical Imaging or Radiation Therapy profession;

(B) Have a baccalaureate or associate degree in other disciplines of Medical Imaging with successful completion of courses in the following areas: college algebra, physics or chemistry, human anatomy, physiology, and radiation safety;

(C) National certification as a certified Nuclear Medicine Technologist (CNMT);

(D) National certification as a Registered Radiographer (ARRT (R));

(E) National certification as a Registered Radiographer specializing in Nuclear Medicine (ARRT (N)); or

(F) National certification as a Radiation Therapist (ARRT (T)); and

(6) Pass an examination which has been approved by the board, with a minimum passing score of 75 percent, which examination shall cover the basic subject matter of medical imaging, radiation safety, skills and techniques as it pertains to Nuclear Medicine.

(b) A person seeking a Nuclear Medicine Technology license shall submit an application on a form prescribed by the board and pay the license fee, which fee shall be returned to the applicant if the license application is denied.

(c) A Nuclear Medicine Technology license issued by the board prior to July 1, 2007, shall for all purposes be considered a license issued under this article: *Provided*, That a person holding a Nuclear Medicine Technology license issued prior to July 1, 2007, must renew the license pursuant to the provisions of this article.

§30-23-17. Requirements for Magnetic Resonance Imaging Technologist license.

(a) To be eligible for a license to practice Magnetic Resonance Imaging Technology, the applicant must:

(1) Be of good moral character;

(2) Have a high school diploma or its equivalent;

(3) Not have been convicted of a felony under the laws of any state or the United States within five years preceding the date of application for licensure, which conviction remains unreversed: *Provided*, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code;

(4) Not have been convicted of a misdemeanor or a felony under the laws of any state or the United States if the offense for which the applicant was convicted practice of Medical Imaging, which conviction remains unreversed: *Provided*, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code;

(5) Meet one of the following qualifications:

(A) Have a baccalaureate or associate degree in one of the physical or biological sciences pertaining to the Medical Imaging or Radiation Therapy profession;

(B) Have a baccalaureate or associate degree in other disciplines of Medical Imaging with successful completion of courses in the following areas: college algebra, physics or chemistry, human anatomy, physiology, and radiation safety;

(C) National certification as a certified Nuclear Medicine Technologist (CNMT);

(D) National certification as a Registered Radiographer (ARRT (R));

(E) National certification as a Registered Radiographer specializing in Nuclear Medicine (ARRT (N));

(F) National certification as a Radiation Therapist (ARRT(T)); or

(G) National certification as an MRI technologist (ARRT (MR) or ARMRIT); and

(6) Pass an examination which has been approved by the board, with a minimum passing score of 75 percent, which examination shall cover the basic subject matter of Medical Imaging, radiation safety, skills and techniques as it pertains to Magnetic Resonance Imaging.

(b) A person seeking a Magnetic Resonance Imaging Technology license shall submit an application on a form prescribed by the board and pay the license fee, which fee shall be returned to the applicant if the license application is denied.

(c) A Magnetic Resonance Imaging Technology license issued by the board prior to July 1, 2007, shall for all purposes be considered a license issued under this article: *Provided*, That a person holding a Magnetic Resonance Imaging Technology license issued prior to July 1, 2007, must renew the license pursuant to the provisions of this article.

§30-23-20. Requirements for Podiatric Medical Assistant permit.

(a) To be eligible for a Podiatric Medical Assistant permit to perform podiatric radiographs, the applicant must:

(1) Be of good moral character;

(2) Have a high school diploma or its equivalent;

(3) Pass a written examination for certification from the American Society of Podiatric Medical Assistants (ASPMA);

(4) Maintain an active certification in the American Society of Podiatric Medical Assistants (ASPMA) and meet all requirements of that organization including the continuing education requirements; and

(5) Not have been convicted of a felony under the laws of any state or the United States within five years preceding the date of application for licensure, which conviction remains unreversed: *Provided*, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code; and

(6) Not have been convicted of a misdemeanor or felony under the laws of any state or the United States if the offense for which the applicant was convicted related to the practice of Radiologic Technology, which conviction remains unreversed: *Provided*, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code.

(b) A person seeking a Podiatric Medical Assistant permit shall submit an application on a form prescribed by the board and pay the permit fee, which fee shall be returned to the applicant if the permit application is denied.

Upon application for renewal, the permittee shall submit documentation of an active certification in ASPMA and payment of a renewal fee.

(c) A Podiatric Medical Assistant permit issued by the board prior to July 1, 2007, shall for all purposes be considered a permit issued under this article: *Provided*, That a person holding a Podiatric Medical Assistant permit issued prior to July 1, 2007, must renew the permit pursuant to the provisions of this article.

ARTICLE 25. NURSING HOME ADMINISTRATORS.

§30-25-8. Qualifications for license; exceptions; application; fees.

(a) To be eligible for a license to engage in the practice of nursing home administration, the applicant must:

- (1) Submit an application to the board;
- (2) Be of good moral character;
- (3) Obtain a baccalaureate degree;
- (4) Pass a state and national examination as approved by the board;
- (5) Complete the required experience as prescribed by the board;

(6) Successfully complete a criminal background check, through the West Virginia State Police and the National Criminal Investigative Center;

(7) Successfully complete a Health Integrity Protection Data Bank check;

(8) Not be an alcohol or drug abuser as these terms are defined in §27-1A-11 of this code: *Provided*, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a 12-step program or other similar group or process, may be considered;

(9) Not have been convicted of a felony in any jurisdiction within 10 years preceding the date of application for license which conviction remains unreversed;

(10) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted related to the practice of nursing home administration, which conviction remains unreversed: *Provided*, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code; and

(11) Has fulfilled any other requirement specified by the board.

(b) A license issued by the board prior to July 1, 2010, shall for all purposes be considered a license issued under this article: *Provided*, That a person holding a license issued prior to July 1, 2010, must renew the license pursuant to the provisions of this article.

ARTICLE 26. HEARING-AID DEALERS AND FITTERS.

§30-26-5. Application for licenses; qualifications of applicants; fees; duties of the board with respect thereto.

Each person desiring to obtain a license from the board to engage in the practice of dealing in or fitting of hearing aids shall make application to the board. The application shall be made in such manner and form as prescribed by the board and shall be accompanied by the prescribed fee. The application shall state under oath that the applicant:

(1) Intends to maintain a permanent office or place of business in this state or that the applicant has at the time of application a permanent office or place of business in another state within a reasonable commuting distance from this state. The board shall determine and prescribe by regulation the term 'reasonable distance' as used herein;

(2) Is a person of good moral character ~~and that he or she has never been convicted of nor is presently under indictment for a crime involving moral turpitude;~~

(3) Is 18 years of age or older;

(4) Has an education equivalent to a four-year course in an accredited high school; and

(5) Is free of chronic infectious or contagious diseases.

Any person who fails to meet any of the standards set forth in the next preceding paragraph shall not be eligible or qualified to take the examination nor shall any such person be eligible or qualified to engage in the practice of dealing in or fitting of hearing aids.

The board, after first determining that the applicant is qualified and eligible in every respect to take the examination, shall notify the applicant that he or she has fulfilled all of the qualifications and eligibility requirements as required by this section and shall advise him or her of the date, time, and place for him or her to appear to be examined as required by the provisions of this article and the regulations promulgated by the board pursuant to this article.

The board, with the aid and assistance of the department, shall give at least one annual examination of the type required by this article and may give such additional examinations, at such times and places, as the board and the department may deem proper, giving consideration to the number of applications.

§30-26-13. Refusal to issue, suspension or revocation of license or trainee permit; false and deceptive advertising.

(a) The board may refuse to issue or renew, or may suspend or revoke any license or trainee permit for ~~any one~~, or any combination of the following causes: Violation of a rule or regulation governing the ethical practice of dealing in or fitting of hearing aids promulgated by the board under the authority granted by this article; conviction of a felony, as shown by a certified copy of the record of the court wherein such conviction was had after such conviction has become final; the obtaining of or the attempt to obtain a license, money, or any other thing of value, by fraudulent misrepresentation; malpractice; continued practice of dealing in or fitting of hearing aids by a person knowingly having a chronic infectious or contagious disease; habitual drunkenness or addiction to the use of a controlled substance as defined in §60-1-101 *et seq.* of this code; advertising, practicing or attempting to practice under a name other than ones own; advertising by means of or selling by the use of knowingly false or deceptive statements: Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code.

(b) False and deceptive advertisement shall constitute unethical practice and the board, by rules and regulations, may regulate and proscribe acts considered by it to be false and deceptive advertisement.

The rules and regulations promulgated pursuant to this subsection shall include prohibitions against: (1) Advertising a particular model or type of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type, where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model or type than that advertised; (2) representing that the service or advice of a person licensed to practice medicine will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true, or using the words 'doctor', 'clinic', or similar words, abbreviations, or symbols which tend to connote the medical profession when such use is not accurate; and (3) advertising a manufacturers product or using a manufacturers name or trademark which implies a relationship with the manufacturer that does not exist or using the words 'audiologist', 'state licensed clinic', 'state registered', 'state certified', or 'state approved', or any other term, abbreviation, or symbol when it would falsely give the impression that service is being provided by persons holding a degree in audiology or trained in clinical audiology, or that licensees service has been recommended by the state when such is not the case.

(c) The refusal to issue or renew a license or trainee permit, or the suspension or revocation of a license or trainee permit by the board must have the concurrence of a majority of the members of the board.

ARTICLE 30. SOCIAL WORKERS.

§30-30-8. License to practice as an independent clinical social worker.

To be eligible for a license to practice as an independent clinical social worker, the applicant must:

(1) Submit an application to the board;

(2) Be at least 18 years of age;

(3) Be of good moral character;

(4) Have obtained a masters degree from a school of social work accredited by the council on social work education that included a concentration of clinically-oriented course work as defined by the board;

(5) Have completed a supervised clinical field placement at the graduate level, or post-masters clinical training that is found by the board to be equivalent;

(6) Have practiced clinical social work for at least two years in full-time employment, or 3,000 under the supervision of an independent clinical social worker, or clinical supervision that is found by the board to be equivalent;

(7) Have passed an examination approved by the board;

(8) Have satisfied the board that he or she merits the public trust by providing the board with three letters of recommendation from persons not related to the applicant;

(9) Not be an alcohol or drug abuser, as these terms are defined in §27-1A-11 of this code: *Provided*, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in an acknowledged substance abuse treatment and/or recovery program may be considered;

(10) Not have been convicted of a felony in any jurisdiction within five years preceding the date of application for license which conviction remains unreversed;

(11) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted related to the practice of social work, which conviction remains unreversed: Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code; and

(12) Meet any other requirements established by the board.

§30-30-10. License to practice as a certified social worker.

(a) To be eligible for a license to practice as certified social worker, the applicant must:

(1) Submit an application to the board;

(2) Be at least 18 years of age;

(3) Be of good moral character;

(4) Have obtained a masters degree from a school of social work accredited by the council on social work education;

(5) Have practiced social work for at least two-years post-masters experience in full-time employment or earned 3,000 hours of post-master's social work experience;

(6) Have passed an examination approved by the board;

(7) Have satisfied the board that he or she merits the public trust by providing the board with three letters of recommendation from persons not related to the applicant;

(8) Not be an alcohol or drug abuser, as these terms are defined in §27-1A-11 of this code: *Provided*, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in an acknowledged substance abuse treatment and/or recovery program may be considered;

(9) Not have been convicted of a felony in any jurisdiction within five years preceding the date of application for license which conviction remains unreversed: Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code;

(10) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted related to the practice of social work, which conviction remains unreversed: Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code; and

(11) Meet other additional requirements as established by the board.

(b) A certified social worker may engage in the practice of clinical social work, if that certified social worker has:

(1) Obtained a masters degree from a school of social work accredited by the council on social work education that included a concentration of clinically-oriented course work as defined by the board;

(2) Has completed a supervised clinical field placement at the graduate level, or post-master's clinical training that is found by the board to be equivalent;

(3) Has contracted, in writing, with a licensed clinical social worker who shall assume responsibility for and supervise the certified social workers practice as directed by the board by promulgation of legislative rules;

(4) Is an employee of an institution or organization in which the certified social worker has no direct or indirect interest other than employment.

(c) A certified social worker may not practice clinical social work until his or her contract has been approved by the board and shall cease the practice of clinical social work immediately upon the termination of the contract. At the termination of the contract, the certified social worker shall apply for licensure as a licensed clinical social worker or request an extension of the contract from the board.

§30-30-12. License to practice as a licensed graduate social worker.

(a) To be eligible for a license to practice as a graduate social worker, the applicant must:

(1) Submit an application to the board;

(2) Be at least 18 years of age;

(3) Be of good moral character;

(4) Have obtained a master's degree from a school of social work accredited by the council on social work education;

(5) Have passed an examination approved by the board;

(6) Have satisfied the board that he or she merits the public trust by providing the board with three letters of recommendation from persons not related to the applicant;

(7) Not be an alcohol or drug abuser, as these terms are defined in §27-1A-11: *Provided*, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in an acknowledged substance abuse treatment and/or recovery program may be considered;

(8) Not have been convicted of a felony in any jurisdiction within five years preceding the date of application for license which conviction remains unreversed: *Provided*, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code;

(9) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted related to the practice of social work, which conviction remains unreversed: *Provided*, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code; and

(10) Meet any other requirements established by the board.

(b) A licensed graduate social worker may engage in the practice of clinical social work, if he or she has:

(1) Obtained a masters degree from a school of social work accredited by the council on social work education that included a concentration of clinically oriented course work as defined by the board;

(2) Has completed a supervised clinical field placement at the graduate level, or post-master's clinical training that is found by the board to be equivalent;

(3) Has contracted, in writing, with a licensed clinical social worker who shall assume responsibility for and supervise the certified social worker's practice as directed by the board by promulgation of legislative rules;

(4) Be employed by an institution or organization in which the graduate social worker has no direct or indirect interest other than employment.

(c) A graduate social worker may not practice clinical social work until this contract has been approved by the board and shall cease the practice of clinical social work immediately upon the termination of the contract. At the termination of the contract, the graduate social worker shall apply for licensure as a licensed independent clinical social worker or request an extension of the contract from the board.

§30-30-14. License to practice as a social worker.

To be eligible for a license to practice as a social worker, the applicant must:

(1) Submit an application to the board;

(2) Be at least 18 years of age;

(3) Be of good moral character;

(4) Have a baccalaureate degree in social work from a program accredited by the council on social work education;

(5) Have passed an examination approved by the board;

(6) Have satisfied the board that he or she merits the public trust by providing the board with three letters of recommendation from persons not related to the applicant;

(7) Not be an alcohol or drug abuser, as these terms are defined in 27A-1A-11 of this code: *Provided*, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in an acknowledged substance abuse treatment and/or recovery program may be considered;

(8) Not have been convicted of a felony in any jurisdiction within five years preceding the date of application for license which conviction remains unreversed: *Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code;*

(9) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted related to the practice of social work, which conviction remains unreversed: *Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code;* and

(10) Meet any other requirements established by the board.

§30-30-26. Complaints; investigations; due process procedure; grounds for disciplinary action.

(a) The board may upon its own motion based on credible information, and shall upon the written complaint of any person, cause an investigation to be made to determine whether grounds exist for disciplinary action under this article or the legislative rules promulgated pursuant to this article.

(b) Upon initiation or receipt of the complaint, the board shall provide a copy of the complaint to the licensee or permittee.

(c) After reviewing any information obtained through an investigation, the board shall determine if probable cause exists that the licensee or permittee has violated subsection (g) of this section or rules promulgated pursuant to this article.

(d) Upon a finding that probable cause exists that the licensee or permittee has violated subsection (g) of this section or rules promulgated pursuant to this article, the board may enter into a consent decree or hold a hearing for the suspension or revocation of the license or permit or the imposition of sanctions against the licensee or permittee. Any hearing shall be held in accordance with this article.

(e) Any member of the board or the administrator of the board may issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person regulated by the article.

(f) Any member of the board or its administrator may sign a consent decree or other legal document on behalf of the board.

(g) The board may, after notice and opportunity for hearing, deny or refuse to renew, suspend, restrict, or revoke the license or permit of, or impose probationary conditions upon or take disciplinary action against, any licensee or permittee for any of the following reasons once a violation has been proven by a preponderance of the evidence:

(1) Obtaining a license or permit by fraud, misrepresentation, or concealment of material facts;

(2) Being convicted of a felony ~~or other crime involving moral turpitude~~: Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code;

(3) Being guilty of unprofessional conduct which placed the public at risk, as defined by legislative rule of the board;

(4) Intentional violation of a lawful order or legislative rule of the board;

(5) Having had a license or other authorization revoked or suspended, other disciplinary action taken, or an application for licensure or other authorization revoked or suspended by the proper authorities of another jurisdiction;

(6) Aiding or abetting unlicensed practice; or

(7) Engaging in an act while acting in a professional capacity which has endangered or is likely to endanger the health, welfare, or safety of the public.

(h) For the purposes of subsection (g) of this section, effective July 1, 2011, disciplinary action may include:

- (1) Reprimand;
- (2) Probation;
- (3) Restrictions;
- (4) Administrative fine, not to exceed \$1,000 per day per violation;
- (5) Mandatory attendance at continuing education seminars or other training;
- (6) Practicing under supervision or other restriction; or

(7) Requiring the licensee or permittee to report to the board for periodic interviews for a specified period of time.

(i) In addition to any other sanction imposed, the board may require a licensee or permittee to pay the costs of the proceeding.

ARTICLE 31. LICENSED PROFESSIONAL COUNSELORS.

§30-31-8. Requirements for license to practice counseling.

(a) To be eligible for a license to practice professional counseling, an applicant must:

- (1) Be of good moral character;
- (2) Be at least 18 years of age;
- (3) Be a citizen of the United States or be eligible for employment in the United States;
- (4) Pay the applicable fee;

(5)(A)(i) Have earned a master's degree in an accredited counseling program or in a field closely related to an accredited counseling program as determined by the board or have received training equivalent to such degree as may be determined by the board; and

(ii) Have at least two years of supervised professional experience in counseling of such a nature as is designated by the board after earning a master's degree or equivalent; or

(B)(i) Have earned a doctorate degree in an accredited counseling program or in a field closely related to an accredited counseling program as determined by the board or have received training equivalent to such degree as may be determined by the board; and

(ii) Have at least one year of supervised professional experience in counseling of such a nature as is designated by the board after earning a doctorate degree or equivalent;

(6) Have passed a standardized national certification examination in counseling approved by the board;

(7) Not have been convicted of a felony ~~or crime involving moral turpitude~~ under the laws of any jurisdiction: Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code:

(A) If the applicant has never been convicted of a felony ~~or a crime involving moral turpitude~~, the applicant shall submit letters of recommendation from three persons not related to the applicant and a sworn statement from the applicant stating that he or she has never been convicted of a felony ~~or a crime involving moral turpitude~~; or

(B) If the applicant has been convicted of a felony ~~or a crime involving moral turpitude~~, it is a rebuttable presumption that the applicant is unfit for licensure unless he or she submits competent evidence of sufficient rehabilitation and present fitness to perform the duties of a licensed professional counselor as may be established by the production of:

(i) Documentary evidence including a copy of the relevant release or discharge order, evidence showing compliance with all conditions of probation or parole, evidence showing that at least one year has elapsed since release or discharge without subsequent conviction, and letters of reference from three persons who have been in contact with the applicant since his or her release or discharge; and

(ii) Any collateral evidence and testimony as may be requested by the board which shows the nature and seriousness of the crime, the circumstances relative to the crime or crimes committed and any mitigating circumstances or social conditions surrounding the crime or crimes and any other evidence necessary for the board to judge present fitness for licensure or whether licensure will enhance the likelihood that the applicant will commit the same or similar offenses;

(8) Not be an alcohol or drug abuser as these terms are defined in §27-1A-11 of this code: *Provided*, That an applicant who has had at least two continuous years of uninterrupted sobriety in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a 12-step program or other similar group or process, may be considered; and

(9) Has fulfilled any other requirement specified by the board.

(b) A person who holds a license or other authorization to practice counseling issued by another state, the qualifications for which license or other authorization are determined by the board to be at least substantially equivalent to the license requirements in this article, is eligible for licensure.

(c) A person seeking licensure under the provisions of this section shall submit an application on a form prescribed by the board and pay all applicable fees. A person applying for licensure may elect for a temporary permit to utilize during the application process while the applicant takes the required examination. The temporary permit shall be valid for a period not to exceed six months and may not be renewed. The fee for the temporary permit is \$50. The permittee shall be supervised by an approved licensed professional supervisor while practicing under the temporary permit. Supervision hours completed under the temporary permit count as supervised professional experience as required for licensure under this section. The supervision requirements are the same as required with a provisional license as defined in section six of this article. The temporary permit may be revoked at any time by a majority vote of the board.

(d) A person who has been continually licensed under this article since 1987, pursuant to prior enactments permitting waiver of certain examination and other requirements, is eligible for renewal under the provisions of this article.

(e) A license to practice professional counseling issued by the board prior to July 1, 2009, shall for all purposes be considered a license issued under this article: *Provided*, That a person holding a license issued prior to July 1, 2009, must renew the license pursuant to the provisions of this article.

§30-31-9. Requirements for a license to practice marriage and family therapy.

(a) To be eligible for a license to practice marriage and family therapy, an applicant must:

(1) Be of good moral character;

(2) Be at least 18 years of age;

(3) Be a citizen of the United States or be eligible for employment in the United States;

(4) Pay the applicable fee;

(5)(A)(i) Have earned a master's degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education, the Council for Accreditation of Counseling and Related Education Programs, or a comparable accrediting body as approved by the board, or in a field closely related to an accredited marriage and family therapy program as determined by the board, or have received training equivalent to such degree as may be determined by the board; and

(ii) Have at least two years of supervised professional experience in marriage and family therapy of such a nature as is designated by the board after earning a master's degree or equivalent; or

(B)(i) Have earned a doctorate degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education, the Council for Accreditation of Counseling and Related Education Programs, or a comparable accrediting body as approved by the board, or in a field closely related to an accredited marriage and family therapy program as determined by the board, or have received training equivalent to such degree as may be determined by the board; and

(ii) Have at least one year of supervised professional experience in marriage and family therapy of such a nature as is designated by the board after earning a doctorate degree or equivalent;

(6) Have passed a standardized national certification examination in marriage and family therapy as approved by the board;

(7) Not have been convicted of a felony ~~or crime involving moral turpitude~~ under the laws of any jurisdiction: *Provided*, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code:

(A) If the applicant has never been convicted of a felony ~~or a crime involving moral turpitude~~, the applicant shall submit letters of recommendation from three persons not related to the applicant and a sworn statement from the applicant stating that he or she has never been convicted of a felony ~~or a crime involving moral turpitude~~; or

(B) If the applicant has been convicted of a felony ~~or a crime involving moral turpitude~~, it is a rebuttable presumption that the applicant is unfit for licensure unless he or she submits competent evidence of sufficient rehabilitation and present fitness to perform the duties of a person licensed to practice marriage and family therapy as may be established by the production of:

(i) Documentary evidence including a copy of the relevant release or discharge order, evidence showing compliance with all conditions of probation or parole, evidence showing that at least one year has elapsed since release or discharge without subsequent conviction, and letters of reference from three persons who have been in contact with the applicant since his or her release or discharge; and

(ii) Any collateral evidence and testimony as may be requested by the board which shows the nature and seriousness of the crime, the circumstances relative to the crime or crimes committed and any mitigating circumstances or social conditions surrounding the crime or crimes, and any other evidence necessary for the board to judge present fitness for licensure or whether licensure will enhance the likelihood that the applicant will commit the same or similar offenses;

(8) Not be an alcohol or drug abuser as these terms are defined in §27-1A-1 of this code: *Provided*, That an applicant who has had at least two continuous years of uninterrupted sobriety in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a 12-step program or other similar group or process, may be considered; and

(9) Has fulfilled any other requirement specified by the board.

(b) A person who holds a license or other authorization to practice marriage and family therapy issued by another state, the qualifications for which license or other authorization are determined by the board to be at least substantially equivalent to the license requirements in this article, is eligible for licensure.

(c) A person seeking licensure under the provisions of this section shall submit an application on a form prescribed by the board and pay all applicable fees. A person applying for licensure may elect for a temporary permit to utilize during the application process while the applicant takes the required examination. The temporary permit shall be valid for a period not to exceed six months and may not be renewed. The fee for the temporary permit is \$50. The permittee shall be supervised by an approved licensed professional supervisor while practicing under the temporary permit. Supervision hours completed under the temporary permit count as supervised professional experience as required for licensure under this section. The supervision requirements are the same as required with a provisional license as defined in section six of this article. The temporary permit may be revoked at any time by a majority vote of the board.

(d) A person who is licensed for five years as of July 1, 2010, and has substantially similar qualifications as required by subdivisions (1), (2), (3), (4), (5)(A)(i) or (5)(B)(i), (7) and (8), subsection (a) of this section is eligible for a license to practice marriage and family therapy until July 1, 2012, and is eligible for renewal under section ten of this article.

ARTICLE 38. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT.

§30-38-12. Refusal to issue or renew license or certification; suspension or revocation; grounds for disciplinary action.

(a) The following acts or omissions are grounds for disciplinary action, and the board may refuse to issue or renew a license or certification, or after issuance may suspend or revoke a license or certification, or impose disciplinary sanctions for:

(1) Procuring or attempting to procure license or certification under this article by knowingly making a false statement, submitting false information, or making a material misrepresentation in an application filed with the board, or procuring or attempting to procure a license or certification through fraud or misrepresentation;

(2) Paying money other than the fees provided for by this article to any member or employee of the board to procure a license or certification under this article;

(3) An act or omission in the practice of real estate appraising which constitutes dishonesty, fraud, or misrepresentation with the intent to substantially benefit the licensee or another person or with the intent to substantially injure another person;

(4) Entry of a final civil or criminal judgment against a licensee on grounds of fraud, misrepresentation, or deceit in the making of an appraisal of real estate;

(5) Conviction, including a conviction based upon a plea of guilty or nolo ~~contendere~~ contendere of a crime which is substantially related to the qualifications, functions, or duties of a person developing real estate appraisals and communicating real estate appraisals to others: Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code;

(6) Making a false or misleading statement in that portion of a written appraisal report that deals with professional qualifications or in any testimony concerning professional qualifications;

(7) Violation of any section of this article, or any rule of the board;

(8) Violation of the confidential nature of governmental records to which a licensee gained access through employment or engagement as an appraiser by a governmental agency;

(9) Acceptance of a fee that is or was contingent upon the appraiser reporting a predetermined analysis, opinion, or conclusion, or is or was contingent upon the analysis, opinion, conclusion, or valuation reached, or upon the consequences resulting from the appraisal assignment;

(10) Failing to meet the minimum qualifications for state licensure or certification established by or pursuant to this article; or

(11) Failing or refusing without good cause to exercise reasonable diligence, or negligence or incompetence, in developing an appraisal, preparing an appraisal report, or communicating an appraisal.

(b) Every person licensed or certified by the board has a duty to report to the board in a timely manner any known or observed violation of this article or the board's rules by any other person licensed or certified by the board.

ARTICLE 39. UNIFORM ATHLETE AGENTS ACT.

§30-39-6. Certificate of registration; issuance or denial; renewal.

(a) Except as otherwise provided in subsection (b) of this section, the Secretary of State shall issue a certificate of registration to an individual who complies with §30-39-5 of this code or whose application has been accepted under §30-39-5 of this code.

(b) The Secretary of State may refuse to issue a certificate of registration if the Secretary of State determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the Secretary of State may consider whether the applicant has:

(1) Been convicted of a crime that, if committed in this state, would be a ~~crime involving moral turpitude or a felony~~;

(2) Made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent;

(3) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;

(4) Engaged in conduct prohibited by §30-39-14 of this code;

(5) Had a registration or licensure as an athlete agent suspended, revoked, or denied, or been refused renewal of registration or licensure as an athlete agent in any state;

(6) Engaged in conduct the consequence of which was that a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student-athlete or educational institution; or

(7) Engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.

(c) In making a determination under subsection (b) of this section, the Secretary of State shall consider:

(1) How recently the conduct occurred;

(2) The nature of the conduct and the context in which it occurred; and

(3) Any other relevant conduct of the applicant.

(d) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the Secretary of State. An application filed under this section is a public record. The application for renewal must be signed by the applicant under penalty of perjury and must contain current information on all matters required in an original registration.

(e) An individual who has submitted an application for renewal of registration or licensure in another state, in lieu of submitting an application for renewal in the form prescribed pursuant to subsection (d) of this section, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The Secretary of State shall accept the application for renewal from the other state as an application for renewal in this state if the application to the other state:

(1) Was submitted in the other state within six months next preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;

(2) Contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and

(3) Was signed by the applicant under penalty of perjury.

(f) A certificate of registration or a renewal of a registration is valid for two years."

And,

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

Com. Sub. for H. B. 2486 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-1-22; and to amend and reenact §30-5-11, §30-5-11a, §30-10-8, §30-10-10, §30-13A-9, §30-13A-12, §30-14-11, §30-20-8, §30-20-10, §30-21-7, §30-22-10, §30-23-9, §30-23-15, §30-23-17, §30-23-20, §30-25-8, §30-26-5, §30-26-13, §30-30-8, §30-30-10, §30-30-12, §30-30-14, §30-30-26, §30-31-8, §30-31-9, §30-38-12 and §30-39-6 of said code, all relating to the use of post-criminal conduct in professional and occupational initial licensure decision making; creating a rational nexus requirement between prior criminal conduct and initial licensure decision making; removing offenses of moral turpitude as to basis for license denial; authorizing persons to petition licensure boards for a determination as to whether a person's criminal record precludes licensure; limiting licensure disqualification."

The further title amendment offered by Delegate Shott and adopted by the House being as:

Com. Sub. for H. B. 2486 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-1-22; and to amend and reenact §30-5-11, §30-5-11a, §30-10-8, §30-10-10, §30-13A-9, §30-13A-12, §30-20-8, §30-20-10, §30-21-7, §30-22-10, §30-23-9, §30-23-15, §30-23-17, §30-23-20, §30-25-8, §30-26-5, §30-26-13, §30-30-8, §30-30-10, §30-30-12, §30-30-14, §30-30-26, §30-31-8, §30-31-9, §30-38-12 and §30-39-6 of said code, all relating to the use of post-criminal conduct in professional and occupational initial licensure decision making; creating a rational nexus requirement between prior criminal conduct and initial licensure decision making; removing offenses described as one of moral turpitude as a basis for license denial unless the underlying crime bears a rational nexus to the occupation requiring licensure, certification or registration; limiting licensure disqualification; authorizing persons to petition licensure boards for a determination as to whether a person's criminal record precludes licensure; and providing for rulemaking."

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 698**), and there were—yeas 96, nays 2, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Fast, C. Martin.

Absent and Not Voting: Cooper and Ellington.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2486) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 2583, Family Planning Access Act.

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

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

“ARTICLE 57. FAMILY PLANNING ACCESS ACT.

§16-57-1. Definitions.

As used in this article:

‘Dispense’ means the same as that term is defined in §30-5-4 of this code.

‘Patient counseling’ means the same as that term is defined in §30-5-4 of this code.

‘Pharmacist’ means the same as that term is defined in §30-5-4 of this code.

‘Self-administered hormonal contraceptive’ means a self-administered hormonal contraceptive that is approved by the United States Food and Drug Administration to prevent pregnancy and does not include the class of emergency contraceptives commonly known as the ‘morning after pill’ or ‘Plan B’.

§16-57-2. Voluntary participation.

This article does not create a duty or standard of care for a person to prescribe or dispense a self-administered hormonal contraceptive.

§16-57-3. Authorization to dispense self-administered hormonal contraceptives.

(a) A pharmacist licensed under §30-5-1 *et seq.* of this code may dispense a self-administered hormonal contraceptive: (1) pursuant to a standing prescription drug order made in accordance with §16-57-4 of this code without any other prescription drug order from a person licensed to prescribe a self-administered hormonal contraceptive; (2) in accordance with the dispensing guidelines in §16-57-6 of this code; and (3) to a patient who is 18 years old or older.

(b) All state and federal laws governing insurance coverage of contraceptive drugs, devices, products, and services shall apply to self-administered contraceptives dispensed by a pharmacist under a standing order pursuant to this section.

§16-57-4. Standing prescription drug orders for a self-administered hormonal contraceptive.

The state health officer may prescribe on a statewide basis a self-administered hormonal contraceptive by one or more standing orders in accordance with a protocol consistent with the United States Medical Eligibility Criteria for Contraceptive Use (MEC) Centers for Disease Control and Prevention, that requires:

(1) Use of the self-screening risk assessment questionnaire described below;

(2) Written and oral education;

(3) The timeline for renewing and updating the standing order;

(4) Who is eligible to utilize the standing order;

(5) The pharmacist to make and retain a record of each person to whom the self-administered hormonal contraceptive is dispensed, including:

- (A) The name of the person;
- (B) The drug dispensed; and
- (C) Other relevant information.

§16-57-5. Pharmacist education and training required.

(a) The Board of Pharmacy, in collaboration with the Bureau for Public Health, shall approve a training program or programs to be eligible to participate in the utilization of the standing prescription drug order for self-administered hormonal contraceptives by a pharmacist.

(b) Documentation of training shall be provided to the Board of Pharmacy upon request.

§16-57-6. Guidelines for dispensing a self-administered hormonal contraceptive.

(a) A pharmacist who dispenses a self-administered hormonal contraceptive under this article:

(1) Shall obtain a completed self-screening risk assessment questionnaire that has been approved by the state health officer in collaboration with the Board of Pharmacy, the Board of Osteopathic Medicine, and the Board of Medicine from the patient before dispensing the self-administered hormonal contraceptive;

(2) Shall notify the patient's primary care provider, if provided;

(3) If when dispensing within the guidelines it is unsafe to dispense a self-administered hormonal contraceptive to a patient then the pharmacist:

(A) May not dispense a self-administered hormonal contraceptive to the patient; and

(B) Shall refer the patient to a health care practitioner or local health department;

(4) May not continue to dispense a self-administered hormonal contraceptive to the patient for more than 12 months after the date of the initial prescription without evidence that the patient has consulted with a health care practitioner during the preceding 12 months; and

(5) Shall provide the patient with:

(A) Written and verbal information regarding:

(i) The importance of seeing the patient's health care practitioner to obtain recommended tests and screening; and

(ii) The effectiveness and availability of long-acting reversible contraceptives and other effective contraceptives as an alternative to self-administered hormonal contraceptives; and

(B) A copy of the record of the encounter with the patient that includes:

(i) The patient's completed self-assessment tool; and

(ii) A description of the contraceptives dispensed, or the basis for not dispensing a contraceptive.

(b) If a pharmacist dispenses a self-administered hormonal contraceptive to a patient, the pharmacist shall, at a minimum, provide the patient counseling regarding:

(1) The appropriate administration and storage of the self-administered hormonal contraceptive;

(2) Potential side effects and risks of the self-administered hormonal contraceptive;

(3) The need for backup contraception;

(4) When to seek emergency medical attention;

(5) The risk of contracting a sexually transmitted infection or disease, and ways to reduce the risk of contraction; and

(6) Any additional counseling outlined in the protocol as prescribed in §16-57-4 of this code.

(c) The Board of Pharmacy regulates a pharmacist who dispenses a self-administered hormonal contraceptive under this article.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 699**), and there were—yeas 90, nays 8, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Fast, D. Jeffries, J. Jeffries, C. Martin, P. Martin, Pack, Porterfield and Worrell.

Absent and Not Voting: Cooper and Ellington.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2583) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 2670, Relating to damages for medical monitoring.

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

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

“ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-32. Limitations on medical monitoring damages.

(a) Increased risk of disease, whether or not accompanied by physiological or other changes in the human body, is not compensable through damages or any other form of relief under the law of this state, regardless of the legal theory being asserted. In any civil action a defendant cannot be required to pay as damages or provide any other type of legal, injunctive, or equitable relief for a plaintiff's future medical surveillance, screening tests, or monitoring procedures unless the plaintiff proves in addition to the other requirements for the underlying cause of action: (1) That the future medical surveillance, screening tests, or monitoring procedures are directly related to a presently existing and diagnosable physical disease of the plaintiff; and (2) that the plaintiff's presently existing physical disease was caused by the defendant's conduct.

(b) In any civil action in which a court orders a defendant to pay for a plaintiff's future medical surveillance, screening tests, or monitoring procedures, a plaintiff shall not be awarded or paid any moneys to cover the cost of his or her future medical surveillance, screening tests, or monitoring procedures until they have been completed. The court shall order that the liable defendant make periodic payments into a fund established to pay the cost of future medical surveillance, screening tests, or monitoring procedures that are required by the judgment of the court. The court shall determine how the fund will be administered. The court shall also determine the date after which the future medical surveillance, screening tests, or monitoring procedures are no longer required, and after that date any moneys remaining in the fund that are not needed to pay for medical surveillance, screening tests, or monitoring procedures completed prior to the termination date shall be repaid to the liable defendant who paid such amounts in the fund. If there are multiple defendants, then repayments shall be made in proportion to the total contributions of each defendant into the fund."

And,

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

Com. Sub. for H. B. 2670 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-32, relating to damages for medical monitoring; establishing requirements for an order for payment of medical monitoring expenses; providing that an increased risk of disease is not a compensable basis for damages in any civil action; requiring proof that future medical surveillance, screening tests, or monitoring procedures are directly related to a presently existing and diagnosable physical disease caused by the defendant's conduct; prohibiting payment for cost of future medical surveillance, screening tests, or monitoring procedures until they are completed; allowing court to order defendant to make periodic payments into a fund to pay future costs; and authorizing court to determine when future medical surveillance, screening tests, or monitoring procedures are no longer required and providing for disbursement of any moneys remaining in the fund."

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

A message from the Senate, by

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

Com. Sub. for H. B. 2694, Relating to the state's ability to regulate hemp.

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

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

“ARTICLE 12E. INDUSTRIAL HEMP DEVELOPMENT ACT.**§19-12E-3. Definitions.**

As used in this article:

(a) ‘Cannabidiol’ or ‘CBD’ means the compound by the same name derived from the hemp variety of the cannabis sativa L. plant;

(b) ‘Commercial sales’ means the sale of products in the stream of commerce, at retail, wholesale, and online;

~~(4)~~ (c) ‘Commissioner’ means the Commissioner of Agriculture or his or her designee;

(d) ‘Cultivating’ means planting, watering, growing, and harvesting a plant or crop;

(e) ‘Department’ means the West Virginia Department of Agriculture and its employees;

(f) ‘Handling’ means possessing or storing hemp plants for any period of time on premises owned, operated, or controlled by a person licensed to cultivate or process hemp. ‘Handling’ also includes possessing or storing hemp plants in a vehicle for any period of time other than during its actual transport from the premises of one licensed person to cultivate or process industrial hemp to the premises of another licensed person. ‘Handling’ does not mean possessing or storing finished hemp products;

~~(2)~~ (g) ‘Hemp’ or ‘Industrial industrial hemp’ means all parts and varieties of the plant Cannabis sativa L. containing and any part of the plant, including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not with no greater than one percent 0.3% tetrahydrocannabinol, or the THC concentration for hemp defined in 7 U.S.C. § 5940, whichever is greater; and

(h) ‘Hemp products’ means all products derived from, or made by, processing hemp plants or plant parts, that are prepared in a form available for commercial sale;

(i) ‘Licensee’ means an individual or business entity possessing a license issued by the Department to grow, handle, cultivate, or process hemp;

~~(3)~~ (j) ‘Marijuana’ means all plant material from the genus cannabis containing more than one percent tetrahydrocannabinol or seeds of the genus capable of germination;

(k) ‘Processing’ means converting an agricultural commodity into a marketable form; and

(l) ‘THC’ means tetrahydrocannabinol. Notwithstanding any other provision of this code to the contrary, the THC found in industrial hemp shall not be considered to be THC for the purposes of qualifying as a controlled substance.

§19-12E-4. Industrial hemp authorized as agricultural crop; license required.

~~(a) Industrial hemp that has not more than one percent tetrahydrocannabinol is considered an agricultural crop in this state if grown for the purposes authorized by the provisions of this article. Upon meeting the requirements of section three §19-12E-5 of this article code, an individual in this state may plant, grow, harvest, possess, process, sell or buy industrial hemp.~~

(b) A person shall not cultivate, handle, or process industrial hemp in this state unless the person holds an industrial hemp license issued by the department.

§19-12E-5. Industrial hemp – licensing.

(a) A person growing industrial hemp ~~for commercial purposes~~ shall apply to the commissioner for a license on a form prescribed by the commissioner.

(b) The application for a license must include the name and address of the applicant and the legal description and global positioning coordinates of the land area to be used for the production of industrial hemp.

(c) ~~The commissioner shall require each first-time applicant, and may establish requirements for other persons involved with the industrial hemp program, to submit to a for a license to file a set of the applicant's fingerprints, taken by a law enforcement officer, and any other information necessary to complete a statewide and nationwide criminal history check with the criminal investigation bureau of the department of justice for state processing and with the Federal Bureau of Investigation for federal processing. All of the costs associated with the criminal history check are the responsibility of the applicant. Criminal history records provided to the department under this section are confidential. The commissioner may use the records only to determine if an applicant is eligible to receive a license for the production of industrial hemp.~~ state and national criminal history record check. The criminal history record check shall be based on fingerprints submitted to the West Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.

(1) The applicant shall meet all requirements necessary to accomplish the state and national criminal history record check, including:

(A) Submitting fingerprints; and

(B) Authorizing the board, the West Virginia State Police, and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for a license.

(2) The results of the state and national criminal history record check may not be released to or by a private entity except:

(A) To the individual who is the subject of the criminal history record check;

(B) With the written authorization of the individual who is the subject of the criminal history record check; or

(C) Pursuant to a court order.

(3) The criminal history record check and related records are not public records for the purposes of §29B-1-1 et seq. of this code.

(4) The applicant shall pay the actual costs of the fingerprinting and criminal history record check.

(d) If the applicant has completed the application process to the satisfaction of the commissioner, the commissioner shall issue the license, which is valid until December 31 of the year of application; Provided, That an individual applying to renew a current license may continue to operate under an existing license, as long as his or her completed renewal application has been submitted to the department on or before the deadline established by the department. ~~An individual licensed under this section is presumed to be growing industrial hemp for commercial purposes.~~

~~(e) Notwithstanding any provision of this article, rule or the provisions of chapter sixty-a 60A of this code to the contrary, the Commissioner of Agriculture may license qualified persons and state institutions of higher learning to lawfully grow or cultivate industrial hemp in this state, but institutions of higher learning may only lawfully grow industrial hemp for research and educational purposes.~~

(e) Any person seeking to grow, cultivate, or process industrial hemp shall provide to the Department prior written consent allowing the Department, State Police, and other state and local law enforcement agencies to enter onto all premises where industrial hemp is grown, cultivated, processed, or stored to conduct physical inspections or otherwise ensure compliance with the requirements of this code and the legislative rules promulgated pursuant to this code.

(f) Sale of industrial hemp products —

(1) Notwithstanding any provision of the code to the contrary, a person need not obtain a license to possess, handle, transport, or sell hemp products or extracts, including those containing one or more hemp-derived cannabinoids, including CBD.

(2) Hemp-derived cannabinoids, including CBD, are not controlled substances or adulterants.

(3) Products containing one or more hemp-derived cannabinoids, such as CBD, intended for ingestion are to be considered foods, not controlled substances or adulterated products.

(4) Applicable state agencies shall make available any and all customary registrations to the processors and manufacturers of hemp products.

(5) Retail sales of hemp products may be conducted when the products and the hemp used in the products were grown and cultivated legally in another state or jurisdiction and meet the same or substantially the same requirements for processing hemp products or growing hemp under this article and rules promulgated under §19-2E-7 of this code.

(6) Notwithstanding any other provision of this code to the contrary, derivatives of hemp, including hemp-derived cannabidiol, may be added to cosmetics, personal care products, and products intended for animal or human consumption, and the addition is not considered an adulteration of the products.

(7) Hemp and hemp products may be legally transported across state lines, and exported to foreign nations, consistent with U. S. federal law and laws of respective foreign nations.

§19-12E-6. Industrial hemp production – notification.

(a) Every licensee shall file with the commissioner:

(1) Documentation showing that the seeds planted are of a type and variety certified to contain no more than ~~one percent~~ 0.3% tetrahydrocannabinol; ~~and~~

(2) A copy of any contract to grow industrial hemp; and

(3) Any other document required to be submitted by the commissioner.

(b) Each licensee shall notify the commissioner of the sale or distribution of any industrial hemp grown by the licensee, including, but not limited to, the name and address of the person or entity receiving the industrial hemp and the amount of industrial hemp sold.

§19-12E-7. Rule-making authority.

The commissioner shall ~~promulgate legislative rules~~ propose legislative rules for promulgation in accordance with §29A-3-1 et seq. of this code that include, but are not limited to:

(1) Licensing persons who wish to grow, cultivate, handle, or process industrial hemp;

(2) Sampling and Testing testing of the industrial hemp ~~during growth~~ to determine tetrahydrocannabinol levels;

~~(2)~~ (3) Supervision of the industrial hemp during its growth and harvest;

~~(3)~~ (4) Assessment of ~~a fee~~ fees that ~~is~~ are commensurate with the costs of the commissioner's activities in licensing, testing, and supervising industrial hemp production;

~~(4)~~ Promulgate rules relating to the (5) The production and sale of industrial hemp which are consistent with the rules of the United States Department of Justice, Drug Enforcement Administration for the production, distribution and sale of industrial hemp;

(6) The production, sale, possession, handling, or transport of hemp products and extracts, including those containing one or more hemp-derived cannabinoids, including CBD; and

~~(5)~~ (7) Any other rules and procedures necessary to carry out the purposes of this article.

§19-12E-8. Disposition of fees.

All fees assessed as provided for in ~~section five~~ §19-12E-5 of this article ~~code~~ must be deposited with the state treasurer to the credit of the 'Agricultural Fees Fund' established by the provisions of ~~section four-c, §19-1-4c~~ article one of this chapter ~~code~~ for the use of the commissioner for administering and enforcing the provisions of this article.

§19-12E-9. Defense for possession or cultivation of marijuana.

(a) It is a complete defense to a prosecution for the possession or cultivation of marijuana pursuant to the provisions of ~~article four, §60A-4-401 et seq. chapter sixty-a~~ of this code that defendant was growing industrial hemp pursuant to the provisions of this article.

(b) This section is not a defense to a charge of criminal sale or distribution of marijuana as defined in §60A-1-101 et seq. of this code which does not meet the definition of industrial hemp.

§19-12E-10. State regulation of industrial hemp.

(a) The commissioner may submit to the Secretary of the United States Department of Agriculture, for his or her approval, a plan under which this state monitors and regulates the production of industrial hemp. The plan shall comply with the requirements of 7 U.S.C. § 1621 et seq. and any other requirements established by the United States Department of Agriculture.

(b) Nothing in this section prohibits the production of industrial hemp in this state if the commissioner declines to submit a plan, or if a submitted plan is not approved by the United States Department of Agriculture in accordance with other federal laws and regulations.

§19-12E-11. Violations; negligent violations; notice.

(a) A licensee in this state that does not comply with any approved plan is subject to §19-12E-11(b) of this code if the department determines the licensee has negligently violated the state plan by:

(1) Failing to provide a legal description of the land on which the licensee produces hemp;

(2) Failing to obtain a license or other required authorization from the West Virginia Department of Agriculture; or

(3) Producing industrial hemp containing more than 0.3% of tetrahydrocannabinol.

(b) A licensee described in subsection (a) of this section shall comply with any requirements established by the department to correct any negligent violation, including:

(1) A reasonable date by which the hemp producer shall correct the negligent violation; and

(2) In the discretion of the commissioner, any requirement that the licensee shall periodically report to the department the licensee's compliance with the state plan for at least two calendar years from the date of the negligent violation.

(c) A licensee that negligently violates the provisions of this article, legislative rules promulgated pursuant to this article, or this state's approved plan authorized pursuant to §19-12E-10 of this code three times in a five-year period, is ineligible to produce hemp in this state for a period of five years beginning on the date of the third violation.

(d) If the department determines that a licensee in this state has intentionally violated the provisions of this article, legislative rules promulgated pursuant to this article, or this state's approved plan authorized pursuant to §19-12E-10 of this code, the provisions of §19-12E-11(b) of this code shall not apply to the violation and the department shall report the licensee to:

(1) The attorney general;

(2) The sheriff of the county in which the hemp is being grown; and

(3) The local detachment of the West Virginia State Police.

(e) Absent a notification pursuant to subsection (d) of this section, a licensee that negligently violates state laws or rules is not subject to any criminal or civil enforcement action by any state, county, or municipal government."

And,

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

Com. Sub. for H. B. 2694 - "A Bill to amend and reenact §19-12E-3, §19-12E-4, §19-12E-5, §19-12E-6, §19-12E-7, §19-12E-8, and §19-12E-9 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto two new sections, designated §19-12E-10 and §19-12E-11, all relating generally to the Industrial Hemp Development Act; adding and modifying definitions; updating code to reflect changes in federal law; clarifying that no person may grow, cultivate, possess, or process industrial hemp without a license from the Department of Agriculture; requiring certain documentation requested by the commissioner to be submitted by licensees; authorizing commissioner to submit plan for state regulation of industrial hemp to United States Department of Agriculture; requiring licensee to provide prior written consent for law enforcement to enter the

premises; providing that a license is not necessary to possess, handle, transport, or sell hemp products and extracts; setting standards regarding sale of industrial hemp products; requiring plan to comply with federal law; providing for continued legality of hemp production in absence of submitted plan; providing for handling negligent violations; addressing handling of non-negligent violations; requiring notification of attorney general and law enforcement under certain circumstances; and making technical corrections.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 700**), and there were—yeas 96, nays 3, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Jennings, Malcolm and Porterfield.

Absent and Not Voting: Cooper.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2694) passed.

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

A message from the Senate, by

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

H. B. 2828, Relating to Qualified Opportunity Zones.

Delegates Capito, Lovejoy and Hicks asked and obtained unanimous consent to be added as cosponsors of H. B. 2828.

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

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

“CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12j. Decreasing modification reducing federal adjusted gross income for the net income of Qualified Opportunity Zone Businesses; effective date.

(a) General. – In addition to the amounts authorized to be subtracted from federal adjusted gross income pursuant to §11-21-12(c) of this code, a modification reducing federal adjusted gross income is hereby authorized for taxable years beginning on and after January 1, 2020:

(1) For individuals: in an amount equal to and limited to that portion of net income included in federal adjusted gross income by a taxpayer in the taxable year that is directly derived from a qualified opportunity zone business located in a qualified opportunity zone which is located in West Virginia;

(2) For partners or members of limited liability companies that are treated as partnerships for federal income tax purposes, and other pass-through entities: in an amount equal to and limited to that portion of the distributive share of the partner or member that is attributable to the flow through income directly derived from the qualified opportunity zone business located in West Virginia. A similar rule applies to shareholders in corporations taxed under subchapter S of the Internal Revenue Code.

(b) *Eligibility.* — To be entitled to modification provided for in subsection (a) of this section, the qualified opportunity zone business must be a newly registered business in West Virginia registered on or after January 1, 2020, or an existing West Virginia business that has qualified as a qualified opportunity zone business in West Virginia on or after that date. Limited liability companies that are treated as corporations for purposes of the federal income tax and West Virginia corporation net income tax and which otherwise qualify in accordance with the requirements and limitations of this section may qualify for the modification authorized under this section.

(c) *Duration.* – The modification provided for in subsection (a) of this section shall apply with respect to a taxpayer for a 10-year period beginning with the first full taxable year during which the qualified opportunity zone business first qualifies as a qualified opportunity zone business, or the first year in which the qualified opportunity zone business reports net income: *Provided*, That the qualified opportunity zone business first qualifies as such on or after January 1, 2020.

(d) The following definitions apply to this section:

(1) ‘Qualified Opportunity Zone Business’ means ‘Qualified Opportunity Zone Business’ as that term is defined in 26 U.S.C. §1400Z-2.

(2) ‘Qualified Opportunity Zone’ means ‘Qualified Opportunity Zone’ as that term is defined in 26 U.S.C. §1400Z-1.

(e) The Tax Commissioner may propose rules necessary to carry out the provisions of this section and to provide guidelines and requirements to ensure uniform administrative practices statewide to effect the intent of this section, all in accordance with the provisions of §29A-3-1 et seq. of this code.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-6b. Decreasing modification reducing federal taxable income for the income of Qualified Opportunity Zone Businesses; effective date.

(a) *General.* - In addition to the amounts authorized to be subtracted from federal taxable income pursuant to §11-24-6(c) of this article, there shall be subtracted from federal taxable income, an amount equal to net income included in federal taxable income by a corporate taxpayer in a taxable year that is ordinary income derived from a qualified opportunity zone business located in a qualified opportunity zone located in West Virginia: *Provided*, That In any case in which a consolidated or combined return is filed, or required to be filed, the amount subtracted from federal taxable income under this section may not exceed that member’s proportionate share of the affiliated, combined or unitary group’s tax liability under this article, that is ordinary income derived from a qualified opportunity zone business located in a qualified opportunity zone located in West Virginia for the taxable year. The provisions of this section are effective for taxable years beginning on and after January 1, 2020.

(b) *Eligibility.* - To be entitled to modification provided for in subsection (a), the qualified opportunity zone business must be a newly registered business in West Virginia registered on or after

January 1, 2020, or an existing West Virginia business that has qualified as a qualified opportunity zone business in West Virginia on or after that date. Limited liability companies that are treated as corporations for purposes of the federal income tax and West Virginia corporation net income tax and which otherwise qualify in accordance with the requirements and limitations of this section may qualify for the modification authorized under this section.

(c) *Duration.* - The modification provided for in subsection (a) of this section shall apply with respect to a taxpayer during the 10-year period beginning with the first full taxable year during which the qualified opportunity zone business first qualifies as a qualified opportunity zone business, or the first year in which the qualified opportunity zone business reports net income: *Provided*, That the qualified opportunity zone business first qualifies as such on or after January 1, 2020.

(d) The following definitions apply to this section:

(1) 'Qualified Opportunity Zone Business' means 'Qualified Opportunity Zone Business' as that term is defined in 26 U.S.C. §1400Z-2.

(2) 'Qualified Opportunity Zone' means 'Qualified Opportunity Zone' as that term is defined in 26 U.S.C. §1400Z-1.

(e) The Tax Commissioner may propose rules necessary to carry out the provisions of this section and to provide guidelines and requirements to ensure uniform administrative practices statewide to carry out the intent of this section, all in accordance with the provisions of §29A-3-1 *et seq.* of this code.

CHAPTER 31. CORPORATIONS.

ARTICLE 15D. WEST VIRGINIA BUSINESS GROWTH IN LOW-INCOME COMMUNITIES TAX CREDIT.

§31-15D-1. Title.

The provisions of this article shall be known as, and may be cited as, the 'West Virginia New Markets Jobs Act'.

§31-15D-2. Definitions.

(a) Any term used in this article has the meaning ascribed by this section unless a different meaning is clearly required by the context of its use or by definition in this article.

(b) For purposes of this article, the term:

(1) 'Affiliate' means an entity that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with the entity specified;

(2) 'Aggregate offset' shall mean the sum of the West Virginia New Market Jobs offset reported in each annual report to the authority pursuant to. § 31-15D-6(a)(10).

(3) 'Annual jobs retained' means the number of full-time equivalent employees that existed before the initial qualified low-income community investment in the qualified active low-income community business that are paid a high wage and for which:

(A) The qualified active low-income community business's chief executive officer or similar officer certifies that the full-time equivalent employee positions would have been eliminated but for the initial qualified low-income community investment; and

(B) The qualified community development entity receives approval from the authority of the satisfaction of this definition;

(4) 'Applicable percentage' means zero percent of the qualified equity investment for the first two credit allowance dates, five percent of the qualified equity investment for the third credit allowance date, and ten percent of the qualified equity investment for each of the final four credit allowance dates;

(5) 'Authority' means the West Virginia Economic Development Authority as provided in §31-15-4 of this code;

(6) 'Credit allowance date' means with respect to any qualified equity investment:

(A) The date on which the investment is initially made; and

(B) Each of the six anniversary dates of such date thereafter;

(7) 'Full-time equivalent employee' means the quotient obtained by dividing the total number of hours for which employees were compensated for employment over the preceding 12 month period by 2,080;

(8) 'High wage' means an hourly wage rate of at least 150 percent of the federal minimum wage;

(9) 'Insurance Commissioner' means the Insurance Commissioner of West Virginia or his or her designee as provided in §33-2-1 of this code;

(10) 'Investor allocation' means the allocation of tax credits to insurance companies pursuant to §31-15D-3.

(11) 'Long-term debt security' means any debt instrument issued by a qualified community development entity with an original maturity date of at least seven years from the date of its issuance, with no repayment, amortization or prepayment features prior to its original maturity date. The qualified community development entity that issues the debt instrument may not make cash interest payments on the debt instrument during the period beginning on the date of issuance and ending on the final credit allowance date in an amount that exceeds the cumulative operating income, as defined by regulations adopted under 26 U. S. C. § 45D, as amended, of the qualified community development entity for that period prior to giving effect to the interest expense of the long-term debt security. The foregoing shall in no way limit the holder's ability to accelerate payments on the debt instrument in situations where the qualified community development entity has defaulted on covenants designed to ensure compliance with this 26 U. S. C. § 45D, as amended;

(12) 'New annual jobs' means the difference, provided that if such difference is less than zero, the new annual jobs shall be zero, between:

(A)(i) The monthly average of full-time equivalent employees that are paid a high wage at a qualified low-income community business for the preceding calendar year; or

(ii) If the preceding calendar year contains the initial low-income community investment, the monthly average of full-time employees that are paid a high-wage at a qualified active low-income

community investment, the monthly average of full-time employees that are paid a high wage at a qualified low-income community business for the months including and after the initial low-income community investment and before the end of the preceding calendar year;

(B) The number of full-time equivalent employees at the qualified active low-income community business on the day of the initial qualified low-income community investment;

(13) 'Opportunity zone' means the low-income census tracts located in West Virginia receiving such designation from the U.S. Treasury Department;

(14) 'Principal business operations' of business is the location or locations where at least 60 percent of the business's employees work or where the employees who are paid at least 60 percent of the business's payroll are located. A business that agrees to relocate or hire new employees using the proceeds of a qualified low-income community investment to establish its principal business operations at a location is deemed to have its principal business operations in the new location provided it satisfies this definition within 180 days after receiving the qualified low-income community investment, unless the authority agrees to a later date;

(15) 'Purchase price' means the amount paid to the qualified community development entity for a qualified equity investment, which may not exceed the amount of qualified equity investment authority certified pursuant to §31-15D-4 of this code;

(16) 'Qualified active low-income community business' has the meaning given the term in 26 U. S. C. § 45D, as amended, and 26 C. F. R. § 1.45D-1 (2012). Any business that is nonprofit or derives, or projects to derive, 15 percent or more of its annual revenue from the rental or sale of real estate is not considered to be a qualified active low-income community business. The real estate exception does not apply to a business that is controlled by or under common control with another business if the second business: (A) Does not derive or project to derive 15 percent or more of its annual revenue from the rental or sale of real estate; and (B) is the primary tenant of the real estate leased from the initial business. A business shall be considered a qualified active low-income community business for the duration of the qualified community development entity's investment in, or loan to, the business if the entity reasonably expects, at the time it makes the investment or loan, that the business will continue to satisfy the requirements of being a qualified active low-income community business, other than the size and net income standards, throughout the entire period of the investment or loan;

(17) 'Qualified community development entity' has the meaning given the term in 26 U. S. C. § 45D, as amended: *Provided*, That the entity has entered into an allocation agreement with the Community Development Financial Institutions Fund of the U. S. Treasury Department with respect to credits authorized by 26 U. S. C. § 45D, as amended, which includes the State of West Virginia within the service area set forth in the allocation agreement. An entity may not be deemed to be controlled by another entity solely as a result of the entity having made a direct or indirect equity investment in the other entity that earns tax credits under 26 U.S.C. § 45D, as amended, or similar state program. The term shall include subsidiary qualified community development entities of any qualified community development entity and transferees of qualified equity investment authority pursuant to §31-15D-4 of this code;

(18) 'Qualified equity investment' means any equity investment in, or long-term debt security issued by, a qualified community development entity that:

(A) Is acquired after the effective date of this act at its original issuance solely in exchange for cash;

(B) Has 100 percent of its cash purchase price used by the qualified community development entity to make qualified low-income community investments in qualified active low-income community businesses located in this state by the first anniversary of the initial credit allowance date; and

(C) Is designated by the qualified community development entity as a qualified equity investment hereunder and is certified by the authority pursuant to §31-15D-4 of this code. This term shall include any qualified equity investment that does not meet the provisions of paragraph (A) of this subdivision if the investment was a qualified equity investment in the hands of a prior holder;

(19) 'Qualified low-income community investment' means any capital or equity investment in, or loan to, any qualified active low-income community business: *Provided*, That with respect to any one qualified active low-income community business, the maximum amount of qualified low-income community investments made in the business, on a collective basis with all of the businesses' affiliates, with the proceeds of qualified equity investments certified under §31-15D-4 of this code, shall be \$5 million, exclusive of qualified low-income community investments made with repaid or redeemed qualified low-income community investments or interest or profits realized thereon;

(20) 'State premium tax liability' means any liability incurred by any entity under §33-3-14, §33-3-14a, §33-3-15, §33-3-16 or §33-3-17 of this code: *Provided*, That if the tax liability imposed under these sections is eliminated or reduced, the term 'state premium tax liability' shall also include any tax liability imposed by this state on an insurance company or other person that had premium tax liability under the laws of this state for the purpose of making up tax revenue lost by the state as a result of the elimination or reduction of the taxes imposed under these sections: *Provided, however*, That the issuance of tax credits pursuant to §33-3-14e of this code shall in no way affect the funding of any fire department or volunteer fire department that receives any moneys from revenues generated by any of the taxes for which credits are issued pursuant to §33-3-14e of this code.

(21) 'State reimbursement amount' means the difference, provided that if such difference is less than zero, the state reimbursement amount shall be zero, between:

(A) The product of the amount of qualified equity investment authority certified and 45 percent; and

(B) The aggregate offset;

(22) 'Tier One Job' means a new annual job held by an employee who served in the active military, naval or air service and who was discharged or released under conditions other than dishonorable, suffers from a disability, was found guilty of a crime and sentenced by a court to a prison term, or was a non-West Virginia resident within the prior 12 months;

(23) 'Tier Two Job' means a new annual job held by an employee who received or had a family member receive, with neither still receiving, benefits under West Virginia Medicaid, West Virginia Unemployment Insurance, the West Virginia Supplemental Nutrition Assistance Program, the West Virginia Children's Health Insurance Program, and West Virginia Head Start;

(24) 'Tier Three Job' means all new annual jobs that are not Tier One Jobs or Two Tier Jobs.

§31-15D-3. Transferability.

No tax credit earned under this article is transferrable to another entity other than an affiliate subject to state premium tax liability or saleable on the open market: *Provided*, That tax credits earned by or allocated to a partnership, limited liability company or S-corporation may be further allocated to the partners, members or shareholders of the entity in accordance with the provisions of any

agreement among the partners, members or shareholders. The allocation shall not be considered a sale for purposes of this article.

§31-15D-4. Certification of qualified equity investments.

(a) A qualified community development entity that seeks to have an equity investment or long-term debt security designated as a qualified equity investment and eligible for tax credits under this article shall first file a credit application with the authority. The authority shall begin accepting applications on July 1, 2019. The application filed by the qualified community development entity shall include the following:

(1) The amount of qualified equity investment authority requested;

(2) The amount of qualified equity investment authority requested that the applicant agrees to designate as a federal qualified equity investment with the Community Development Financial

Institutions Fund;

(3) Evidence of the applicant's certification as a qualified community development entity, including evidence of the service area of the entity that includes this state;

(4) A copy of an allocation agreement executed by the applicant, or its controlling entity, and the Community Development Financial Institutions Fund;

(5) A certificate executed by an executive officer of the applicant attesting that the allocation agreement remains in effect and has not been revoked or canceled by the Community

Development Financial Institutions Fund;

(6) A business plan that includes a revenue impact assessment projecting state and local tax revenue to be generated by the applicant's proposed qualified low-income community investments prepared by a nationally recognized third-party independent economic forecasting firm using a dynamic economic forecasting model that analyzes the applicant's business plan over the 10 years following the date the application is submitted to the authority; and

(7) A signed affidavit from each insurance company stating the amount of investor allocation the insurance company commits to receiving;

(8) A nonrefundable application fee of \$10,000. This fee shall be paid to the authority and shall be required of each application submitted.

(b) Within 30 days of receipt of a completed application containing the information set forth in subsection (a) of this section, the authority shall grant or deny the application in full or in part. The authority shall deny an application if the business plan submitted with the application does not project revenue neutrality against the proposed tax credit utilization or if the applicant does not submit affidavits committing to the allocations equal to 45 percent of the amount of qualified equity authority requested. If the authority denies any part of the application, the authority shall inform the qualified community development entity of the grounds for the denial. If the qualified community development entity provides any additional information required by the authority or otherwise completes its application within days of the notice of denial, the application shall be considered complete as of the original date of submission. If the qualified community development entity fails to provide the information or complete its application within the 15 day period, the application remains denied and must be resubmitted in full with a new submission date.

(c) If the application is complete, the authority shall certify the proposed equity investment or long-term debt security as a qualified equity investment that is eligible for tax credits under this article, subject to the limitations contained in subsection (f) of this section. The Tax Commissioner shall provide written notice of the certification to the qualified community development entity.

(d) The authority shall certify qualified equity investments in the order applications are received by the authority. Applications received on the same day shall be deemed to have been received simultaneously.

(e) For applications that are complete and received on the same day, the authority shall first certify applications by applicants that agree to designate qualified equity investments as federal qualified equity investments in proportionate percentages based on the ratio of the amount of qualified equity investments requested in an application to be designated as a federal qualified equity investment to the total amount of qualified equity investments to be designated as federal qualified equity investments in all applications in which applicants agree to designate qualified equity investments. Thereafter, the authority shall certify the qualified equity investments of all other applicants, including the remaining qualified equity investment authority requested by applicants not designated as federal qualified equity investments, in proportionate percentages based on the ratio of the amount of qualified equity investments not requested in an application to be designated as a federal qualified equity investment to the total amount of qualified equity investments not requested in applications to be designated as federal qualified equity investments.

(f) The authority shall certify no more than \$60 million in qualified equity investments pursuant to this article.

(g) An approved applicant may transfer all or a portion of its certified qualified equity investment authority to its controlling entity or any subsidiary qualified community development entity of the controlling entity: *Provided*, That the applicant and the transferee notify the authority of the transfer with the notice set forth in §31-15D-4(h) of this code and include the information required in the application with respect to such transferee with such notice.

(h) Within one calendar year of the applicant receiving notice of certification, the qualified community development entity shall issue the qualified equity investment and receive cash in the amount of the certified amount and, if applicable, designate the required amount of qualified equity investment authority as a federal qualified equity investment. The qualified community development entity must provide the authority with evidence of the receipt of the cash investment and designation as a federal qualified equity investment, if applicable and the allocation of tax credits to insurance companies that submitted affidavits in the qualified community development entity's application at least equal to 45 percent of the amount of qualified equity investment authority certified by the authority, within one calendar year and five days of the applicant receiving notice of certification. If the qualified community development entity does not receive the cash investment, issue the qualified equity investment and, if applicable, designate the qualified equity investment as a federal qualified equity investment and make such allocation of tax credits to insurance companies within such time period following receipt of the certification notice, the certification shall lapse and the entity may not issue the qualified equity investment without reapplying to the authority for certification.

(i) Lapsed certifications revert to the authority and shall be reissued:

(1) First, pro rata to applicants whose qualified equity investment allocations were reduced pursuant to §31-15D-4(e) of this code with a preference to applicants who have agreed to designate qualified equity investments as federal qualified equity investments; and

(2) Thereafter, in accordance with the provisions of this article.

(j) Recaptured tax credits and the related qualified equity investment authority are eligible for reissuance to qualified community development entities under the provisions of this article and recaptured tax credits shall be reissued:

(1) First, pro rata to applicants whose qualified equity investment allocations were reduced pursuant to §31-15D-4(e) of this code, with a preference to applicants who agreed to designate qualified equity investments as federal qualified equity investments; and

(2) Thereafter, in accordance with the provisions of this article.

(k) The authority must notify the Insurance Commissioner of the names of the entities that are eligible to use tax credits provided under §31-15D-3 of this code, pursuant to an allocation of tax credits or change in allocation of tax credits or due to a transfer of a qualified equity investment upon the allocation, change or transfer.

§31-15D-5. New capital requirement.

No qualified active low-income community business that receives a qualified low-income community investment from a qualified community development entity that issues qualified equity investments under this article, or any affiliates of such a qualified active low-income community business, may directly or indirectly: (1) Own or have the right to acquire an ownership interest in a qualified community development entity or member or affiliate of a qualified community development entity, including, but not limited to, a holder of a qualified equity investment issued by the qualified community development entity; or (2) loan to or invest in a qualified community development entity or member or affiliate of a qualified community development entity, including, but not limited to, a holder of a qualified equity investment issued by a qualified community development entity, where the proceeds of such loan or investment are directly or indirectly used to fund or refinance the purchase of a qualified equity investment hereunder. For purposes of this section, a qualified community development entity shall not be considered an affiliate of a qualified active low-income community business solely as a result of its qualified low-income community investment in such business.

§31-15D-6. Reporting.

Qualified community development entities shall submit a report to the authority within the first five business days after each anniversary of the initial credit allowance date. The report due for the second anniversary of the credit allowance date shall provide documentation as to the investment of 100 percent of the purchase price of the qualified equity investment in qualified low-income community investments in qualified active low-income community businesses located in West Virginia. Each report shall include:

(1) The location of the qualified active low-income community business;

(2) A bank statement of the qualified community development entity evidencing each qualified low-income community investment if such qualified low-income community investment occurred after the prior annual report;

(3) Evidence that the business was a qualified active low-income community business at the time of the qualified low-income community investment if evidence was not submitted in a prior annual report;

(4) Any information regarding the recapture under 26 U. S. C. § 45D, as amended, of a federal tax credit available with respect to a qualified equity investment that is eligible for a credit under this article;

(5) Any information regarding the qualified community development entity redeeming or making principal repayment with respect to a qualified equity investment prior to the seventh anniversary of the issuance of such qualified equity investment;

(6) Any information that the qualified community development entity failed to invest an amount equal to 100 percent of the purchase price of the qualified equity investment in qualified low-income community investments in West Virginia within 24 months of the issuance of the qualified equity investment and maintain the level of investment in qualified low-income community investments in West Virginia until the last credit allowance date for the qualified equity investment. For purposes of this article, an investment shall be considered held by a qualified community development entity even if the investment has been sold or repaid, if the qualified community development entity reinvests an amount equal to the capital returned to or recovered by the qualified community development entity from the original investment, exclusive of any profits realized, in another qualified low-income community investment within 12 months of the receipt of the capital. Periodic amounts received as repayment of principal pursuant to regularly scheduled amortization payments on a loan that is a qualified low-income community investment shall be treated as continuously invested in a qualified low-income community investment if the amounts are reinvested in one or more qualified low-income community investments by the end of the following calendar year. A qualified community development entity shall not be required to reinvest capital returned from qualified low-income community investments after the sixth anniversary of the issuance of the qualified equity investment, and the qualified low-income community investment shall be considered held by the qualified community development entity through the seventh anniversary of the qualified equity investment's issuance;

(7) Number of new annual jobs and annual jobs retained as a result of qualified low-income community investments;

(8) Average annual salary of employment positions described in this subsection;

(9) In the event the authority is provided any information required by subdivision (4), (5) or (6) of this subsection, the authority shall provide that information to the insurance commissioner; and

(10) A qualified community development entity shall calculate the West Virginia New Market Jobs offset annually and include such amount in its annual report. A qualified community development entity may include new annual jobs and annual jobs retained at qualified active low-income community businesses that have repaid or redeemed their qualified low-income community investment. The West Virginia New Markets Job offset shall equal the sum of the following:

(A) The product of the number of new annual jobs that are Tier 1 Jobs and \$50,000;

(B) The product of the number of new annual jobs that are Tier 2 Jobs and \$40,000;

(C) The product of the number of new annual jobs that are Tier 3 Jobs and \$25,000;

(D) The product of the number of annual jobs retained and \$10,000; and

(E) A \$10,000 bonus added to the West Virginia New Markets offset of each of the following:

(I) Each new annual job at qualified active low-income community businesses whose principal business operations are in an opportunity zone; and

(II) Each new annual job held by an employee who has received workforce training either internally or externally, provided such training is verified by the president or similar officer of the qualified low-income community business and approved by the authority.

§ 31-15D-7. Penalty for Job Creation Underperformance.

(a) At any time after the seventh anniversary of the initial credit allowance date and prior to making any distributions or payments that exceed the qualified community development entity's qualified equity investment authority, the qualified community development entity shall calculate the state reimbursement amount and submit such calculation to the authority.

(b) Thereafter, prior to any distribution or payment, the qualified community development entity must remit the state reimbursement amount to the authority.

(c) All amounts received by the authority under this section shall be submitted to the general revenue fund.

CHAPTER 33. INSURANCE.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14e. Credits against premium tax for investment pursuant to the West Virginia New Market Jobs Acts.

(a) For the purpose of this section, the term:

(1) 'Applicable percentage' means zero percent of the qualified equity investment for the first two credit allowance dates, five percent of the qualified equity investment for the third credit allowance date, and ten percent of the qualified equity investment for each of the final four credit allowance dates;

(2) 'Credit allowance date' means with respect to any qualified equity investment:

(A) The date on which the investment is initially made; and

(B) Each of the six anniversary dates of the date thereafter;

(3) 'Insurance Commissioner' means the Insurance Commissioner of West Virginia or his or her designee as provided in §33-2-1 of this code;

(4) 'Long-term debt security' means any debt instrument issued by a qualified community development entity with an original maturity date of at least seven years from the date of its issuance, with no repayment, amortization or prepayment features prior to its original maturity date. The qualified community development entity that issues the debt instrument may not make cash interest payments on the debt instrument during the period beginning on the date of issuance and ending on the final credit allowance date in an amount that exceeds the cumulative operating income, as defined by regulations adopted under 26 U. S. C. § 45D, as amended, of the qualified community development entity for that period prior to giving effect to the interest expense of the long-term debt security. The foregoing shall in no way limit the holder's ability to accelerate payments on the debt

instrument in situations where the qualified community development entity has defaulted on covenants designed to ensure compliance with 26 U. S. C. § 45D, as amended;

(5) 'Purchase price' means the amount paid to the qualified community development entity for a qualified equity investment, which may not exceed the amount of qualified equity investment authority certified pursuant to §31-15D-4 of this code;

(6) 'Qualified active low-income community business' has the meaning given the term in 26 U. S. C. § 45D, as amended, and 26 C. F. R. § 1.45D-1 (2012). Any business that is a nonprofit or derives or projects to derive 15 percent or more of its annual revenue from the rental or sale of real estate is not considered to be a qualified active low-income community business. The real estate exception does not apply to a business that is controlled by or under common control with another business if the second business: (A) Does not derive or project to derive 15 percent or more of its annual revenue from the rental or sale of real estate; and (B) is the primary tenant of the real estate leased from the initial business. A business shall be considered a qualified active low-income community business for the duration of the qualified community development entity's investment in, or loan to, the business if the entity reasonably expects, at the time it makes the investment or loan, that the business will continue to satisfy the requirements for being a qualified active low-income community business, other than the size and net income standards, throughout the entire period of the investment or loan;

(7) 'Qualified community development entity' has the meaning given the term in Section 26 U. S. C § 45D, as amended: *Provided*, That the entity has entered into an allocation agreement with the Community Development Financial Institutions Fund of the U. S. Treasury Department with respect to credits authorized by 26 U. S. C § 45D, as amended, which includes the State of West Virginia within the service area set forth in the allocation agreement. An entity may not be deemed to be controlled by another entity solely as a result of the entity having made a direct or indirect equity investment in the other entity that earns tax credits under 26 U. S. C § 45D, as amended, or similar state program. The term shall include subsidiary community development entities of any such qualified community development entity and transferees of qualified equity investment authority pursuant to §31-15D-4 of this code;

(8) 'Qualified Equity Investment' means any equity investment in, or long-term debt security issued by, a qualified community development entity that:

(A) Is acquired after the effective date of this act at its original issuance solely in exchange for cash;

(B) Has 100 percent of its cash purchase price used by the qualified community development entity to make qualified low-income community investments in qualified active low-income community businesses located in this state by the first anniversary of the initial credit allowance date; and

(C) Is designated by the qualified community development entity as a qualified equity investment hereunder and is certified by the Economic Development Authority pursuant to §31-15D-4 of this code. This term shall include any qualified equity investment that does not meet the provisions of §33-3-14e(a)(9) of this code if the investment was a qualified equity investment in the hands of a prior holder;

(9) 'Qualified low-income community investment' means any capital or equity investment in, or loan to, any qualified active low-income community business: *Provided*, That with respect to any one qualified active low-income community business, the maximum amount of qualified low-income community investments made in the business, on a collective basis with all of the businesses' affiliates, with the proceeds of qualified equity investments certified under §31-15D-4 of this code,

shall be \$5 million, exclusive of qualified low-income community investments made with repaid or redeemed qualified low-income community investments or interest or profits realized thereon;

(10) 'State premium tax liability' means any liability incurred by any entity under §33-3-14, §33-3-14a, §33-3-15, §33-3-16 or §33-3-17 of this code: *Provided*, that if the tax liability imposed under these sections is eliminated or reduced, the term 'state premium tax liability' shall also include any tax liability imposed by this state on an insurance company or other person that had premium tax liability under the laws of this state for the purpose of making up tax revenue lost by the state as a result of the elimination or reduction of the taxes imposed under said sections.

(b) Any entity that makes a qualified equity investment pursuant to §31-15D-4 of this code shall be allowed an earned and vested tax credit against the entity's state premium tax liability that may be used as follows:

(1) The amount of tax credit allowable on each credit allowance date to an entity that makes a qualified equity investment, or to a subsequent holder of the qualified equity investment, shall be annually computed by multiplying the purchase price paid to the qualified community development entity for the qualified equity investment by the applicable percentage for the credit allowance date;

(2) The annual credit allowance, computed pursuant to §33-3-14e(a)(1) of this code, may be used to offset the entity's state premium tax liability for tax periods ending on or after the credit allowance date; and

(3) The amount of the credit claimed by an entity shall not exceed the amount of the entity's state premium tax liability for the tax year for which the credit is claimed. Any amount of tax credit remaining, after the credit is used as provided in this section, may be carried forward for use in any subsequent taxable year.

(c) The Insurance Commissioner may recapture, from the entity that claimed the credit on a return, the tax credit allowed under this article if:

(1) Any amount of a federal tax credit available with respect to a qualified equity investment that is eligible for a credit under this article is recaptured under 26 U. S. C. § 45D, as amended. In such case the Insurance Commissioner's recapture shall be proportionate to the federal recapture with respect to such qualified equity investment;

(2) The qualified community development entity redeems or makes principal repayment with respect to a qualified equity investment prior to the seventh anniversary of the issuance of the qualified equity investment. In such case the Insurance Commissioner's recapture shall be proportionate to the amount of the redemption or repayment with respect to the qualified equity investment;

(3) The qualified community development entity fails to invest an amount equal to 100 percent of the purchase price of the qualified equity investment in qualified low-income community investments in West Virginia within 24 months of the issuance of the qualified equity investment and maintain that level of investment in qualified low-income community investments in West Virginia until the last credit allowance date for the qualified equity investment. For purposes of this article, an investment shall be considered held by a qualified community development entity even if the investment has been sold or repaid, if the qualified community development entity reinvests an amount equal to the capital returned to or recovered by the qualified community development entity from the original investment, exclusive of any profits realized, in another qualified low-income community investment within 12 months of the receipt of such capital. Periodic amounts received as repayment of principal pursuant to regularly scheduled amortization payments on a loan that is a qualified low-income community

investment shall be treated as continuously invested in a qualified low-income community investment if the amounts are reinvested in one or more qualified low-income community investments by the end of the following calendar year. A qualified community development entity may not be required to reinvest capital returned from qualified low-income community investments after the sixth anniversary of the issuance of the qualified equity investment, and the qualified low-income community investment shall be considered held by the qualified community development entity through the seventh anniversary of the qualified equity investment's issuance; or

(4) As a result of any violation of §31-15D-5 of this code.

(d) Recaptured tax credits and the related qualified equity investment authority are eligible for reissuance to qualified community development entities under the provisions of this article and recaptured tax credits shall be reissued:

(1) First, pro rata to applicants whose qualified equity investment allocations were reduced pursuant to §31-15D-4(e) of this code, with a preference to applicants who agreed to designate qualified equity investments as federal qualified equity investments; and

(2) Thereafter, in accordance with the provisions of this article.

(e) Enforcement of the recapture provisions set forth in this section shall be subject to a six-month cure period. No recapture shall occur until the qualified community development entity shall have been given notice of noncompliance and afforded six months from the date of such notice to cure the noncompliance.

(f) In rendering letter rulings and making other determinations under this section, to the extent applicable, the Insurance Commissioner shall look for guidance in 26 U. S. C. § 45D, as amended, and the rules and regulations issued thereunder."

And,

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

H. B. 2828 "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section designated §11-21-12j; and to amend said code by adding thereto a new section, designated §11-24-6b; and to amend said code by adding thereto a new article, designated §31-15D-1, §31-15D-2, §31-15D-3, §31-15D-4, §31-15D-5, §31-15D-6, and §31-15D-7; and to amend said code by adding thereto a new section, designated §33-3-14e; all relating to promoting investment and business growth in low-income communities in West Virginia; providing title; defining terms; providing for transferability; certification of qualified equity investment; providing for recapture of tax credits; requiring notice of noncompliance; letter rulings; new capital requirement; reporting; providing penalty for job creation underperformance; establishing amount of credit allowed; providing mechanism to exempt corporate net income tax and personal income tax for new businesses in Qualified Opportunity Zones located in West Virginia; providing effective date; authorizing rulemaking in Commissioner."

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 701**), and there were—yeas 96, nays 2, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Hanna and Phillips.

Absent and Not Voting: Cooper and Rodighiero.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2828) passed.

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

A message from the Senate, by

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

H. B. 3020, Relating to sole source contracts for goods and services with nonprofit corporations affiliated with the respective education institutions.

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

On page one, section three, lines ten through seventeen, by striking out all of subsection (b) and inserting in lieu thereof the following:

“(b) When a governing board, the commission, or the council determines that a contract for financial services is necessary and proper, it may enter into such a contract with an affiliated nonprofit corporation under such financial terms as the governing board, commission, or council determines are reasonable and proper in the sound administration of their financial responsibilities to the state. In so doing, the affiliated nonprofit corporation shall be deemed a sole source in respect to any applicable law or regulation relating to expenditures of public funds.”

And,

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

H. B. 3020 - “A Bill to amend and reenact §18B-5-3 of the Code of West Virginia, 1931, as amended, relating to the authority of the Higher Education Policy Commission, the Council for Community and Technical College Education, and institutional governing boards to enter into contracts for financial services; and providing for specified flexibility entering into agreements with certain affiliated nonprofit corporations.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 702**), and there were—yeas 94, nays 5, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: S. Brown, Campbell, Hardy, Lavender-Bowe and Rowe.

Absent and Not Voting: Cooper.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3020) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 3024, West Virginia Business Ready Sites Program.

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

On page four, section one-n, line seventy-six, after the word "section", by changing the period to a colon and inserting the following proviso: "Provided further, That if the number of congressional districts is reduced to two, that no more than five Industrial Development Sites shall be located in any one congressional district."

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 703**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Cooper.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3024) passed.

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

On this question, the yeas and nays were taken (**Roll No. 704**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Cooper.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3024) takes effect from its passage.

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

A message from the Senate, by

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

H. B. 3044, Requiring the Commissioner of Highways to develop a formula for allocating road funds.

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

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

ARTICLE 30. ALLOCATION OF FUNDS.

§17-30-1. Findings.

The Legislature finds that:

(1) According to an independent audit report submitted to the Joint Committee on Government and Finance on January 10, 2016, the West Virginia Division of Highways currently has no formula in place to allocate and distribute road funds among districts and counties. The audit report recommended that in order to more effectively distribute funds, the division should create a framework to allocate and distribute road funds to each of the districts and county organizations; that a baseline maintenance capital plan should be reexamined and revised periodically; and that metrics for the allocation process should be transparent.

(2) A transparent process to develop an official formula for allocating road funds among districts in the state is crucial to ensure that funds are distributed in an effective and efficient manner, based on the needs of the counties within the districts.

§17-30-2. Definitions.

For the purposes of this article:

'Commissioner' means the West Virginia Commissioner of Highways.

'District' means one of the management areas of the state, which include one or more counties, established by the West Virginia Division of Highways, with each district headed by a separate district engineer or manager.

'Heavy truck' means an on-road vehicle with a gross vehicle weight rating of 50,000 pounds or more.

'Road funds' means state funds appropriated or otherwise available to the West Virginia Division of Highways for the purpose of:

(A) New construction;

(B) Maintenance; or

(C) New capacity improvements.

§17-30-3. Formula for allocation of funds.

(a) Prior to the beginning of the regular legislative session in 2020, the commissioner shall develop and propose a formula for the effective and efficient allocation of state road funds among the districts and counties in this state, to be promulgated as a legislative rule.

(b) The commissioner shall include, but not be limited to, the following factors in the formula developed pursuant to this section:

(1) The amount of population growth in each county according to the most recent United States Census projection;

(2) The number of total lane miles in a county;

(3) The approximate number of vehicle miles travelled within a county;

(4) The approximate number of heavy truck miles travelled within a county; and

(5) The number of bridges in a county and their condition.

(c) Before developing the formula required by this section, the commissioner shall review and consider all public comments submitted to the commissioner pursuant to §17-30-4 of this code.

§17-30-4. Public comment period.

(a) On or before October 1, 2019, the commissioner shall develop and implement a mechanism to proactively seek public comments and recommendations regarding the division's current allocation of road funds.

(b) In developing and implementing a mechanism to seek public comments, the commissioner shall, at a minimum:

(1) Use multimedia resources to publicize the public comment period;

(2) Allow a period of six weeks for members of the public to submit comments to the commissioner through written and electronic forms of communication; and

(3) Make all public comments received by the commissioner available for the public to view on the department's website.

(c) The commissioner shall issue targeted communications to the following entities to encourage representatives of those entities to participate in the public comment period required by this subsection:

(1) Division of Highways district offices;

(2) County commissions; and

(3) Metropolitan planning organizations.

§17-30-5. Legislative rule.

(a) For approval during the regular legislative session of 2021, the commissioner shall propose rules for legislative approval in accordance with the requirements of §29A-3-1 et seq. of this code, including the formula developed pursuant to this section.

(b) The proposed legislative rule shall allow districts to exercise discretion over how to distribute funds among counties within the district over a period of five years: *Provided*, That at the end of the five-year period, all counties within the district shall have received the funds apportioned to them by the formula developed pursuant to this article.

(c) On or before June 30, 2020, the commissioner shall present the proposed legislative rule containing the formula developed pursuant to this section to the Joint Legislative Oversight Commission on Department of Transportation Accountability."

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

A message from the Senate, by

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

H. B. 3141, Requiring capitol building commission authorization for certain renovations.

The amendment by the Senate being as follows:

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

“ARTICLE 8. CAPITOL BUILDING COMMISSION.

§4-8-4. Powers and duties generally.

The ~~capitol building commission~~ Capitol Building Commission shall review and approve or reject all plans recommending substantial physical changes inside or outside the state Capitol ~~capitol~~ building or surrounding complex, ~~including the public meeting rooms, hallways and grounds,~~ which affect the appearance thereof. In all instances constituting a substantial physical change, the approval of the commission is mandatory before a contract may be let or before changes are started if the work is not done under a contract and includes all areas occupied by the Legislature, the Governor, and the Supreme Court of Appeals. As used in this article, the surrounding complex shall include the Governor’s mansion and other buildings used by the Governor as part of his or her residence, the state science and cultural center, all state office buildings located in the immediate vicinity of the state Capitol ~~capitol~~, and the roadways, structures and facilities which are incidental to such buildings. As used in this article, substantial physical change shall include, but not be limited to, permanent physical changes that alter the appearance of ~~the public~~ all areas of the capitol building and surrounding complex. The secretary of the Department of Administration shall promulgate rules and regulations, pursuant to the provisions of §29A-1-1 *et seq.* of this code, which rules and regulations shall be subject to the approval of the ~~capitol building commission~~ Capitol Building Commission, to implement the provisions of this article.

On motion of Delegate Kessinger, the House concurred in the Senate amendment with the following further amendment, on page one, section four, line six, after the word “contract”, by inserting “or before work on a change order in excess of \$40,000 is begun”.

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 705**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Cooper.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3141) passed.

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

A message from the Senate, by

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

H. B. 3142, Relating to reducing the severance tax on thermal or steam coal.

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

On page one, section three, lines ten through fourteen, by striking out the provisos and inserting in lieu thereof a new proviso to read as follows:

“Provided, That effective July 1, 2019, the tax rate imposed by this subsection on the gross value of thermal or steam coal produced shall be reduced incrementally over the next three tax years for a total reduction of two percent by July 1, 2021. That on July 1, 2019, the reduction shall occur at the rate of 35 percent of the two percent reduction, on July 1, 2020, the reduction shall occur at the rate of 65 percent of the two percent reduction, and on July 1, 2021, at the rate of 100 percent of the two percent reduction.”

On page three, section three, after line sixty-one, by inserting the following:

“(i) Termination and expiration of the privilege tax on limestone or sandstone. — The taxes imposed under this section for persons exercising the privilege of engaging or continuing within this state in the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use limestone or sandstone shall cease, terminate and be of no further force or effect on and after July 1, 2019. Termination of the taxes imposed under this section do not relieve any person of any liability or duty to pay tax imposed under this article with respect to privileges exercised before the effective date of the termination.”

And,

On pages ten and eleven, section six-a, lines fifty-one through eighty, by striking out all of subsection (f) and inserting in lieu thereof a new subsection (f) to read as follows:

“(f) (1) No distribution made to a county under this section may be deposited into the county’s general revenue fund. The county commission of each county receiving a distribution under this section shall establish a special account to be known as the “(Name of County) Coal County Reallocated Severance Tax Fund” into which all distributions made to that county under this section shall be deposited.

(2) Moneys in the county’s coal county reallocated severance tax fund shall be expended by the county commission solely for economic development projects and infrastructure projects.

(3) For purposes of this section:

(A) ‘Economic development project’ means a project in the state which is likely to foster economic growth and development in the area in which the project is developed for commercial, industrial, community improvement or preservation or other proper purposes.

(B) ‘Infrastructure project’ means a project in the state which is likely to foster infrastructure improvements including, but not limited to, post-mining land use, any water or wastewater facilities or any part thereof, storm water systems, steam, gas, telephone and telecommunications, broadband development, electric lines and installations, roads, bridges, railroad spurs, drainage and flood control facilities, industrial park development or buildings that promote job creation and retention.

(4) A county commission may not expend any of the funds available in its coal county reallocated severance tax fund for personal services, for the costs of issuing bonds, or for the payment of bond debt service, and shall direct the total funds available in its coal county reallocated severance tax fund to project development, which may include the costs of architectural and engineering plans, site

assessments, site remediation, specifications and surveys, and any other expenses necessary or incidental to determining the feasibility or practicability of any economic development project or infrastructure project.

(5) On or before December 31, 2013, and December 1 of each year thereafter, the county commission of each county receiving a distribution of funds under this section shall deliver to the Joint Committee on Government and Finance a written report setting forth the specific projects for which those funds were expended during the next preceding fiscal year, a detailed account of those expenditures, and a showing that the expenditures were made for the purposes required by this section.”

And,

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

H. B. 3142 - “A Bill to amend and reenact §11-13A-3, §11-13A-6 and §11-13A-6a of the Code of West Virginia, 1931, as amended, all relating to severance taxes; reducing the severance tax on thermal or steam coal to incrementally over three years; providing for a total reduction of two percent of the coal severance tax at the conclusion of the three year period; providing for a reduction of thirty-five percent of the two percent reduction in the first year; providing for a reduction of sixty-five percent of the two percent reduction in the second year; providing for a the full two percent reduction in the third year; providing for an elimination of the severance tax on limestone or sandstone; and establishing minimum amounts of distribution of portion of severance taxes on coal dedicated for use and benefit of coal-producing counties.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 706**), and there were—yeas 82, nays 17, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Bates, S. Brown, Cowles, Doyle, Estep-Burton, Fleischauer, Hansen, Hornbuckle, Miley, Pushkin, Pyles, Robinson, Rowe, Sponaugle, C. Thompson, Walker and Williams.

Absent and Not Voting: Cooper.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3142) passed.

A message from the Senate, by

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

H. B. 3143, Relating to requirements for consumer loans in West Virginia.

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

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

“ARTICLE 4. REGULATED CONSUMER LENDERS.

§46A-4-107. Loan finance charge for regulated consumer lenders.

(1) With respect to a regulated consumer loan, including a revolving loan account, a regulated consumer lender may contract for and receive a loan finance charge not exceeding that permitted by this section.

(2) On a loan of ~~\$2,000~~ \$3,500 or less which is unsecured by real property, the loan finance charge, calculated according to the actuarial method, may not exceed 31 percent per year on the unpaid balance of the principal amount.

(3) On a loan greater than ~~\$2,000~~ \$3,500 but less than or equal to \$15,000, or which is secured by real property, the loan finance charge, calculated according to the actuarial method, may not exceed 27 percent per year on the unpaid balance of the principal amount: *Provided*, That the loan finance charge on any loan greater than ~~\$10,000~~ \$15,000 may not exceed 18 percent per year on the unpaid balance of the principal amount. Loans made by regulated consumer lenders shall be subject to the restrictions and supervision set forth in this article irrespective of their rate of finance charges.

(4) Where the loan is nonrevolving and is greater than ~~\$2,000~~ \$3,500, the permitted finance charge may include a charge of not more than a total of two percent of the amount financed for any origination fee, points, or investigation fee: *Provided*, That where any loan, revolving or nonrevolving, is secured by real estate, the permitted finance charge may include a charge of not more than a total of five percent of the amount financed for any origination fee, points, or investigation fee. In any loan secured by real estate, the charges may not be imposed again by the same or affiliated lender in any refinancing of that loan made within 24 months thereof, unless these earlier charges have been rebated by payment or credit to the consumer under the actuarial method or the total of the earlier and proposed charges does not exceed five percent of the amount financed. Charges permitted under this subsection shall be included in the calculation of the loan finance charge. The financing of the charges ~~may be~~ is permissible and ~~may does~~ not constitute charging interest on interest. In a revolving home equity loan, the amount of the credit line extended ~~shall~~ is, for purposes of this subsection, ~~constitute~~ the amount financed. Other than herein provided, no points, origination fee, investigation fee, or other similar prepaid finance charges attributable to the lender or its affiliates may be levied. Except as provided for by §46A-3-109 of this code, no additional charges may be made; nor may any charge permitted by this section be assessed unless the loan is made. To the extent that this section overrides the preemption on limiting points and other charges on first lien residential mortgages contained in Section 501 of the United States Depository Institutions Deregulation and Monetary Control Act of 1980, the state law limitations contained in this section shall apply. If the loan is precomputed:

(a) The loan finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) The effect of prepayment, refinancing, or consolidation is governed by the provisions on rebate upon prepayment, refinancing, or consolidation contained in §46A-3-111 of this code.

(5) For the purposes of this section, the term of a loan commences on the date the loan is made. Differences in the lengths of months are disregarded and a day may be counted as one thirtieth of a month. Subject to classifications and differentiations the licensee may reasonably establish, a part of a month in excess of 15 days may be treated as a full month if periods of 15 days or less are disregarded and if that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(6) With respect to a revolving loan account:

(a) A charge may be made by a regulated consumer lender in each monthly billing cycle which is one-twelfth of the maximum annual rates permitted by this section computed on an amount not exceeding the greatest of:

(i) The average daily balance of the debt; or

(ii) The balance of the debt at the beginning of the first day of the billing cycle, less all payments on and credits to such debt during such billing cycle and excluding all additional borrowings during the billing cycle.

For the purpose of this subdivision, a billing cycle is monthly if the billing statement dates are on the same day each month or do not vary by more than four days therefrom.

(b) If the billing cycle is not monthly, the maximum loan finance charge which may be made by a regulated consumer lender is that percentage which bears the same relation to an applicable monthly percentage as the number of days in the billing cycle bears to 30.

(c) Notwithstanding subdivisions (a) and (b) of this subsection, if there is an unpaid balance on the date as of which the loan finance charge is applied, the licensee may contract for and receive a charge not exceeding 50 cents if the billing cycle is monthly or longer or the pro rata part of 50 cents which bears the same relation to 50 cents as the number of days in the billing cycle bears to 30 if the billing cycle is shorter than monthly, but no charge may be made pursuant to this subdivision if the lender has made an annual charge for the same period as permitted by the provisions on additional charges.

(7) As an alternative to the loan finance charges allowed by subsections (2) and (4) of this section, a regulated consumer lender may on a loan not secured by real estate of ~~\$2,000~~ \$3,500 or less contract for and receive interest at a rate of up to 31 percent per year on the unpaid balance of the principal amount, together with a nonrefundable loan processing fee of not more than two percent of the amount financed: *Provided*, That no other finance charges are imposed on the loan. The processing fee permitted under this subsection shall be included in the calculation of the loan finance charge and the financing of the fee shall be permissible and may not constitute charging interest on interest.

(8) Notwithstanding any contrary provision in this section, a licensed regulated consumer lender who is the assignee of a nonrevolving consumer loan unsecured by real property located in this state, which loan contract was applied for by the consumer when he or she was in another state, and which was executed and had its proceeds distributed in that other state, may collect, receive, and enforce the loan finance charge and other charges, including late fees, provided in the contract under the laws of the state where executed: *Provided*, That the consumer was not induced by the assignee or its in-state affiliates to apply and obtain the loan from an out-of-state source affiliated with the assignee in an effort to evade the consumer protections afforded by this chapter. Such charges may not be considered to be usurious or in violation of the provisions of this chapter or any other provisions of this code.”

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

Conference Committee Report Availability

At 4:09 p.m., the Clerk announced that the report of the Committee of Conference on **Com. Sub. for S. B. 241**, Permitting county court clerks scan certain documents in electronic form, shall be available in the Clerk’s Office.

Delegate Summers asked and obtained unanimous consent to return to further consideration of **Com. Sub. for S. B. 352**, Relating to Division of Corrections and Rehabilitation acquiring and disposing of services, goods, and commodities.

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

On this question, the yeas and nays were taken (**Roll No. 707**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Cooper.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 352) takes effect from its passage.

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

At 4:19 p.m., the House of Delegates recessed until 6:30 p.m.

* * * * *

Evening Session

* * * * *

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

Conference Committee Report Availability

At 6:50 p.m., the Clerk announced that the report of the Committee of Conference on **Com. Sub. for S. B. 317**, Authorizing three or more adjacent counties form multicounty trail network authority, shall be available in the Clerk's Office.

Messages from the Senate

A message from the Senate, by

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

Com. Sub. for S. B. 522, Creating Special Road Repair Fund.

On motion of Delegate Summers, the House of Delegates refused to recede from its amendment and requested the Senate to agree to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses.

Whereupon,

The Speaker appointed as conferees on the part of the House of Delegates the following:

Delegates Criss, Linville and Barrett.

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

A message from the Senate, by

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

Com. Sub. for H. B. 2479, Corporate Governance Annual Disclosure Act.

A message from the Senate, by

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

Com. Sub. for H. B. 2490, Preventing proposing or enforcing rules that prevent recreational water facilities from making necessary upgrades.

A message from the Senate, by

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

H. B. 2665, Supplemental appropriation for PEIA Rainy Day Fee.

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

On page two, lines sixteen and seventeen, by striking out ‘and §5-16-28’.

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 708**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Cooper.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2665) passed.

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

On this question, the yeas and nays were taken (**Roll No. 709**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Cooper.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2665) takes effect from its passage.

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

A message from the Senate, by

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

Com. Sub. for H. B. 2673, Creating the Oil and Gas Abandoned Well Plugging Fund.

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

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

“CHAPTER 11. TAXATION.

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

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

(a) *Imposition of tax.* — For the privilege of engaging or continuing within this state in the business of severing natural gas or oil for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising such the privilege an annual privilege tax at the rate and measure provided in subsection (b) of this section; *Provided*, That effective for all taxable periods beginning on or after January 1, 2000, there is an exemption from the imposition of the tax provided in this article on the following: (1) Free natural gas provided to any surface owner; (2) natural gas produced from any well which produced an average of less than 5,000 cubic feet of natural gas per day during the calendar year immediately preceding a given taxable period; (3) oil produced from any oil well which produced an average of less than one-half barrel of oil per day during the calendar year immediately preceding a given taxable period; and (4) for a maximum period of 10 years, all natural gas or oil produced from any well which has not produced marketable quantities of natural gas or oil for five consecutive years immediately preceding the year in which a well is placed back into production and thereafter produces marketable quantities of natural gas or oil.

(b) *Rate and measure of tax.* — The tax imposed in subsection (a) of this section ~~shall be~~ is five percent of the gross value of the natural gas or oil produced by the producer as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article; *Provided*, That effective for taxable periods beginning on or after January 1, 2019:

(1) For all natural gas produced from any well which produced an average in excess of 60,000 cubic feet of natural gas per day during the calendar year immediately preceding a given taxable year, and for oil produced from any well which produced an average in excess of 10 barrels of oil per day, during the calendar year immediately preceding the beginning date of a given taxable year, the rate of tax is 5% of the gross value of the natural gas or oil produced as shown by the gross proceeds derived from the sale thereof by the producer; and

(2) For all natural gas produced from any well which produced an average between 5,000 cubic feet of natural gas per day and 60,000 cubic feet of natural gas per day during the calendar year immediately preceding the beginning date of a given taxable year, and for oil produced from any well which produced an average between ½ barrel per day and 10 barrels per day, during the calendar year immediately preceding the beginning date of a given taxable year, the rate of tax is 2.5% of the gross value of the natural gas or oil produced as shown by the gross proceeds derived from the sale thereof by the producer.

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

~~(d)(1) The Legislature finds that in addition to the production reports and financial records which must be filed by oil and gas producers with the State Tax Commissioner in order to comply with this section, oil and gas producers are required to file other production reports with other agencies,~~

~~including, but not limited to, the office of oil and gas, the Public Service Commission and county assessors. The reports required to be filed are largely duplicative, the compiling of the information in different formats is unnecessarily time consuming and costly, and the filing of one report or the sharing of information by agencies of government would reduce the cost of compliance for oil and gas producers.~~

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

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

(d) For purposes of this section, in determining the average amount of production of gas and oil in any given calendar year, a taxpayer must calculate the actual production of such well in the calendar year and divide the same by the number of days the well was in operation and producing gas or oil in such calendar year.

(e) The proceeds of the tax imposed at the rate prescribed under subdivision (2), subsection (b) of this section are dedicated to the Oil and Gas Abandoned Well Plugging Fund created under §22-6-29a of this code: *Provided*, That if on June 1, 2021, or on June 1 of any year thereafter there exists in the Oil and Gas Abandoned Well Plugging Fund an amount equal to or exceeding the sum of \$4 million then the special rate of tax imposed under subdivision (2), subsection (b) of this section is reduced to zero for the taxable year beginning on and after the next succeeding January 1. The Tax Commissioner shall issue an Administrative Notice by July 1 of each year indicating the balance in the fund as of the immediately preceding June 1 and the rate of tax on wells pursuant to this subsection.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS.

§22-6-29a. Oil and Gas Abandoned Well Plugging Fund.

(a)(1) This section may be referred to as the Oil and Gas Abandoned Well Plugging Fund Act. There is established within the Treasury of the State of West Virginia the special use fund known as the Oil and Gas Abandoned Well Plugging Fund.

(2) The Oil and Gas Abandoned Well Plugging Fund shall be administered by the secretary solely for the purposes of carrying out the provisions of this section.

(3) Any balance remaining in the Oil and Gas Abandoned Well Plugging Fund at the end of any state fiscal year does not revert to the General Revenue Fund but shall remain in the special revenue account and may be used only as provided in this section. The revenues deposited in the Oil and Gas Abandoned Well Plugging Fund may not be designated as nonaligned state special revenue funds under §11B-2-32 of this code.

(b)(1) Using funds from the Oil and Gas Reclamation Fund and the Oil and Gas Abandoned Well Plugging Fund, the secretary shall plug and reclaim abandoned oil and gas wells without a responsible operator all in accordance with plans and specifications developed pursuant to the provisions of this article relating to the plugging and reclamation of wells, and the rules establishing well plugging standards adopted thereunder.

(2) Funds from the Oil and Gas Abandoned Well Plugging Fund may only be used to plug abandoned oil and gas wells without a responsible operator and to reclaim the property disturbed from the plugging.

(3) On or before July 1 of each year, the secretary shall make an annual report to the Governor and the Legislature as to the use of the Oil and Gas Abandoned Well Plugging Fund and the Oil and Gas Reclamation Fund. The report shall include the balance in both funds on June 1 of each year. The secretary's annual report shall set forth the number of wells reclaimed or plugged through the use of the Oil and Gas Reclamation Fund and the Oil and Gas Abandoned Well Plugging Fund in the previous year. The report shall identify each reclamation and plugging project, state the number of wells plugged thereby, show the county in which the wells are located, and make a detailed accounting of all expenditures from the Oil and Gas Reclamation Fund and from the Oil and Gas Abandoned Well Plugging Fund. The annual report shall also include a 5-year plan detailing current and future projects and activities to plug and reclaim wells.

(4) Wells shall be plugged, and plugged wells reclaimed by contract entered into by the secretary on a competitive bid basis as provided for under the provisions of §5A-3-1 et seq. of this code and the rules promulgated thereunder."

And,

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

Com. Sub for H. B. 2673 - "A Bill to amend and reenact §11-13A-3a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §22-6-29a, all relating to creating the Oil and Gas Abandoned Well Plugging Fund for use by the West Virginia Department of Environmental Protection to plug abandoned oil and gas wells without a responsible operator; providing for administration of the fund; requiring severance tax to be deposited in the fund; providing specific purposes and limitations for use of the fund; modifying imposition of the tax on the privilege of severing natural gas or oil by marginal oil and gas wells; providing exemptions from the severance tax; deleting a subsection of the code which expired by its own terms; providing reporting requirements for the Oil and Gas Reclamation Fund and the Oil and Gas Abandoned Well Plugging Fund; providing rulemaking authority; and providing a short title."

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 710**), and there were—yeas 91, nays 8, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: S. Brown, Doyle, Fleischauer, Hansen, Pushkin, Pyles, Walker and Williams.

Absent and Not Voting: Cooper.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2673) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 2674, Creating a student loan repayment program for a mental health provider.

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

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

“ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN PROGRAMS.

§18C-3-3. Health Sciences Service Program; establishment; administration; eligibility.

(a) *Legislative findings.* — The Legislature finds that there is a critical need for additional practicing health care professionals in West Virginia. Therefore, there is created a Health Sciences Service Program to be administered by the Vice Chancellor for Health Sciences. The purpose of this program is to provide an incentive for health professional students to complete their training and provide primary care and emergency medical care in underserved areas of West Virginia.

(b) *Special account.* — There is continued a special revolving fund account under the Higher Education Policy Commission in the State Treasury formerly known as the Health Sciences Scholarship Fund. ~~and hereafter designated the Health Sciences Service Program Fund.~~ The fund shall be used to accomplish the purposes of this section. The fund consists of any of the following:

(1) All unexpended health sciences scholarship funds on deposit in the State Treasury on the effective date of this section;

(2) Appropriations as may be provided by the Legislature;

(3) Repayments, including interest as set by the Vice Chancellor for Health Sciences, collected from program award recipients who fail to practice or teach in West Virginia under the terms of an award agreement or the health sciences scholarship program previously established by this section; and

(4) Amounts that may become available from other sources.

Balances remaining in the fund at the end of the fiscal year do not expire or revert to the general revenue. All costs associated with the administration of this section shall be paid from the Health Sciences Service Program Fund under the direction of the Vice Chancellor for Health Sciences.

(c) *Eligibility requirements.* — Award preference is given to West Virginia residents. An individual is eligible for consideration for a Health Sciences Service Program award if the individual:

(1) Either:

(A) Is a fourth-year medical student at the Marshall University School of Medicine, West Virginia School of Osteopathic Medicine or West Virginia University School of Medicine who has been accepted in a primary care or emergency medicine internship/residency program in West Virginia; or

(B) Is enrolled in an approved education program at a West Virginia institution leading to a degree or certification in the field of nurse practitioner, nurse educator, nurse midwife, physician assistant, dentist, pharmacist, physical therapist, doctoral clinical psychologist, licensed independent clinical

social worker or other disciplines identified as shortage fields by the Vice Chancellor for Health Sciences; and

(2) Signs an agreement to practice for at least two years in an underserved area of West Virginia or, if pursuing a Master's Degree in nursing, signs an agreement to teach at least two years for a school of nursing located in West Virginia, as may be determined by the Vice Chancellor for Health Sciences, after receiving the master's degree.

(d) *Program awards.* — Program awards shall be in an amount set by the Higher Education Policy Commission of at least \$20,000 for medical and dental students and at least \$10,000 for all others and may be awarded by the Vice Chancellor for Health Sciences, with the advice of an advisory panel, from the pool of all applicants with a commitment to practice in an underserved area of West Virginia. This section does not grant or guarantee any applicant any right to a program award.

(e) *Repayment provisions.* — A program award recipient who fails to practice in an underserved area of West Virginia within six months of the completion of his or her training, or who fails to complete his or her training or required teaching, is in breach of contract and is liable for repayment of the program award and any accrued interest. The granting or renewal of a license to practice in West Virginia or to reciprocal licensure in another state based upon licensure in West Virginia is contingent upon beginning payment and continuing payment until complete repayment of the award and any accrued interest. A license, renewal or reciprocity may not be granted to any person whose repayment is in arrears. The appropriate regulatory board shall inform all other states where a recipient has reciprocated based upon West Virginia licensure of any refusal to renew licensure in West Virginia as a result of failure to repay the award. This provision shall be explained in bold type in the award contract. Repayment terms, not inconsistent with this section, shall be established by the Vice Chancellor for Health Sciences pursuant to the rule required by this section.

(f) *Loan repayment program.* —

(1) There is created a student loan repayment program to be administered by the Higher Education Policy Commission. The loan repayment program shall help repay the student loans for mental health providers who provide therapy and counseling services and who reside in West Virginia and work in an underserved area of West Virginia for up to three years beginning January 1, 2020. Individuals participating in the loan repayment program may be eligible to receive up to \$30,000 to be dispersed as follows:

(A) A participant may receive a loan repayment program award of up to \$10,000 each year in exchange for the participant completing one year of practice in an underserved area.

(B) A participant may not receive a program award for more than three years of practice.

(C) A participant must direct each award received toward the repayment of his or her educational loans.

(2) There is created a special revenue fund account under the Higher Education Policy Commission in the State Treasury known as the 'Mental Health Provider Student Loan Repayment Fund'. The fund shall be used to accomplish the purposes of this subsection. The fund shall consist of appropriations as may be provided by the Legislature. Any moneys remaining in the fund at the close of a fiscal year shall be carried forward for use in the next fiscal year.

(3) The Higher Education Policy Commission shall promulgate a rule to implement the provisions of this subsection pursuant to §29A-3A-1.

~~(f)~~ (g) Rule. — The Higher Education Policy Commission shall promulgate a rule pursuant to §29A-3A-1 *et seq.* of this code to implement and administer this section.

~~(g)~~ (h) Definitions. — As used in this section:

(1) 'Training' means:

(A) The entire degree program or certification program for nurse midwives, nurse practitioners, nurse educators, physician assistants, dentists, pharmacists, physical therapists, doctoral clinical psychologists, licensed independent clinical social workers and other disciplines identified as shortage fields by the Vice Chancellor for Health Sciences; or

(B) Completion of a degree program and an approved residency/internship program for students pursuing a degree in medicine or osteopathy, or as otherwise may be designated for such students in the rule required by this section.

(2) 'Underserved area' means any primary care health professional shortage area located in the state as determined by the Bureau for Public Health or any additional health professional shortage area, including an emergency medicine professional determined by the Vice Chancellor for Health Sciences.

§18C-3-5. Non-resident Medical Student Tuition Regularization Program.

(a) Findings. — The Legislature finds as follows:

(1) There is a critical need for additional primary care physicians practicing in West Virginia;

(2) West Virginia has an aging population, and an increasing need for recruiting primary care physicians and placing primary care physicians in rural areas of the state;

(3) West Virginia has a historically low retention rate of state resident medical students following graduation;

(4) Efforts by the medical schools in West Virginia to increase class sizes as a means of increasing the number of physicians practicing in the state have been largely ineffective;

(5) The primary care field of practice yields a lower wage than other medical specialties and maintains an extreme shortage of practicing physicians, particularly in rural areas of the state;

(6) The high cost of nonresident medical education tuition, and resulting high level of debt incurred by students, often prohibit nonresident graduates who remain in the state from entering a primary care practice;

(7) Many nonresident medical students in West Virginia have indicated that they would be willing to remain in the state as a practicing physician if it was affordable;

(8) A waiver of the state resident to nonresident tuition rate differential would offset the significant student debt load incurred by nonresident medical school graduates;

(9) Beginning a medical practice with up to four years committed to practicing medicine in a specific area has a strong likelihood of influencing a nonresident medical school graduate to remain in that area following the service commitment;

(10) Investing resources, developing professional networks, and creating community ties all serve to create permanent connections to an area for an individual who is not originally from that area; and

(11) Attracting practicing physicians to rural and medically under-served areas of the state will further attract related health-care professionals that support a medical practice or facility and will expand the economic and job-growth potential of such areas.

(b) Purpose. – It is the purpose of this section to offer nonresident medical students a partial tuition waiver as a means of recruiting practicing physicians to under-served areas, and to primary care and practitioner shortage fields in West Virginia.

(c) Program established. – There is created the Nonresident Medical Student Tuition Regularization Program to be administered by the Vice Chancellor for Health Sciences in cooperation with the deans of the three medical schools in the state.

(1) Two nonresident medical students from each medical school in the state are selected annually to participate in the program subject to the exception provided in subsection (f) of this section.

(2) Each student selected is charged the state resident tuition rate for each academic year he or she is enrolled in the program, and has the cost differential between the resident and nonresident rates waived by the institution at which he or she is enrolled.

(3) For each academic year that a medical student participates in the program, he or she shall commit to render services for one calendar year as a medical doctor or a doctor of osteopathy in this state in a medically under-served area or in a primary care or specialty practice or field in which there is a shortage of physicians, as determined by the Division of Health at the time the application for the program is submitted. The service commitment begins within six months after graduation from an accredited residency program.

(4) Once selected to participate in the program, a student may continue in the program for as long as he or she continues to meet the eligibility criteria in subsection (d) of this section, for a maximum of four academic years.

(d) Eligibility. -- An individual is eligible for enrollment or continuation in the program if he or she meets the following criteria:

(1) Is enrolled or accepted for enrollment at the West Virginia University School of Medicine, the Marshall University School of Medicine, or the West Virginia School of Osteopathic Medicine in a program leading to the degree of medical doctor (M.D.) or doctor of osteopathy (D.O.);

(2) Has not yet received one of the degrees provided in subdivision (1) of this subsection;

(3) Satisfies the academic standards established by the program rule;

(4) Is not in default of any previous student loan;

(5) Is a nonresident student who is charged nonresident tuition rates;

(6) Commits to render services for one calendar year as a medical doctor or a doctor of osteopathy in this state in a medically under-served area or in a primary care or specialty practice or field in which there is a shortage of physicians for each academic year for which he or she participates in the program;

(7) Submits to the commission:

(A) An application for enrollment in the program as provided by the commission; and

(B) A sworn statement of commitment to service on a form provided by the commission for that purpose; and

(8) Other criteria as established by the program rule.

(e) *Penalty for failure to satisfy service commitment.* –

(1) A program participant violates the service commitment if he or she:

(A) Fails to render services as a medical doctor or doctor of osteopathy in accordance with the sworn statement he or she submitted to the commission. This includes failure to begin serving within six months of completing an accredited residency program, or failure to complete each one-year term to which he or she committed to serve; or

(B) Fails to complete or remain enrolled in the medical education program for which he or she obtained the tuition waiver.

(2) A program participant who violates the service commitment is subject to the following:

(A) He or she shall repay the amount of nonresident tuition charges waived plus interest at a rate of five percent per annum;

(B) The granting or renewal of a license to practice medicine in West Virginia or to reciprocal licensure in another state based upon licensure in West Virginia is contingent upon commencing payment and continuing payment until full repayment of the obligation if the recipient fails to complete the required practice commitment. A license, renewal or reciprocity may not be granted to an individual whose repayments are in arrears. The West Virginia Board of Medicine shall inform all other states where a recipient has reciprocated based upon West Virginia licensure of any refusal to renew licensure in West Virginia as a result of failure to repay the tuition amount.

(f) *Rule.* — The commission shall promulgate a rule in accordance with §18B-1-6 of this code to implement this section. The rule shall provide for:

(1) A method for selecting annually the six new students to be enrolled in the program, with priority consideration to applicants in the earliest academic years of the medical education program;

(2) A method for selecting greater or fewer than two participants from a single medical school in any year where two suitable applicants are not available at each school;

(3) A method for the applicant to select the service area or specialty to which he or she commits to practice medicine;

(4) A method for developing a mutually agreeable modification to the terms of a participant's service commitment regarding the medically under-served area or primary care or specialty practice or field in which he or she committed to serve under circumstances where the Division of Health determines at the time the participant's service commitment is scheduled to commence that the area is no longer medically under-served or that primary care or service specialty is no longer experiencing a physician shortage;

(5) Provisions for enforcing sanctions against a participant who fails to satisfy the service commitment; and

(6) Such other provisions as the commission considers necessary to administer the program.

(g) There is created in the State Treasury a special revenue account to be designated the 'Nonresident Medical Student Tuition Regularization Fund' which is an interest-bearing account that may be invested and retain all earnings. Expenditures from the fund shall be for the purposes set forth in this section and are to be made only in accordance with appropriation by the Legislature and in accordance with §11B-2-1 et seq. of this code."

And,

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

Com. Sub. for H. B. 2674 - "A Bill to amend and reenact §18C-3-3 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto a new section, designated, §18C-3-5, all relating to establishing health professionals' student loan programs; providing legislative findings and purpose; establishing a loan repayment program for mental health providers; providing for in-state tuition rates to out-of-state medical students who agree to practice for a specific time within West Virginia; establishing the program eligibility requirements; setting forth repayment schedules; creating application procedures; establishing violations; providing for civil penalties for the failure to complete the required service; creating a special revenue accounts; and providing for legislative rule-making authority."

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 711**), and there were—yeas 94, nays 2, absent and not voting 4, with the nays and absent and not voting being as follows:

Nays: McGeehan and Wilson.

Absent and Not Voting: Cooper, Foster, Harshbarger and Phillips.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2674) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 2770, Fairness in Cost-Sharing Calculation Act.

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

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

"ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4t. Fairness in Cost-Sharing Calculation.

(a) As used in this section:

'Cost sharing' means any copayment, coinsurance, or deductible required by or on behalf of an insured in order to receive a specific health care item or service covered by a health plan.

'Drug' means the same as the term is defined in §30-5-4(19).

'Person' means a natural person, corporation, mutual company, unincorporated association, partnership, joint venture, limited liability company, trust, estate, foundation, nonprofit corporation, unincorporated organization, or government or governmental subdivision or agency.

'Pharmacy benefits manager' means the same as that term is defined in §33-51-3 of this code.

(b) When calculating an insured's contribution to any applicable cost sharing requirement, including, but not limited to, the annual limitation on cost sharing subject to 42 U.S.C. §18022(c) and 42 U.S.C. § 300gg-6(b):

(1) An insurer shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person; and

(2) A pharmacy benefits manager shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person.

(c) The commissioner is authorized to propose rules for legislative approval in accordance with §29A-3-1 *et seq* of this code, to implement the provisions of this section.

(d) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.**§33-16-3ee. Fairness in Cost-Sharing Calculation.**

(a) As used in this section:

'Cost sharing' means any copayment, coinsurance, or deductible required by or on behalf of an insured in order to receive a specific health care item or service covered by a health plan.

'Drug' means the same as the term is defined in §30-5-4(19).

'Person' means a natural person, corporation, mutual company, unincorporated association, partnership, joint venture, limited liability company, trust, estate, foundation, nonprofit corporation, unincorporated organization, or government or governmental subdivision or agency.

'Pharmacy benefits manager' means the same as that term is defined in §33-51-3 of this code.

(b) When calculating an insured's contribution to any applicable cost sharing requirement, including, but not limited to, the annual limitation on cost sharing subject to 42 U.S.C. §18022(c) and 42 U.S.C. § 300gg-6(b):

(1) An insurer shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person; and

(2) A pharmacy benefits manger shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person.

(c) The commissioner is authorized to propose rules for legislative approval in accordance with §29A-3-1 et seq of this code, to implement the provisions of this section.

(d) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS, AND HEALTH SERVICE CORPORATIONS.

§33-24-7t. Fairness in Cost-Sharing Calculation.

(a) As used in this section:

'Cost sharing' means any copayment, coinsurance, or deductible required by or on behalf of an insured in order to receive a specific health care item or service covered by a health plan.

'Drug' means the same as the term is defined in §30-5-4(19).

'Person' means a natural person, corporation, mutual company, unincorporated association, partnership, joint venture, limited liability company, trust, estate, foundation, nonprofit corporation, unincorporated organization, or government or governmental subdivision or agency.

'Pharmacy benefits manager' means the same as that term is defined in §33-51-3 of this code.

(b) When calculating an insured's contribution to any applicable cost sharing requirement, including, but not limited to, the annual limitation on cost sharing subject to 42 U.S.C. §18022(c) and 42 U.S.C. § 300gg-6(b):

(1) An insurer shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person; and

(2) A pharmacy benefits manger shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person.

(c) The commissioner is authorized to propose rules for legislative approval in accordance with §29A-3-1 et seq of this code, to implement the provisions of this section.

(d) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8q. Fairness in Cost-Sharing Calculation.

(a) As used in this section:

'Cost sharing' means any copayment, coinsurance, or deductible required by or on behalf of an insured in order to receive a specific health care item or service covered by a health plan.

'Drug' means the same as the term is defined in §30-5-4(19).

'Person' means a natural person, corporation, mutual company, unincorporated association, partnership, joint venture, limited liability company, trust, estate, foundation, nonprofit corporation, unincorporated organization, or government or governmental subdivision or agency.

'Pharmacy benefits manager' means the same as that term is defined in §33-51-3 of this code.

(b) When calculating an insured's contribution to any applicable cost sharing requirement, including, but not limited to, the annual limitation on cost sharing subject to 42 U.S.C. §18022(c) and 42 U.S.C. § 300gg-6(b):

(1) An insurer shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person; and

(2) A pharmacy benefits manger shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person.

(c) The commissioner is authorized to propose rules for legislative approval in accordance with §29A-3-1 *et seq* of this code, to implement the provisions of this section.

(d) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8t. Fairness in Cost-Sharing Calculation.

(a) As used in this section:

'Cost sharing' means any copayment, coinsurance, or deductible required by or on behalf of an insured in order to receive a specific health care item or service covered by a health plan.

'Drug' means the same as the term is defined in §30-5-4(19).

'Person' means a natural person, corporation, mutual company, unincorporated association, partnership, joint venture, limited liability company, trust, estate, foundation, nonprofit corporation, unincorporated organization, or government or governmental subdivision or agency.

'Pharmacy benefits manager' means the same as that term is defined in §33-51-3 of this code.

(b) When calculating an insured's contribution to any applicable cost sharing requirement, including, but not limited to, the annual limitation on cost sharing subject to 42 U.S.C. §18022(c) and 42 U.S.C. § 300gg-6(b):

(1) An insurer shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person; and

(2) A pharmacy benefits manger shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person.

(c) The commissioner is authorized to propose rules for legislative approval in accordance with §29A-3-1 et seq of this code, to implement the provisions of this section.

(d) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

And,

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

Com. Sub. for H. B. 2770 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-15-4t; to amend said code by adding thereto a new section, designated §33-16-3ee; to amend said code by adding thereto a new section, designated §33-24-7t; to amend said code by adding thereto a new section, designated §33-25-8q; and to amend said code by adding thereto a new section, designated §33-25A-8t, all relating to establishing the Fairness in Cost-Sharing Calculation Act; providing for definitions; establishing health plan cost sharing calculations; establishing pharmacy benefits cost sharing calculations; providing for an effective date; and providing for rule-making authority.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 712**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Cooper, Foster, Harshbarger and Phillips.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2770) passed.

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

A message from the Senate, by

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

H. B. 2856, Relating to the administration of the operating fund of the securities division of the Auditor’s office.

A message from the Senate, by

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

Com. Sub. for H. B. 2933, Modifying the criminal penalties imposed on a parent, guardian or custodian for child abuse resulting in injury.

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

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

“ARTICLE 8D. CHILD ABUSE.

§61-8D-3. Child abuse resulting in injury; child abuse creating risk of injury; criminal penalties.

(a) If ~~any a~~ parent, guardian or custodian ~~shall abuse~~ abuses a child and by ~~such the~~ the abuse ~~cause~~ causes the child bodily injury as ~~such the~~ the term is defined in §61-8B-1 of this code, then ~~such the~~ the parent, guardian or custodian ~~shall be is~~ 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 two~~ two nor more than ~~five 10~~ 10 years, or in the discretion of the court, be confined in jail for not more than one year.

(b) If ~~any a~~ parent, guardian, or custodian ~~shall abuse~~ abuses a child and by ~~such the~~ the abuse ~~cause said~~ causes the child serious bodily injury as ~~such the~~ the term is defined in §61-8B-1 of this code, then ~~such the~~ the parent, guardian or custodian ~~shall be is~~ is 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 and Rehabilitation not less than ~~two five~~ five nor more than ~~ten 15~~ 15 years.

(c) ~~Any A~~ parent, guardian or custodian 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 §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 two~~ two nor more than ~~five ten~~ ten years, or both fined and imprisoned.

~~(d)(1) If a parent, guardian or custodian who has not previously been convicted under this section, section four of this article 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 section one, article eight b of this chapter, 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 or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,500 and confined in jail not less than thirty 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 or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian 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~~

(d) A person convicted of any offense under this section with any prior conviction under this section, §61-8D-4 of this code, or a law of another state or the federal government with the same essential elements is subject to the following increased penalties:

(1) A person with one prior conviction 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 three nor more than 15 years, or both fined and imprisoned. *Provided, however,* That a person convicted of a crime under subsection (b) of this section is subject to the higher penalty in that subsection.

(2) A person with two or more prior convictions is guilty of a felony and, upon conviction thereof, shall be fined not more than \$3,000 and imprisoned in a state correctional facility for not less than five years nor more than 15 years, or both fined and imprisoned.

(e) Any person convicted of ~~a misdemeanor~~ an 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 through its services assessment evaluation, which shall be submitted to the court of conviction upon written request;

(2) ~~Shall not be~~ is not required to register pursuant to §15-13-1 *et seq.* of this code; and

(3) ~~Shall~~ May not, solely by virtue of the conviction, have their custody, visitation or parental rights automatically restricted.

(f) ~~Nothing in~~ This section ~~shall~~ does not preclude a parent, guardian, or custodian from providing reasonable discipline to a child.

§61-8D-4. Child neglect resulting in injury; child neglect creating risk of injury; criminal penalties.

(a) If a parent, guardian, or custodian neglects a child and by such neglect causes the child bodily injury, as bodily injury is defined in §61-8B-1 of this code, then the parent, guardian, or custodian 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 fined and confined.

(b) If a parent, guardian, or custodian neglects a child and by such neglect ~~cause~~ causes the child serious bodily injury, as serious bodily injury is defined in §61-8B-1 of this code, then the parent, guardian, or custodian 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 10 years, or both fined and imprisoned.

(c) If a parent, guardian, or custodian ~~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 §61-8B-1 of this code, of the child, then the parent, guardian, or custodian 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.~~ shall be fined not less than \$100 nor more than \$1,000 or confined in jail not more than two years, or both fined and confined.

~~(d)(1) If a parent, guardian or custodian who has not been previously convicted under this section, section three of this article 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, to the child, then the parent, guardian or custodian, 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 this section, section three of this article or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 and confined in jail not less than thirty 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 or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian 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.~~

(d) A person convicted of any offense under this section with any prior conviction is subject to the following increased penalties. A prior conviction includes any offense under this section, §61-8D-3 of this code, or a law of another state or the federal government with the same essential elements:

(1) A person with one prior conviction shall be fined not more than \$3,000 or imprisoned in a state correctional facility for not less than three nor more than 15 years, or both fined and imprisoned.

(2) A person with two or more prior convictions 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 five years nor more than 15 years, or both fined and imprisoned.

(e) The provisions of this section shall not apply if the neglect by the parent, guardian, or custodian is due primarily to a lack of financial means on the part of such parent, guardian, or custodian.

(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 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 §15-13-1 *et seq.* of this code; and

(3) Shall not, solely by virtue of the conviction, have their custody, visitation, or parental rights automatically restricted.”

And,

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

Com. Sub. for H. B. 2933 - “A Bill to amend and reenact §61-8D-3 and §61-8D-4 of the Code of West Virginia, 1931, as amended, relating to modifying the criminal penalties imposed on a parent, guardian or custodian for child abuse resulting in injury and child abuse or neglect creating risk of injury.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 713**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Cooper, Foster, Harshbarger and Phillips.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2933) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 2945, Relating to vendors paying a single annual fee for a permit issued by a local health department.

A message from the Senate, by

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

Com. Sub. for H. B. 2947, Relating generally to telemedicine prescription practice requirements and exceptions.

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

On page on page five, section thirteen-a, line ninety-eight, after the word “do not apply”, by inserting “to a hospital, excluding the emergency department” and a comma.

And,

On page ten, section twelve-d, line ninety-five, after the words “do not apply”, by inserting “to a hospital, excluding the emergency department” and a comma.

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 714**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Cooper, Foster, Harshbarger and Phillips.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2947) passed.

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

A message from the Senate, by

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

H. B. 2968, Adding remote service unit to the definition of customer bank communications terminals.

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

On page two, section twelve-b, lines thirty-nine and forty, by striking out the words “That the operator of an RSU shall maintain a physical location in this state: *Provided, however*”, and a comma.

And,

On page two, section twelve-b, line forty, after “ATM”, by inserting “or RSU”.

And,

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

H. B. 2968 - “A Bill to amend and reenact §31A-8-12b of the Code of West Virginia, 1931, as amended, relating to adding remote service units to the definition of customer bank communication terminal; defining remote service unit; and allowing national banks to operate remote service units in this state pursuant to federal regulation.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 715**), and there were—yeas 96, nays none, absent and not voting 4 with the absent and not voting being as follows:

Absent and Not Voting: Cooper, Foster, Harshbarger and Phillips.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2968) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 3131, Relating to providing salary adjustments to employees of the Department of Health and Human Resources.

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

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

“§5-5-4a. Psychiatrists, nurses and aides Department of Health and Human Resources facility employee classifications.

(a) The Legislature finds that Mildred Mitchell Bateman Hospital and William R. Sharpe, Jr. Hospital state-operated acute care, long-term care, psychiatric care, clinical, and medical facilities

have extreme difficulty in recruiting and retaining physicians, physician specialists, nurses, nursing directors, health service workers, health service assistants, ~~health service associates~~ and other employees who assist in the direct or indirect provision of medical care to patients in those facilities.

~~(b) The West Virginia Division of Personnel and the Department of Health and Human Resources jointly shall develop pay rates and employment requirements to support the recruitment and retention of a special merit-based system, including an application and appointment procedure for physicians, physician specialists, nurses, nursing directors, health service workers, health service assistants, health service associates or other positions at Mildred Mitchell Bateman Hospital and William R. Sharpe, Jr. Hospital and other employees who assist in the direct provision of medical care to patients at state-operated acute care, long-term care, psychiatric care, clinical, and medical facilities. Pay rates shall reflect the regional market rates for relevant positions. The procedure shall include classification specifications, and may include compensation adjustments, retention incentives, and hiring approval by the secretary. The secretary shall have the full authority to evaluate applicants for employment or promotion or make classification determinations for positions within the special merit-based system. The special merit-based system shall be approved by the State Personnel Board. The pay rates and employment requirements shall be put into effect by July 1, 2009. no sooner than January 1, 2020, and no later than July 1, 2020.~~

~~(c) Funding for the pay rates and employment requirements shall be provided from the appropriation to the Department of Health and Human Resources. Due to the limits of funding, the implementation of the pay rates and employment requirements shall not be subject to the provisions of §6C-2-1 et seq. of this code. The provisions of this section are rehabilitative in nature and it is the specific intent of the Legislature that no private cause of action, either express or implied, shall arise pursuant to the provisions or implementation of this section.~~

~~(d) The provisions of §6C-2-1 et seq. of this code shall be applicable to the employees of the special merit-based system: *Provided*, That the Division of Personnel shall not be a mandatory party to any public employee grievance filed by any employee in the special merit-based system.~~

~~(e) The department may conduct periodic wage and compensation analysis of identified market rates for the above positions as determined necessary by the secretary.~~

~~(f) The secretary may promulgate emergency rules and shall propose legislative rules pursuant to the provisions of §29A-3-1 et seq. of this code as may be necessary to implement and comply with the provisions of this section.”~~

And,

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

Com. Sub for H. B. 3131 - “A Bill to amend and reenact §5-5-4a of the Code of West Virginia, as amended, all relating to employees of the Department of Health and Human Resources; providing that the Department of Health and Human Resources shall develop a special merit-based system for specified employees at state-operated acute care, long-term care, psychiatric care, clinical, and medical facilities; providing for an effective date; providing that provisions of the West Virginia Public Employees Grievance Act apply to employees of the special merit-based system; providing that the Department of Health and Human Resources may conduct a marketplace analysis; and providing for emergency rulemaking.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 716**), and there were—yeas 79, nays 17, absent and not voting 4, with the nays and absent and not voting being as follows:

Nays: Angelucci, S. Brown, Byrd, Caputo, Diserio, Doyle, Estep-Burton, Fleischauer, Hansen, Longstreth, Pushkin, Pyles, Robinson, Rowe, C. Thompson, Walker and Zukoff.

Absent and Not Voting: Cooper, Foster, Hartman and Phillips.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3131) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption of the report of the Committee of Conference on, and the passage, as amended by said report, and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 295, Relating to crimes against public justice.

Conference Committee Report

Delegate Hollen, from the Committee of Conference on matters of disagreement between the two houses, as to

Com. Sub. for S. B. 295, Relating to crimes against public justice.

Submitted the following report, which was received:

Your Committee of Conference on the disagreeing votes of the two houses as to the amendments of the House to Engrossed Committee Substitute for Senate Bill No. 295 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That both houses recede from their respective positions as to the amendment of the House of Delegates, by striking out everything after the enacting clause, and that the Senate and House agree to an amendment as follows:

ARTICLE 3. COURTS IN GENERAL.

§51-3-19. Courthouse security officers; arrest authority; concealed-carry authority; requirements for participation; authorization to carry firearms concealed consistent with federal law.

(a) In furtherance of enhanced courthouse security for court personnel, litigants, and the general public, courthouse security officers charged with effecting courthouse security may arrest any person committing a violation of the criminal laws of the State of West Virginia, the United States, or a violation of Rule 42 of the West Virginia Rules of Criminal Procedure occurring within a courthouse while the courthouse security officer is engaged in his or her official duties;

(b) For purposes of subsection (a) of this section, the arrest authority of courthouse security officers is consistent with that of a county deputy sheriff;

(c) In any judicial circuit where there is an order in effect authorizing courthouse security officers to carry a firearm, the circuit court may also authorize, consistent with the provisions of this section, qualifying courthouse security officers to carry a concealed firearm for self-defense purposes pursuant to 18 U.S.C. § 926B, upon the following criteria being met:

(1) The supervising authority of the courthouse security officer shall require courthouse security officers desiring to participate to regularly qualify in the use of firearms with standards therefor which are equal to or exceed those required of sheriff's deputies in the county in which the courthouse security officers are employed;

(2) The supervising authority of the courthouse security officers shall issue photographic identification and certification cards which identify the courthouse security officers as law-enforcement employees of the supervising entity pursuant to the provisions of §30-29-12 of this code;

(3) Any policy instituted pursuant to this section shall include provisions that:

(A) Preclude or remove a person from participation in the concealed firearm program who is subject to any disciplinary or legal action which could result in the loss of his or her authority to participate in the program;

(B) Preclude from participation persons prohibited by federal or State law from possessing or receiving a firearm; and

(C) Prohibit persons from carrying a firearm pursuant to this subsection while in an impaired State as defined in §17C-5-2 of this code; and

(4) A courthouse security officer who participates in a program authorized by this section is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition for use when not engaged in his or her official duties.

(d) It is the intent of the Legislature in enacting this section during the 2019 regular session of the Legislature that active courthouse security personnel meeting all the requirements of this section to also meet the requirements of the federal Law-Enforcement Officers Safety Act, 18 U.S.C. § 926B.

(e) The provisions of this section shall become effective July 1, 2020.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-17. Obstructing officer; fleeing from officer; making false statements to officer; interfering with emergency communications; penalties; definitions.

(a) A person who by threats, menaces, acts or otherwise forcibly or illegally hinders or obstructs or attempts to hinder or obstruct a law-enforcement officer, probation officer, ~~or~~ parole officer, courthouse security officer, correctional officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined in jail not more than one year, or both fined and confined.

(b) A person who intentionally disarms or attempts to disarm a law-enforcement officer, correctional officer, probation officer, ~~or~~ parole officer, courthouse security officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than five years.

(c) A person who, with intent to impede or obstruct a law-enforcement officer, the State Fire Marshal or a full-time deputy or assistant fire marshal in the conduct of an investigation of a misdemeanor or felony offense, knowingly and willfully makes a materially false statement is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$25 nor more than \$200, or confined in jail for five days, or both fined and confined. The provisions of this section do not apply to statements made by a spouse, parent, stepparent, grandparent, sibling, half sibling, child, stepchild or grandchild, whether related by blood or marriage, of the person under investigation. Statements made by the person under investigation may not be used as the basis for prosecution under this subsection. For purposes of this subsection, 'law-enforcement officer' does not include a watchman, a member of the West Virginia State Police or college security personnel who is not a certified law-enforcement officer.

(d) A person who intentionally flees or attempts to flee by any means other than the use of a vehicle from a law-enforcement officer, probation officer, or parole officer, courthouse security officer, correctional officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity who is attempting to make a lawful arrest of or to lawfully detain the person, and who knows or reasonably believes that the officer is attempting to arrest or lawfully detain him or her, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined in jail not more than one year, or both fined and confined.

(e) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000 and shall be confined in jail not more than one year.

(f) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who operates the vehicle in a manner showing a reckless indifference to the safety of others, is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$2,000 and shall be imprisoned in a state correctional facility not less than one nor more than five years.

(g) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who causes damage to the real or personal property of a person during or resulting from his or her flight, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$3,000 and shall be confined in jail for not less than six months nor more than one year.

(h) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who causes bodily injury to a person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than three nor more than ten years.

(i) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who causes death to a person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than five nor more than fifteen years. A person imprisoned pursuant to this subsection is not eligible for parole prior to having served a minimum of three years

of his or her sentence or the minimum period required by section thirteen, article twelve, chapter sixty-two of this code, whichever is greater.

(j) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who is under the influence of alcohol, controlled substances or drugs, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than three nor more than ten years.

(k) For purposes of this section, the term 'vehicle' includes any motor vehicle, motorcycle, motorboat, all-terrain vehicle or snowmobile as those terms are defined in section one, article one, chapter seventeen-a of this code, whether or not it is being operated on a public highway at the time and whether or not it is licensed by the state.

(l) For purposes of this section, the terms 'flee', 'fleeing' and 'flight' do not include a person's reasonable attempt to travel to a safe place, allowing the pursuing law-enforcement officer to maintain appropriate surveillance, for the purpose of complying with the officer's direction to stop.

(m) The revisions to subsections (e), (f), (g) and (h) of this section enacted during the regular session of the 2010 regular legislative session shall be known as the Jerry Alan Jones Act.

(n) (1) No person, with the intent to purposefully deprive another person of emergency services, may interfere with or prevent another person from making an emergency communication, which a reasonable person would consider necessary under the circumstances, to law-enforcement, fire, or emergency medical service personnel.

(2) For the purpose of this subsection, the term 'interfere with or prevent' includes, but is not limited to, seizing, concealing, obstructing access to or disabling or disconnecting a telephone, telephone line or equipment or other communication device.

(3) For the purpose of this subsection, the term 'emergency communication' means communication to transmit warnings or other information pertaining to a crime, fire, accident, power outage, disaster or risk of injury or damage to a person or property.

(4) A person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not less than one day nor more than one year or shall be fined not less than \$250 nor more than \$2,000, or both fined and confined.

(5) A person who is convicted of a second offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than three months nor more than one year or fined not less than \$500 nor more than \$3,000, or both fined and confined.

(6) A person who is convicted of a third or subsequent offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than six months nor more than one year or fined not less than \$500 nor more than \$4,000, or both fined and confined.

(7) In determining the number of prior convictions for purposes of imposing punishment under this subsection, the court shall disregard all such prior convictions occurring more than ten years prior to the offense in question.

And,

That both houses recede from their respective positions as to the title of the bill and agree to a new title as follows:

Com. Sub. for S. B. 295 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §51-3-19, and to amend and reenact §61-5-7 of said code relating to granting courthouse security officers arrest powers under certain circumstances; authorizing certain West Virginia courthouse security officers to carry concealed firearms while off duty with court approval; setting forth firearm training and qualification requirements; requiring supervising authority to issue photo identification and certification cards; specifying policy content; stating legislative intent that the new code section be consistent with the federal Law-Enforcement Officers Safety Act; establishing an effective date of July 1, 2020; criminalizing the obstruction of a courthouse security officer, correctional officer, and certain Fire Marshal's office personnel while they are acting in their official capacities; criminalizing fleeing from a courthouse security officer, correctional officer, and certain Fire Marshal's office personnel; criminalizing the disarming or attempted disarming of courthouse security officers and certain Fire Marshal's office personnel; including the investigation of misdemeanor offenses as subject to prohibition against making false statements; criminalizing the making of materially false statements as to misdemeanor and felony investigations to the State Fire Marshal and certain Fire Marshal's office personnel; and setting criminal penalties.

Respectfully submitted,

Charles S. Trump, IV, *Chair*

Sue Cline,

Richard D. Lindsey, II

Conferees on the part of the Senate.

Ray Hollen, *Chair*

David Kelly,

Rodney Miller,

*Conferees on the part of the House
of Delegates.*

On motion of Delegate Hollen, the report of the Committee of Conference was adopted.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 717**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Foster.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 295) passed.

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

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had refused to recede from its amendment and requested the House of Delegates to agree to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses as to

Com. Sub. for S. B. 405, Increasing limit on additional expenses incurred in preparing notice list for redemption.

The message further announced that the President of the Senate had appointed as conferees on the part of the Senate the following:

Senators Boso, Sypolt and Palumbo.

On motion of Delegate Summers, the House of Delegates agreed to the appointment of a Committee of Conference from each house on the disagreeing votes of the two houses.

Whereupon,

The Speaker appointed as conferees on the part of the House of Delegates the following:

Delegates Pack, Bibby and Tomblin.

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

A message from the Senate, by

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

Com. Sub. for H. B. 2807, Creating an additional modification to the West Virginia adjusted gross income of shareholders of S corporations engaged in banking.

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

On page one, section twelve-j, line eleven, by striking out the word "obligation's" and inserting in lieu thereof the word "obligations".

On page one, section twelve-j, line twelve, by striking out "1120S" and by inserting in lieu thereof "1120S)".

On page two, section twelve-j, line thirty-three, by striking out the words "by the adjustment authorized under §11-24-6 of this code or §11-21-37c(f) of this code".

On page three, section twelve-j, line forty-six, after "§11-24-3a(a)(14)", by inserting the words "of this code".

On page three, section twelve-j, line forty-nine, after "§11-24-3a(a)(14)", by inserting the words "of this code".

On page two, section twelve-j, line forty, by striking out "§11-24-6" and inserting in lieu thereof "§11-21-12j(a)".

On page three, section twelve-j, lines forty-one through forty-three, after the word "section" and the period, by striking out the remainder of the subsection.

And,

On page three, section twelve-j, line fifty-one, by striking out “§11-24-6(f)(1)(A), (B), (C) and (D)” and inserting in lieu thereof “§11-21-12j(a)”.

And,

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

Com. Sub. for H. B. 2807 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-21-12j; and to amend and reenact §11-21-17a of said code, all relating to creating an additional modification to the West Virginia adjusted gross income of shareholders of S corporations or members of a limited liability company engaged in business as a financial organization in this state, similar to the modification that presently exists in the code for financial organizations organized as C corporations; setting forth apportionment rules for certain financial organizations; specifying special gross receipts factor; and providing for retroactive effective date.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 718**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Foster.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2807) passed.

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

A message from the Senate, by

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

S. B. 424 - “A Bill supplementing and amending by adding a new item of appropriation of public moneys out of the Treasury in the State Fund, General Revenue, to the Governor’s Office, Civil Contingent Fund, fund 0105, fiscal year 2019, organization 0100, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.”

In the absence of objection, reference of the bill (S. B. 424) to a committee was dispensed with, and it was taken up for immediate consideration, read a first time and ordered to second reading

Delegate Summers moved to dispense with the constitutional rule requiring the bill to be fully and distinctly read on three different days.

On this question, the yeas and nays were taken (**Roll No. 719**), and there were—yeas 82, nays 16, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Barrett, Bates, Bibby, S. Brown, Campbell, Fast, Fluharty, Hanna, Kump, Lavender-Bowe, P. Martin, McGeehan, Paynter, Robinson, Waxman and Wilson.

Absent and Not Voting: Cooper and Foster.

So, four fifths of the members present having voted in the affirmative, the constitutional rule was dispensed with.

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

The bill was then read a third time and put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 720**), and there were—yeas 71, nays 27, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Barrett, Bates, Bibby, S. Brown, Butler, Dean, Fast, Fluharty, Graves, Hanna, Hill, Hott, D. Jeffries, J. Jeffries, Jennings, J. Kelly, Kump, Malcolm, C. Martin, P. Martin, McGeehan, Pack, Paynter, Phillips, Waxman, Wilson and Worrell.

Absent and Not Voting: Cooper and Foster.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 424) passed.

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

On this question, the yeas and nays were taken (**Roll No. 721**), and there were—yeas 76, nays 21, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Barrett, Bates, Bibby, S. Brown, Butler, Fast, Fluharty, Graves, Hott, D. Jeffries, J. Jeffries, J. Kelly, Kump, Malcolm, C. Martin, P. Martin, McGeehan, Paynter, Waxman, Wilson and Worrell.

Absent and Not Voting: Cooper, Foster, Jennings and Lovejoy.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 424) takes effect from its passage.

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

Conference Committee Report Availability

At 7:22 p.m., the Clerk announced that the report of the Committee of Conference on **S. B. 596**, Adjusting voluntary contribution amounts on certain DMV forms, shall be available in the Clerk's Office.

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had agreed to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses as to

Com. Sub. for S. B. 487, Relating to admissibility of health care staffing requirements in litigation.

The message further announced that the President of the Senate had appointed as conferees on the part of the Senate the following:

Senators Takubo, Boso and Woelfel.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had agreed to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses as to

S. B. 596, Adjusting voluntary contribution amounts on certain DMV forms.

The message further announced that the President of the Senate had appointed as conferees on the part of the Senate the following:

Senators Weld, Sypolt and Jeffries.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee Rules:

S. C. R. 65 - "Requesting the Joint Committee on Government and Finance study the proposal of allowing retailers to pay sales tax for the consumer as a method of advertisement."

Whereas, Retailers are currently prohibited from absorbing sales tax on consumer transactions; and

Whereas, Permitting retailers to absorb sales tax on consumer purchases allows small businesses to create unique discounts that would draw customers; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance study the proposal of allowing retailers to pay sales tax for the consumer as a method of advertisement; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2020, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

Delegate Summers moved the House recess until 9:00 p.m., which motion was withdrawn.

On motion of Delegate Summers, at 7:37 p.m., the House of Delegates recessed until 7:50 p.m.

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Evening Session

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-continued-

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

Conference Committee Report Availability

At 7:53 p.m., the Clerk announced that the reports of the Committees of Conference on **Com. Sub. for S. B. 405**, Increasing limit on additional expenses incurred in preparing notice list for redemption and **Com. Sub. for S. B. 522**, Creating Special Road Repair Fund, shall be available outside of the Clerk's Office.

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the House of Delegates amendment, with amendment, and the passage, as amended, to take effect July 1, 2019, of

Com. Sub. for S. B. 632, Improving student safety.

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

On page five, section eleven, subsection (k), by inserting a new subdivision, designated subdivision (2), to read as follows:

“(2) A parent or legal guardian of a student who is involved in an alleged incident that is documented by the video recording and has been reported to the public school or school district” and a semicolon, and renumbering the remaining subdivisions.

And,

On page eight, section eight, after subsection (e), by striking out the remainder of the bill.

And,

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

Com. Sub. for S. B. 632 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-48; to amend said code by adding thereto a new section, designated §18-20-11; and to amend and reenact §18A-2-8 of said code, all relating to improving student safety; requiring safety and security measures of each school facility be upgraded when necessary to ensure, to the best of the county board's ability, the safety of students; creating Safe Schools Fund and providing for distribution of funds subject to appropriation; requiring video cameras capable of audio recording in certain public special education classrooms upon appropriation of funds; designating principal as the custodian; requiring written explanation if there is an interruption in the operation of the video camera; setting forth required capabilities of the video camera; prohibited monitoring in certain areas; allowing video camera to not be in operation when students not present; providing for notice of placement; setting forth video retention and access requirements; providing that immunity from liability not waived and liability not created; providing limitations on use of video; providing for protection of confidentiality and identity of students not involved in incident; allowing appeals to state board; permitting funding from Safe School Fund and gifts, grants or donations; authorizing state board rule; adding to justifications for which a school employee may be suspended or dismissed; providing duty and authority to provide safe and secure environment; requiring reports on suspensions and dismissals of employees and database maintained by state superintendent of individuals suspended or dismissed for certain reasons.”

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 722**), and there were—yeas 91, nays 2, absent and not voting 7, with the nays and absent and not voting being as follows:

Nays: C. Thompson and Toney.

Absent and Not Voting: Cadle, Cooper, Dean, Diserio, Foster, Graves and Skaff.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 632) passed.

Delegate Kessinger moved that the bill take effect July 1, 2019.

On this question, the yeas and nays were taken (**Roll No. 723**), and there were—yeas 93, nays 2, absent and not voting 5, with the nays and absent and not voting being as follows:

Nays: C. Thompson and Toney.

Absent and Not Voting: Capito, Cooper, Dean, Diserio and Foster.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 632) takes effect July 1, 2019.

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

A message from the Senate, by

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

Com. Sub. for H. B. 2079, Removing certain limitations on medical cannabis grower, processor and dispensary licenses.

Conference Committee Report Availability

At 7:58 p.m., the Clerk announced that the report of the Committee of Conference on **Com. Sub. for S. B. 487**, Relating to admissibility of health care staffing requirements in litigation, shall be available in the Clerk's Office.

Messages from the Senate

Com. Sub. for H. B. 2079 was taken up for further consideration.

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

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

“ARTICLE 2. DEFINITIONS.

§16A-2-1. Definitions.

(a) The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

(1) 'Act' means the West Virginia Medical Cannabis Act and the provisions contained in §60A-1-101 *et seq.* of this code.

(2) 'Advisory board' means the advisory board established under §16A-11-1 *et seq.* of this chapter.

(3) 'Bureau' means the Bureau for Public Health within the West Virginia Department of Health and Human Resources.

(4) 'Caregiver' means the individual designated by a patient or, if the patient is under 18 years of age, an individual authorized under §16A-5-1 *et seq.* of this code, to deliver medical cannabis.

(5) 'Certified medical use' means the acquisition, possession, use, or transportation of medical cannabis by a patient, or the acquisition, possession, delivery, transportation, or administration of medical cannabis by a caregiver, for use as part of the treatment of the patient's serious medical condition, as authorized in a certification under this act, including enabling the patient to tolerate treatment for the serious medical condition.

(6) 'Change in control' means the acquisition by a person or group of persons acting in concert of a controlling interest in an applicant or permittee either all at one time or over the span of a 12-consecutive-month period.

(7) 'Commissioner' means the Commissioner of the Bureau for Public Health.

(8) 'Continuing care' means treating a patient ~~for at least six months~~, in the course of which the practitioner has completed a full assessment of the patient's medical history and current medical condition, including an in-person consultation with the patient, and is able to document and make a medical diagnosis based upon the substantive treatment of the patient.

(9) 'Controlling interest' means:

(A) For a publicly traded entity, voting rights that entitle a person to elect or appoint one or more of the members of the board of directors or other governing board or the ownership or beneficial holding of five percent or more of the securities of the publicly traded entity.

(B) For a privately held entity, the ownership of any security in the entity.

(10) 'Dispensary' means a person, including a natural person, corporation, partnership, association, trust, or other entity, or any combination thereof, which holds a permit issued by the bureau to dispense medical cannabis. The term does not include a health care medical cannabis organization ~~under~~ as defined in §16A-13-1 *et seq.* of this code.

(11) 'Family or household member' means the same as defined in §48-27-204 of this code.

(12) 'Financial backer' means an investor, mortgagee, bondholder, note holder, or other source of equity, capital, or other assets, other than a financial institution.

(13) 'Financial institution' means a bank, a national banking association, a bank and trust company, a trust company, a savings and loan association, a building and loan association, a mutual savings bank, a credit union, or a savings bank.

(14) 'Form of medical cannabis' means the characteristics of the medical cannabis recommended or limited for a particular patient, including the method of consumption and any particular dosage, strain, variety and quantity, or percentage of medical cannabis or particular active ingredient.

(15) 'Fund' means the Medical Cannabis Program Fund established in §16A-9-2 of this code.

(16) 'Grower' means a person, including a natural person, corporation, partnership, association, trust or other entity, or any combination thereof, which holds a permit from the bureau under this act to grow medical cannabis. The term does not include a health care medical cannabis organization as defined in article thirteen this chapter.

(17) 'Grower/processor' means either a grower or a processor.

(18) 'Identification card' means a document issued under §16A-5-1 *et seq.* of this code that authorizes access to medical cannabis under this act.

(19) 'Individual dose' means a single measure of medical cannabis.

(20) 'Medical cannabis' means cannabis for certified medical use as set forth in this act.

(21) 'Medical cannabis organization' means a dispensary, grower or processor. The term does not include a health care medical cannabis organization ~~under~~ as defined in §16A-13-1 *et seq.* of this code.

(22) 'Patient' means an individual who:

(A) has a serious medical condition;

(B) has met the requirements for certification under this act; and

(C) is a resident of this state.

(23) 'Permit' means an authorization issued by the bureau to a medical cannabis organization to conduct activities under this act.

(24) 'Physician' or 'practitioner' means a doctor of allopathic or osteopathic medicine who is fully licensed pursuant to the provisions of either §30-3-1 *et seq.* or §30-14-1 *et seq.* of this code to practice medicine and surgery in this state.

(25) 'Post-traumatic stress disorder' means a diagnosis made as part of continuing care of a patient by a medical doctor, licensed counselor, or psychologist.

~~(26) 'Practitioner' means a physician who is registered with the bureau under article four of this chapter.~~

~~(27)~~ (26) 'Prescription drug monitoring program' means the West Virginia Controlled Substances Monitoring program under §60A-9-101 *et seq.* of this code.

~~(28)~~ (27) 'Principal' means an officer, director, or person who directly owns a beneficial interest in or ownership of the securities of an applicant or permittee, a person who has a controlling interest in an applicant or permittee or who has the ability to elect the majority of the board of directors of an applicant or permittee or otherwise control an applicant or permittee, other than a financial institution.

~~(29)~~ (28) 'Processor' means a person, including a natural person, corporation, partnership, association, trust, or other entity, or any combination thereof, which holds a permit from the bureau under this act to process medical cannabis. The term does not include a health care medical cannabis organization ~~under~~ as defined in §16A-13-1 et seq. of this chapter.

~~(30)~~ (29) 'Registry' means the registry established by the bureau for practitioners.

~~(31)~~ (30) 'Serious medical condition' means any of the following, as has been diagnosed as part of a patient's continuing care:

(A) Cancer.

(B) Positive status for human immunodeficiency virus or acquired immune deficiency syndrome.

(C) Amyotrophic lateral sclerosis.

(D) Parkinson's disease.

(E) Multiple sclerosis.

(F) Damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity.

(G) Epilepsy.

(H) Neuropathies.

(I) Huntington's disease.

(J) Crohn's disease.

(K) Post-traumatic stress disorder.

(L) Intractable seizures.

(M) Sickle cell anemia.

(N) Severe chronic or intractable pain of neuropathic origin or severe chronic or intractable pain.

(O) Terminally ill.

(32) 'Terminally ill' means a medical prognosis of life expectancy of approximately one year or less if the illness runs its normal course.

ARTICLE 4. PRACTITIONERS.

§16A-4-3. Issuance of certification.

(a) *Conditions for issuance.* — A certification to use medical cannabis may be issued by a practitioner to a patient if all of the following requirements are met:

(1) The practitioner has been approved by the bureau for inclusion in the registry and has a valid, unexpired, unrevoked, unsuspended license to practice medicine in this state at the time of the issuance of the certification.

(2) The practitioner has determined that the patient has a serious medical condition and has included the condition in the patient's health care record.

(3) The patient is under the practitioner's continuing care for the serious medical condition.

(4) In the practitioner's professional opinion and review of past treatments, the practitioner determines the patient is likely to receive therapeutic or palliative benefit from the use of medical cannabis.

(5) The practitioner has determined that the patient has no past or current medical condition(s) or medication use that would constitute a contraindication for the use of cannabis.

(6) The practitioner has determined that the patient is experiencing serious pathophysiological discomfort, disability, or dysfunction that may be attributable to a serious medical condition and may possibly benefit from cannabis treatment when current medical research exhibits a moderate or higher probability of efficacy; and

(7) The practitioner has educated the patient about cannabis and its safe use.

(b) *Contents.* — The certification shall include:

(1) The patient's name, date of birth, and address.

(2) The specific serious medical condition of the patient.

(3) A statement by the practitioner that the patient has a serious medical condition and the patient is under the practitioner's continuing care for the serious medical condition.

(4) The date of issuance.

(5) The name, address, telephone number, and signature of the practitioner.

(6) Any requirement or limitation concerning the appropriate form of medical cannabis and limitation on the duration of use, if applicable, including whether the patient is terminally ill.

(7) A statement by the practitioner attesting that he or she has performed the requirements contained in subsection (a) of this section on a form to be issued by the West Virginia Department of Health and Human Resources, Bureau for Public Health.

(c) *Consultation.* —

(1) A practitioner shall review the prescription drug monitoring program prior to:

(A) Issuing a certification to determine the controlled substance history of a patient.

(B) Recommending a change of amount or form of medical cannabis.

(2) The practitioner shall consider and give due consideration to other controlled substances the patient may be taking prior to certifying medical cannabis.

(d) *Other access by practitioner.* — A practitioner may access the prescription drug monitoring program to do any of the following:

(1) Determine whether a patient may be under treatment with a controlled substance by another physician or other person.

(2) Allow the practitioner to review the patient's controlled substance history as deemed necessary by the practitioner.

(3) Provide to the patient, or caregiver, on behalf of the patient if authorized by the patient, a copy of the patient's controlled substance history.

(e) *Duties of practitioner.* — The practitioner shall:

(1) Provide the certification to the patient.

(2) Provide a copy of the certification to the bureau, which shall place the information in the patient directory within the bureau's electronic database. The bureau shall permit electronic submission of the certification.

(3) File a copy of the certification in the patient's health care record.

(f) *Prohibition.* — A practitioner may not issue a certification for the practitioner's own use or for the use of a family or household member.

ARTICLE 6. MEDICAL CANNABIS ORGANIZATIONS.

§16A-6-3. Granting of permit.

(a) The bureau may grant or deny a permit to a grower, processor, or dispensary. In making a decision under this subsection, the bureau shall determine that:

(1) The applicant will maintain effective control of and prevent diversion of medical cannabis.

(2) The applicant will comply with all applicable laws of this state.

(3) The applicant is a resident of this state as defined in §29-22B-327 of this code or is organized under the law of this state. If the applicant is a business entity, majority ownership in the business entity must be held by a state resident or residents.

(4) The applicant is ready, willing, and able to properly carry on the activity for which a permit is sought.

(5) The applicant possesses the ability to obtain in an expeditious manner sufficient land, buildings, and equipment to properly grow, process, or dispense medical cannabis.

(6) It is in the public interest to grant the permit.

(7) The applicant, including the financial backer or principal, is of good moral character and has the financial fitness necessary to operate.

(8) The applicant is able to implement and maintain security, tracking, recordkeeping, and surveillance systems relating to the acquisition, possession, growth, manufacture, sale, delivery, transportation, distribution, or the dispensing of medical cannabis as required by the bureau.

(9) The applicant satisfies any other conditions as determined by the bureau.

(b) *Nontransferability*. — A permit issued under this chapter shall be nontransferable.

(c) *Privilege*. — The issuance or renewal of a permit shall be a revocable privilege.

~~(d) *Regions*. — The bureau shall establish a minimum of three regions within this state for the purpose of granting permits to grower/processors and dispensaries and enforcing this act. The bureau shall approve permits for growers, processors and dispensaries in a manner which will provide an adequate amount of medical cannabis to patients and caregivers in all areas of this state. The bureau shall consider the following when issuing a permit:~~

(d) *Dispensary location*. — The bureau shall consider the following when issuing a dispensary permit:

(1) *Geographic location*:

~~(1)~~(2) Regional population;

~~(2)~~ (3) The number of patients suffering from serious medical conditions;

~~(3)~~ (4) The types of serious medical conditions;

~~(4)~~ (5) Access to public transportation;

~~(5)~~ (6) Approval by local health departments;

~~(6)~~ (7) Whether the county has disallowed the location of a grower, processor or dispensary; and

~~(7)~~ (8) Any other factor the bureau deems relevant.

(e) *Application procedure*. — The bureau shall establish a procedure for the fair and objective evaluation of all applications for all medical cannabis organization permits. Such evaluations shall score each applicant numerically according to standards set forth in this chapter.

§16A-6-13. Limitations on permits.

(a) The following limitations apply to approval of permits for growers, processors, and dispensaries, subject to the limitations in subsection (b) of this section:

(1) The bureau may not issue permits to more than 10 growers: *Provided*, That each grower may have up to two locations per permit.

(2) The bureau may not issue permits to more than 10 processors.

(3) The bureau may not issue permits to more than ~~thirty~~ 100 dispensaries. ~~with no more than five in any region~~

(4) The bureau may not issue more than ~~two~~ 10 individual dispensary permits to one person.

(5) The bureau may not issue more than one individual grower permit to one person.

(6) The bureau may not issue more than one individual processor permit to one person.

(7) A dispensary may only obtain medical cannabis from a grower or processor holding a valid permit under this act.

(8) A grower or processor may only provide medical cannabis to a dispensary holding a valid permit under this act.

~~(9) A grower or a processor may not be a dispensary. A person may hold a grower permit, a processor permit, and a dispensary permit, or any combination thereof, concurrently.~~

(b) Before a permit may be issued, the bureau shall obtain the following:

(1) A written approval from the board of health for the county in which the permit is to be located and operate business.

(2) A written statement from the county commission for the county in which the permit is to be located and conduct business that the county has not voted, pursuant to §16A-7-6 of this code, to disapprove a medical cannabis organization to be located or operate within the county.

ARTICLE 7. MEDICAL CANNABIS CONTROLS.

§16A-7-4. Laboratory.

~~A grower and processor shall contract with an independent laboratory to test the medical cannabis produced by the grower or processor. The bureau shall approve the laboratory and require that the laboratory report testing results in a manner as the bureau shall determine, including requiring a test at harvest and a test at final processing. The possession by a laboratory of medical cannabis shall be a lawful use.~~

(a) All medical cannabis produced pursuant to this chapter shall be subject to testing as directed by the bureau.

(b) The bureau shall ensure that there is sufficient testing capacity to meet patient demand.

(c) To the extent practicable, testing required by the provisions of subsection (a) of this section shall be conducted by the Commissioner of Agriculture. The commissioner shall, in consultation with the bureau, establish a fee schedule for such testing as is required by the bureau.

(d) Fees received pursuant to subsection (b) of this section, shall be deposited in the Agriculture Fees Fund established under §19-1-4c of this code.

(e) Should the bureau determine that the Commissioner is unable to provide the testing required by this section, it shall provide notice to the Commissioner and authorize growers and processors to contract with other laboratories certified by the Office of Laboratory Services.

ARTICLE 8. DISPENSARIES.

§16A-8-1. Dispensing to patients and caregivers.

(a) *General rule.* — A dispensary that has been issued a permit under §16A-6-1 *et seq.* of this code may lawfully dispense medical cannabis to a patient or caregiver upon presentation to the dispensary of a valid identification card for that patient or caregiver. The dispensary shall provide to the patient or caregiver a receipt, as appropriate. The receipt shall include all of the following:

- (1) The name, address and any identification number assigned to the dispensary by the bureau.
- (2) The name and address of the patient and caregiver.
- (3) The date the medical cannabis was dispensed.
- (4) Any requirement or limitation by the practitioner as to the form of medical cannabis for the patient.
- (5) The form and the quantity of medical cannabis dispensed.

~~(b) *Requirements.* — A dispensary shall have a physician or a pharmacist onsite at all times during the hours the dispensary is open to receive patients and caregivers. A physician or a pharmacist shall, prior to assuming duties under this paragraph, successfully complete the course established in subsection (a), section one, article three of this chapter. A physician may not issue a certification to authorize patients to receive medical cannabis or otherwise treat patients at the dispensary.~~

~~(c) *(b) Filing with bureau.* — Prior to dispensing medical cannabis to a patient or caregiver, the dispensary shall file the receipt information with the bureau utilizing the electronic tracking system. When filing receipts under this subsection, the dispensary shall dispose of any electronically recorded certification information as provided by rule.~~

~~(d) *(c) Limitations.* — No dispensary may dispense to a patient or caregiver:~~

- (1) A quantity of medical cannabis greater than that which the patient or caregiver is permitted to possess under the certification; or
- (2) A form of medical cannabis prohibited by this act.

~~(e) *(d) Supply.* — When dispensing medical cannabis to a patient or caregiver, the dispensary may not dispense an amount greater than a 30-day supply until the patient has exhausted all but a seven-day supply provided pursuant to §16A-4-5 of this code.~~

~~(f) *(e) Verification.* — Prior to dispensing medical cannabis to a patient or caregiver, the dispensary shall verify the information in subsections (d) and (f) of this section by consulting the electronic tracking system included in the bureau's electronic database established under §16A-3-1 of this code and the dispensary tracking system under §16A-7-1 of this code.~~

~~(g) *(f) Form of medical cannabis.* — Medical cannabis dispensed to a patient or caregiver by a dispensary shall conform to any requirement or limitation set by the practitioner as to the form of medical cannabis for the patient.~~

~~(h) *(g) Safety insert.* — When a dispensary dispenses medical cannabis to a patient or caregiver, the dispensary shall provide to that patient or caregiver, as appropriate, a safety insert. The insert shall be developed and approved by the bureau. The insert shall provide the following information:~~

- (1) Lawful methods for administering medical cannabis in individual doses.

(2) Any potential dangers stemming from the use of medical cannabis.

(3) How to recognize what may be problematic usage of medical cannabis and how to obtain appropriate services or treatment for problematic usage.

(4) How to prevent or deter the misuse of medical cannabis by minors or others.

(5) Any other information as determined by the bureau.

(i) (h) *Sealed and labeled package.* — Medical cannabis shall be dispensed by a dispensary to a patient or caregiver in a sealed, properly labeled, and child-resistant package. The labeling shall contain the following:

(1) The information required to be included in the receipt provided to the patient or caregiver, as appropriate, by the dispensary.

(2) The packaging date.

(3) Any applicable date by which the medical cannabis should be used.

(4) A warning stating:

“This product is for medicinal use only. Women should not consume during pregnancy or while breastfeeding except on the advice of the practitioner who issued the certification and, in the case of breastfeeding, the infant’s pediatrician. This product might impair the ability to drive or operate heavy machinery. Keep out of reach of children.”

(5) The amount of individual doses contained within the package and the species and percentage of tetrahydrocannabinol and cannabidiol.

(6) A warning that the medical cannabis must be kept in the original container in which it was dispensed.

(7) A warning that unauthorized use is unlawful and will subject the person to criminal penalties.

(8) Any other information required by the bureau.

ARTICLE 9. TAX ON MEDICAL CANNABIS.

§16A-9-1. Tax on medical cannabis.

(a) Tax imposed. — A tax is imposed on the gross receipts of a grower/processor received from the sale of medical cannabis by a grower/processor to a dispensary, to be paid by the grower/processor, at the rate of ten percent. The tax shall be charged against and be paid by the grower/processor and shall not be added as a separate charge or line item on any sales slip, invoice, receipt or other statement or memorandum of the price paid by a dispensary, patient or caregiver.

~~(b) Payment of tax and reports. — A grower/processor shall make quarterly payments under this section for each calendar quarter at the rate prescribed in subsection (a) on the gross receipts for the calendar quarter. The tax shall be due and payable on the 20th day of January, April, July and October for the preceding calendar quarter on a form prescribed by the Department of Revenue.~~

(a) Tax imposed. – Upon every person exercising the privilege of engaging or continuing within this state in the business of growing medical cannabis for sale to a processor of medical cannabis, purchasing, and processing medical cannabis for sale to a dispensary, growing, processing, and selling medical cannabis to a dispensary of medical cannabis, or engaging in any combination thereof, there is hereby imposed an annual privilege tax. The tax imposed by this article shall not be added as a separate charge or line item on any sales slip, invoice, receipt, other statement, or memorandum of the price paid by a dispensary, patient, or caregiver. Persons subject to this tax shall pay the tax at the rates specified in subsection (b) of this section based upon the taxable privilege specified, and no diminishment, offset, or deduction shall be allowed for tax paid directly or as an embedded cost at any earlier point in the growth, sales, or distribution process.

(b) Rate and measure of tax. – The rate of tax imposed by this article shall be:

(1) In the case of a grower of medical cannabis who sells medical cannabis to an unrelated processor of medical cannabis, 10 percent of the gross receipts derived from the sale to the processor.

(2) In the case of a processor of medical cannabis who purchases medical cannabis from a grower of medical cannabis and after processing sells processed medical cannabis to an unrelated dispensary of medical cannabis, 10 percent of the gross receipts derived from the sale to the dispensary.

(3) In the case of an integrated grower or processor of medical cannabis who sells processed medical cannabis to an unrelated dispensary of medical cannabis, 10 percent of the gross receipts derived from the sale to the dispensary.

(4) When the same person is the grower, processor, and dispensary, or when the grower, processor, and dispensary are related parties, the tax shall be 5 percent of the gross receipts the dispensary derived from sale of medical cannabis product to the patient, or to a caregiver.

(c) Definitions. – For purposes of this article:

(1) ‘Gross receipts’ means and includes the gross receipts, however denominated, derived from the sale, distribution, or transfer of medical cannabis, without any deduction on account of the cost of property sold; the cost of materials used to grow, process, or sell the medical cannabis; labor costs, taxes, royalties paid in cash or in kind, or otherwise; interest or discount paid; or any other expense, however denominated.

(2) ‘Person’ includes any natural person, corporation, partnership, limited liability company, or other business entity as those terms are defined in §11-1-1 et seq. of this code.

(3) ‘Related person’ means two or more persons that are related persons as defined in section 267 of the Internal Revenue Code, as defined in §11-24-3 of this code.

~~(b)~~ (d) Payment of tax and reports. — A grower/processor Every person subject to the tax imposed by this article shall make quarterly payments under this section for each calendar quarter at the rate prescribed in ~~subsection (a)~~ subsection (b) of this section on the gross receipts for the calendar quarter. The tax shall be due and payable on the 20th day of January, April, July, and October for the preceding calendar quarter and shall be filed with a tax return and such schedules as may be prescribed by the Tax Division of the Department of Revenue. The Tax Commissioner may require such forms, schedules, and returns and impose such filing and remittance requirements as may be necessary or convenient for the efficient administration of taxes imposed by this §16A-9-1 of this code and may prescribe such electronic filings and payments as the Tax Commissioner may deem

appropriate. The Tax Commissioner may issue such procedural, interpretive, or legislative rules, including emergency rules, as the Tax Commissioner may deem necessary or convenient for the efficient administration of taxes imposed by this §16A-9-1 of this code.

(e) *Electronic filing and payment.* — As the Tax Commissioner may direct, taxes imposed by this article may be paid to the Tax Commissioner by electronic funds transfer unless electronic payment is prohibited by state or federal law. As the Tax Commissioner may direct, tax returns required by this article may be filed electronically with the Tax Commissioner.

(d) (f) *Deposits of proceeds.* — All money received from the tax imposed under subsection (a) this article, including any interest and additions to tax paid under §11-10-1 *et seq.*, shall be deposited into the fund ~~Medical Cannabis Program Fund~~.

(d) (g) *Exemption.* — ~~Medical~~ Sales of medical cannabis shall not be subject to a sales tax, if gross receipts from the sale thereof are taxable under this article and the tax has been paid on gross receipts thereof under this article.

(e) *Information.* — ~~A grower/processor that sells medical cannabis shall provide to the Department of Revenue information required by the bureau.~~

(1) Persons subject to the tax imposed by this article of this code shall provide to the Tax Commissioner any information required by the Tax Commissioner to administer, collect, and enforce the taxes imposed by this article.

(2) Notwithstanding any provision of §11-10-1 *et seq.* of this code or of this article to the contrary, the Tax Commissioner, the bureau, and the Secretary of Health and Human Resources may enter into written agreements pursuant to which the Tax Commissioner will disclose to designated employees of the bureau and the Secretary of Health and Human Resources, whether a particular grower, processor, or dispensary is in good standing with the Tax Commissioner, and the bureau and the Secretary will disclose to designated employees of the Tax Commissioner information a grower, processor, or dispensary provides to the bureau and the Secretary pursuant to this code. Tax information disclosed pursuant to a written agreement shall remain confidential in the hands of the receiver and shall not be disclosable under §29B-1-1 *et seq.* of this code. To the extent feasible, this information should be shared or exchanged electronically.

§16A-9-3. Tax on medical cannabis crimes and penalties.

Notwithstanding any provision in §11-9-1 *et seq.* of this code to the contrary, each and every provision of the 'West Virginia Tax Crimes and Penalties Act' set forth in §11-9-1 *et seq.* of this code shall apply to the tax imposed by §16A-9-1 *et seq.* of this code with like effect as if said act were applicable only to the tax imposed by §16A-9-1 *et seq.* of this code and were set forth in extenso in §16A-9-1 *et seq.* of this code.

§16A-9-4. Procedure and administration of the tax on medical cannabis.

Notwithstanding any provision of §11-10-1 *et seq.* of this code or any other provision of this code to the contrary, each and every provision of the 'West Virginia Tax Procedure and Administration Act' set forth in §11-10-1 *et seq.* of this code, shall apply to the tax imposed by §16A-9-1 *et seq.* with like effect as if the said West Virginia Tax Procedure and Administration Act were applicable only to the tax imposed by §16A-9-1 *et seq.* of this code and were set forth in extenso in §16A-9-1 *et seq.* of this code.

ARTICLE 10. ADMINISTRATION.

§16A-10-6. Emergency rules.

(a) *Promulgation.* — In order to facilitate the prompt implementation of this act, the bureau may promulgate emergency rules that shall expire not later than two years following the publication of the emergency rule.

(b) *Expiration.* — The bureau's authority to adopt emergency rules under subsection (a) of this section shall expire ~~two years after the effective date of this section~~ July 1, 2021. Rules adopted after this period shall be promulgated as provided by law.

(c) *Publication.* — The bureau shall begin publishing emergency rules in the State Register no later than six months after the effective date of this section.

ARTICLE 11. MEDICAL CANNABIS ADVISORY BOARD.**§16A-11-1. Advisory board.**

(a) The Medical Cannabis Advisory Board is established within the bureau. The advisory board shall consist of the following members:

(1) The commissioner or a designee.

(2) The Superintendent of the West Virginia State Police or a designee.

(3) Four physicians licensed to practice in the state to be appointed by the State Medical Association with one from each of the following specialized medicine:

(A) Family Practice/Neurologist/General Practitioner.

(B) Pain Management.

(C) Oncologist/Palliative Care.

(D) Psychiatrist.

~~(4) Two physicians who are licensed pursuant to §30-14-1 et seq. of this code appointed by the West Virginia Osteopathic Association.~~

~~(4) (5)~~ One pharmacist licensed to practice in the state, to be designated by the Board of Pharmacy.

~~(5) (6)~~ One pharmacologist who has experience in the science of cannabis and a knowledge of the uses, effects, and modes of actions of drugs, to be appointed by the Governor.

~~(6) (7)~~ One member who is a horticulturalist, to be designated by the West Virginia Commissioner of Agriculture.

~~(7) (8)~~ One member designated by the West Virginia Association of Alcoholism and Drug Counselors.

~~(8) (8)~~ An attorney licensed in the state who is knowledgeable about medical cannabis laws.

~~(9) (10)~~ One member appointed by the West Virginia Prosecuting Attorneys Institute.

~~(40)~~ (11) One member appointed by the Governor, who shall be a patient, a family or household member of a patient or a patient advocate.

(b) *Terms.* — Except as provided under subsection (g) of this section, the members shall serve a term of four years or until a successor has been appointed and qualified, but no longer than six months beyond the four-year period.

(c) *Chair.* — The commissioner, or a designee, shall serve as chair of the advisory board.

(d) *Voting; quorum.* — A majority of the members shall constitute a quorum for the purpose of organizing the advisory board, conducting its business and fulfilling its duties. A vote of the majority of the members present shall be sufficient for all actions of the advisory board unless the bylaws require a greater number.

(e) *Attendance.* — A member of the advisory board who fails to attend three consecutive meetings shall be deemed vacant, unless the commissioner, upon written request from the member, finds that the member should be excused from a meeting for good cause. A member who cannot be physically present may attend meetings via electronic means, including video conference.

(f) *Governance.* — The advisory board shall have the power to prescribe, amend and repeal bylaws governing the manner in which the business of the advisory board is conducted and the manner in which the duties granted to it are fulfilled. The advisory board may delegate supervision of the administration of advisory board activities to an administrative commissioner and other employees of the bureau as the commissioner shall appoint.

(g) *Initial terms.* — The initial terms of members appointed under subsection (a) of this section shall be for terms of one, two, three, or four years, the particular term of each member to be designated by the commissioner at the time of appointment. All other members shall serve for a term of four years.

(h) *Vacancy.* — In the event that any member appointed under subsection (a) of this section shall die or resign or otherwise become disqualified during the member's term of office, a successor shall be appointed in the same way and with the same qualifications as set forth in this section and shall hold office for the unexpired term. An appointed member of the advisory board shall be eligible for reappointment.

(i) *Expenses.* — A member shall receive the amount of reasonable travel, hotel, and other necessary expenses incurred in the performance of the duties of the member in accordance with state rules but shall receive no other compensation for the member's service on the board.

(j) *Duties.* — The advisory board shall have the following duties:

(1) To examine and analyze the statutory and regulatory law relating to medical cannabis within this state.

(2) To examine and analyze the law and events in other states and the nation with respect to medical cannabis.

(3) To accept and review written comments from individuals and organizations about medical cannabis.

(4) To issue, two years after the effective date of this section, a written report to the Governor, the Senate, and the House of Delegates.

(5) The written report under subdivision (4) shall include recommendations and findings as to the following:

(A) Whether to change the types of medical professionals who can issue certifications to patients.

(B) Whether to change, add, or reduce the types of medical conditions which qualify as serious medical conditions under this act.

(C) Whether to change the form of medical cannabis permitted under this act.

(D) Whether to change, add, or reduce the number of growers, processors or dispensaries.

(E) How to ensure affordable patient access to medical cannabis.

(F) Whether to permit medical cannabis to be dispensed in dry leaf or plant form, for administration by vaporization.

(6) The final written report under this section shall be adopted at a public meeting.

ARTICLE 15. MISCELLANEOUS PROVISIONS.

§16A-15-10. State employee actions and federal law.

(a) No cause of action exists against the state officers and employees in their personal capacities, while acting within the scope of duties contemplated by §16A-1-1 et seq. of this code. Any recovery for claims or actions arising from this section is limited solely to the proceeds of available insurance coverage.

(b) To the extent permitted by law, the State of West Virginia shall defend state officers and employees involved in implementing the provisions of §16A-1-1, et seq. of this code against any claims, charges, liabilities, or expenses and shall indemnify and hold harmless state officers and employees involved in implementing the provisions of §16A-1-1 et seq. of this code provided within the scope of their duties or employment in accordance with the Act, including without limitation, defense in any state, federal, or local court and payment of the amount of any judgment obtained, damages, legal fees, expenses, and any other expenses incurred.

ARTICLE 16. EFFECTIVE DATE.

§16A-16-1. Effective date.

(a) Unless excepted in subsection (b) or (c), the provisions of this act shall be effective upon passage.

(b) The provisions of §16A-12-1 et seq. of this code, and any other criminal provisions or penalties contained in this act, shall not be effective until 90 days from passage of Senate Bill 386 during the 2017 regular session.

(c) Notwithstanding any provision of this chapter to the contrary, no identification cards may be issued to patients until July 1, 2019. The Bureau may take sufficient steps through rule to implement the preliminary provisions in preparation for implementation of the provisions of this act.

(d) Notwithstanding the prohibition contained in subsection (c) on the issuance of identification cards until July 1, 2019, the bureau may implement a process for the pre-registration of patients with

a serious medical condition who have been issued a certification approved by the bureau and to a caregiver designated by the patient: *Provided*, That a patient who is pre-registered must nevertheless comply with the provisions of §16A-5-1 of this code and may not be issued an identification card necessary to obtain and use medical cannabis as authorized by this act until July 1, 2019.”

And,

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

Com. Sub. for H. B. 2079 - “A Bill to amend and reenact §16A-2-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §16A-4-3 of said code; to amend and reenact §16A-6-3 of this code; to amend and reenact §16A-6-13 of said code; to amend and reenact §16A-7-4 of said code; to amend and reenact §16A-8-1 of said code; to amend and reenact §16A-9-1 of said code; to amend said code by adding thereto two new sections, designated §16A-9-3 and §16A-9-4; to amend and reenact §16A-10-6 of said code; to amend and reenact §16A-11-1 of said code; to amend said code by adding thereto a new section, designated §16A-15-10; and to amend and reenact §16A-16-1 of said code, all relating generally to medical cannabis; defining terms; modifying certain definitions; modifying conditions for issuance of patient certifications; expanding practitioner reporting requirements; defining resident for purposes of the act; requiring that state residents own a majority of business entities applying for medical cannabis organization permits; removing regional distribution requirements for growers, processors, and dispensaries; establishing criteria for choosing the locations of dispensary permittees; requiring the Bureau for Public Health to adopt fair and objective evaluation procedures in choosing permittees; requiring numeric scoring of applications; increasing the maximum number of dispensary permits; increasing the number of dispensary permits a person or entity may hold; authorizing persons or entities to hold grower, processor and dispensary permits; authorizing the bureau to oversee testing of medical cannabis; granting a preference to the Department of Agriculture to perform medical cannabis testing; directing that fees for testing of medical cannabis received by the Department of Agriculture be deposited in the Agriculture Feed Fund; authorizing the bureau to contract with persons or entities other than the Department of Agriculture for testing of medical cannabis; removing the requirement that dispensaries have a physician or pharmacist onsite; modifying tax rates and tax procedures related to medical cannabis organizations; authorizing the electronic filing with the Tax Commissioner; directing tax proceeds to be deposited in the Medical Cannabis Program Fund; clarifying applicability of the West Virginia Tax Procedure and Administration Act and the West Virginia Tax Crimes and Penalties Act apply to medical cannabis operations; extending the authority of the bureau to adopt emergency rules until July 1, 2021; adding two osteopathic physicians appointed by the West Virginia Osteopathic Association to the Medical Cannabis Advisory Board; immunizing state officials and employees from causes of action in their personal capacities for actions taken to implement the act; limiting any type of recovery to proceeds of available insurance; obligating the state to defend and indemnify state officials and employees against one type of action brought against them for implementing the act; authorizing pre-certification of patients; maintaining restriction that patient certificates may not be issued until July 1, 2019; and incorporating certain tax offenses and penalties by reference.”

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

Delegate J. Jeffries requested to be excused from voting on Com. Sub. for H. B. 2079 under the provisions of House Rule 49.

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 724**), and there were—yeas 75, nays 24, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Anderson, Azinger, Bibby, Butler, Cadle, Cowles, Criss, Fast, Graves, Hollen, D. Jeffries, Jennings, D. Kelly, J. Kelly, Kessinger, Malcolm, C. Martin, P. Martin, Porterfield, Rohrbach, Rowan, Summers, Toney and Waxman.

Absent and Not Voting: Cooper.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2079) passed.

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

On this question, the yeas and nays were taken (**Roll No. 725**), and there were—yeas 80, nays 18, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Azinger, Bibby, Butler, Cadle, Cowles, Fast, Hollen, D. Jeffries, Jennings, D. Kelly, J. Kelly, Kessinger, Malcolm, P. Martin, Porterfield, Rowan, Toney and Waxman.

Absent and Not Voting: Cooper and Sypolt.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2079) takes effect from its passage.

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

On motion of Delegate Summers, at 8:13 p.m., the House of Delegates recessed until 9:00 p.m.

* * * * *

Evening Session

* * * * *

-continued-

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

Messages from the Senate

A message from the Senate, by

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

Com. Sub. for S. B. 40, Establishing Military Service Members Court program.

On motion of Delegate Summers, the House concurred in the following Senate amendment to the House amendment:

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

“ARTICLE 16. THE MILITARY SERVICE MEMBERS COURT ACT.**§62-16-1. Short title.**

This may be cited as the Military Service Members Court Act.

§62-16-2. Legislative findings.

(a)(1) The Legislature recognizes that while most veterans are strengthened by their military service, the combat experiences of many veterans have unfortunately left a growing number of veterans who suffer from issues such as Post Traumatic Stress Disorder and traumatic brain injury. A growing body of research shows that one in five veterans will have symptoms of a mental illness, mental health disorder, or cognitive impairment. One in six veterans who served in either Operation Enduring Freedom or Operation Iraqi Freedom suffer from substance abuse and related issues. As a result, many veterans have found themselves in the criminal court system charged with crimes which may be directly attributable to these service-related issues.

(2) The Legislature further recognizes that a Military Service Members Court is necessary to link veterans with the programs, benefits, and services that are necessary to help them overcome these issues and provide them with rehabilitation services instead of incarceration.

(3) Given the context of veteran life, especially given their past training and experiences in the Armed Forces, it is reasonably anticipated and likely that military service members would respond favorably to a structured environment. The Military Service Members Court is a professional, structured, and monitored program which mandates and provides participant accountability and responsibility, including mandatory court appearances, treatment, and counseling sessions, as well as frequent and random testing for drug and alcohol use. However, the Legislature also finds that some may still struggle. Those are the veterans who need the structure and support of a Military Service Members Court program the most. Without the structure of a Military Service Members Court program mentally ill and challenged veterans may well reoffend, remain in the criminal court system, and suffer under the emotional, physical, and mental yoke of substance abuse.

(4) The Legislature creates the Military Service Members Court to ensure that these veterans in need are able meet their obligations to themselves, their family, their loved ones, the court, and their community.

§62-16-3. Definitions.

For the purposes of this article:

‘Assessment’ means an evaluation to determine whether a criminal defendant is a military service member as defined by this section, that the offense he or she has been charged with are attributable to their military service, and if the offender would benefit from the provisions set forth in this article.

‘Court’ means a Military Service Members Court.

‘Department’ means the West Virginia Department of Veterans Assistance.

‘Military Service Members Court program’ or ‘program’ is a program that includes pre-adjudicatory and post-adjudicatory treatment for military service members.

'Military service member' means a person who is currently serving in the Army, Air Force, Marines, Navy, or Coast Guard on active duty, reserve status, or in the National Guard, or a person who served in the active military, or who was discharged or released under conditions other than dishonorable.

'Offender' means a criminal defendant who qualifies as a military service member under this article.

'Post-adjudicatory program' means a program in which the offender has admitted guilt or has been found guilty and agrees, with the prosecutor's consent, to enter a court program as part of his or her sentence.

'Pre-adjudicatory program' means a program that allows the offender, with the consent of the prosecutor, team, and the court to expedite the offender's criminal case before conviction or before filing of a criminal case and requires the offender to agree to and successfully complete the court program as part of the written agreement.

'VA' means the United States Department of Veterans Affairs.

'VJO' means the Veterans Justice Outreach program of the United States Department of Veterans Affairs.

'Written agreement' means the agreement executed to allow a military service member to participate in a court program.

§62-16-4. Court authorization; funding; immunity from liability.

(a) *Court authorization.* — The Supreme Court of Appeals is hereby authorized to establish a Military Service Members Court program, under the oversight of its administrator. Each Military Service Members Court may be a stand-alone court or operated in conjunction with an existing drug court or other specialty court program. The Supreme Court is further encouraged to give deference to circuits or regions in the operation of those programs to maximize flexibility, and to take into account regional and other differences and circumstance.

(b) Once a program is established, termination of any program may not take place until at least six months after written notice of the intent to terminate the program has been provided by the Supreme Court administrator to the Speaker of the House of Delegates and the President of the Senate.

(c) Each court judge may establish rules and may make special orders as necessary that do not conflict with rules and orders promulgated by the Supreme Court of Appeals to effectuate the purposes of this article.

(d) A court may offer pre-adjudication or post-adjudication programs for adult offenders.

(e) Nothing contained in this article confers a right or an expectation of a right to participate in a court program nor does it obligate a court to accept every military service member offender.

(f) Neither the establishment of a Military Service Members Court nor anything in this article may be construed as limiting the discretion of the prosecuting attorney to act on any criminal case which he or she determines advisable to prosecute.

(g) Funding. — Each Military Service Members Court, with the guidance of the Supreme Court of Appeals, may establish a schedule for the payment of reasonable fees and costs to be paid by participants necessary to conduct the program.

(h) Nothing in this article prohibits Military Service Members Courts from obtaining supplemental funds or exploring grants to support the courts.

(i) Immunity from liability. — Any person who, in good faith, provides services pursuant to this article is not liable in any civil action, unless his or her actions were the result of gross negligence or willful misconduct. The grant of immunity provided in this section extends to all employees and administrative personnel of a court.

§62-16-5. Eligibility; written agreement.

(a) Eligibility. — A military service member offender, who is eligible for probation based upon the nature of the offense for which he or she has been charged, and in consideration of his or her criminal background, if any, may, upon application, be admitted into a court program only upon the agreement of the prosecutor and the offender. Additionally, the court must also determine whether the offense is in any way attributable to the offender's military service.

(b) A military service member offender may not participate in the court program if he or she has been charged with any of the following offenses:

(1) A sexual offense, including, but not limited to, a violation of the felony provisions of §61-8-1 et seq., §61-8B-1 et seq., §61-8C-1 et seq., or §61-8D-1 et seq. of this code, or a criminal offense where the judge has made a written finding that the offense was sexually motivated;

(2) A felony violation of the provisions of §61-8D-2, §61-8D-2a, or §61-8D-3a of this code;

(3) A felony violation of the provisions of §61-14-3 or §61-14-4 of this code;

(4) A felony violation of §61-2-9b or §61-2-14 of this code;

(5) A felony violation of §61-2-28 of this code;

(6) A felony violation of §17C-5-2(b) of this code; or

(7) If he or she has previously been convicted in this state, another state, or in a federal court for any of the offenses enumerated above.

(c) Written agreement. — Participation in a Military Service Members Court program, with the consent of both the prosecutor and the court, shall be pursuant to a written agreement. This written agreement shall set forth all of the agreed upon provisions to allow the military service member offender to proceed in the court. The offender shall execute a written agreement with the court as to his or her participation in the program and shall agree to all of the terms and conditions of the program, including, but not limited to, the possibility of sanctions or incarceration for failing to comply with the terms of the program.

(d) Upon successful completion of a court program, the judge shall dispose of an offender's case in the manner prescribed by the written agreement and by the applicable policies and procedures adopted by the court. Disposition may include, but is not limited to, withholding criminal charges, dismissal of charges, probation, deferred sentencing, suspended sentencing, split sentencing, or a reduced period of incarceration.

§62-16-6. Procedure; mental health and substance abuse treatment; violation; termination.

(a) Procedure. — Upon application, the court shall order the offender to submit to an eligibility screening, a mental health and drug/alcohol screening, and an assessment by the VA VJO to provide information on the offender's mental health or military service member status. The assessment shall include a risks assessment and be based, in part, upon the known availability of treatment resources available to the court. The assessment shall also include recommendations for treatment of the conditions which are indicating a need for treatment under the monitoring of the court and reflect a level of risk assessed for the individual seeking admission. The court is not required to order an assessment if a valid screening or assessment related to the present charge(s) pending against the offender has been completed within the previous 60 days.

(b) The court may order the offender to complete substance abuse treatment in an outpatient, inpatient, residential, or jail-based custodial treatment program, order the offender to complete mental health counseling in an inpatient or outpatient basis, comply with all physician recommendations regarding medications, and complete all follow-up treatment. The mental health issues for which treatment may be provided include, but are not limited to, post-traumatic stress disorder, traumatic brain injury, and depression.

(c) Mental health and substance abuse treatment. — The court may maintain a network of mental health treatment programs and substance abuse treatment programs representing a continuum of graduated mental health and substance abuse treatment options commensurate with the needs of offenders; these shall include programs with the VA, the department, this state, and community-based programs.

(d) Violation. — The court may impose reasonable sanctions under the offender's written agreement, including, but not limited to, imprisonment or dismissal of the offender from the program. The court may reinstate criminal proceedings against him or her for a violation of probation, conditional discharge, or supervision hearing, if the court finds from the evidence presented, including, but not limited to, the reports or proffers of proof from the court's professionals that:

(1) The offender is not performing satisfactorily in the assigned program;

(2) The offender is not benefitting from educational treatment or rehabilitation;

(3) The offender has engaged in criminal conduct rendering him or her unsuitable for the program;

or

(4) The offender has otherwise violated the terms and conditions of the program or his or her sentence or is for any reason unable to participate.

(e) Termination. — Upon successful completion of the terms and conditions of the program, the court may dismiss the original charges against the offender, successfully terminate the offender's sentence, permit the offender to enter into a plea agreement to a lesser offense, or otherwise discharge him or her from any further proceedings against him or her in the original prosecution.

(f) Notwithstanding any provision of this code to the contrary, upon successful completion of the terms and conditions of the program or if the presiding judge determines the lack of the ability to operate a motor vehicle is preventing program success, the court may expunge any driving offenses that prevent the veteran offender from obtaining a West Virginia driver's license.

§62-16-7. Program integrity and offender accountability.

(a) If deemed appropriate by the Supreme Court of Appeals or its administrative office, the courts shall collect and maintain information on participants which may include, but is not limited to, the following:

(1) The participants' prior criminal history;

(2) The participants' prior substance abuse and mental health treatment history;

(3) The participants' employment, education, and income histories;

(4) The participants' gender, race, ethnicity, marital and family status, and any child custody and support obligations;

(5) Instances of participants' recidivism occurring during and after participation in a court program. Recidivism may be measured at intervals of six months, one year, two years, and five years after successful graduation from Military Service Members Court;

(6) The number of offenders screened for eligibility, the number of eligible offenders who were and were not admitted, and their case dispositions; and

(7) The costs of operation and sources of funding.

(b) An offender may be required, as a condition of pretrial diversion, probation, or parole, to provide the information described in this section. The collection and maintenance of information under this section shall be collected in a standardized format according to applicable guidelines set forth by the Supreme Court of Appeals.

(c) To protect an offenders' privacy in accordance with federal and state confidentiality laws, a court shall keep treatment records in a secure environment, separated from the court records to which the public has access."

And,

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

Com. Sub. for S. B. 40 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §62-16-1, §62-16-2, §62-16-3, §62-16-4, §62-16-5, §62-16-6, and §62-16-7, all relating to establishing a Military Service Members Court program within the Supreme Court of Appeals; providing legislative findings establishing the need for creation of a Military Service Members Court program; defining terms; granting authority to the Supreme Court of Appeals to establish a Military Service Members Court program under the oversight of its administrator; providing for no termination of any program until at least six months after written notice of the intent to terminate the program has been provided by the Supreme Court of Appeals Administrator to the Speaker of the House of Delegates and the President of the Senate; providing that a Military Service Members Court judge may establish rules and make special orders as necessary that do not conflict with rules and orders promulgated by the Supreme Court of Appeals to effectuate the purposes of the program; providing for funding mechanisms which may include court fees; providing for limitation of liability; setting forth eligibility requirements for participation; providing for written agreement to participate in the court; setting forth procedure to participate in court; allowing for mental health and drug treatment services for participants; providing for sanctions for violation of provisions of the court; setting forth incentives for successful participation; setting out disposition on successful completion; providing that Military Service Members Courts shall if deemed appropriate by the Supreme Court of Appeals collect and maintain information on program participants; setting

forth that offenders may be required to provide certain information to Military Service Members Courts; and requiring Military Service Members Courts to keep offender treatment records in a secure environment separated from the court records to which the public has access.”

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 726**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Cooper.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 40) passed.

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

A message from the Senate, by

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

Com. Sub. for S. B. 622, Relating generally to regulation and control of financing elections.

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

Com. Sub. for S. B. 622 - “A Bill to amend and reenact §3-8-1a, §3-8-2, §3-8-4, §3-8-5, §3-8-5b, §3-8-5e, §3-8-7, §3-8-8, §3-8-9, and §3-8-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto five new sections, designated §3-8-5c, 3-8-5g, §3-8-9a, §3-8-9b, and §3-8-9c, all relating generally to the regulation and control of elections; modifying and adding definitions; modifying requirements for information to be included in independent expenditure reports; providing that persons or committees required to file federal expenditure reports are not exempt from requirement to file state-level expenditure and electioneering disclosure reports; raising the threshold amounts for required disclosure of independent expenditures occurring within a certain time frame preceding elections; requiring electronic filing of certain financial disclosure statements; requiring that certain records and receipts related to expenditures for electioneering communications be maintained for five years; removing the deadline before an election for a political action committee or political party committee to file a statement of organization; clarifying that a political committee must file a statement of organization before engaging in any activity; specifying information to be included in a statement or organization; modifying record-keeping requirements for certain receipts and expenditures made for political purposes and requiring that records be maintained for a period of two years; modifying deadlines for financial disclosure reports; providing that candidates for certain offices must file financial disclosure statements electronically and candidates for other offices may file by mail, facsimile, or electronic means; modifying limits on contributions to candidates and candidate committees; modifying limits on contributions to state party executive committees and legislative caucus campaign committees; modifying limits on contributions to political action committees; providing that precandidates may accept contributions for a general election campaign prior to nomination, but may not expend such funds until after nomination is declared; providing that persons receiving precandidacy contributions are subject to certain expenditure reporting requirements; prohibiting foreign nationals from making contributions or donations to candidates, committees, and parties, and prohibiting receipt of a contribution or donation by a foreign national; modifying daily rate of civil penalty for persons filing late, inaccurate, or incomplete financial statements and making such penalty mandatory; requiring the Secretary of State to publish an online list of persons filing late financial statements; providing that membership organizations are subject to

certain limitations applying to corporate contributions and solicitation of contributions by corporations; adding certain expenses to the list of permissible expenses of political committees; providing that coordinated expenditures are treated as contributions; providing criteria for whether an expenditure is coordinated and exceptions thereto; permitting political party committees and legislative caucus campaign committees to make coordinated expenditures up to certain limits in connection with certain state-level candidates; permitting political committees to engage in joint fundraising efforts pursuant to a written agreement filed with the Secretary of State subject to certain requirements; requiring the State Election Commission to promulgate legislative rules pertaining to joint fundraising efforts; permitting unlimited transfers of money between and among state party executive committees, legislative caucus campaign committees, and national committees of the same political party for voter registration and get-out-the-vote initiatives; providing that prohibition against intimidating or coercing certain government employees into engaging in political activity also extends to intimidating or coercing employees into refraining from political activity; eliminating prohibition on a political organization organized under Section 527 of the Internal Revenue Code from soliciting or accepting donations before registering with the Secretary of State; providing that it is unlawful for any person to establish more than one political committee with the intent to evade contribution limitations; and deleting obsolete language.”

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 727**), and there were—yeas 57, nays 42, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Angelucci, Barrett, Bates, Boggs, N. Brown, S. Brown, Byrd, Campbell, Canestraro, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Hornbuckle, Lavender-Bowe, Longstreth, Lovejoy, Miley, Miller, Paynter, Pethtel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Skaff, Sponaugle, Staggers, Swartzmiller, C. Thompson, R. Thompson, Tomblin, Walker, Williams and Zukoff.

Absent and Not Voting: Cooper.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 622) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had receded from its amendment to a bill of the House of Delegates, and again amended and passed, as amended

Com. Sub. for H. B. 2049, Relating to a prime contractor’s responsibility for wages and benefits.

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

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

“ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-7. Prime contractor’s responsibility for wages and benefits.

(a) Whenever any person, firm, or corporation shall contract with another for the performance of any work which the prime contracting person has undertaken to perform for another, the prime contractor shall become civilly liable to employees engaged in the performance of work under such the contract for the payment of wages and fringe benefits relating to such work only, exclusive of attorney's fees, interest, liquidated damages, or any other damages of any kind, as provided in §21-5-4(e) of this code, or other applicable law and/or common law, to the extent that the employer of such the employee fails to pay such the wages and fringe benefits: for work performed under the contract with the prime contractor. The employer, and its shareholders, owners, directors, and officers shall be personally and civilly liable to the prime contractor for any sums paid under this section, including attorney's fees.

(b) Any individual or entity seeking redress pursuant to subsection (a) of this section must:

(1) Notify the prime contractor, by certified mail, only that wages or fringe benefits have not been paid within 100 days of the date the wages or fringe benefits become payable to the employee; and

(2) Commence the action within one year of the date the employee delivered notice to the prime contractor pursuant to subdivision (1) of this subsection.

~~Provided, That such employees have exhausted all feasible remedies contained in this article against such employer, but if the prime contractor has failed to notify the commissioner as required by section sixteen of this article, then the employee shall not be required to exhaust any remedies against the employer: Provided, however, That such employer shall become civilly liable to such prime contractor for any sum of money paid by him under this section.~~

(c) The employer of the employee to whom wages and/or fringe benefits are owed, shall whenever feasible provide, immediately upon request by the employee or the prime contractor, complete payroll records relating to work performed under the contract with the prime contractor.

(d) Whenever the employee to whom wages and/or fringe benefits are due is represented by a union or other plan administrator, the union or other plan administrator, shall whenever feasible, immediately upon notice of a claim hereunder, cooperate with the employee and the prime contractor to identify and quantify the wages and fringe benefits owed for work performed under the contract with the prime contractor. Further, if the union or agents thereof or other plan administrator, including, but not limited to, third party administrators, trustees, administrators, or employees, become aware that an employer is not timely in the payment of wages and/or fringe benefits, the union or other plan administrator shall immediately notify the affected employee and the prime contractor for whom the affected employee provided work.

(e) A prime contractor must notify the owner and the architect prior to the completion of the contract if any subcontractor has not been paid in full."

And,

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

Com. Sub. for H. B. 2049- "A Bill to amend and reenact §21-5-7 of the Code of West Virginia, 1931, as amended, relating to a prime contractor's responsibility for wages and benefits of employees of a subcontractor; establishing personal and civil liability for the employer and its shareholders, owners, directors, and officers to the prime contractor for any sums paid under this section, including attorney's fees; requiring notice to prime contractor by certified mail within 100 days of the missing wages becoming payable to the employee; instituting a one-year statute of limitations; requiring the employer of the employee to whom wages and fringe benefits are owed to whenever feasible provide

immediately upon request by the employee or the prime contractor complete payroll records relating to work performed under the contract with the prime contractor; requiring when an employee to whom wages and fringe benefits are due is represented by a union or other plan administrator that the union or other plan administrator must whenever feasible immediately upon notice of a claim cooperate with the employee and the prime contractor to identify and quantify the wages and fringe benefits owed for work performed under the contract with the prime contractor; providing that if the union or its agents or other plan administrator become aware that an employer is not timely in the payment of wages and fringe benefits the union or other plan administrator must immediately notify the affected employee and the prime contractor for whom the affected employee provided work; and providing that a prime contractor must notify the owner and the architect prior to the completion of the contract if any subcontractor has not been paid in full.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 728**), and there were—yeas 54, nays 45, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Angelucci, Barrett, Bates, Boggs, N. Brown, S. Brown, Byrd, Campbell, Canestraro, Caputo, Dean, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Hornbuckle, J. Jeffries, Lavender-Bowe, Longstreth, Lovejoy, McGeehan, Miley, Miller, Paynter, Pethel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Sponaule, Staggers, Storch, Swartzmiller, C. Thompson, R. Thompson, Tomblin, Walker, Williams and Zukoff.

Absent and Not Voting: Cooper.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2049) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 2083, Providing an identification card for released inmates who do not have a West Virginia identification card or driver’s license.

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

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

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

§17B-2-1c. Temporary identification card for released inmates.

(a) The West Virginia Division of Corrections and Rehabilitation is authorized to issue a temporary identification card to an eligible inmate, no more than seven days prior to the inmate’s release from the Division’s custody. An identification card issued pursuant to this section shall be valid for 90 days after the date of issuance.

(b) A valid identification card issued pursuant to this section shall have the same force and effect as a standard identification card issued by the Division of Motor Vehicles pursuant to §17B-2-1(f) of this code.

(c)(1) Notwithstanding any other provision of this code, the Division of Motor Vehicles shall accept a valid identification card issued pursuant to this section as sufficient proof of identity, age, and residency of a person applying for an identification card or driver's license pursuant to §17B-2-1 of this code.

(2) If the Division of Motor Vehicles is unable to verify the person's social security number by another means, the Division of Motor Vehicles shall contact the Division of Corrections and Rehabilitation to verify the social security number provided by such person. The Division of Motor Vehicles shall accept verification by the Division of Corrections and Rehabilitation as sufficient documentation of the person's social security number for the purpose of issuing such person an identification card or driver's license pursuant to §17B-2-1 of this code.

(3) The Division of Corrections and Rehabilitation, in collaboration with the Division of Motor Vehicles, shall develop a policy to permit the sharing of released inmates' social security numbers for the limited purposes of this section, and shall obtain any necessary written authorization from an inmate prior to the inmate's release from the Division of Corrections and Rehabilitation's custody.

(d) An inmate is not eligible to receive an identification card pursuant to this section if the inmate is in possession of a valid West Virginia identification card or driver's license, which expires more than seven days after the inmate's date of release from the Division of Corrections and Rehabilitation's custody, or if the inmate is not a citizen of the United States.

(e) Nothing in this section shall be construed to permit or require issuance of an identification card or driver's license for federal use, in violation of the standards promulgated pursuant to the REAL ID Act of 2005, 49 U.S.C. § 30301 et seq.

(f) During the six months preceding an inmate's release date from the Division of Corrections and Rehabilitation's custody, the division shall make efforts to assist the inmate to obtain a certified copy of the inmate's birth certificate, a Social Security card, and a state-issued driver's license or identification card."

And,

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

Com. Sub. for H. B. 2083 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17B-2-1c, relating to authorizing the Division of Corrections and Rehabilitation to issue a temporary identification card to an inmate prior to release from custody; providing when temporary identification cards must be issued and for how long such cards are valid; providing that temporary identification cards have the same force and effect as standard identification cards issued by the Division of Motor Vehicles; requiring the Division of Motor Vehicles to accept temporary identification cards as proof of identity, age, and residency; requiring the Division of Motor Vehicles to contact the Division of Corrections and Rehabilitation to verify the social security number of a person presenting a temporary identification card in certain circumstances and to accept verification as documentation of social security number; requiring the Division of Corrections and Rehabilitation to develop a policy and obtain necessary authorizations for sharing social security numbers of released inmates with the Division of Motor Vehicles for limited purposes; providing limitations on inmate eligibility for temporary identification cards; clarifying that the new section neither permits nor requires issuance of temporary identification cards for federal use, in

violation of any standards promulgated pursuant to the federal Real ID Act of 2005; and requiring the Division of Corrections and Rehabilitation to make efforts, during the six months preceding an inmate's release, to assist an inmate in obtaining certain personal identification documents."

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 729**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Malcolm.

Absent and Not Voting: Cooper.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2083) passed.

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

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

Com. Sub. for H. B. 2193, Providing a specific escheat of US savings bonds.

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

H. B. 2474, Relating to a reserving methodology for health insurance and annuity contracts.

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

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

"ARTICLE 7. ASSETS AND LIABILITIES.

§33-7-9. Standard Valuation Law.

(a) This section shall be known as the standard valuation law. For the purposes of this section, the following definitions apply on or after the operative date of the valuation manual:

(1) The term 'accident and health insurance' means contracts that incorporate morbidity risk and provide protection against economic loss resulting from accident, sickness, or medical conditions and as may be specified in the valuation manual.

(2) The term 'appointed actuary' means a qualified actuary who is appointed in accordance with the valuation manual to prepare the actuarial opinion required in subdivision (2), subsection (c) of this section.

(3) The term 'company' means an entity that has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and has at least one such policy in force or on claim, or has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in any state and is required to hold a certificate of authority to write life insurance, accident and health insurance, or deposit-type contracts in this state.

(4) The term 'deposit-type contract' means contracts that do not incorporate mortality or morbidity risks, and as may be specified in the valuation manual.

(5) The term 'life insurance' means contracts that incorporate mortality risk, including annuity and pure endowment contracts, and as may be specified in the valuation manual.

(6) The term 'NAIC' means the National Association of Insurance Commissioners.

(7) The term 'policyholder behavior' means any action a policyholder, contract holder, or any other person with the right to elect options, such as a certificate holder, may take under a policy or contract subject to this section including, but not limited to, lapse, withdrawal, transfer, deposit, premium payment, loan, annuitization, or benefit elections prescribed by the policy or contract but excluding events of mortality or morbidity that result in benefits prescribed in their essential aspects by the terms of the policy or contract.

(8) The term 'principle-based valuation' means a reserve valuation that uses one or more methods or one or more assumptions determined by the insurer and is required to comply with subsection (o) of this section as specified in the valuation manual.

(9) The term 'qualified actuary' means an individual who is qualified to sign the applicable statement of actuarial opinion in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements and who meets the requirements specified in the valuation manual.

(10) The term 'tail risk' means a risk that occurs either where the frequency of low probability events is higher than expected under a normal probability distribution or where there are observed events of very significant size or magnitude.

(11) The term 'valuation manual' means the manual of valuation instructions adopted by the commissioner in accordance with subsection (n) of this section.

(b) *Reserve valuation.* —

(1) *Policies and Contracts Issued Prior to the Operative Date of the Valuation Manual.* —

(A) The commissioner shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state issued on or after January 1, 1958 and prior to the operative date of the valuation manual. In calculating reserves, the commissioner may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien company, the commissioner may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when the valuation complies with the minimum standard provided in this section.

(B) Subsections (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m) of this section apply to all policies and contracts, as appropriate, subject to this section issued on or after January 1, 1958 and prior to the operative date of the valuation manual, and subsections (n) and (o) of this section do not apply to any such policies and contracts.

(C) The minimum standard for the valuation of policies and contracts issued prior to January 1, 1958 shall be that provided by the laws in effect immediately prior to that date.

(2) Policies and contracts issued on or after the operative date of the valuation manual. —

(A) The commissioner shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance contracts, annuity and pure endowment contracts, accident and health contracts, and deposit-type contracts of every company issued on or after the operative date of the valuation manual. In lieu of the valuation of the reserves required of a foreign or alien company, the commissioner may accept a valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when the valuation complies with the minimum standard provided in this section.

(B) Subsection (n) and (o) of this section apply to all policies and contracts issued on or after the operative date of the valuation manual.

(c) Actuarial opinion of reserves. —

(1) Actuarial Opinion Prior to the Operative Date of the Valuation Manual. —

(A) *General.* — Every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this state. The commissioner shall define the specifics of this opinion and add any other items deemed to be necessary to its scope.

(B) Actuarial analysis of reserves and assets supporting the reserves. —

(i) Every life insurance company, except as exempted by or pursuant to rule, shall also annually include in the opinion required by paragraph (A) of this subdivision an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including, but not limited to, the benefits under and expenses associated with the policies and contracts.

(ii) The commissioner may provide, by rule, for a transition period for establishing any higher reserves that the qualified actuary may deem necessary in order to render the opinion required by this subdivision.

(C) *Requirement for opinion under paragraph (B) of this subdivision.* — Each opinion required by paragraph (B) of this subdivision shall be governed by the following provisions:

(i) A memorandum in form and substance acceptable to the commissioner as specified by rule shall be prepared to support each actuarial opinion.

(ii) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by rule or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the rules or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting memorandum required by the commissioner.

(D) *Requirement for all opinions subject to this subdivision.* — Every opinion ~~subject to~~ required by this subdivision is governed by the following:

(i) The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after December 31, 1995.

(ii) The opinion shall apply to all business in force, including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by rule.

(iii) The opinion shall be based on standards adopted, from time to time, by the actuarial standards board and on such additional standards as the commissioner may by rule prescribe.

(iv) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(v) For the purposes of this ~~section~~ subsection, 'qualified actuary' means a member in good standing of the American Academy of Actuaries who meets the requirements set forth in such regulations.

(vi) Except in cases of fraud or willful misconduct, the qualified actuary is not liable for damages to any person (other than the insurance company and the commissioner) for any act, error, omission, decision, or conduct with respect to the actuary's opinion.

(vii) Disciplinary action by the commissioner against the company or the qualified actuary shall be defined in rules by the commissioner.

(viii) Except as provided in subparagraphs (xii), (xiii), and (xiv) of this paragraph, documents, materials or other information in the possession or control of the commissioner that are a memorandum in support of the opinion and any other material provided by the company to the commissioner in connection therewith are confidential by law and privileged, exempt from disclosure under §29A-1-1 *et seq.* of this code and are not to be subject to subpoena and, additionally, are not subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.

(ix) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner is permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subparagraph (viii) of this paragraph.

(x) In order to assist in the performance of the commissioner's duties, the commissioner:

(l) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subparagraph (viii) of this paragraph with other state,

federal, and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal, and international law-enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information;

(II) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law-enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(III) May enter into agreements governing sharing and use of information consistent with this subparagraph and subparagraphs (viii) and (ix) ~~and this subparagraph of this paragraph.~~

(xi) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information occurs as a result of disclosure to the commissioner under this ~~section~~ subsection or as a result of sharing as authorized in subparagraph ~~(ix)~~ (x) of this paragraph.

(xii) A memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection with the memorandum, may be subject to subpoena for the purpose of defending an action seeking damages from the actuary submitting the memorandum by reason of an action required by this subsection or by rules.

(xiii) The memorandum or other material may otherwise be released by the commissioner with the written consent of the company or to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material.

(xiv) Once any portion of the confidential memorandum is cited by the company in its marketing or is cited before a governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum shall be no longer confidential.

(2) Actuarial Opinion of Reserves after the Operative Date of the Valuation Manual. —

(A) *General.* — Every company with outstanding life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and subject to rule of the commissioner shall annually submit the opinion of the appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this state. The valuation manual will prescribe the specifics of this opinion including any items deemed to be necessary to its scope.

(B) *Actuarial Analysis of Reserves and Assets Supporting Reserves.* — Every company with outstanding life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and subject to rule of the commissioner, except as exempted in the valuation manual, shall also annually include in the opinion required by paragraph (A) of this subdivision, an opinion of the same appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified in the valuation manual, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's

obligations under the policies and contracts, including, but not limited to, the benefits under and expenses associated with the policies and contracts.

~~(C) Requirements for Opinions Subject to paragraph (B), subdivision (2), subsection (c)~~
Requirement for opinion under paragraph (B) of this subdivision. — Each opinion required by ~~subdivision (2), subsection (c) of this section~~ paragraph (B) of this subdivision shall be governed by the following:

(i) A memorandum, in form and substance as specified in the valuation manual, and acceptable to the commissioner, shall be prepared to support each actuarial opinion.

(ii) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified in the valuation manual or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the valuation manual or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting memorandum required by the commissioner.

~~(D) Requirement for All Opinions Subject to subdivision (2), subsection (c) of this section~~
Requirement for all opinions subject to this subdivision. — Every opinion required by this subdivision is governed by the following:

(i) The opinion shall be in form and substance as specified in the valuation manual and acceptable to the commissioner.

(ii) The opinion shall be submitted with the annual statement reflecting the valuation of ~~such~~ the reserve liabilities for each year ending on or after the operative date of the valuation manual.

(iii) The opinion shall apply to all policies and contracts subject to paragraph (B) ~~subdivision (2), subsection (c) of this section~~ of this subdivision, plus other actuarial liabilities as may be specified in the valuation manual.

(iv) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board or its successor, and on such additional standards as may be prescribed in the valuation manual.

(v) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(vi) Except in cases of fraud or willful misconduct, the appointed actuary is not liable for damages to any person, other than the insurance company and the commissioner, for any act, error, omission, decision, or conduct with respect to the appointed actuary's opinion.

(vii) Disciplinary action by the commissioner against the company or the appointed actuary shall be defined in rules.

(d) *Computation of minimum standards.* — Except as otherwise provided in subsections (e), (f), and (m) of this section, the minimum standard for the valuation of all policies and contracts issued prior to January 1, 1958 shall be that provided by the laws in effect immediately prior to that date. Except as otherwise provided in subsections (e), (f), and (m) of this section, the minimum standard for the valuation of all policies and contracts issued on or after January 1, 1958 of this section shall

be the commissioners reserve valuation methods defined in subsections (g), (h), (k), and (m) of this section, three and one-half percent interest or in the case of life insurance policies and contracts, other than annuity and pure endowment contracts, issued on or after June 1, 1974, four percent interest for policies issued prior to April 6, 1977, five and one-half percent interest for single premium life insurance policies, and four and one-half percent interest for all other policies issued on and after April 6, 1977, and the following tables:

(1) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in the policies:

(A) The commissioner's 1941 standard ordinary mortality table for policies issued prior to the operative date of §33-13-30(e) of this code;

(B) The commissioner's 1958 standard ordinary mortality table for policies issued on or after the operative date of §33-13-30(e) of this code and prior to the operative date of §33-13-30(g) of this code: *Provided*, That for any category of policies issued on female risks, all modified net premiums and present values referred to in this section may be calculated according to an age not more than six years younger than the actual age of the insured; and

(C) For policies issued on or after the operative date of §33-13-30(g) of this code:

(i) The commissioner's 1980 standard ordinary mortality table;

(ii) At the election of the company for any one or more specified plans of life insurance, the commissioner's 1980 standard ordinary mortality table with 10 year select mortality factors; or

(iii) Any ordinary mortality table adopted after the year 1980 by the ~~national association of Insurance Commissioners~~ NAIC that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for the policies.

(2) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in the policies: the 1941 standard industrial mortality table for policies issued prior to the operative date of §33-13-30(f) of this code and for policies issued on or after the operative date, the commissioner's 1961 standard industrial mortality table or any industrial mortality table adopted after the year 1980 by the ~~national association of Insurance Commissioners~~ NAIC that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for the policies.

(3) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in policies: the 1937 standard annuity mortality table or, at the option of the company, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the commissioner.

(4) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in the policies: The group annuity mortality table for 1951, any modification of the table approved by the commissioner or, at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(5) For total and permanent disability benefits in or supplementary to ordinary policies or contracts: for policies or contracts issued on or after January 1, 1966, the tables of period two disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates adopted after the year 1980 by the ~~national association of Insurance Commissioners~~ NAIC that

are approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for the policies; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either those tables or, at the option of the company, the Class (3) disability table (1926); and for policies issued prior to January 1, 1961, the Class (3) disability table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(6) For accidental death benefits in or supplementary to policies issued on or after January 1, 1966, the 1959 accidental death benefits table or any accidental death benefits table adopted after the year 1980 by the ~~national association of Insurance Commissioners~~ NAIC that is approved by rules promulgated by the commissioner for use in determining the minimum standard of valuation for ~~such~~ the policies, for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the company, the intercompany double indemnity mortality table; and for policies issued prior to January 1, 1961, the intercompany double indemnity mortality table. Either table shall be combined with a mortality table for calculating the reserves for life insurance policies.

(7) For group life insurance, life insurance issued on the substandard basis, and other special benefits: Tables as may be approved by the commissioner.

(e) *Computation of minimum standard for annuities.* — Except as provided in subsection (f) of this section, the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this subsection, and for all annuities and pure endowments purchased on or after the operative date under group annuity and pure endowment contracts, shall be the commissioner's reserve valuation methods defined in subsections (g) and (h) of this section and the following tables and interest rates:

(1) For individual annuity and pure endowment contracts issued prior to April 6, 1977, excluding any disability and accidental death benefits in the contracts: The 1971 individual annuity mortality table or any modification of this table approved by the commissioner and six percent interest for single premium immediate annuity contracts and four percent interest for all other individual annuity and pure endowment contracts;

(2) For individual single premium immediate annuity contracts issued on or after April 6, 1977, excluding any disability and accidental death benefits in ~~such~~ the contracts: The 1971 individual annuity mortality table or any individual annuity mortality table adopted after the year 1980 by the ~~national association of Insurance Commissioners~~ NAIC that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for the contracts or any modification of these tables approved by the commissioner and seven and one-half percent interest;

(3) For individual annuity and pure endowment contracts issued on or after April 6, 1977, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in those contracts: The 1971 individual annuity mortality table or any individual annuity mortality table adopted after the year 1980 by the ~~national association of Insurance Commissioners~~ NAIC that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for the contracts or any modification of these tables approved by the commissioner and five and one-half percent interest for single premium deferred annuity and pure endowment contracts and four and one-half percent interest for all other individual annuity and pure endowment contracts;

(4) For all annuities and pure endowments purchased prior to April 6, 1977, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased

under those contracts: The 1971 group annuity mortality table or any modification of this table approved by the commissioner and six percent interest;

(5) For all annuities and pure endowments purchased on or after April 6, 1977, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under the contracts: The 1971 group annuity mortality table or any group annuity mortality table adopted after the year 1980 by the ~~national association of Insurance Commissioners~~ NAIC that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for annuities and pure endowments or any modification of these tables approved by the commissioner and seven and one-half percent interest.

After June 3, 1974, any company may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before January 1, 1979, which shall be the operative date of this subsection for the company provided, if a company makes no election, the operative date of this section for the company shall be January 1, 1979.

(f) *Computation of minimum standard by calendar year of issue.* —

(1) The interest rates used in determining the minimum standard for the valuation of the following shall be the calendar year statutory valuation interest rates as defined in this section:

(A) All life insurance policies issued in a particular calendar year, on or after the operative date of §33-13-30(g) of this code, as amended;

(B) All individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1982;

(C) All annuities and pure endowments purchased in a particular calendar year on or after January 1, 1982, under group annuity and pure endowment contracts; and

(D) The net increase, if any, in a particular calendar year after January 1, 1982, in amounts held under guaranteed interest contracts.

(2) *Calendar year statutory valuation interest rates.* —

(A) The calendar year statutory valuation interest rates, I, shall be determined as follows and the results rounded to the nearer one quarter of one percent:

(i) For life insurance: $I = .03 + W(R1 - .03) + W/2(R2 - .09)$;

(ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options: ~~$I = .03 + W(R1 - .03)$~~ $I = .03 + W(R - .03)$

Where R1 is the lesser of R and .09; R2 is the greater of R and .09; R is the reference interest rate defined in this subsection; and W is the weighting factor defined in this ~~section~~ subsection;

(iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue-year basis, except as stated in subparagraph (ii) of this paragraph, the formula for life insurance stated in subparagraph (i) of this paragraph shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of ten years and the formula for single premium immediate annuities stated in subparagraph (ii) of this paragraph shall apply to annuities and guaranteed interest contracts with guarantee duration of 10 years or less;

(iv) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in subparagraph (ii) of this paragraph shall apply;

(v) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in subparagraph (ii) of this paragraph shall apply.

(B) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one half of one percent, the calendar year statutory valuation interest rate for ~~such~~ the life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for the year 1980 (using the reference interest rate defined for the year 1979) and shall be determined for each subsequent calendar year regardless of when §33-13-30(g) of this code, as amended, becomes operative.

(3) *Weighting factors.* —

(A) The weighting factors referred to in the formulas stated above are given in the following tables:

(i) Weighting factors for life insurance:

~~Guarantee~~

~~Duration Weighting~~

~~(Years) Factors~~

~~10 or less .50~~

~~More than 10, but not more than 20 .45~~

~~More than 20 .35~~

Guarantee duration of 10 years or less: .50

Guarantee duration of more than 10 years but not more than 20 years: .45

Guarantee duration of more than 20 years: .35

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy;

(ii) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options: .80;

(iii) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in subparagraph (ii) of this paragraph, shall be as specified in clauses (I), (II), and (III) of this subparagraph, according to the rules and definitions in clauses (IV), (V), and (VI) of this subparagraph:

(I) For annuities and guaranteed interest contracts valued on an issue year basis, the following weighting factors shall apply:

~~Guarantee Weighting Factor~~

~~Duration for Plan Type~~

~~(Years) A B C~~

~~5 or less: .80 .60 .50~~

~~More than 5, but not more than 10: .75 .60 .50~~

~~More than 10, but not more than 20: .65 .50 .45~~

~~More than 20: .45 .35 .35~~

Guarantee duration of five years or less: Plan Type A - .80; Plan Type B - .60; Plan Type C - .50

Guarantee duration of more than five years but not more than 10 years: Plan Type A - .75; Plan Type B - .60; Plan Type C - .50

Guarantee duration of more than 10 years but not more than 20 years: Plan Type A - .65; Plan Type B - .50; Plan Type C - .45

Guarantee duration of more than 20 years: Plan Type A - .45; Plan Type B - .35; Plan Type C - .35

(II) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in clause (I) of this subparagraph increased by:

~~Weighting Factor~~

~~for Plan Type~~

~~A B C1~~

~~.15 .25 .05~~

Plan Type A - .15; Plan Type B - .25; Plan Type C - .05

(III) For annuities and guaranteed interest contracts valued on an issue-year basis (other than those with no cash settlement options) which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than 12 months beyond the valuation date, the factors shown in clause (I) of this subparagraph or derived in clause (II) of this subparagraph increased by:

~~Weighting Factor~~

~~for Plan Type~~

~~A-B-C1~~

~~.05-.05-.05~~

Plan Type A - .05; Plan Type B - .05; Plan Type C - .05

(IV) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of 20 years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guaranteed duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(V) Plan type as used in the above tables is defined as follows:

Plan Type A:

At any time policyholder may withdraw funds only: (1) With an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) without such adjustment but in installments over five years or more; or (3) as an immediate life annuity; or (4) no withdrawal permitted;

Plan Type B:

Before expiration of the interest rate guarantee, policyholder may withdraw funds only: (1) With an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) without such adjustment but in installments over five years or more; or (3) no withdrawal permitted. At the end of interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five years;

Plan Type C:

Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five years either: (1) Without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(VI) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue-year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue-year basis. As used in this section, an issue-year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(4) *The reference interest rate.* —

(A) Reference interest rate referred to in subdivision (2) of this subsection is defined as follows:

(i) For all life insurance, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year next preceding the year of issue, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody's Investors Service, Inc.;

(ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or year of purchase, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody's Investors Service, Inc.;

(iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subparagraph (ii) of this paragraph, with guarantee duration in excess of 10 years, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody's Investors Service, Inc.;

(iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subparagraph (ii) of this paragraph, with guarantee duration of 10 years or less, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody's Investors Service, Inc.;

(v) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody's Investors Service, Inc.; and

(vi) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in subparagraph (ii) of this paragraph, the average over a period of 12 months, ending on June 30 of the calendar year of the change in the fund, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody's Investors Service, Inc.

(5) *Alternative method for determining reference interest rates.* —

In the event that the monthly average of the composite yield on seasoned corporate bonds is no longer published by Moody's Investors Service, Inc., or in the event that the ~~national association of Insurance Commissioners~~ NAIC determines that the monthly average of the composite yield on seasoned corporate bonds as published by Moody's Investors Service, Inc., is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate, which is adopted by the ~~national association of Insurance Commissioners~~ NAIC and approved by rule promulgated by the commissioner, may be substituted.

(g) *Reserve valuation method: Life insurance and endowment benefits.* —

(1) Except as otherwise provided in subsections (h), (k), and (m) of this section, reserves according to the commissioner's reserve valuation method for the life insurance and endowment

benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of the future guaranteed benefits provided by the policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be the uniform percentage of the respective contract premiums for the benefits that the present value, at the date of issue of the policy, of all the modified net premiums shall be equal to the sum of the then present value of the benefits provided by the policy and the excess of ~~subdivision (4) paragraph (A) of this subsection~~ subdivision (2) paragraph (B) of this subsection, as follows:

(4) (A) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due: *Provided*, That such net level annual premium shall not exceed the net level annual premium on the 19 year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

~~(2)~~ (B) A net one-year term premium for such benefits provided for in the first policy year.

~~Provided, That for (2)~~ For any life insurance policy issued on or after January 1, 1985, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the ~~commissioners'~~ commissioner's reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in subsection (k) of this section, be the greater of the reserve as of such policy anniversary calculated as described in ~~the preceding paragraph subdivision (1) of this subsection~~ and the reserve as of the policy anniversary calculated as described in that paragraph subdivision, but with: (i) The value defined in subdivision (1) of ~~that paragraph~~ this subsection being reduced by ~~fifteen~~ 15 percent of the amount of such excess first-year premium; (ii) all present values of benefits and premiums being determined without reference to premiums or benefits provided by the policy after the assumed ending date; (iii) the policy being assumed to mature on the date as an endowment; and (iv) the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison, the mortality and interest bases stated in subsections (d) and (f) of this section shall be used.

(3) Reserves according to the ~~commissioners'~~ commissioner's reserve valuation method shall be calculated by a method consistent with the principles of ~~the preceding paragraphs~~ subdivisions (1) and (2) of this section subsection for:

(i) (A) Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums;

(ii) (B) Group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code (26 U.S.C. § 408) as now or hereafter amended;

(iii) (C) Disability and accidental death benefits in all policies and contracts; and

~~(iv) (D)~~ All other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts. ~~shall be calculated by a method consistent with the principles of the preceding paragraphs of this section~~

(h) *Reserve valuation method: Annuity and pure endowment benefits.* —

(1) This subsection shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code (26 U.S.C. § 408) as now or hereafter amended.

(2) Reserves according to the ~~commissioners'~~ commissioner's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in ~~such the~~ contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided by ~~such the~~ contracts at the end of each respective contract year over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of ~~such the~~ contract, that become payable prior to the end of the respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in the contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of ~~such the~~ contracts to determine nonforfeiture values.

(i) *Minimum reserves.* —

(1) In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after January 1, 1958 be less than the aggregate reserves calculated in accordance with the methods set forth in subsections (g), (h), (k), and (l) of this section and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for the policies.

(2) In no event shall the aggregate reserves for all policies, contracts, and benefits be less than the aggregate reserves determined by the qualified actuary to be necessary to render the opinion required by subsection (c) of this section.

(j) *Optional reserve calculation.* —

(1) Reserves for all policies and contracts issued prior to ~~the effective date of this section~~ January 1, 1958 may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all policies and contracts than the minimum reserves required by the laws in effect immediately prior to such date.

(2) Reserves for any category of policies, contracts or benefits as established by the commissioner issued on or after January 1, 1958 may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided therein.

(3) Any ~~such~~ company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided: *Provided*, That for the purposes of this section, the holding of additional reserves previously determined by the appointed actuary to be necessary to render the opinion required by subsection (c) of this section shall not be considered to be the adoption of a higher standard of valuation.

(k) *Reserve calculation: Valuation net premium exceeding the gross premium charged. —*

(1) If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for ~~such~~ the policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for ~~such~~ the policy or contract or the reserve calculated by the method actually used for ~~such~~ the policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in subsections (d) and (f) of this section: *Provided*, That for any life insurance policy issued on or after January 1, 1985, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than ~~such~~ the excess premium, the foregoing provisions of this subsection shall be applied as if the method actually used in calculating the reserve for ~~such~~ the policy were the method described in subsection (g) of this section, ignoring ~~the second paragraph~~ subdivision (2) of said subsection.

(2) The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with subsection (g) of this section, including ~~the second paragraph~~ subdivision (2) of said ~~section~~ subsection, and the minimum reserve calculated in accordance with this subsection.

(l) *Reserve calculation: Indeterminate premium plans. —*

In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in subsections (g), (h), and (k) of this section, the reserves which are held under any such plan must:

(1) Be appropriate in relation to the benefits and the pattern of premiums for that plan; and

(2) Be computed by a method which is consistent with the principles of this standard valuation law as determined by rules promulgated by the commissioner.

~~(m) The commissioner may, by rule, establish alternative methods of calculating reserve liabilities, which methods shall be used to calculate reserve liabilities for the types of policies, annuities or other contracts identified in the rule: *Provided*, That the method specified in the rule shall be one which, in the opinion of the commissioner and in light of the methods applied to the contracts by the insurance regulators of other states, is appropriate to the contracts. This power shall be in addition to, and in no~~

~~way diminish, rule-making power granted to the commissioner elsewhere in this code Minimum standard for accident and health insurance contracts. —~~

For accident and health insurance contracts issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under subdivision (2), subsection (b) of this section. For accident and sickness insurance contracts issued on or after January 1, 1958 and prior to the operative date of the valuation manual, the minimum standard of valuation is the standard adopted by the commissioner by rule.

(n) *Valuation manual for policies issued on or after the operative date of the valuation manual.* —

(1) The commissioner shall promulgate emergency rules adopting a valuation manual that is substantially similar to the valuation manual approved by the ~~National Association of Insurance Commissioners~~ NAIC and any amendments to ~~such the~~ the manual as may be subsequently approved by the ~~National Association of Insurance Commissioners~~ NAIC, and ~~such the~~ the rules shall be effective in accordance with subdivisions (2) and (3) of this subsection.

(2) The operative date of the valuation manual is January 1 of the first calendar year following the first July 1 as of which all of the following have occurred:

(A) The valuation manual has been adopted by the ~~National Association of Insurance Commissioners~~ NAIC by an affirmative vote of at least 42 members, or three-fourths of the members voting, whichever is greater;

(B) The Standard Valuation Law, as amended by the ~~National Association of Insurance Commissioners~~ NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by states representing greater than 75 percent of the direct premiums written as reported in the following annual statements submitted for 2008: Life, accident, and health annual statements; health annual statements; and fraternal annual statements; and

(C) The Standard Valuation Law, as amended by the ~~National Association of Insurance Commissioners~~ NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by at least 42 of the following 55 jurisdictions: The 50 states of the United States, American Samoa, the American Virgin Islands, the District of Columbia, Guam, and Puerto Rico.

(3) Unless a change in the valuation manual specifies a later effective date, changes to the valuation manual shall be effective on January 1 following the date when ~~such the~~ the changes have been adopted by the ~~National Association of Insurance Commissioners~~ NAIC by an affirmative vote representing:

(A) At least three-fourths of the members of the ~~National Association of Insurance Commissioners~~ NAIC voting, but not less than a majority of the total membership; and

(B) Members of the ~~National Association of Insurance Commissioners~~ NAIC representing jurisdictions totaling greater than 75 percent of the direct premiums written, as reported in the following annual statements most recently available prior to the vote in paragraph (A) of this subdivision: Life, accident, and health annual statements, health annual statements, or fraternal annual statements.

(4) The valuation manual must specify all of the following:

(A) Minimum valuation standards for and definitions of the policies or contracts subject to subdivision (2), subsection (b) of this section. ~~Such The~~ The minimum valuation standards shall be:

(i) The commissioner's reserve valuation method for life insurance contracts, other than annuity contracts, subject to subdivision (2), subsection (b) of this section;

(ii) The commissioner's annuity reserve valuation method for annuity contracts subject to subdivision (2), subsection (b) of this section; and

(iii) Minimum reserves for all other policies or contracts subject to subdivision (2), subsection (b) of this section.

(B) Which policies or contracts or types of policies or contracts that are subject to the requirements of a principle-based valuation in subdivision (1), subsection (o) of this section and the minimum valuation standards consistent with those requirements.

(C) For policies and contracts subject to a principle-based valuation under subsection (o) of this section:

(i) Requirements for the format of reports to the commissioner under paragraph (C), subdivision (2), subsection (o) of this section and which shall include information necessary to determine if the valuation is appropriate and in compliance with this section;

(ii) Assumptions shall be prescribed for risks over which the company does not have significant control or influence; and

(iii) Procedures for corporate governance and oversight of the actuarial function and a process for appropriate waiver or modification of ~~such~~ the procedures.

(D) For policies not subject to a principle-based valuation under subsection (o), the minimum valuation standard shall either:

(i) Be consistent with the minimum standard of valuation prior to the operative date of the valuation manual; or

(ii) Develop reserves that quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring.

(E) Other requirements, including, but not limited to, those relating to reserve methods, models for measuring risk, generation of economic scenarios, assumptions, margins, use of company experience, risk measurement, disclosure, certifications, reports, actuarial opinions and memoranda, transition rules and internal controls; and

(F) The data and form of the data required under subsection (p) of this section, with whom the data must be submitted, and may specify other requirements including data analyses and reporting of analyses.

(5) For policies issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under subdivision (2), subsection (b) of this section, except as provided under subdivision (6) or (8) of this subsection.

(6) In the absence of a specific valuation requirement or if a specific valuation requirement in the valuation manual is not, in the opinion of the commissioner, in compliance with this section, then the company shall, with respect to ~~such~~ the requirements, comply with minimum valuation standards prescribed by rule.

(7) The commissioner may engage a qualified actuary, at the expense of the company, to perform an actuarial examination of the company and opine on the appropriateness of any reserve assumption or method used by the company, or to review and opine on a company's compliance with any requirement set forth in this section. The commissioner may rely upon the opinion, regarding provisions contained within this section, of a qualified actuary engaged by the commissioner of another state, district, or territory of the United States. As used in this subdivision, term 'engage' includes employment and contracting.

(8) The commissioner may require a company to change any assumption or method that in the opinion of the commissioner is necessary in order to comply with the requirements of the valuation manual or this section, and the company shall adjust the reserves as required by the commissioner.

(o) *Requirements of a Principle-Based Valuation.* —

(1) A company must establish reserves using a principle-based valuation that meets the following conditions for policies or contracts as specified in the valuation manual:

(A) Quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring during the lifetime of the contracts. For policies or contracts with significant tail risk, reflects conditions appropriately adverse to quantify the tail risk.

(B) Incorporate assumptions, risk analysis methods and financial models, and management techniques that are consistent with, but not necessarily identical to, those utilized within the company's overall risk assessment process, while recognizing potential differences in financial reporting structures and any prescribed assumptions or methods.

(C) Incorporate assumptions that are derived in one of the following manners:

(i) The assumption is prescribed in the valuation manual; or

(ii) For assumptions that are not prescribed, the assumptions shall either:

(I) Be established utilizing the company's available experience, to the extent it is relevant and statistically credible; or

(II) To the extent that company data is not available, relevant or statistically credible, be established utilizing other relevant, statistically credible experience.

(D) Provide margins for uncertainty including adverse deviation and estimation error, such that the greater the uncertainty, the larger the margin and resulting reserve.

(2) A company using a principle-based valuation for one or more policies or contracts subject to this section as specified in the valuation manual shall:

(A) Establish procedures for corporate governance and oversight of the actuarial valuation function consistent with those described in the valuation manual.

(B) Provide to the commissioner and the board of directors an annual certification of the effectiveness of the internal controls with respect to the principle-based valuation. ~~Such~~ The controls shall be designed to assure that all material risks inherent in the liabilities and associated assets subject to ~~such~~ the valuation are included in the valuation, and that valuations are made in

accordance with the valuation manual. The certification shall be based on the controls in place as of the end of the preceding calendar year.

(C) Develop, and file with the commissioner upon request, a principle-based valuation report that complies with standards prescribed in the valuation manual.

(3) A principle-based valuation may include a prescribed formulaic reserve component.

(p) *Experience reporting for policies in force on or after the operative date of the valuation manual.* — A company shall submit mortality, morbidity, policyholder behavior, or expense experience and other data as prescribed in the valuation manual.

(q) *Confidentiality.* —

(1) For purposes of this subsection, 'confidential information' means:

(A) A memorandum in support of an opinion submitted under subsection (c) of this section and any other documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by, or disclosed to the commissioner or any other person in connection with ~~such~~ the memorandum;

(B) All documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by, or disclosed to the commissioner or any other person in the course of an examination made under subdivision (7), subsection (n) of this section, but only to the same extent as ~~such~~ the documents, materials, and other information would be held confidential were they created, produced or obtained in connection with an examination made under the general examination law set forth in §33-2-9 of this code;

(C) Any reports, documents, materials, and other information developed by a company in support of, or in connection with, an annual certification by the company under paragraph (B), subdivision (2), subsection (o) of this section evaluating the effectiveness of the company's internal controls with respect to a principle-based valuation and any other documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by, or disclosed to the commissioner or any other person in connection with ~~such~~ the reports, documents, materials, and other information;

(D) Any principle-based valuation report developed under paragraph (C), subdivision (2), subsection (o) of this section and any other documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by, or disclosed to the commissioner or any other person in connection with ~~such~~ the report; and

(E) Any documents, materials, data, and other information submitted by a company under subsection (p) of this section (collectively, 'experience data') and any other documents, materials, data, and other information, including, but not limited to, all working papers, and copies thereof, created or produced in connection with ~~such~~ the experience data, in each case that include any potentially company-identifying or personally identifiable information, that is provided to or obtained by the commissioner (together with any 'experience data', the 'experience materials') and any other documents, materials, data, and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by, or disclosed to the commissioner or any other person in connection with ~~such~~ the experience materials.

(2) *Privilege for, and Confidentiality of, Confidential Information.* —

(A) Except as otherwise provided in this subsection, a company's confidential information is confidential by law and privileged, is exempt from disclosure under §29A-1-1 *et seq.* of this code, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action: *Provided*, That the commissioner is authorized to use the confidential information in the furtherance of any regulatory or legal action brought against the company as a part of the commissioner's official duties.

(B) Neither the commissioner nor any person who received confidential information while acting under the authority of the commissioner is permitted or required to testify in any private civil action concerning any confidential information.

(C) In order to assist in the performance of the commissioner's duties, the commissioner may share confidential information:

(i) With other state, federal, and international regulatory agencies and with the ~~National Association of Insurance Commissioners~~ NAIC and its affiliates and subsidiaries;

(ii) In the case of confidential information specified in paragraphs (A) and (D), subdivision (1) of this subsection only, with the Actuarial Board for Counseling and Discipline or its successor upon request stating that the confidential information is required for the purpose of professional disciplinary proceedings and with state, federal, and international law-enforcement officials; and

(iii) In the case of subparagraphs (i) and (ii) of this paragraph, provided that ~~such~~ the recipient agrees and has the legal authority to agree, to maintain the confidentiality and privileged status of ~~such~~ the documents, materials, data, and other information in the same manner and to the same extent as required for the commissioner.

(D) The commissioner may receive documents, materials, data, and other information, including otherwise confidential and privileged documents, materials, data, or information, from the ~~National Association of Insurance Commissioners~~ NAIC and its affiliates and subsidiaries, from regulatory or law-enforcement officials of other foreign or domestic jurisdictions, and from the Actuarial Board for Counseling and Discipline or its successor, and he or she shall maintain as confidential or privileged any document, material, data, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.

(E) The commissioner may enter into agreements governing sharing and use of information consistent with this subdivision.

(F) No waiver of any applicable privilege or claim of confidentiality in the confidential information occurs as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in paragraph (C) of this subdivision.

(G) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subdivision is available and may ~~been forced~~ be enforced in any proceeding in, and in any court of, this state.

(H) In this subsection 'regulatory agency', 'law-enforcement agency', and the 'NAIC' include, but are not limited to, their employees, agents, consultants, and contractors.

(3) Notwithstanding subdivision (2) of this subsection, any confidential information specified in paragraphs (A) and (D), subdivision (1) of this subsection:

(A) May be subject to subpoena for the purpose of defending an action seeking damages from the appointed actuary submitting the related memorandum in support of an opinion submitted under subsection (c) of this section or principle-based valuation report developed under paragraph (C), subdivision (2), subsection (o) of this section by reason of an action required by this section or by rules promulgated hereunder;

(B) May otherwise be released by the commissioner with the written consent of the company; and

(C) Once any portion of a memorandum in support of an opinion submitted under subsection (c) of this section or a principle-based valuation report developed under paragraph (C), subdivision (2), subsection (o) of this section is cited by the company in its marketing or is publicly volunteered to or before a governmental agency other than a state insurance department or is released by the company to the news media, all portions of ~~such~~ the memorandum or report are no longer ~~be~~ confidential.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 730**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: N. Brown.

Absent and Not Voting: Cooper.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2474) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had receded from its amendment to a bill of the House of Delegates, and again amended and passed, as amended

Com. Sub. for H. B. 2503, Relating to court actions.

Delegate Summers moved the House concur in the following amendment of the bill by the Senate:

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

“ARTICLE 4. COURT ACTIONS.

PART VI.

PROCEDURES IN CASES OF CHILD NEGLECT OR ABUSE.

§49-4-601. Petition to court when child believed neglected or abused; venue; notice; right to counsel; continuing legal education; findings; proceedings; procedure.

(a) *Petitioner and venue.* — If the department or a reputable person believes that a child is neglected or abused, the department or the person may present a petition setting forth the facts to the circuit court in the county in which the child resides, or if the petition is being brought by the

department, in the county in which the custodial respondent or other named party abuser resides, or in which the abuse or neglect occurred, or to the judge of the court in vacation. Under no circumstance may a party file a petition in more than one county based on the same set of facts.

(b) *Contents of Petition.* — The petition shall be verified by the oath of some credible person having knowledge of the facts. The petition shall allege specific conduct including time and place, how the conduct comes within the statutory definition of neglect or abuse with references ~~thereto to~~ the statute, any supportive services provided by the department to remedy the alleged circumstances, and the relief sought. Each petition shall name as a party each parent, guardian, custodian, other person standing in loco parentis of or to the child allegedly neglected or abused and state with specificity whether each parent, guardian, custodian, or person standing in loco parentis is alleged to have abused or neglected the child.

(c) *Court action upon filing of petition.* — Upon filing of the petition, the court shall set a time and place for a hearing and shall appoint counsel for the child. When there is an order for temporary custody pursuant to this article, the preliminary hearing shall be held within 10 days of the order continuing or transferring custody, unless a continuance for a reasonable time is granted to a date certain, for good cause shown.

(d) *Department action upon filing of the petition.* — At the time of the institution of any proceeding under this article, the department shall provide supportive services in an effort to remedy circumstances detrimental to a child.

(e) *Notice of hearing.* —

(1) The petition and notice of the hearing shall be served upon both parents and any other guardian, custodian, or person standing in loco parentis, giving to ~~the parents or custodian those persons~~ at least five days' actual notice of a preliminary hearing and at least ten days' notice of any other hearing.

(2) Notice shall be given to the department, any foster or pre-adoptive parent, and any relative providing care for the child.

(3) In cases where personal service within West Virginia cannot be obtained after due diligence upon any parent or other custodian, a copy of the petition and notice of the hearing shall be mailed to the person by certified mail, addressee only, return receipt requested, to the last known address of the person. If the person signs the certificate, service ~~shall be~~ is complete and the certificate shall be filed as proof of the service with the clerk of the circuit court.

(4) If service cannot be obtained by personal service or by certified mail, notice shall be by publication as a Class II legal advertisement in compliance with §59-3-1 *et seq.* of this code.

(5) A notice of hearing shall specify the time and place of ~~the hearing~~ hearings, the right to counsel of the child, and parents, or and other guardians, custodians, at every stage of the proceedings, and other persons standing in loco parentis with the child and the fact that the proceedings can result in the permanent termination of the parental rights.

(6) Failure to object to defects in the petition and notice may not be construed as a waiver.

(f) *Right to counsel.* —

~~(1) In any proceeding under this article, the child, his or her parents, and his or her legally established custodian or other persons standing in loco parentis to him or her has the right to be~~

represented by counsel at every stage of the proceedings and shall be informed by the court of their right to be so represented and that if they cannot pay for the services of counsel, that counsel will be appointed.

(1) In any proceeding under this article, the child shall have counsel to represent his or her interests at all stages of the proceedings.

~~(2) Counsel shall be appointed in the initial order. For parents, legal guardians, and other persons standing in *loco parentis*, the representation may only continue after the first appearance the parent or other persons standing in *loco parentis* cannot pay for the services of counsel.~~

(2) The court's initial order shall appoint counsel for the child and for any parent, guardian, custodian, or other person standing in *loco parentis* with the child if such person is without retained counsel.

~~(3) Counsel for other parties shall only be appointed upon request for appointment of counsel. If the requesting parties have not retained counsel and cannot pay for the services of counsel, the court shall, by order entered of record, appoint an attorney or attorneys to represent the other party or parties and so inform the parties.~~

(3) The court shall, at the initial hearing in the matter, determine whether persons other than the child for whom counsel has been appointed:

(A) Have retained counsel; and

(B) Are financially able to retain counsel.

(4) A parent, guardian, custodian, or other person standing in *loco parentis* with the child who is alleged to have neglected or abused the child and who has not retained counsel and is financially unable to retain counsel beyond the initial hearing, shall be afforded appointed counsel at every stage of the proceedings.

(5) A parent, guardian, custodian, or other person standing in *loco parentis* with the child who is not alleged to have abused or neglected the child, has not retained counsel and who is financially unable to retain counsel, may request the court to continue to have appointed counsel. The court shall, upon a finding that the interests of justice will be served, afford that person appointed counsel at every stage of the proceedings.

~~(4) (6) Under no circumstances may the same attorney represent both the child and another party the other party or parties., nor may the The same attorney may not represent both parents or custodians more than one parent or custodian: However, *Provided*, That one attorney may represent both parents or custodians where both parents or guardians custodians consent to this representation after the attorney fully discloses to the client the possible conflict and where the attorney assures advises the court that she or he is able to represent each client without impairing her or his professional judgment.; however, if If more than one child from a family is involved in the proceeding, one attorney may represent all the children.~~

~~(5) (7) A parent who is a co-petitioner is entitled to his or her own attorney.~~

(8) The court may allow to each attorney so appointed pursuant to this section a fee in the same amount which appointed counsel can receive in felony cases.

~~(6)~~ (9) The court shall, *sua sponte* or upon motion, appoint counsel to any unrepresented party if, at any stage of the proceedings, the court determines doing so is necessary to satisfy the requirements of fundamental fairness.

(g) *Continuing education for counsel.* — Any attorney representing a party under this article shall receive a minimum of eight hours of continuing legal education training per reporting period on child abuse and neglect procedure and practice. In addition to this requirement, any attorney appointed to represent a child must first complete training on representation of children that is approved by the administrative office of the Supreme Court of Appeals. The Supreme Court of Appeals shall develop procedures for approval and certification of training required under this section. Where no attorney has completed the training required by this subsection, the court shall appoint a competent attorney with demonstrated knowledge of child welfare law to represent the parent or child. Any attorney appointed pursuant to this section shall perform all duties required of an attorney licensed to practice law in the State of West Virginia.

(h) *Right to be heard.* — In any proceeding pursuant to this article, the party or parties having custodial or other parental rights or responsibilities to the child shall be afforded a meaningful opportunity to be heard, including the opportunity to testify and to present and cross-examine witnesses. Foster parents, pre-adoptive parents, and relative caregivers shall also have a meaningful opportunity to be heard.

(i) *Findings of the court.* — Where relevant, the court shall consider the efforts of the department to remedy the alleged circumstances. At the conclusion of the adjudicatory hearing, the court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether the child is abused or neglected and whether the respondent is abusing, neglecting, or, if applicable, a battered parent, all of which shall be incorporated into the order of the court. The findings must be based upon conditions existing at the time of the filing of the petition and proven by clear and convincing evidence.

(j) *Priority of proceedings.* — Any petition filed and any proceeding held under this article shall, to the extent practicable, be given priority over any other civil action before the court, except proceedings under §48-27-309 of this code and actions in which trial is in progress. Any petition filed under this article shall be docketed immediately upon filing. Any hearing to be held at the end of an improvement period and any other hearing to be held during any proceedings under this article shall be held as nearly as practicable on successive days and, with respect to the hearing to be held at the end of an improvement period, shall be held as close in time as possible after the end of the improvement period and shall be held within 30 days of the termination of the improvement period.

(k) *Procedural safeguards.* — The petition may not be taken as confessed. A transcript or recording shall be made of all proceedings unless waived by all parties to the proceeding. The rules of evidence shall apply. Following the court's determination, it shall ~~be inquired of~~ ask the parents or custodians whether or not appeal is desired and the response transcribed. A negative response may not be construed as a waiver. The evidence shall be transcribed and made available to the parties or their counsel as soon as practicable, if the ~~same~~ transcript is required for purposes of further proceedings. If an indigent person intends to pursue further proceedings, the court reporter shall furnish a transcript of the hearing without cost to the indigent person if an affidavit is filed stating that he or she cannot pay for the transcript ~~therefor~~.

PART VI.

JUVENILE PROCEEDINGS.

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

(a) Notwithstanding any other provision of law to the contrary, any person who is 18 years of age or older who is convicted as an adult of an offense that he or she committed while in the custody of the ~~Division~~ Bureau of Juvenile Services and who is ~~therefor~~ sentenced for the conviction to a regional jail or state correctional facility for the offense may not be returned to the custody of the ~~division~~ bureau upon the completion of his or her adult sentence.

(b) Upon the incarceration in a regional jail or state correctional facility of any person 18 years of age or older who remains subject to the juvenile jurisdiction of the circuit court for crimes committed in a juvenile facility, the Bureau of Juvenile Services shall provide written notification to both the circuit court with juvenile jurisdiction over the person and the judicial authority in the county where the criminal charges are pending that the person is being detained, remains in the jurisdiction of a circuit court, and is pending a sentence as an adult offender. Prior to the imposition of a sentence on the criminal charges, the juvenile facility in which the adult crime occurred shall inform the judicial authority in the county with jurisdiction over the criminal offense which circuit court has juvenile jurisdiction over the person. The judicial authority in the county with jurisdiction over the criminal offense shall then notify the circuit court with juvenile jurisdiction over the person. The person may not be released from custody on the criminal offense until the judicial authority in the county where the criminal charges are pending has been notified by the circuit court with juvenile jurisdiction over the person that it has conducted the hearing required in §49-4-722(c) of this code.

~~(b)~~(c) Prior to completion of the adult sentence specified in subsection (a) of this section, the circuit court having jurisdiction over the underlying juvenile matter shall conduct a hearing to determine whether the person who has turned 18 years of age shall remain in the regional jail during pendency of the underlying juvenile matter or if another disposition or pretrial placement is appropriate and available: *Provided*, That the court may not remand a child who reached the age of 18 years to a juvenile facility or placement during the pendency of the underlying juvenile matter: *Provided, however*, That the Commissioner of the Division of Corrections and Rehabilitation is authorized to designate a unit in one or more of the institutions under his or her management to ensure that the detention of any person 18 years of age or older who is subject to subsection (a) of this section and who remains subject to the juvenile jurisdiction of a Circuit Court, may be placed in by the Commissioner, so that the person does not have contact with or come within sight or sound of any adult incarcerated persons."

And,

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

Com. Sub. for H. B. 2503 - "A Bill to amend and reenact §49-4-601 and §49-4-722 of the Code of West Virginia, 193, as amended, all relating to court actions in abuse and neglect proceedings; counsel appointment procedures in child neglect or abuse cases; requiring a petition to include the names of all parents, guardians, custodians, or other persons standing *in loco parentis* with the child and an express statement as to whether each parent, guardian, custodian, or person standing *in loco parentis* is alleged to have neglected or abused the child; requiring the court to appoint counsel for the child, parents, guardians, custodians, and persons standing *in loco parentis* prior to the initial hearing; clarifying when a court may and may not appoint counsel; requiring a court to appoint counsel to an unrepresented person if necessary to satisfy the requirements of fundamental fairness; directing notice to various courts in actions involving certain adults held in juvenile custody when charged or convicted of adult crimes; requiring the Bureau of Juvenile Services to provide written notification to court as to such defendants during various stages of the criminal process in cases of adults in the juvenile jurisdiction of the circuit court; requiring notice generally; requiring that notice to

be given by courts that a hearing required by subsection (a) of this section has been held; and authorizing the Commissioner of Corrections and Rehabilitation to establish one or more facilities to house adult offenders who remain under the juvenile jurisdiction of the circuit court to comply with federal sight and sound restrictions.”

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

The yeas and nays having been ordered, they were taken (**Roll No. 731**), and there were—yeas 42, nays 57, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Anderson, Atkinson, Azinger, Bibby, Butler, Cadle, Capito, Criss, Ellington, Espinosa, Foster, Graves, Hamrick, Hanna, Hardy, Harshbarger, Higginbotham, Hill, Hollen, Hott, Householder, D. Jeffries, Jennings, D. Kelly, Kessinger, Linville, Mandt, Nelson, Phillips, Queen, Rohrbach, Rowan, Shott, Steele, Storch, Summers, Sypolt, Toney, Waxman, Westfall, Wilson and Hanshaw (Mr. Speaker).

Absent and Not Voting: Cooper.

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

A message from the Senate, by

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

Com. Sub. for H. B. 2540, Prohibiting the waste of game animals, game birds or game fish.

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

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

“ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5i. Waste of game animals, game birds, or game fish; penalties.

(a) It is unlawful for any person to cause through carelessness, neglect, or otherwise to let any edible portion of any big game or game fish to go to waste needlessly.

(b) For purposes of this section, ‘edible portion’ means, with respect to:

(1) *Big game.* — One or more of the following: (A) the meat of the front quarters to the knee; (B) the meat of the hind-quarters to the hock; or (C) the meat along the backbone between the front quarters and hind quarters: *Provided*, That an edible portion of a wild turkey is the meat of the breast only.

(2) *Game fish.* — The fillet meat from the gill plate to the tail fin.

(3) Edible portion does not include bones, sinew, viscera, meat from the head or neck, meat that has been damaged or rendered inedible by method of taking, or meat that is reasonably lost as a result of boning or close trimming of bones.

(c) It is unlawful for any person to take any big game and detach or remove from the carcass the head, hide, antlers, tusks, paws, claws, gallbladder, teeth, beards, or spurs only and leave the carcass to waste.

(d) Any person who through no carelessness, neglect, or otherwise, is unable to locate the carcass of any lawfully taken big game prior to the spoilage or decay of any or all edible portions may detach or remove from the carcass the head, hide, antlers, tusks, paws, claws, gall bladder, teeth, beards, or spurs: *Provided*, That the big game is registered and shall be counted toward the daily, seasonal, bag, and possession limit of the person in possession of, or responsible for taking the big game.

(e) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be subject to the following penalties, with respect to:

(1) *Big game violations.* —

(A) A fine of not less than \$500 nor more than \$2,500, or confinement in jail not less than 10 days nor more than 100 days, or both fined and confined;

(B) Suspension of hunting and fishing license for a period of five years; and

(C) All applicable forfeiture and replacement provisions in §20-2-5a of this code.

(2) *Game fish violations.* —

(A) A fine of not less than \$100 nor more than \$500, or confinement in jail not less than 10 days nor more than 100 days, or both fined and confined;

(B) Suspension of hunting and fishing license for a period of two years; and

(C) All applicable forfeiture and replacement provisions in §20-2-5a of this code.”

And,

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

Com. Sub. for H. B. 2540 - “A Bill to amend the Code of West Virginia, 1931, as amended, by thereto a new section, designated §20-2-5i, relating to prohibiting the waste of any edible portion of big game or game fish; making it unlawful to take any big game and detach or remove the head, hide, antlers, tusks, paws, claws, gallbladder, teeth, beards, or spurs only and leave the carcass to waste; setting forth exceptions; and establishing criminal penalties for violations.”

The further title amendment offered by Delegate Summers and adopted by the House being as follows:

Com. Sub. for H. B. 2540 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §20-2-5i, relating to prohibiting the waste of any edible portion of big game animals or game fish; defining the term edible portion; setting forth exceptions to the term edible portion; making it unlawful to take any big game and detach or remove the head, hide, antlers, tusks, paws, claws, gallbladder, teeth, beards, or spurs only and leave the carcass to waste; setting forth exceptions if the person is unable to locate the carcass of any lawfully taken big game prior to the spoilage or decay of any or all edible portions; and establishing criminal penalties for violations.”

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 732**), and there were—yeas 79, nays 20, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Bibby, S. Brown, Butler, Doyle, Fast, Fluharty, Graves, Hansen, Hornbuckle, Howell, D. Jeffries, J. Jeffries, Jennings, Kump, Lovejoy, P. Martin, McGeehan, Miley, Walker and Wilson.

Absent and Not Voting: Cooper.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2540) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 2618, Including undue influence as a factor in the definition of financial exploitation of an elderly person or protected person.

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

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

“ARTICLE 7J. FINANCIAL EXPLOITATION OF AN ELDERLY PERSON, PROTECTED PERSON, OR INCAPACITATED ADULT.

§55-7J-1. Action for financial exploitation of an elderly person, protected person or incapacitated adult; definitions.

(a) Any elderly person, protected person, or incapacitated adult against whom an act of financial exploitation has been committed may bring an action under this article against any person who has committed an act of financial exploitation against him or her.

(b) For the purposes of this article:

(1) ‘Incapacitated adult’ has the same meaning as prescribed under §61-2-29 of this code;

(2) ‘Elderly person’ means a person who is 65 years or older;

(3) ‘Financial exploitation’ or ‘financially exploit’ means the intentional misappropriation or misuse of funds or assets or the diminishment of assets due to undue influence of an elderly person, protected person, or incapacitated adult, but ~~shall~~ may not apply to a transaction or disposition of funds or assets where the defendant made a good-faith effort to assist the elderly person, protected person, or incapacitated adult with the management of his or her money or other things of value; and

(4) ‘Protected person’ means any person who is defined as a ‘protected person’ in §44A-1-4 of this code and who is subject to the protections of §44A-1-1 *et seq.* or §44C-1-1 *et seq.* of this code.

(c) Any person who believes that an elderly person, protected person, or incapacitated adult is suffering financial exploitation due to the intentional misappropriation or misuse of funds or undue influence may bring an action for a protective order pursuant to this section in the magistrate court or circuit court in the county in which the elderly person, protected person, or incapacitated adult resides: *Provided*, That an action for relief brought in the magistrate court of the county of residence of the elderly person, protected person, or incapacitated adult believed to be the victim of financial exploitation to stay further diminution of the persons assets shall be temporary in nature.

(d) An action under this section is commenced by the filing of a verified petition. Temporary relief may be granted without notice to the person alleged to be engaging in financial exploitation and without that person being present.

(e) If a magistrate court grants the petition and issues a temporary protective order, the magistrate court shall immediately transfer the matter to the circuit court of the county in which the petition was filed. Upon receipt of the notice of transfer from the magistrate court, the circuit court shall set the matter for a review hearing within 20 days. After a hearing, the circuit court may issue a permanent protective order containing any relief the circuit court determines necessary to protect the alleged victim if the court finds by a preponderance of the evidence that:

(1) The respondent has committed an act against the victim that constitutes financial exploitation; and

(2) There is reasonable cause to believe continued financial exploitation will occur unless relief is granted; or

(3) The respondent consents to entry of the permanent protective order.”

And,

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

Com. Sub. for H. B. 2618 - “A Bill to amend and reenact §55-7J-1 of the Code of West Virginia, 1931, as amended, relating to amending the definition of the terms ‘financial exploitation’ or ‘financially exploit’ to include the use of undue influence resulting in diminishment of assets of an elderly person, protected person or incapacitated adult; authorizing cause of action in magistrate and circuit court for financial exploitation due to intentional misappropriation or misuse of funds or undue influence against an elderly person, protected person or incapacitated adult; temporary relief may be granted without notice to the respondent; providing for issuance of protective orders; providing protective orders issued by a magistrate court are temporary; requiring magistrate court to transfer matter to circuit court upon issuance of a temporary protective order; setting time frame for hearing; and authorizing circuit court to issue a permanent protective order under stated circumstances.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 733**), and there were—yeas 93, nays 6, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: S. Brown, Howell, McGeehan, Sponaugle, C. Thompson and Wilson.

Absent and Not Voting: Cooper.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2618) passed.

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

In accordance with House Rule 58, and having voted on the prevailing side, Delegate Pack moved that the House of Delegates reconsider its action on the vote (Roll No. 731) to concur in the Senate amendment to Com. Sub. for H. B. 2503.

On the motion to reconsider the vote on concurrence, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 734**), and there were—yeas 55, nays 44, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Angelucci, Barrett, Bates, Boggs, N. Brown, S. Brown, Byrd, Campbell, Canestraro, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Hornbuckle, Kump, Lavender-Bowe, Longstreth, C. Martin, P. Martin, McGeehan, Miley, Miller, Pethel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Skaff, Sponaule, Staggers, Swartzmiller, C. Thompson, R. Thompson, Tomblin, Walker, Williams and Zukoff.

Absent and Not Voting: Cooper.

So, a majority of the members present and voting having voted in the affirmative, the motion prevailed.

The question now before the House being the motion to concur in the Senate amendments, the same was put and prevailed.

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 735**), and there were—yeas 74, nays 25, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Barrett, Bates, S. Brown, Byrd, Canestraro, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Lavender-Bowe, McGeehan, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Skaff, Sponaule, C. Thompson, Walker, Williams and Zukoff.

Absent and Not Voting: Cooper.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2503) passed.

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

A message from the Senate, by

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

H. B. 2709, Relating to hunting licenses.

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

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

“CHAPTER 1. THE STATE AND ITS SUBDIVISIONS.

ARTICLE 7. THE PROTECT OUR RIGHT TO UNITE ACT.

§1-7-1. Legislative purpose.

(a) The purpose of this article is to protect an individual’s right to support nonprofit organizations that represent their beliefs and the nonprofit organization’s right to keep the names and addresses of its supporters confidential by codifying the landmark United States Supreme Court decision in *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958). If a public agency actor violates this protection by making an individual’s name, address, and support for nonprofit groups public, either by publication on a public website or other type of broadcast, this article gives the citizen a right to bring suit for relief.

(b) It is the intent of this article to recognize that compelled disclosure of membership lists by a public agency actor is a trespass upon fundamental freedoms protected by the Due Process Clause of the Fourteenth Amendment, as held by the United States Supreme Court in *NAACP v. Alabama ex rel. Patterson*. Therefore, this article should be liberally construed in favor of the individual right to association to ensure that private association is not discouraged or suppressed by any actions of the public servants of this state.

§1-7-2. Definitions.

For the purposes of this article:

‘Citizen’ means an individual who is a United States citizen and any entity domiciled in the United States, but does not include any foreign agent, foreign government, or noncitizen.

‘Donor information’ means any record which identifies the association of a citizen with an entity, including information that does not directly identify the citizen but which, in combination with other information, would allow a reasonable person to identify the citizen involved. Donor information includes, but is not limited to, a citizen’s name, address, occupation, employer, or any electronic or technical data, including social media accounts, email accounts, location data, or other identifying information.

‘Public agency’ means any department, office, commission, board, or division of state government; and any county, city, district, or other political subdivision or municipal corporation or any department, office, commission, court, or board or any other state or local government unit, however designated.

§1-7-3. Protecting privacy of association.

(a) Except as otherwise provided in chapters 3 and 6B of this code, or as specified in subsection (c) or subsection (d) of this section, no public agency may require any entity organized under Section 501(c) of the Internal Revenue Code to provide it with donor information: *Provided*, That where the state or a public agency nevertheless obtains donor information, it may not be released unless otherwise permitted in chapters 3 and 6B of this code or as otherwise permitted under this section.

(1) The state or public agency may not release, allow to be released, nor be required to release any record which identifies the association of a citizen with an entity organized under Section 501(c)

of the Internal Revenue Code, or which identifies the type or level of financial or nonfinancial support of a citizen for such an entity, without the express written permission of the entity or citizen or at the request of the citizen.

(2) All donor information is exempt from production under the state's Freedom of Information Act, §29B-1-1 et seq. of this code.

(b) The state or a public agency may satisfy subsection (a) of this section by redacting from a record any donor information that would tend to show association of citizens, including nonspecific information that would allow a reasonable person to identify the citizen or citizens involved.

(c) This section does not preclude any lawful order or request for information issued by a court of competent jurisdiction.

(d) This section does not preclude any lawful request for discovery by a public agency in litigation: Provided, That both of the following qualifications are met:

(1) The requesting party demonstrates a compelling need for the donor information; and

(2) The donor information is subject to a protective order barring distribution of the donor information to any individual not directly involved in the litigation.

§1-7-4. Enforcement by state or private citizen action.

(a) A citizen has a cause of action to enjoin any violation of this article and to recover any actual damages incurred by him or her as a result of the violation.

(b) If the plaintiff prevails, he or she is entitled to be reimbursed by the state or public agency for costs and attorneys' fees he or she has incurred. If the defendant state or public agency prevails, each party is responsible for their own attorneys' fees and costs, except as determined by any applicable statutes or common law rule concerning frivolous cases.

(c) If the judge or jury finds that the violation by the state or public agency was intentional, the amount of the judgment, which for this purpose includes costs and attorneys' fees, may be trebled as punitive damages.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-27. Necessity for license.

(a) Except as otherwise provided by law, no resident who has reached his or her 15th birthday and who has not reached his or her 65th birthday before January 1, 2012, and no nonresident shall at any time take, hunt, pursue, trap for, kill, or chase any wild animals, wild birds, or fish for, take, kill or catch any fish, amphibians, or aquatic life of any kind whatsoever in this state without first having secured a license or permit and then only during the respective open seasons, except that a nonresident who has not reached his or her 15th birthday may fish for, take, kill, or catch any fish, amphibians, or aquatic life of any kind whatsoever in this state without first having secured a license or permit. A person under the age of 15 years shall not hunt or chase any wild animals or wild birds upon lands of another unless accompanied by a licensed adult.

(b) A resident or nonresident member of any club, organization, or association or persons owning or leasing a game preserve or fish preserve, plant, or pond in this state shall not hunt or fish therein without first securing a license or permit as required by law: *Provided*, That resident landowners or their resident children, or bona fide resident tenants of land, may, without a permit or license, hunt and fish on their own land during open seasons in accordance with laws and rules applying to such hunting and fishing unless the lands have been designated as a wildlife refuge or preserve.

(c) Licenses and permits shall be of the kinds and classes set forth in this article and shall be conditioned upon the payment of the fees established for the licenses and permits.

(d) The list of names, addresses, and other contact information of all licensees compiled and maintained by the division as a result of the sale and issuance of any resident or nonresident licenses or stamps under this chapter is exempt from disclosure under the Freedom of Information Act, §29B-1-1 et seq. of this code: *Provided*, That the records specified in this section shall be available to all law-enforcement agencies and other governmental entities authorized to request or receive such records.”

And,

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

H. B. 2709 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §1-7-1, §1-7-2, §1-7-3, and §1-7-4; and to amend and reenact §20-2-27 of said code, all relating generally to protecting the right to privacy and association of the citizens of West Virginia; creating the Protect Our Right to Unite Act; declaring legislative purpose; defining terms; providing that no public agency may require nonprofit entities to disclose donor information, subject to certain exceptions; providing that where the state or a public agency obtains donor information it may not be released, subject to certain exceptions; providing exemption from Freedom of Information Act requests; providing for redaction of donor information; providing exception for court orders; providing exception for discovery requests under certain conditions; providing civil remedies; providing for the payment of attorneys’ fees and costs, and in certain circumstances, treble damages; and providing that the name, address, and other contact information of persons having obtained certain fishing and wildlife authorizations from the Division of Natural resources are exempt from the Freedom of Information Act.”

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect July 1, 2019, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2761, Modernizing the self-service storage lien law.

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

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

“ARTICLE 14. SELF-SERVICE STORAGE LIEN ACT.

§38-14-2. Definitions.

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

(1) 'Default' means the failure by the occupant to perform on time any obligation or duty set forth in the rental agreement or this article;

~~(2) 'Late fee' means a fee or charge assessed for a default;~~

~~(3) 'Leased space' means the individual storage space at the self-service facility which is leased or rented to an occupant pursuant to a rental agreement;~~

~~(4) 'Occupant' means a person entitled to the use of a leased space at a self-service storage facility under a rental agreement, or the person's sublessee, successor or assign;~~

~~(5) 'Owner' means the owner, operator, lessor or sublessor of a self-service storage facility or the person's agent or any other person authorized to manage the facility or to receive rent from any occupant under a rental agreement. The owner of a self-service storage facility is not a warehouseman as defined in section one hundred two, article seven, chapter forty-six of this code unless the owner issues a warehouse receipt, bill of lading or other document of title for the personal property stored, in which event the owner and the occupant are subject to the provisions of article seven, chapter forty-six of this code dealing with warehousemen;~~

~~(6) 'Personal property' means movable property not affixed to land and includes, but is not limited to, goods, wares, merchandise, motor vehicles and household items and furnishings;~~

~~(7) 'Primary address' means that address provided by the occupant in the rental agreement or the address provided by the occupant in a subsequent notice of a change of address;~~

~~(8) 'Rental agreement' means any agreement or lease that establishes or modifies the terms, conditions or rules concerning the lawful and reasonable use and occupancy of a self-service storage facility;~~

~~(9) 'Secondary address' means any address provided on the rental agreement and is in addition to the primary address;~~

~~(10) 'Self-service storage facility' means any real property used for renting or leasing individual storage spaces, other than storage spaces which are leased or rented as an incident to the lease or rental of residential property or dwelling units, to which the occupants have access for storing or removing their personal property; and~~

~~(11) 'Self-service storage lien' means a lien imposed on the personal property of an occupant by the owner of a self-service storage facility~~

(2) 'Last known address' means that address or electronic mail address provided by the occupant in the rental agreement or the address or electronic mail address provided by the occupant in a subsequent written notice of a change of address;

(3) 'Leased space' means the individual storage space at the self-service storage facility which is rented to an occupant pursuant to a rental agreement;

(4) 'Occupant' means a person, a sublessee, successor, or assign, entitled to the use of a leased space at a self-service storage facility under a rental agreement;

(5) 'Operator' means the owner, operator, lessor, or sublessor of a self-service storage facility, an agent, or any other person authorized to manage the facility. The operator is not a warehouseman, unless the operator issues a warehouse receipt, bill of lading, or other document of title for the personal property stored;

(6) 'Personal property' means movable property, not affixed to land. Personal property includes goods, wares, merchandise, motor vehicles, trailers, watercraft, and household items and furnishings;

(7) 'Rental agreement' means any written agreement that establishes or modifies the terms, conditions, or rules concerning the use and occupancy of leased space at a self-service storage facility;

(8) 'Self-service storage facility' means any real property used for renting or leasing individual storage spaces in which the occupants themselves customarily store and remove their own personal property on a 'self-service' basis; and

(9) 'Verified mail' means any method of mailing that is offered by the United States Postal Service or private delivery service that provides evidence of mailing.

§38-14-3. Self-service storage lien.

(a) The ~~owner~~ operator has a ~~self-service storage~~ lien on all personal property stored within each leased space for agreed rent, labor, ~~or late fees, and~~ other charges and for expenses reasonably incurred in its sale or ~~destruction~~ disposition pursuant to this article. The ~~self-service storage~~ lien attaches as of the date the personal property is stored within each leased space and remains a lien until the occupant has satisfied the terms of the rental agreement.

(b) In the case of any motor vehicle or watercraft which is subject to a lien previously recorded on the certificate of title, the ~~owner~~ operator has a ~~self-service storage~~ lien on the vehicle or watercraft ~~so~~ as long as the motor vehicle or watercraft remains stored within the leased space.

(c) The rental agreement ~~must~~ shall contain:

(1) A statement ~~in bold type~~ advising the occupant of the existence of the ~~self-service storage~~ lien and that the personal property stored within the leased space may be sold to satisfy the ~~self-service storage lien or destroyed if the value of the property would not reasonably discharge the costs of the sale and self-service storage lien~~ if the occupant is in default;

(2) A ~~space for a secondary address immediately following the space provided for the primary address;~~ and

(3) A ~~statement that the occupant may not store hazardous waste or contraband in the leased space.~~

(2) A statement advising the occupant that personal property stored in the leased space may be towed or removed from the self-service storage facility if the personal property is a motor vehicle, trailer, or watercraft and the occupant is in default for more than 60 days; and

(3) A statement advising the occupant that a sale of personal property stored in the leased space to satisfy the lien if the occupant is in default may be advertised;

(A) In a newspaper of general circulation in the jurisdiction where the sale is to be held or where the self-service storage facility is located;

(B) By electronic mail or text; or

(C) On an online website.

§38-14-4. Late fees.

The ~~owner~~ operator may charge a late fee not to exceed ~~\$10 or ten~~ \$20 or 20 percent of the monthly rental fee, whichever is greater, for each month the occupant defaults for a period of ~~fifteen~~ five days or more.

§38-14-5. Enforcement of self-service storage lien.

~~(a) (1) If an occupant is in default under a rental agreement and the owner wishes to enforce the lien, the owner shall notify the occupant of the default in a form as prescribed by subsection (c) of this section. If the default is not cured within sixty days after the service of the notice, the owner may:~~

~~(A) Proceed to enforce the self-service storage lien by selling the contents of the occupant's unit at public auction, for cash, and apply the proceeds to satisfaction of the self-service storage lien, with the surplus, if any, to be disbursed as provided in this article; or~~

~~(B) Destroy the personal property if he or she can demonstrate by photographs or other images and affidavit of a knowledgeable and credible person that the personal property lacks a value sufficient to cover the reasonable expense of a public auction plus the amount of the self-service storage lien;~~

~~(2) In the case of personal property having a fair market value in excess of \$1,000 and against which a secured party has filed a financing statement in the name of the occupant with the Secretary of State or in the office of the clerk of the county commission in the county where the self-service storage facility is located or in the county in West Virginia shown as the last known address of the occupant or if the personal property is a motor vehicle or watercraft required by the laws of this state to be registered and the Division of Motor Vehicles shows a lien on the certificate of title, the owner shall notify the lienholder of record, by certified mail, at the address on the financing statement or certificate of title, of the time and place of the proposed public auction, at least thirty days prior to the auction. At any time prior to the public sale or destruction, a secured party may pay the reasonable fees and costs due to the person possessing the self-service storage lien and take possession of the personal property which is subject to the lien;~~

~~(3) If a lienholder of record of the personal property cannot be ascertained, the name of 'Jane Doe' shall be substituted in the proceedings brought under this article and no written notice is required except as prescribed by subsection (c) of this section. Whenever a motor vehicle or watercraft is sold under the provisions of this article, the Division of Motor Vehicles shall issue a certificate of title and registration to the purchaser upon the purchaser's application containing the serial or motor number of the vehicle or watercraft purchased, together with an affidavit by the person conducting the public auction, evidencing compliance with the provisions of this article.~~

~~(b) The owner may, without judicial process, deny the occupant access to the personal property stored at the self-service storage facility if the occupant has been in default for fifteen days: *Provided*, That the owner clearly states in the rental agreement that he or she may deny the occupant access to the personal property stored in the rental space after a default lasting fifteen or more days and the owner maintains a conspicuous sign on the premises of the self-service storage facility stating the name, street address and telephone number of the owner or the owner's designated agent who the occupant may contact to redeem his or her personal property and upon redemption, the occupant or~~

~~lienholder be permitted access to his or her personal property at a time not later than the close of business on the next following business day.~~

~~(c) Anytime after the occupant has been in default and before the owner can sell or destroy the occupant's personal property in accordance with the terms of this article, the owner shall send a notice of default, by regular mail, and registered or certified mail, postage prepaid, to the occupant at the occupant's last known primary address and secondary address, if any. The notice of default shall include:~~

~~(1) An itemized statement of the owner's claim, indicating the charges due on the date of the notice, the date when the charges became due and those charges that will accrue through the date of sale or destruction of the occupant's personal property;~~

~~(2) A demand for payment of the charges due to the owner with an address where payment can be made;~~

~~(3) A statement that the contents of the occupant's leased space are subject to the owner's self-service storage lien;~~

~~(4) A conspicuous statement that unless the claim is paid prior to the enforcement of the self-storage lien:~~

~~(A) The personal property contained in the occupant's space will be sold at public auction at a specified time and place which may not be less than sixty days from the date of the service; or~~

~~(B) The personal property contained in the occupant's space will be disposed of at a commercially reasonable cost to the occupant at a specified time and place which may not be less than sixty days from the date of the service; and~~

~~(d) At any time prior to the public auction or destruction of the personal property pursuant to this section the occupant may pay the full amount necessary to satisfy the self-service storage lien. A lienholder of record may pay an amount not to exceed \$175 for incurred rental fees, late fees and safekeeping of the property in addition to an amount not to exceed \$75 for notice and redeem only the personal property subject to the lien.~~

~~(e)(1) Any owner who conducts a public auction pursuant to this section may satisfy the self-service storage lien from the proceeds of the public auction and hold the balance, if any, for delivery on demand to the occupant. If an owner complies with the provisions of this article, his or her liability to the occupant is limited to the net proceeds less the amount of the self-service storage lien and costs received at the public auction;~~

~~(2) If an owner conducts a public auction pursuant to this section, the owner's liability to a lienholder is limited to the proceeds received at the public auction, less the amount of the self-service storage lien and costs. If an owner complies with the provisions of this article, the owner is not liable to a lienholder who fails to claim an interest in the net proceeds within thirty days after the public auction.~~

~~(f) Any public auction of the personal property shall be held at the self-service storage facility or at the nearest suitable place to where the personal property is held or stored. An advertisement shall be published in a newspaper of general circulation in the county or municipality in which the public auction is to be held not less than twenty days prior to the public auction. The advertisement must state the:~~

- ~~(1) Fact that it is a public auction;~~
- ~~(2) Date, time and location of the public auction;~~
- ~~(3) Date, time and location which the property may be inspected; and~~
- ~~(4) Form of payment acceptable.~~

~~(g) A purchaser in good faith of any personal property sold or otherwise disposed of pursuant to this article takes the property free and clear of any rights of persons against whom the lien was valid.~~

~~(h) Any notice made pursuant to this section is presumed delivered when it is deposited with the United States postal service and properly addressed with postage prepaid.~~

(a)(1) If the occupant is in default for a period of more than 60 days, the operator may enforce the lien by selling the personal property stored in the leased space at a public sale or dispose of the personal property if the operator can demonstrate by photographs or other images and affidavit of a knowledgeable and credible person that the personal property lacks a value sufficient to cover the reasonable expense of a public auction plus the amount of the self-service storage lien.

(2) Proceeds from the sale shall be applied to satisfy the lien, and any surplus shall be disbursed as provided in subsection (e) of this section.

(b)(1) Before conducting a sale under subsection (a) of this section, the operator shall, subject to subdivision (2) of this subsection, notify the occupant of the default by hand delivery, verified mail, electronic mail, or text at the occupant's last known address.

(2)(A) The operator may not notify the occupant of the default by electronic mail unless:

(i) The rental agreement specifies, in bold type, that notice may be given by electronic mail or text; and

(ii) The occupant provides the occupant's initials next to the statement in the rental agreement specifying that notice of default may be given by electronic mail or text.

(B) If the operator notifies the occupant of the default by electronic mail or text at the occupant's last known address and does not receive a response, return receipt, or a confirmation of delivery, the operator shall send the notice of default to the occupant by hand delivery or by verified mail to the occupant's last known postal address.

(C) Additional requirements for members of the military apply under the Soldiers and Sailors Relief Act, 50 U.S.C. §§3901-4043.

(3) The notice shall include:

(A) A statement that the contents of the occupant's leased space are subject to the operator's lien;

(B) A statement of the operator's claim, indicating the charges due on the date of the notice, the amount of any additional charges which will become due before the date of sale, and the date those additional charges will become due;

(C) A demand for payment of the charges due within a specified time, not less than 14 days after the date that the notice was mailed;

(D) A statement that unless the claim is paid within the time stated, the contents of the occupant's space will be sold at a specified time and place; and

(E) The name, street address, and telephone number of the operator, or his or her designated agent, whom the occupant may contact to respond to the notice.

(4) (A) Subject to paragraph (B) of this subdivision, at least three days before conducting a sale under this section, the operator shall advertise the time, place, and terms of the sale:

(i) In a newspaper of general circulation in the jurisdiction where the sale is to be held;

(ii) By electronic mail; or

(iii) On an online website.

(B) The operator may not advertise the sale in the manner provided under subparagraph (ii) or (iii) of this paragraph unless the occupant provides the occupant's initials next to the statement in the rental agreement required under this article.

(c) The operator may dispose of the personal property if the operator has complied with subsection (b) of this section and the property has not been purchased.

(d) At any time before a sale under this section, the occupant may pay the amount necessary to satisfy the lien and redeem the occupant's personal property.

(e) A sale under this section shall be held at the self-service storage facility where the personal property is stored, on an online auction website, or at any other location reasonably determined by the operator.

(f)(1) If a sale is held under this section, the operator shall:

(A) Satisfy the lien from the proceeds of the sale; and

(B) Mail the balance, if any, by certified mail to the occupant at the occupant's last known address of the occupant.

(2) (A) If the balance is returned to the operator after the operator mailed the balance in the manner required under paragraph (B), subdivision (1) of this subsection, the operator shall hold the balance for one year after the date of sale for delivery on demand to the operator.

(B) After expiration of the one-year period, the balance is presumed abandoned.

(g) A purchaser in good faith of any personal property sold under this article takes the property free and clear of any rights of persons against whom the lien was valid.

(h) If the operator complies with the provisions of this article, the operator's liability to the occupant is limited to the net proceeds received from the sale of the personal property less the amount of the operator's lien.

(i) If an occupant is in default, the operator may deny the occupant access to the leased space.

(j)(1)(A) Notices sent to the operator shall be sent to the self-service storage facility where the occupant's personal property is stored by hand delivery or verified mail.

(B) Notices to the occupant shall be sent to the occupant at the occupant's last known address.

(2) Notices shall be considered delivered when:

(A) Deposited with the United States Postal Service or a private delivery service, properly addressed as provided in subsection (b) of this section, with postage prepaid; or

(B) Sent by electronic mail to the occupant's last known address.

(k)(1) If the occupant is in default for more than 60 days and the personal property stored in the leased space is a motor vehicle, trailer, or watercraft, the operator may have the personal property towed or removed from the self-service storage facility in lieu of a sale authorized under subsection (a) of this section.

(2) The operator is immune from civil liability for any damage to the personal property towed or removed from the self-service storage facility under subdivision (1) of this subsection that occurs after the person that undertakes the towing or removal of the personal property takes possession of the personal property.

(l) If a rental agreement specifies a limit on the value of personal property that may be stored in the occupant's leased space, the limit is the maximum value of the stored personal property.

(m) Nothing in this article impairs or affects the rights of the parties to create additional rights, duties, and obligations in and by virtue of the rental agreement.

§38-14-7. Duties; care, custody, and control of property.

~~(a) The owner operator shall use reasonable care in maintaining the self-service storage facility for the purposes of storage of personal property. and may not offer to sell insurance to the occupant to cover the owner's risk or lack of care~~

~~(b) Prior to the sale or destruction of personal property pursuant to this section, the owner shall prepare a detailed inventory of all personal property to be sold or destroyed and shall maintain the inventory listing for a period of two years from the date of the sale or destruction of the property. The occupant shall have access to the inventory listing for the period during which it is maintained by the owner~~

~~(c) (b) Unless the rental agreement specifically provides otherwise, the exclusive care, custody, and control of all personal property stored in the leased space remains vested in the occupant.~~

~~(d) (c) An occupant may not use a self-service storage facility for residential purposes.~~

~~(e) (d) An occupant may not store hazardous waste or contraband in the leased space. An owner who discovers hazardous waste or contraband in a leased space shall promptly notify the appropriate law enforcement agency and is authorized to deliver the hazardous waste or contraband to the appropriate law enforcement agency~~

§38-14-8. Savings clause.

All rental agreements entered into prior to July 1, ~~2004~~ 2019, which have not been extended or renewed after that date remain valid and may be enforced or terminated in accordance with their terms or as permitted by any other statute or law of this state.

§38-14-9. Effective date and application of article.

The provisions of this article apply to all rental agreements entered into or extended or renewed after July 1, ~~2004~~ 2019.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 736**), and there were—yeas 84, nays 15, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: S. Brown, Cadle, Diserio, Doyle, Fleischauer, Fluharty, Hansen, J. Jeffries, Paynter, Pushkin, Pyles, Robinson, Rowe, C. Thompson and Walker.

Absent and Not Voting: Cooper.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2761) passed.

Delegate Summers moved that the bill take effect July 1, 2019.

On this question, the yeas and nays were taken (**Roll No. 737**), and there were—yeas 91, nays 8, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: S. Brown, Cadle, Fleischauer, Hansen, P. Martin, Paynter, Robinson and Walker.

Absent and Not Voting: Cooper.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2761) takes effect July 1, 2019.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had refused to recede from its amendment and requested the House of Delegates to agree to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses as to

H. B. 3044, Requiring the Commissioner of Highways to develop a formula for allocating road funds.

The message further announced that the President of the Senate had appointed as conferees on the part of the Senate the following:

Senators Clements, Swope and Beach.

On motion of Delegate Kessinger, the House reconsidered its action on refusing to concur in the amendment of the bill by the Senate. The House then concurred with further amendment offered by

Delegate Howell, on page two, section three, by striking out section three in its entirety and inserting in lieu thereof a new section three to read as follows:

“§17-30-3. Formula for allocation of funds.

(a) Prior to the beginning of the regular legislative session in 2020, the commissioner shall develop and propose a formula for the effective and efficient allocation of state road funds among the districts and counties in this state, to be promulgated as a legislative rule.

(b) The commissioner shall include, but not be limited to, the following factors in the formula developed pursuant to this section:

(1) The population served in each county according to the most recent United States Census;

(2) The amount of population growth in each county according to the most recent United States Census projection;

(3) The number of total lane miles in a county and their condition;

(4) The approximate number of vehicle miles travelled within a county;

(5) The approximate number of heavy truck miles travelled within a county; and

(6) The number of bridges in a county and their condition.

(c) Before developing the formula required by this section, the commissioner shall review and consider all public comments submitted to the commissioner pursuant to §17-30-4 of this code.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 738**), and there were—yeas 97, nays 2, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: McGeehan and Paynter.

Absent and Not Voting: Cooper.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3044) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 3057, Relating to the Adult Drug Court Participation Fund.

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

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

“ARTICLE 15. DRUG OFFENDER ACCOUNTABILITY AND TREATMENT ACT.

§62-15-9a. Adult Drug Court Participation Fund ~~created~~.

(a) ~~There is created within the State Treasury a~~ The special revenue fund created within the State Treasury designated the Adult Drug Court Participation Fund to be administered by the West Virginia Supreme Court of Appeals is hereby continued. The fund shall consist of moneys received from individuals participating in an adult drug court program.

(b) ~~The fund shall consist of moneys received from individuals participating in an adult drug court program.~~ All moneys collected by the Administrator of the Supreme Court of Appeals for participation in the court’s adult drug court program shall be deposited into the Adult Drug Court Participation Fund. Any moneys remaining in the fund at the end of a fiscal year shall remain in the fund and be available for expenditure during the ensuing fiscal year.

(c) All moneys deposited into the State Treasury and credited to the Adult Drug Court Participation Fund shall be used to pay the costs associated with maintaining and administering the court’s adult drug court programs.

~~(d) All moneys collected by the Administrator of the Supreme Court of Appeals for participation in the court’s adult drug court program shall be deposited into the Adult Drug Court Participation Fund. Expenditures from the fund shall be for the purpose set forth in subsection (c) of this section and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with article three, chapter twelve of this code and upon fulfillment of the requirements of article two, chapter eleven b of this code: *Provided*, That for the fiscal year ending June 30, 2017, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature~~

ARTICLE 15B. FAMILY DRUG TREATMENT COURT ACT

§62-15B-1. Oversight and implementation of family drug treatment courts.

(a) The Supreme Court of Appeals of West Virginia may implement a Family Drug Treatment Court pilot program in at least four circuits.

(b) Family drug treatment courts are specialized court dockets within the existing structure of West Virginia’s court system offering judicial monitoring of intensive treatment and strict supervision of individuals with substance use disorder involved in a child abuse and neglect case pursuant to §49-4-601, et. seq.

(c) The Supreme Court of Appeals of West Virginia may:

(1) Provide oversight for the distribution of funds for family drug treatment courts;

(2) Provide technical assistance to family drug treatment courts;

(3) Provide training for judges who preside over family drug treatment courts;

(4) Provide training to the providers of administrative, case management, and treatment services to family drug treatment courts; and

(5) Monitor the completion of evaluations of the effectiveness and efficiency of family drug treatment courts in the state.

(d) A state family drug treatment court advisory committee shall be established to

(1) evaluate and recommend standards for the planning and implementation of family drug treatment courts;

(2) assist in the evaluation of their effectiveness and efficiency;

(3) encourage and enhance cooperation among agencies that participate in their planning and implementation; and,

(4) report by January 1, annually, to the Legislative Oversight Commission on Health and Human Resources Accountability regarding legislation to enhance family drug treatment courts.

(e) The committee shall be chaired by the Chief Justice of the Supreme Court of Appeals of West Virginia or his or her designee and shall include a circuit court judge who presides over a family drug treatment court; the Director of the Office of Drug Control Policy or the executive assistant to the director; Cabinet Secretary of the Department of Health and Human Resources or his or her designee; the commissioners or their designee of the following bureaus: the Bureau for Children and Families; the Bureau for Public Health; and the Bureau for Behavioral Health; the Executive Director of the West Virginia Prosecuting Attorneys Institute or his or her designee; the Executive Director of the West Virginia Public Defender Services or his or her designee; and the Executive Director of West Virginia CASA Association or his or her designee.

(f) Each circuit selected to establish a family drug treatment court shall establish and maintain a local family drug treatment court advisory committee. Each advisory committee shall ensure quality, efficiency, and fairness in the planning, implementation, and operation of the family drug treatment court or courts that serve the jurisdiction or combination of jurisdictions. Advisory committee membership shall include, but shall not be limited to the following people or their designees:

(1) the family drug treatment court judge;

(2) the prosecuting attorney of the county;

(3) the public defender or a member of the county bar who represents individuals in child abuse and neglect cases;

(4) the Community Service Manager of the Bureau of Children and Families of the Department of Health and Human Resources;

(5) a court appointed special advocate, as applicable; and

(6) any other individuals selected by the family drug treatment court advisory committee.

§62-15B-2. Establish eligibility and policies procedures.

(a) Each local family drug treatment court advisory committee shall establish criteria for the eligibility and participation of adult respondents who have been adjudicated an abusing or neglecting parent pursuant to § 49-4-601(i) and who have been granted a post-adjudicatory improvement period pursuant to § 49-4-610(2) and who have a substance use disorder. Adult respondents who have been adjudicated for such abuse that the department is not required to make reasonable efforts to preserve

the family as defined in § 49-4-604(b)(7) shall not be eligible for participation in any family drug treatment court.

(b) Participation by an adult respondent in a family drug treatment court shall be voluntary and made pursuant only to a written agreement into by and between the adult respondent and the department with concurrence of the court.”

And,

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

Com. Sub. for H. B. 3057 - “A Bill to amend and reenact §62-15-9a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §62-15B-1 and §62-15B-2, all relating generally to drug courts; removing certain restrictions on Drug Court Participation Fund expenditures; providing for disposition of moneys from said fund at the end of a fiscal year; permitting the Supreme Court of Appeals of West Virginia to create a family drug treatment court pilot program; permitting the implementation of a family drug treatment court pilot program in at least four circuits; restricting family drug treatment courts to individuals with substance use disorders who are involved in a child abuse and neglect case; permitting the Supreme Court of Appeals of West Virginia provide oversight, technical assistance and training; establishing a state family drug treatment court advisory committee; establishing a local family drug treatment court advisory committee; requiring each local family drug treatment court advisory committee to establish criteria for the eligibility and participation of adult responders who have been adjudicated to be an abusive or neglectful parent and who have been granted a post-adjudicatory improvement period and who have a substance use disorder; prohibiting certain respondents from being eligible for participation in a family drug treatment court; and providing that participation by an adult respondent in a family drug treatment court shall be voluntary and made pursuant only to a written agreement by and between the adult respondent and the department with the concurrence of the court.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 739**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Cooper.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3057) passed.

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

A message from the Senate, by

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

H. B. 3139, Relating to funding of the Public Employees Health Insurance Program.

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

“CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE, AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-25. Reserve fund.

Upon the effective date of this section, the finance board shall establish and maintain a reserve fund for the purposes of offsetting unanticipated claim losses in any fiscal year. Beginning with the fiscal year 2002 plan and for each succeeding fiscal year plan, the finance board shall ~~transfer~~ maintain the actuarially recommended reserve in an amount no less than 10 percent of the projected total plan costs for that fiscal year ~~into~~ in the reserve fund, which is to be certified by the actuary and included in the final, approved financial plan submitted to the Governor and Legislature in accordance with the provisions of this article. ~~Any moneys saved in a plan year shall be transferred into the reserve fund. At the close of any fiscal year in which the balance in the reserve fund exceeds the recommended reserve amount by fifteen percent, the executive director shall transfer that amount to the West Virginia Retiree Health Benefit Trust Fund created in section two, article sixteen-d of this chapter~~

CHAPTER 11B. DEPARTMENT OF REVENUE.

ARTICLE 2. STATE BUDGET OFFICE.

§11B-2-15a. PEIA Rainy Day Fund.

(a) There is hereby created in the State Treasury a special account, designated the PEIA Rainy Day Fund, which is an interest-bearing account administered by the Secretary of Revenue in accordance with the provisions of this section.

(b) The PEIA Rainy Day Fund shall consist of moneys collected from income from investment of moneys held in the special revenue account, and all other sums available for deposit to the account, public or private. Any balance remaining in the special revenue account at the end of the fiscal year does not revert to the General Revenue Fund but remains in the special revenue account and may be used in a manner consistent with this article.

(c) The Secretary of Revenue, upon the written approval of the Governor, may transfer moneys from the PEIA Rainy Day Fund to the Public Employees Insurance Agency only to (1) reduce or prevent benefit cuts, (2) reduce premium increases, or (3) any combination thereof. The amount of moneys transferred may be included in the calculation of any plan year aggregate premium cost-sharing percentages between employers and employees.

(d) The Secretary of Revenue may contract with the West Virginia Investment Management Board, or the West Virginia Board of Treasury Investments, for any services with respect to fund investments which the secretary considers necessary.

(e) The Secretary of Revenue may promulgate legislative rules, and emergency rules as provided in §29A-3-15 of this code, as the secretary considers necessary to implement and administer the provisions of this section.”

And,

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

H. B. 3139 - “A Bill to amend and reenact §5-16-25 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11B-2-15a, all relating generally to funding of Public Employees Health Insurance Program; requiring the finance board to maintain a reserve fund at actuarially recommended amounts of at least 10 percent of plan costs; removing requirement to transfer moneys resulting from plan savings into reserve fund; removing requirement that excess funds be transferred to West Virginia Retiree Health Benefit Trust Fund; establishing PEIA Rainy Day Fund as special, nonexpiring, interest-bearing revenue account in the State Treasury; providing for the administration of the fund, including investment of funds, transfer of funds, and purposes for which the fund can be used; and authorizing the promulgation of emergency and legislative rules.”

The further amendment offered by Delegate Summers and adopted by the House being on page three, section fifteen-a, line four, subsection (b), following the words “(b) The PEIA Rainy Day Fund”, by striking out the words “shall consist of moneys collected from” and inserting in lieu thereof the words “may consist of moneys appropriated by the Legislature” and a comma.

And,

The further title amendment offered by Delegate Summers and adopted by the House being as follows:

H. B. 3139 - “A Bill to amend and reenact §5-16-25 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11B-2-15a, all relating generally to funding of Public Employees Health Insurance Program; requiring the finance board to maintain a reserve fund at actuarially recommended amounts of at least 10 percent of plan costs; removing requirement to transfer moneys resulting from plan savings into reserve fund; removing requirement that excess funds be transferred to West Virginia Retiree Health Benefit Trust Fund; establishing PEIA Rainy Day Fund as special, nonexpiring, interest-bearing revenue account in the State Treasury; providing funding for the Fund from appropriations, investment income and other sources; providing for the administration of the fund, including investment of funds, transfer of funds, and purposes for which the fund can be used; and authorizing the promulgation of emergency and legislative rules.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 740**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Cooper.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3139) passed.

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

On this question, the yeas and nays were taken (**Roll No. 741**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and R. Thompson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3139) takes effect from its passage.

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

A message from the Senate, by

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

Com. Sub. for S. B. 561, Permitting Alcohol Beverage Control Administration request assistance of local law enforcement.

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

On page two, section three-ss, after the words "until 1:00 p.m.", by striking out the following: If prior to July 1, 2019, a county commission had voted against 10:00 a.m. on premises sale, then notwithstanding this section, on premises sales of nonintoxicating beer, wine, and alcoholic liquors shall not begin until 1:00 p.m.

The further title amendment offered by Delegate Shott and adopted by the House being as follows:

Com. Sub. for S. B. 561 - "A Bill to amend and reenact §7-1-3ss of the Code of West Virginia, 1931, as amended; to amend and reenact §11-16-18 of said code; to amend said code by adding thereto two new sections, designated §60-2-17a and §60-2-17b; to amend and reenact §60-6-7, §60-6-8, and §60-6-9 of said code; to amend and reenact §60-7-2, §60-7-3, §60-7-4, §60-7-5, §60-7-6, and §60-7-12 of said code; to amend said code by adding thereto two new sections, designated §60-7-6a and §60-7-8a; to amend and reenact §60-8-34 of said code; and to amend and reenact §61-8-27 of said code, all relating to alcoholic beverages generally; creating a county option election on forbidding nonintoxicating beer, wine or alcoholic liquors to be sold, given or dispensed after 10:00 a.m. on Sundays in lieu of an county option election to permit such sales; delineating hours of unlawful sale on a Sunday generally; permitting the Alcohol Beverage Control Administration to request the assistance of law enforcement; limiting the jurisdiction of such requested law enforcement assistance; implementing a \$100 operations fee and establishing special revenue account and fund; clarifying that consumption of alcoholic liquors in public is unlawful; clarifying that West Virginia licensees can only sell liquor by the drink with certain exceptions; clarifying prohibition on liquor bottle sales in Class A licenses; providing for a bottle service fee and establishing requirements for bottle service; clarifying certain licensing requirements for licensure; providing guidance on certain lawful conduct such as wine bottle sales and frozen drink machines; forbidding the operation of certain bring your own bottle establishments; creating a private fair and festival license; definitions; license requirements; license fee; creating the private hotel license and license fee; creating a private nine-hole golf course license and fee; removing the need for golf carts to be offered at licensed golf courses; definitions; license requirements; license fee; permitting a private resort hotel to have inner-connection with a resident brewer who has a brewpub; providing a 30-day requirement to issue or deny a completed license application; creating a reactivation fee for licensees who fail to timely file their renewal application and pay their annual license fees; permitting a license privilege for certain licensees to operate a connected but separately operated Class A on-premises license and a Class B off-premises license; clarifying that certain state-licensed gaming is permissible in a private club; clarifying permitted hours of operation for certain licensees; clarifying unlawful Sunday sales for certain wine licensees; and permitting minors to attend a private hotel, private nine-hole golf course, and a private fair or festival under certain conditions."

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 742**), and there were—yeas 80, nays 19, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Anderson, Butler, Fast, Graves, Hanna, Hollen, D. Jeffries, Jennings, D. Kelly, P. Martin, McGeehan, Pack, Paynter, Porterfield, Rohrbach, Toney, Waxman, Worrell and Hanshaw (Mr. Speaker).

Absent and Not Voting: Cooper.

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

Delegate C. Martin moved the bill take effect from its passage, which motion was withdrawn.

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

A message from the Senate, by

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

Com. Sub. for S. B. 90, Transferring Safety and Treatment Program from DHHR to DMV.

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

Com. Sub. for S. B. 90 - "A Bill to amend and reenact §17B-3-3c of the Code of West Virginia, 1931, as amended; and to amend and reenact §17C-5A-3 and §17C-5A-3a of said code, all relating to the Safety and Treatment Program; transferring the program from the Department of Health and Human Resources to the Division of Motor Vehicles; waiving license reinstatement fees in some circumstances; and providing for a method to reduce the license revocation period."

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 743**), and there were—yeas 94, nays 4, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Canestraro, Fast, Fluharty and McGeehan.

Absent and Not Voting: Cooper and Cowles.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 90) passed.

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

A message from the Senate, by

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

S. B. 665, Allowing for expedited oil and gas well permitting.

Delegate Kessinger moved the House refuse to concur in the following amendment of the bill by the Senate and request the Senate to recede therefrom:

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

“ARTICLE 6A. NATURAL GAS HORIZONTAL WELL CONTROL ACT.

§22-6A-7. Horizontal well permit required; permit fee; application; soil erosion control plan; well site safety plan; site construction plan; water management plan; permit fee; installation of permit number; suspension and transfer of a permit.

(a) It is unlawful for any person to commence any well work, including site preparation work which involves any disturbance of land, for a horizontal well without first securing from the secretary a well work permit pursuant to this article.

(b) Every permit application filed under this section shall be on a form as may be prescribed by the secretary, shall be verified, and shall contain the following information:

(1) The names and addresses of: (A) The well operator; (B) the agent required to be designated under subsection (k) of this section; and (C) every person whom the applicant shall notify under any section of this article, together with a certification and evidence that a copy of the application and all other required documentation has been delivered to all such persons;

(2) The names and addresses of every coal operator operating coal seams under the tract of land on which the well is or may be located, and the coal seam owner of record and lessee of record required to be given notice by §22-6A-5(a)(6) of this code, if any, if the owner or lessee is not yet operating the coal seams;

(3) The number of the well or other identification the secretary may require;

(4) The well work for which a permit is requested;

(5) The approximate total depth to which the well is to be drilled or deepened, or the actual depth if the well has been drilled; the proposed angle and direction of the well; the actual depth or the approximate depth at which the well to be drilled deviates from vertical, the angle, and direction of the nonvertical well bore until the well reaches its total target depth or its actual final depth; and the length and direction of any actual or proposed horizontal lateral or well bore;

(6) Each formation in which the well will be completed if applicable;

(7) A description of any means used to stimulate the well;

(8) If the proposed well work will require casing or tubing to be set, the entire casing program for the well, including the size of each string of pipe, the starting point and depth to which each string is to be set and the extent to which each such string is to be cemented;

(9) If the proposed well work is to convert an existing well, all information required by this section, all formations from which production is anticipated, and any plans to plug any portion of the well;

(10) If the proposed well work is to plug or replug the well, all information necessary to demonstrate compliance with the legislative rules promulgated by the secretary in accordance with §22-6A-13 of this code;

(11) If the proposed well work is to stimulate a horizontal well, all information necessary to demonstrate compliance with the requirements of §22-6A-5(a)(7) of this code;

(12) The erosion and sediment control plan required under subsection (c) of this section for applications for permits to drill;

(13) A well site safety plan to address proper safety measures to be employed for the protection of persons on the site as well as the general public. The plan shall encompass all aspects of the operation, including the actual well work for which the permit was obtained, completion activities and production activities, and shall provide an emergency point of contact for the well operator. The well operator shall provide a copy of the well site safety plan to the local emergency planning committee established pursuant to §15-5A-7 of this code for the emergency planning district in which the well work will occur at least seven days before commencement of well work or site preparation work that involves any disturbance of land;

(14) A certification from the operator that: (A) It has provided the owners of the surface described in §22-6A-10(b)(1), §22-6A-10(b)(2), and §22-6A-10(b)(4) of this code, the information required by §22-6A-16(b) and §22-6A-16(c) of this code; (B) that the requirement was deemed satisfied as a result of giving the surface owner notice of entry to survey pursuant to §22-6A-10(a) of this code; or (C) the notice requirements of §22-6A-16(b) of this code were waived in writing by the surface owner; and

(15) Any other relevant information which the secretary may reasonably require.

(c)(1) An erosion and sediment control plan shall accompany each application for a well work permit under this article. The plan shall contain methods of stabilization and drainage, including a map of the project area indicating the amount of acreage disturbed. The erosion and sediment control plan shall meet the minimum requirements of the West Virginia Erosion and Sediment Control Manual as adopted and from time to time amended by the department. The erosion and sediment control plan shall become part of the terms and conditions of any well work permit that is issued pursuant to this article and the provisions of the plan shall be carried out where applicable in the operation. The erosion and sediment control plan shall set out the proposed method of reclamation which shall comply with the requirements of §22-6A-14 of this code.

(2) For well sites that disturb three acres or more of surface, excluding pipelines, gathering lines and roads, the erosion and sediment control plan submitted in accordance with this section shall be certified by a registered professional engineer.

(d) For well sites that disturb three acres or more of surface, excluding pipelines, gathering lines and roads, the operator shall submit a site construction plan that shall be certified by a registered professional engineer and contains information that the secretary may require by rule.

(e) In addition to the other requirements of this section, if the drilling, fracturing, or stimulating of the horizontal well requires the use of water obtained by withdrawals from waters of this state in amounts that exceed 210,000 gallons during any 30-day period, the application for a well work permit shall include a water management plan, which may be submitted on an individual well basis or on a watershed basis, and which shall include the following information:

(1) The type of water source, such as surface or groundwater, the county of each source to be used by the operation for water withdrawals and the latitude and longitude of each anticipated withdrawal location;

(2) The anticipated volume of each water withdrawal;

(3) The anticipated months when water withdrawals will be made;

(4) The planned management and disposition of wastewater after completion from fracturing, refracturing, stimulation, and production activities;

(5) A listing of the anticipated additives that may be used in water utilized for fracturing or stimulating the well. Upon well completion, a listing of the additives that were actually used in the fracturing or stimulating of the well shall be submitted as part of the completion log or report required by §22-6A-5(a)(14) of this code;

(6) For all surface water withdrawals, a water management plan that includes the information requested in subdivisions (1) through (5) of this subsection and the following:

(A) Identification of the current designated and existing water uses, including any public water intakes within one mile downstream of the withdrawal location;

(B) For surface waters, a demonstration, using methods acceptable to the secretary, that sufficient in-stream flow will be available immediately downstream of the point of withdrawal. A sufficient in-stream flow is maintained when a pass-by flow that is protective of the identified use of the stream is preserved immediately downstream of the point of withdrawal; and

(C) Methods to be used for surface water withdrawal to minimize adverse impact to aquatic life; and

(7) This subsection is intended to be consistent with and does not supersede, revise, repeal, or otherwise modify §22-11-1 *et seq.*, §22-12-1 *et seq.*, or §22-26-1 *et seq.* of this code and does not revise, repeal, or otherwise modify the common law doctrine of riparian rights in West Virginia law.

(f) An application may propose and a permit may approve two or more activities defined as well work; however, a separate permit shall be obtained for each horizontal well drilled.

(g) The application for a permit under this section shall be accompanied by the applicable bond as required by §22-6A-15 of this code, the applicable plat required by §22-6A-5(a)(6) of this code, and a permit fee of \$10,000 for the initial horizontal well drilled at a location and a permit fee of \$5,000 for each additional horizontal well drilled on a single well pad at the same location.

(h)(1) An applicant may enter into an expedited permit application process with the secretary for a well permit and pay an additional expedited permit fee of \$30,000 for the initial horizontal well drilled at a location and an additional expedited permit fee of \$15,000 for each additional horizontal well drilled on a single well pad at the same location; *Provided*, That deep well permitting is excluded from this expedited permit process due to the independent board review and approval requirement which is outside the secretary's control.

(2) Upon entering into an expedited permit process and meeting all the criteria set forth in this article, the secretary shall issue or deny a permit within 45 days of the submission of a permit application under this article, unless the secretary seeks additional information or modification from the applicant, which would toll the 45 day period until the secretary receives the required responsive information from the applicant.

(3) Each day the agency exceeds: (A) The 45-day deadline for approval or denial of an expedited initial horizontal well drilled, the secretary shall refund \$2,000 per day up to and including day 60 after the submission of a permit application until the expedited fee is reduced to the normal permit fee amount; or (B) the 45-day deadline for approval or denial of an expedited permit for any additional

horizontal well drilled on a single well pad at the same location, the secretary shall be required to refund \$1,000 per day up to and including day 60 after the submission of a permit application, until the expedited fee is reduced to the normal permit fee amount.

(4)(A) After all refunds are paid by the secretary, one half of the additional expedited permit fee shall be deposited in the Oil and Gas Operating Permit and Processing Fund and shall be used by the agency to cover costs to review, process, and approve or deny the applicable horizontal well permit applications and modifications pending before the agency, but not to exceed \$1,000,000 annually in combination with proceeds received through §22-6A-7(i)(4)(A) of this code and any residuary fee proceeds to be distributed as set forth in §22-6A-7(h)(4)(B) of this code.

(B) After all refunds are paid by the secretary, one half of the additional expedited permit fee, plus any residuary as set forth in §22-6A-7(h)(4)(A) of this code, shall be deposited in the Oil and Gas Reclamation Fund and used specifically for the reclamation and plugging of orphaned oil or gas wells.

(i)(1) An applicant may enter into an expedited permit modification application process with the secretary for a well permit and pay an expedited permit modification fee of \$5,000 for the modification of the permit for any horizontal well drilled at a location. *Provided*, That deep well permit modifications are excluded from this expedited permit modification process if the modification is subject to independent board review and approval.

(2) Upon entering into an expedited permit modification process and meeting all the criteria set forth in this article, the secretary shall issue or deny a permit modification within 20 days of the submission of a permit modification application under this article, unless the secretary seeks additional information or further modification from the applicant, which would toll the 20 day period until the secretary receives the required responsive information from the applicant.

(3) Each day the agency exceeds the 20-day deadline for approval or denial of an expedited horizontal well permit modification, the secretary shall refund \$500 per day up to and including day 30 after the submission of an expedited permit modification application, until the expedited permit modification fee of \$5,000 is reduced to zero.

(4)(A) After all refunds are paid by the secretary, one half of the expedited permit modification fee shall be deposited in the Oil and Gas Operating Permit and Processing Fund and shall be used by the agency to cover costs to review, process, and approve or deny the applicable horizontal well permit applications and modifications pending before the agency, but not to exceed \$1,000,000 annually in combination with proceeds received through §22-6A-7(h)(4)(A) of this code and any residuary fee proceeds to be distributed as set forth in §22-6A-7(i)(4)(B) of this code.

(B) After all refunds are paid by the secretary, one half of the expedited permit modification fee, plus any residuary as set forth in §22-6A-7(i)(4)(A) of this code, shall be deposited in the Oil and Gas Reclamation Fund and used specifically for the reclamation and plugging of orphaned oil or gas wells.

(j) Any balance in the Oil and Gas Reclamation Fund, earmarked specifically for the reclamation and plugging of orphaned oil or gas wells pursuant to §22-6A-7(h)(4)(B) and §22-6A-7(i)(4)(B) of this code, which remains at the end of any state fiscal year does not revert to the General Revenue Fund but shall remain in the special revenue account as indicated and may be used only as provided in §22-6-29(b) of this code. The revenues deposited in the Oil and Gas Reclamation Fund, earmarked specifically for the reclamation and plugging of orphaned oil or gas wells pursuant to §22-6A-7(h)(4)(B) and §22-6A-7(i)(4)(B) of this code may not be designated as nonaligned state special revenue funds under §11B-2-32 of this code.

~~(h)~~ (k) The well operator named in the application shall designate the name and address of an agent for the operator who is the attorney-in-fact for the operator and who is a resident of the State of West Virginia upon whom notices, orders, or other communications issued pursuant to this article or §22-11-1 *et seq.* of this code may be served, and upon whom process may be served. Every well operator required to designate an agent under this section shall, within five days after the termination of the designation, notify the secretary of the termination and designate a new agent.

~~(i)~~ (l) The well owner or operator shall install the permit number as issued by the secretary and a contact telephone number for the operator in a legible and permanent manner to the well upon completion of any permitted work. The dimensions, specifications, and manner of installation shall be in accordance with the rules of the secretary.

~~(j)~~ (m) The secretary may waive the requirements of this section and §22-6A-8, §22-6A-10, §22-6A-11, and §22-6A-24 of this code in any emergency situation if the secretary considers the action necessary. In that case the secretary may issue an emergency permit which is effective for not more than 30 days, unless reissued by the secretary.

~~(k)~~ (n) The secretary shall deny the issuance of a permit if the secretary determines that the applicant has committed a substantial violation of a previously issued permit for a horizontal well, including the applicable erosion and sediment control plan associated with the previously issued permit, or a substantial violation of one or more of the rules promulgated under this article, and in each instance has failed to abate or seek review of the violation within the time prescribed by the secretary pursuant to the provisions of §22-6A-5(a)(1) and §22-6A-5(a)(2) of this code and the rules promulgated hereunder, which time may not be unreasonable.

~~(l)~~ (o) If the secretary finds that a substantial violation has occurred and that the operator has failed to abate or seek review of the violation in the time prescribed, the secretary may suspend the permit on which the violation exists, after which suspension the operator shall forthwith cease all well work being conducted under the permit. However, the secretary may reinstate the permit without further notice, at which time the well work may be continued. The secretary shall make written findings of the suspension and may enforce the same in the circuit courts of this state. The operator may appeal a suspension pursuant to the provisions of §22-6A-5(a)(23) of this code. The secretary shall make a written finding of any such determination.

~~(m)~~ (p) Any well work permit issued in accordance with this section may be transferred with the prior written approval of the secretary upon his or her finding that the proposed transferee meets all requirements for holding a well work permit, notwithstanding any other provision of this article or rule adopted pursuant to this article. Application for the transfer of any well work permit shall be upon forms prescribed by the secretary and submitted with a permit transfer fee of \$500. Within 90 days of the receipt of approval by the secretary, the transferee shall give notice of the transfer to those persons entitled to notice in §22-6A-10(b) of this code by personal service or by registered mail or by any method of delivery that requires a receipt or signature confirmation, and shall further update the emergency point of contact provided pursuant to subdivision (13), subsection (b) of this section.”

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

The yeas and nays having been ordered, they were taken (**Roll No. 744**), and there were—yeas 71, nays 28, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Angelucci, Boggs, S. Brown, Butler, Canestraro, Caputo, Diserio, Doyle, Evans, Fleischauer, Hansen, Hicks, Hornbuckle, Longstreth, P. Martin, Pushkin, Pyles, Rodighiero, Rowe, Skaff, Sponaugle, Staggers, C. Thompson, R. Thompson, Tomblin, Walker, Williams and Zukoff.

Absent and Not Voting: Cooper.

So, a majority of the members present and voting having voted in the affirmative, the motion prevailed.

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

In accordance with House Rule 58, on motion of Delegate Shott, the House of Delegates reconsidered its action on the vote to refuse to concur in the amendment of H. B. 3143 by the Senate.

In absence of objection, the motion to refuse to concur in the amendment of the bill by the Senate was withdrawn.

On motion of Delegate Shott, the House then concurred in the Senate amendment with the following further amendment and title amendment:

On page one, following the article heading by inserting the following:

“§46A-4-101. Authority to make loans.

Unless a person has first obtained a license from the commissioner authorizing him the person to make regulated consumer loans, he ~~shall~~ or she may not engage in the business of:

Making regulated consumer loans; or

Taking assignments of ~~and~~ or undertaking direct collection of payments from or enforcement of rights against consumers arising from regulated consumer loans.

Provided, That the licensing provisions of this act do not pertain to any ‘collection agency’ as defined in, and licensed by, the ‘Collection Agency Act of 1973’ at W. Va. Code §47-16-1 et seq.”

And,

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

H. B. 3143 - “A Bill to amend and reenact §46A-4-101 and §46A-4-107 of the Code of West Virginia, 1931, as amended, all relating to requirements for making consumer loans in West Virginia; modifying the authority to make regulated consumer loans; providing that a person must first obtain a license from the Commissioner of Banking authorizing him or her to make regulated consumer loans before engaging in the business of making regulated consumer loans, taking assignments of or undertaking direct collection of payments from or enforcement of rights against consumers arising from regulated consumer loans; providing that the licensing provisions do not pertain to any collection agencies as defined and licensed by the West Virginia Collection Agency Act of 1973; and, adjusting threshold amounts of consumer loans for which certain finance charges can be imposed.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 745**), and there were—yeas 75, nays 24, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Angelucci, Barrett, Bates, S. Brown, Canestraro, Caputo, Diserio, Doyle, Estep-Burton, Fleischauer, Fluharty, Hansen, Kump, Lavender-Bowe, Longstreth, Lovejoy, Miley, Pushkin, Robinson, Rowe, Staggers, C. Thompson, Walker and Williams.

Absent and Not Voting: Cooper.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3143) passed.

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

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced the adoption of the report of the Committee of Conference on, and the passage, as amended by said report, and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 241, Permitting county court clerks scan certain documents in electronic form.

Conference Committee Report

Delegate C. Martin, from the Committee of Conference on matters of disagreement between the two houses, as to

Com. Sub. for S. B. 241, Permitting county court clerks scan certain documents in electronic form.

Submitted the following report, which was received:

Your Committee of Conference on the disagreeing votes of the two houses as to the amendments of the House to Engrossed Committee Substitute for Senate Bill 241 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That the Senate agree to the amendments of the House of Delegates to the bill and that both houses agree to a new title, to read as follows:

Com. Sub. for S. B. 241 - "A Bill to amend and reenact §39-1-11 of the Code of West Virginia, 1931, as amended, relating to writings to be recorded under the direction of the county clerk; permitting the clerk, with authorization from the county commission, to scan and make available online when financially feasible certain documents in electronic form rather than in well-bound books, not prepare indices in separate books, and replace existing books by scanning them in approved electronic format; requiring that existing books be retained; providing exception to retention of books; requiring that copies of documents in electronic format are stored on an off-site server; and updating terms."

Respectfully submitted,

Dave Sypolt, *Chair*,

Carl Martin, *Chair*,

Chandler Swope,

Kenneth P. Hicks,

Douglas E. Facemire,

Evan Worrell,

*Conferees on the part of
of the Senate.*

*Conferees on the part
of the House of Delegates.*

On motion of Delegate C. Martin, the report of the Committee of Conference was adopted.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 746**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Staggers.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 241) passed.

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

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced the adoption of the report of the Committee of Conference on, and the passage, as amended by said report, and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 317, Authorizing three or more adjacent counties form multicounty trail network authority.

Conference Committee Report

Delegate Howell, from the Committee of Conference on matters of disagreement between the two houses, as to

Com. Sub. for S. B. 317, Authorizing three or more adjacent counties form multicounty trail network authority.

Submitted the following report, which was received:

Your Committee of Conference on the disagreeing votes of the two houses as to the amendment of the House to Engrossed Committee Substitute for Committee Substitute for Senate Bill 317 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That both houses recede from their respective positions as to the amendment of the Senate, striking out everything after the enacting clause, and agree to the same as follows:

“ARTICLE 17. MULTICOUNTY TRAIL NETWORK AUTHORITIES.

§20-17-1. Legislative findings.

The West Virginia Legislature finds that outdoor recreation is an increasingly vital part of the state’s economy and that outdoor recreation participants spend billions of dollars annually in the state and support a significant number of local jobs.

The Legislature further finds that well-managed areas for trail-oriented recreation in the state will increase outdoor recreational tourism, increasing revenue to the state and creating more jobs for West Virginia citizens.

The Legislature further finds that, with the cooperation of private landowners, there is an opportunity to provide citizens and recreational tourists with greater access to trail-oriented recreation by incorporating private property into recreational trail systems and areas throughout West Virginia to provide significant economic and recreational benefits to communities in the state.

The Legislature further finds that, under an appropriate contractual and management scheme, well-managed trail systems may exist on private property without diminishing the landowner's interest, control, or profitability in the land and without increasing the landowner's exposure to liability.

The Legislature further finds that creating and empowering multicounty trail network authorities, that can work with the landowners, county officials, community leaders, state and federal government agencies, recreational user groups, and other interested parties to expand trail systems will greatly assist in improving and linking recreational trail systems.

The Legislature further finds that it is in the best interests of the state to encourage private landowners to make land available for public use, through multicounty trail network authorities, for recreational purposes by limiting landowner liability for injury to persons entering thereon, by limiting landowner liability for injury to the property of persons entering thereon, and by limiting landowner liability to persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon.

§20-17-2. Definitions.

Unless the context clearly requires a different meaning, the terms used in this article have the following meanings:

(1) 'Adjacent county' means a nonparticipating county that directly borders any participating county in a multicounty trail network authority;

(2) 'Authority' means a multicounty trail network authority created pursuant to this article;

(3) 'Board' means the board of a multicounty trail network authority;

(4) 'Contiguous counties' means a group of counties in which each county shares the border of at least one other county in the group;

(5) 'Fee' means the amount of money asked in return for an invitation to enter or go upon a recreational area of a trail network, including a one-time fee for a particular event, amusement, occurrence, adventure, incident, experience, or occasion as set by an authority, which may differ in amount for different categories of participants;

(6) 'Land' or 'property' includes, but is not limited to, roads, water, watercourses, private ways, buildings, premises, structures, and machinery or equipment, when attached to the realty;

(7) 'Owner' or 'owner of land' means a person vested with title to real estate and those with the ability to exercise control over real estate and includes, but is not limited to, a tenant, lessee, licensee, holder of a dominant estate, or other lawful occupant;

(8) 'Participant' means any person using a recreational area of a trail network for recreational purposes;

(9) 'Person' means any public or private corporation, institution, association, society, firm, organization, or company organized or existing under the laws of this or any other state or country;

the State of West Virginia; any state governmental agency; any political subdivision of the state or of its counties or municipalities; a sanitary district; a public service district; a drainage district; a conservation district; a watershed improvement district; a partnership, trust, or estate; a person or individual; a group of persons or individuals acting individually or as a group; any other legal entity; or any authorized agent, lessee, receiver, or trustee of any of the foregoing;

(10) 'Participating county' means one of the three or more counties forming a multicounty trail network authority;

(11) 'Recreational area' means the recreational trails and appurtenant facilities, including trail head centers, parking areas, camping facilities, picnic areas, recreational areas, historic or cultural interpretive sites, and other facilities or attractions that are a part of a multicounty trail network authority system; and

(12) 'Recreational purposes' means:

(A) Any outdoor activity undertaken, or practice or instruction in any such activity, for the purpose of exercise, relaxation, or pleasure, including, but not limited to any one or any combination of the following noncommercial recreational activities: Hunting, fishing, swimming, boating, kayaking, camping, picnicking, hiking, rock climbing, bouldering, bicycling, horseback riding, spelunking, nature study, water skiing, winter sports, and visiting, viewing, or enjoying historical, archaeological, scenic, or scientific sites, aircraft, or ultralight operations on private airstrips or farms, or otherwise using land for purposes of the user;

(B) Parking on or traversing land, outside of the state road system, for the purpose of engaging in a recreational activity described in paragraph (A) of this subdivision; or

(C) Maintaining or making improvements on land, including, but not limited to, artificial improvements for the purpose of making the land accessible or usable for a recreational activity described in paragraph (A) of this subdivision.

§20-17-3. Multicounty trail network authorities authorized; addition of counties; merger of existing authorities.

(a) For the purposes of this article, three or more contiguous counties may, upon approval of the county commission of each county desiring to participate, form a multicounty trail network authority. An authority established pursuant to this section is a public corporation and a joint development entity existing for the purpose of facilitating the development and operation of a system of recreational trails and areas throughout the participating counties. Such trails will be designated and made available for recreational purposes with significant portions of the trails system being located on private property throughout West Virginia, made available for use through lease, license, easement, or other appropriate legal form by a willing landowner.

(b) An adjacent county may join a multicounty trail network authority as a participating county upon approval of both the board of the authority and the county commission of the adjacent county wishing to become a participating county.

(c) Two or more existing authorities may merge and become a single authority encompassing the participating counties in each merging authority upon approval of the board of each authority. Upon merger of two or more authorities, the board of the newly created authority will be composed of all board members serving on the board of each merging authority at the time the merger takes place. Thereafter, the authority will fill any vacancies and appoint board members as required by §20-17-4

of this code. The board of the newly created authority shall adopt appropriate procedures and bylaws to ensure that the newly created authority complies with all requirements of this article.

§20-17-4. Board; quorum; executive director; expenses; application of state Freedom of Information Act.

(a) The board is the governing body of an authority and the board shall exercise all the powers given the authority in this article. The county commission of each participating county shall appoint two members to the board, as follows:

(1) Each participating county shall appoint one member who represents and is associated with a corporation or individual landowner whose land is being used or is expected to be used in the future as part of the authority's recreational area. This member shall be appointed to a four-year term.

(2) Each participating county shall appoint one member who is an experienced instructor, guide, or participant in recreational activities in the county or an individual who represents and is associated with travel, tourism, economic development, land surveying, or relevant engineering efforts within the county. The initial appointment for this member shall be for a two-year term, but all subsequent appointments shall be for a four-year term.

(3) Any appointed member whose term has expired shall serve until his or her successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any appointed member is eligible for reappointment. Members of the board are not entitled to compensation for services performed as members but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties.

(b) Upon joining an existing authority as a participating county pursuant to §20-17-3 of this code, the newly participating county shall appoint board members only for the length of the unexpired terms of the authority's board members serving at the time the county joins the authority. Thereafter, the county shall appoint board members according to the regular appointment procedure provided in subsection (a) of this section.

(c) The board shall meet quarterly, unless a special meeting is called by its chairman. During the first meeting of each fiscal year beginning in an odd-numbered year, or as soon as feasible thereafter, the board shall elect a chairman, secretary, and treasurer from among its own members to serve for two-year terms.

(d) A majority of the members of the board constitutes a quorum and a quorum shall be present for the board to conduct business.

(e) The board may prescribe, amend, and repeal bylaws and rules governing the use of the trail system, safety standards for participants, and the manner in which the business of the authority is conducted.

(f) The board shall review and approve an annual budget. The fiscal year for an authority begins on July 1 and ends on the 30th day of the following June.

(g) The board shall appoint an executive director to act as its chief executive officer, to serve at the will and pleasure of the board. The board, acting through its executive director, may employ any other personnel considered necessary and retain such temporary legal, engineering, financial, and other consultants or technicians as may be required for any special study or survey consistent with the provisions of this article. The executive director shall carry out plans to implement the provisions of this article and to exercise those powers enumerated in the bylaws. The executive director shall

prepare an annual budget to be submitted to the board for its review and approval prior to the commencement of each fiscal year. The budget shall contain a detailed account of all planned and proposed revenue and expenditures for the authority for the upcoming fiscal year, including a detailed list of employees by title, salary, cost of projected benefits, and total compensation. Before August 15 of each year, the executive director shall provide to the board and the county commission for each participating county a detailed list of actual expenditures and revenue, by account and recipient name, for the previous fiscal year and a copy of the approved budget for the current fiscal year.

(h) All costs incidental to the administration of the authority, including office expenses, personal services expenses, and current expenses, shall be paid in accordance with guidelines issued by the board from funds accruing to the authority.

(i) All expenses incurred by an authority in carrying out the provisions of this article shall be payable solely from funds that have accrued to the authority pursuant to this article. An authority may not incur liability or an obligation above the amount of funds that have accrued to the authority pursuant to this article.

(j) A multicounty trail network authority and the board is a 'public body' for purposes of the West Virginia Freedom of Information Act, as provided in §29B-1-1 et seq. of this code.

§20-17-5. Financial review and oversight.

(a) An authority shall contract for and obtain an annual financial audit to be conducted by a private accounting firm in compliance with generally accepted government auditing standards. When complete, the audit shall be transmitted to the board, the president of the county commission of each participating county, and the Legislative Auditor. The cost of the audit shall be paid by the authority.

(b) If an authority receives any funds from the Legislature by appropriation or grant, the Legislative Auditor shall have the power and authority to examine the revenues, expenditures, and performance of the authority, and, for these purposes, shall have the power to inspect the properties, equipment, and facilities of the authority and to request, inspect, and obtain copies of any records of the authority. For each fiscal year in which the authority receives any funds from the Legislature by appropriation or grant, the executive director shall provide to the Legislative Auditor and Secretary of Revenue a detailed list of actual expenditures and revenue by account and recipient name for the previous fiscal year within 45 days of the close of that fiscal year.

§20-17-6. Powers of an authority.

An authority, as a public corporation and joint development entity, may exercise all powers necessary or appropriate to carry out the purposes of this article, including, but not limited to, the power:

- (1) To acquire, own, hold, and dispose of property, real and personal, tangible and intangible;
- (2) To lease property, whether as lessee or lessor, and to acquire or grant through easement, license, or other appropriate legal form, the right to develop and use property and open it to the public;
- (3) To mortgage or otherwise grant security interests in its property;
- (4) To procure insurance against any losses in connection with its property, licenses, easements, operations, assets, or contracts, including hold-harmless agreements, in such amounts and from such insurers as the authority considers desirable;

(5) To maintain such sinking funds and reserves as the board determines appropriate for the purposes of meeting future monetary obligations and needs of the authority;

(6) To sue and be sued, implead and be impleaded, and complain and defend in any court;

(7) To contract for the provision of legal services by private counsel and, notwithstanding the provisions of §5-3-1 et seq. of this code, the counsel may, in addition to the provisions of other legal services, represent the authority in court, negotiate contracts and other agreements on behalf of the authority, render advice to the authority on any matter relating to the authority, prepare contracts and other agreements, and provide such other legal services as may be requested by the authority;

(8) To adopt, use, and alter at will a corporate seal;

(9) To make, amend, repeal, and adopt bylaws for the management and regulation of the authority's affairs;

(10) To appoint officers, agents, and employees and to contract for and engage the services of consultants;

(11) To make contracts of every kind and nature and to execute all instruments necessary or convenient for carrying out the purposes of this article, including contracts with any other governmental agency of this state or of the federal government or with any person, individual, partnership, or corporation;

(12) Without in any way limiting any other subdivision of this section, to accept grants and loans from, and enter into contracts and other transactions with, any federal agency;

(13) To maintain an office at such place or places within the state as it may designate;

(14) To borrow money, to issue notes, to provide for the payment of notes, to provide for the rights of the holders of notes, and to purchase, hold, and dispose of any of its notes;

(15) To issue notes payable solely from the revenue or other funds available to the authority, which may be issued in such principal amounts as necessary to provide funds for any purpose under this article, including:

(A) The payment, funding, or refunding of the principal of, interest on, or redemption premiums on notes issued by it, whether the notes or interest to be funded or refunded have or have not become due; and

(B) The establishment or increase of reserves to secure or to pay notes, or the interest on the notes, and all other costs or expenses of the authority incident to and necessary or convenient to carry out its corporate purposes and powers. Notes may be additionally secured by a pledge of any revenues, funds, assets, or moneys of the authority from any source;

(16) To issue renewal notes, except that no renewal notes may be issued to mature more than 10 years from the date of issuance of the notes renewed;

(17) To apply the proceeds from the sale of renewal notes to the purchase, redemption, or payment of the notes to be refunded;

(18) To accept gifts or grants of property, funds, security interests, money, materials, labor, supplies, or services from the federal government or from any governmental unit or any person, firm,

or corporation, and to take appropriate measures in procuring, accepting, or disposing of gifts or grants;

(19) To the extent permitted under its contracts with the holders of notes of the authority, to consent to any modification of the rate of interest, time of payment of any installment of principal or interest, security or any other term of any note, contract or agreement of any kind to which the authority is a party;

(20) To construct, reconstruct, improve, maintain, repair, operate, and manage the recreational areas at the locations within the participating counties as may be determined by the authority;

(21) To enter into an agreement with the West Virginia Division of Natural Resources for natural resources police officers to provide law-enforcement services within the authority's recreational area and to reimburse the Division of Natural Resources for its costs therefor;

(22) To exercise all power and authority provided in this article necessary and convenient to plan, finance, construct, renovate, maintain, and operate or oversee the operation of the authority at such locations within the participating counties as may be determined by the authority;

(23) To exercise all of the powers which a corporation may lawfully exercise under the laws of this state;

(24) To develop, maintain, and operate or contract for the development, maintenance, and operation of the authority;

(25) To enter into contracts with landowners and other persons holding an interest in the land being used for its recreational facilities to hold those landowners and other persons harmless with respect to any claim in tort growing out of the use of the land for recreational purposes or growing out of the recreational activities operated or managed by the authority from any claim except a claim for damages proximately caused by the willful or malicious conduct of the landowner or any of his or her agents or employees;

(26) To assess and collect a reasonable fee from those persons who use the trails, parking facilities, visitor centers, or other facilities which are part of the recreational area and to retain and utilize that revenue for any purposes consistent with this article: *Provided*, That such fee does not constitute a 'charge' or a 'fee' within the meaning and for the purposes of §19-25-5 of this code: *Provided, however*, That the authority may not charge a fee for any user to enter or go upon any trail that is already open for use by the public without fee as of January 1, 2019;

(27) To enter into contracts or other appropriate legal arrangements with landowners under which land is made available for use as part of the recreational area;

(28) To directly operate and manage recreation activities and facilities within the recreational area;

(29) To promulgate and publish rules governing the use of the recreational area and the safety of participants, including rules designating particular trails or segments of trails within the recreational area for certain activities and limiting use of designated trails to such activities;

(30) To coordinate and conduct athletic races, competitions, or events within the recreational area, in cooperation with the county commissions of participating counties in which such events will take place; and

(31) To exercise such other and additional powers as may be necessary or appropriate to carry out the purposes of this article.

§20-17-7. Requirements for trail users and prohibited acts; criminal penalties.

(a) A person may not enter or remain upon a recreational area without a valid, nontransferable user permit issued by the appropriate authority and properly displayed, except properly identified landowners or leaseholders or their officers, employees, or agents while on the land that the person owns or leases for purposes related to the ownership or lease of the land.

(b) An authority may require recreational users to wear protective helmets or use safety equipment that the authority determines to be appropriate for the recreational activity in which the user is engaged.

(c) Each trail user operating a bicycle or mountain bicycle shall obey all traffic laws, traffic-control devices, and signs within the recreational area, including those which restrict trails to certain types of bicycles or mountain bicycles.

(d) Each trail user shall at all times remain within and on a designated and marked trail while within the recreational area.

(e) A person may not ignite or maintain any fire within the recreational area except in a designated camp site.

(f) A person may not operate a motor vehicle within the recreational area unless the person is authorized to operate a motor vehicle in the area to perform maintenance services or emergency response.

(g) A person who violates any provision of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$100. Prosecution or conviction for the misdemeanor described in this subsection shall not prevent or disqualify any other civil or criminal remedies for the conduct prohibited by this section.

§20-17-8. Limiting liability.

(a) An owner of land used by an authority owes no duty of care to keep his or her land safe for entry or use by others for recreational purposes, or to give any warning of a dangerous or hazardous condition, use, structure, activity, or wild animal on such land to persons entering or going upon the land for such purposes. The provisions of this section apply regardless of whether the person entering or going upon the leased land is permitted to enter the land or is a trespasser.

(b) Unless otherwise agreed in writing, an owner of land who grants a lease, easement, or license of land to an authority for recreational purposes does not, by giving a lease, easement or license: (1) Extend any assurance to any person using the land that the land is safe for any purpose; (2) confer upon those persons the legal status of a party to whom a duty of care is owed; or (3) assume responsibility for or incur liability for any injury to person or property or death caused by an act or omission of a person who enters upon the leased land. The provisions of this section apply whether the person entering or going upon the leased land is permitted to enter the land or is a trespasser.

(c) Nothing in this section limits in any way any liability which otherwise exists for deliberate, willful, or malicious infliction of injury to persons or property: *Provided*, That nothing herein limits in any way the obligation of a person entering upon or using the land of another for recreational

purposes to exercise due care in his or her use of the land and in his or her activities thereon, so as to prevent the creation of hazards or the commission of waste by himself or herself.

§20-17-9. Purchasing and bidding procedures; criminal penalties.

(a) Purchasing and bidding procedures; criminal penalties. —

(1) Whenever an authority proposes to purchase or contract for commodities or services reasonably anticipated to equal or exceed \$25,000 in cost, the purchase or contract shall be based on competitive bidding. Where the purchase of particular commodities or services is reasonably anticipated to be less than \$25,000, the executive director may, on behalf of the authority, solicit bids or price quotes in any manner that the executive director deems appropriate and the authority shall obtain its commodities or services by the lowest bid. In lieu of seeking bids or quotes for commodities or services in this price range, the authority may purchase those commodities and services pursuant to state prequalification agreements as provided in §5A-3-10e of this code.

(2) Where the cost for the purchase of commodities or services is reasonably anticipated to exceed \$25,000, the executive director shall solicit sealed bids for such commodities or services: *Provided*, That the executive director may permit bids by electronic transmission to be accepted in lieu of sealed bids. Bids shall be solicited by public notice. The notice shall be published as a Class II legal advertisement in all participating counties in compliance with the provisions of §59-3-1 *et seq.* of this code and by such other means as the executive director deems appropriate. The notice shall state the general character of the work and general character of the materials to be furnished, the place where plans and specifications therefor may be examined, and the time and place for receiving bids. After all bids are received, the authority shall enter into a written contract with the lowest responsible bidder; however, the authority may reject any or all bids that fail to meet the specifications required by the authority or that exceed the authority's budget estimation for those commodities or services. If the executive director determines in writing that there is only one responsive and responsible bidder and that there has been sufficient public notice to attract competitive bids, he or she may negotiate the price for a noncompetitive award or the specifications for a noncompetitive award based solely on the original purpose of the solicitation.

(3) For any contract that exceeds \$25,000 in total cost, the authority shall require the vendors to post a bond, with form and surety to be approved by the authority, in an amount equal to at least 50 percent of the contract price conditioned upon faithful performance and completion of the contract.

(4) The bidding requirements specified in this section do not apply to any leases for real property upon which the authority makes improvements for public access to the recreational area, information distribution, and welcome centers. This exemption does not apply to leases for offices, vehicle and heavy equipment storage, or administrative facilities.

(5) Any person who violates a provision of this subsection is guilty of a misdemeanor and, upon conviction, shall be confined in jail not less than 10 days nor more than one year, or fined not less than \$10 nor more than \$1,000, or both fined and confined.

(b) Conflicts of interest in contracts prohibited. —

An authority or any of its board members, officers, employees, or agents may not enter into any contracts, agreements, or arrangements for purchases of services or commodities violating the requirements of §6B-2-5 or §61-10-15 of this code.

(c) Civil remedies. —

The county commission of a participating county in an authority may challenge the validity of any contract or purchase entered, solicited, or proposed by the authority in violation of this section by seeking declaratory or injunctive relief in the circuit court of the county of the challenging party. If the court finds by a preponderance of evidence that the provisions of those sections have been violated, the court may declare the contract or purchase to be void and may grant any injunctive relief necessary to correct the violations and protect the funds of the authority as a joint development entity.

ARTICLE 17A. MOUNTAINEER TRAIL NETWORK RECREATION AUTHORITY.

§20-17A-1. Legislative findings; purpose.

The Legislature further finds that, with the cooperation of private landowners, there is an opportunity to provide trail-oriented recreation facilities primarily on private property in the mountainous terrain of the Potomac Highlands and north central West Virginia and that the facilities will provide significant economic and recreational benefits to the state and to the communities in the Potomac Highlands and north central West Virginia through increased tourism in the same manner as whitewater rafting, snow skiing, and utility terrain motor vehicle riding benefit the state and communities surrounding those activities.

The Legislature further finds that the creation and empowering of a joint development entity to work with the landowners, county officials and community leaders, state and federal government agencies, recreational user groups, and other interested parties to enable and facilitate the implementation of the facilities will greatly assist in the realization of these potential benefits.

The purpose of this article is to provide additional opportunities and regulatory authorization for recreational trail networks and to provide for increased access to recreational areas, including, but not limited to, creating a contiguous trail system that connects to the Chesapeake and Ohio Canal Tow Path.

§20-17A-2. Creation of Mountaineer Trail Network Recreation Authority and establishment of recreation area.

(a) There is hereby created the 'Mountaineer Trail Network Recreation Authority' consisting of representatives from the counties of Barbour, Grant, Harrison, Marion, Mineral, Monongalia, Preston, Randolph, Taylor, and Tucker organized pursuant to the provisions of §20-17-1 *et seq.* of this code. This authority is authorized to establish a Mountaineer 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 Mountaineer 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 Mountaineer 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.

§20-17A-3. Recreational purposes.

The permitted recreational purposes for the Mountaineer Trail Network Recreation Area include, but are not limited to, any one or any combination of the following noncommercial recreational activities: Hunting, fishing, swimming, boating, camping, picnicking, hiking, bicycling, mountain

bicycling, running, cross-country running, nature study, winter sports and visiting, viewing or enjoying historical, archaeological, scenic, or scientific sites.

§20-17A-4. Governing body and expenses

(a) The governing body of the authority shall be a board constituted according to the provisions of §20-17-4 of this code.

(b) All costs incidental to the administration of the authority, including office expenses, personal services expenses and current expenses, shall be paid in accordance with guidelines issued by the board from funds accruing to the authority.

(c) All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under the authority of this article and according to the requirements of §20-17-1 et seq. of this code. No liability or obligation may be incurred by the authority under this article beyond the extent to which moneys have been provided under the authority of this article.

§20-17A-5. Protection for private landowners.

Owners of land used by the authority shall have the full benefit of the limitations of liability provided in §20-17-8 of this code."

And,

That both houses agree to a new title, to read as follows:

Com. Sub. for S. B. 317 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §20-17-1, §20-17-2, §20-17-3, §20-17-4, §20-17-5, §20-17-6, §20-17-7, §20-17-8 and §20-17-9; and to amend said code by adding thereto a new article, designated §20-17A-1, §20-17A-2, §20-17A-3, §20-17A-4, and §20-17A-5, all relating generally to forming multicounty trail network authorities; creating a framework for establishment of multicounty trail network authorities and authorizing the formation of the Mountaineer Trail Network Recreation Authority; providing legislative findings; defining terms; providing that an authority is a public corporation and joint development entity; providing procedures for counties to join a trail network authority as a participating county and providing for the merger of two established authorities; providing for appointment of individuals to the board of an authority and for the filling of vacancies in the board; establishing the terms of appointment to a board; requiring quarterly meetings of a board; describing how a quorum is established; authorizing a board to promulgate bylaws and rules; providing that an authority is subject to Freedom of Information Act laws; describing the powers and duties of an authority and its board; requiring a board to appoint an executive director; describing powers and duties of an executive director; authorizing employment of authority staff; requiring creation of an annual budget; providing for payment of an authority's expenses; allowing reimbursement of board member expenses; establishing financial audit requirements; requiring reporting and oversight of state funds; prohibiting certain actions by users of recreational area land and providing criminal penalties; limiting the liability of owners of land used by an authority; setting forth purchasing and bidding procedures for authority contracts and purchases; providing criminal penalties for violation of purchasing and bidding requirements; clarifying that certain provisions of the code prohibiting certain officers from having a pecuniary interest in contracts applies to board members, officers, personnel, and agents of an authority; providing civil remedies for participating counties challenging purchasing contracts violating certain requirements; establishing the Mountaineer Trail Network Recreation Authority and authorizing the creation of the Mountaineer Trail

Network Recreation Area; identifying participating counties; authorizing counties to join the Mountaineer Trail Network Recreation Authority through certain procedures; authorizing the Mountaineer Trail Network Recreation Authority to merge with other multicounty trail network authorities through certain procedures; providing legislative findings and purposes for this authority; listing the recreational purposes for the recreation area; specifying manner of governance and payment of expenses; and ensuring liability protections for cooperating land owners.”

Respectfully submitted,

Mark R. Maynard, *Chair*,

Gary G. Howell, *Chair*,

Randy Smith,

John Paul Hott,

Robert D. Beach,

Evan Hansen,

*Conferees on the part
of the Senate.*

*Conferees on the part of
the House of Delegates.*

On motion of Delegate Howell, the report of the Committee of Conference was adopted.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 747**), and there were—yeas 97, nays 1, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Maynard.

Absent and Not Voting: Cooper and Staggers.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 317) passed.

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

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced the adoption of the report of the Committee of Conference on, and the passage, as amended by said report, and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 481, Relating to Judicial Vacancy Advisory Commission.

Conference Committee Report

Delegate Kump, from the Committee of Conference on matters of disagreement between the two houses, as to

Com. Sub. for S. B. 481, Relating to Judicial Vacancy Advisory Commission.

Submitted the following report, which was received:

Your Committee of Conference on the disagreeing votes of the two houses as to the amendment of the House to Engrossed Committee Substitute for Senate Bill 481 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That both houses recede from their respective positions as to the amendment of the House, and the Senate and House agree to an amendment as follows:

On page two, section three-a, lines thirty through thirty-seven, by striking out all of subdivision (1) and subdivision (2) and inserting in lieu thereof a new subdivision (1) and subdivision (2), to read as follows:

(1) No more than two appointed members of the commission may be residents of the same state senatorial district, as provided in §1-2-1 of this code, at the time of appointment: *Provided*, That the members appointed to, and serving on, the commission prior to the enactment of this subdivision are not disqualified from service for the remainder of the member's term based on the residency requirements of this subdivision.

(2) No more than three appointed members of the commission may be residents of the same congressional district: *Provided*, That, if the number of congressional districts in the state is reduced to two, then no more than four appointed members of the commission may be residents of the same congressional district: *Provided, however*, That the members appointed to, and serving on, the commission prior to the date on which the number of congressional districts in the state is reduced to two are not disqualified from service for the remainder of the member's term based on the residency requirements of this subdivision.

And,

That both houses recede from their respective positions as to the title of the bill and agree to the same as follows:

Com. Sub. for S. B. 481 - "A Bill to amend and reenact §3-10-3a of the Code of West Virginia, 1931, as amended, relating to the Judicial Vacancy Advisory Commission; altering the residency requirements for members of the commission; providing that no more than two of the commission's appointed members may be residents of the same state senatorial district; providing that if the number of congressional districts in the state is reduced to two, no more than four of the commission's appointed members may be residents of the same congressional district; providing that members appointed to, and serving on, the commission prior to the effective date of the new residency requirements will not be disqualified from serving for the remainder of their terms; and deleting obsolete language."

Respectfully submitted,

Ryan Weld, *Chair*,

Larry D. Kump, *Chair*,

Patricia Rucker,

Brandon Steele,

Mike Romano,

Nathan Brown,

*Conferees on the part
of the Senate.*

*Conferees on the part
of the House of Delegates.*

On motion of Delegate Kump, the report of the Committee of Conference was adopted.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 748**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Linville.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 481) passed.

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

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced the adoption of the report of the Committee of Conference on, and the passage, as amended by said report, and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 487, Relating to admissibility of health care staffing requirements in litigation.

Conference Committee Report

Delegate Capito, from the Committee of Conference on matters of disagreement between the two houses, as to

Com. Sub. for S. B. 487, Relating to admissibility of health care staffing requirements in litigation.

Submitted the following report, which was received:

Your Committee of Conference on the disagreeing votes of the two houses as to the amendment of the House to Engrossed Senate Bill 487 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That both houses recede from their respective positions as to the amendment of the Senate, striking out everything after the enacting clause, and agree to the same as follows:

ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

§55-7B-7a. Admissibility and use of certain information.

(a) In an action brought, there is a rebuttable presumption that the following information may not be introduced unless it applies specifically to the injured person or it involves substantially similar conduct that occurred within one year of the particular incident involved:

(1) A state or federal survey, audit, review, or other report of a health care provider or health care facility;

(2) Disciplinary actions against a health care provider's license, registration, or certification;

- (3) An accreditation report of a health care provider or health care facility; and
- (4) An assessment of a civil or criminal penalty.

(b) In any action brought alleging inappropriate staffing or inadequate supervision, if the health care facility or health care provider demonstrates compliance with the minimum staffing requirements under state law, the health care facility or health care provider is entitled to a rebuttable conclusive presumption that appropriate staffing was provided, and a rebuttable presumption that adequate supervision of patients to prevent accidents was provided, and the jury shall be instructed accordingly.

(c) If staffing is less than the requirements dictated by the applicable regulations, then there is a rebuttable presumption that there was inadequate supervision of patients and that inadequate staffing or inadequate supervision was a contributing cause of the patient's fall and injuries or death arising therefrom, and the jury shall be instructed accordingly.

(d) Information under this section may only be introduced in a proceeding if it is otherwise admissible under the West Virginia Rules of Evidence.

And,

That both houses recede from their respective positions as to the title of the bill and agree to the same as follows:

Com. Sub. for S. B. 487 - "A Bill to amend and reenact §55-7B-7a of the Code of West Virginia, 1931, as amended, relating to the admissibility of health care staffing requirements in medical professional liability litigation; providing that compliance with minimum staffing requirements under state law creates a conclusive presumption that appropriate staffing was provided and a rebuttable presumption that adequate supervision of patients to prevent accidents was provided; requiring that if staffing is less than requirements dictated by state law then there is a rebuttable presumption that there was inadequate supervision of patients and that inadequate staffing or inadequate supervision was a contributing cause of the patient's fall and resulting injuries or death; and requiring the jury be instructed accordingly.

Respectfully submitted,

Tom Takubo, *Chair*,

Moore Capito, *Chair*,

Greg Boso,

Geoff Foster,

Mike Woelfel,

Chad Lovejoy,
(*Did not sign.*)

*Conferees on the part
of the Senate.*

*Conferees on the part
of the House of Delegates.*

Delegate Capito moved that the report of the Committee of Conference be adopted.

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

The yeas and nays having been ordered, they were taken (**Roll No. 749**), and there were—yeas 50, nays 49, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Angelucci, Barrett, Bates, Boggs, N. Brown, S. Brown, Byrd, Campbell, Canestraro, Caputo, Dean, Diserio, Doyle, Estep-Burton, Evans, Fast, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Hornbuckle, Kump, Lavender-Bowe, Longstreth, Lovejoy, Miley, Miller, Paynter, Pethtel, Pushkin, Pyles, Robinson, Rodighiero, Rohrbach, Rowe, Shott, Skaff, Sponaugle, Staggers, Steele, Swartzmiller, C. Thompson, R. Thompson, Tomblin, Toney, Walker, Williams and Zukoff.

Absent and Not Voting: Cooper.

So, a majority of the members present and voting having voted in the affirmative, the report of the Committee of Conference was adopted.

Delegate Byrd moved that the bill be tabled.

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

The yeas and nays having been ordered, they were taken (**Roll No. 750**), and there were—yeas 45, nays 54, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Angelucci, Barrett, Bates, Boggs, N. Brown, S. Brown, Byrd, Campbell, Canestraro, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Hornbuckle, Kump, Lavender-Bowe, Longstreth, Lovejoy, Miley, Miller, Paynter, Pethtel, Pushkin, Pyles, Robinson, Rodighiero, Rohrbach, Rowe, Skaff, Sponaugle, Staggers, Steele, Swartzmiller, C. Thompson, R. Thompson, Tomblin, Walker, Williams and Zukoff.

Absent and Not Voting: Cooper.

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

The bill, as amended by the Conference Committee report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 751**), and there were—yeas 54, nays 45, absent and not voting 1, with the yeas and absent and not voting being as follows:

Nays: Angelucci, Barrett, Bates, Boggs, N. Brown, S. Brown, Byrd, Campbell, Canestraro, Caputo, Dean, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Hornbuckle, Kump, Lavender-Bowe, Longstreth, Lovejoy, Miley, Miller, Paynter, Pethtel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Skaff, Sponaugle, Staggers, Steele, Swartzmiller, C. Thompson, R. Thompson, Tomblin, Walker, Williams and Zukoff.

Absent and Not Voting: Cooper.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 487) passed.

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

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced the adoption of the report of the Committee of Conference on, and the passage, as amended by said report, and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 522, Creating Special Road Repair Fund.

Conference Committee Report

Delegate Criss, from the Committee of Conference on matters of disagreement between the two houses, as to

Com. Sub. for S. B. 522, Creating Special Road Repair Fund,

Submitted the following report, which was received:

Your Committee of Conference on the disagreeing votes of the two houses as to the amendments of the House to Second Engrossed Committee Substitute for Committee Substitute for Senate Bill No. 522 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That both houses recede from their respective positions as to the amendment of the House of Delegates on page one, section seven, beginning on line one and agree to the same as follows:

By striking out subsections (a) and (b) in their entirety and inserting in lieu thereof the following:

“There is created a special sub-account in the State Road Fund, designated the Special Road Repair Fund, to be expended solely for the purposes specified in §17-30-1 *et seq.* of this code for the maintenance and repair of the state’s roads and highways. The Commissioner is hereby authorized to transfer no more than \$80 million to this sub-account from the State Road Fund in any fiscal year for the sole purpose of repairs of non-federal aid eligible roads.”

And, to amend the title to read as follows:

Com. Sub. for S. B. 522 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17-2A-6b; to amend said code by adding thereto a new section, designated §17-3-11; and to amend said code by adding thereto a new article, designated §17-30-1, §17-30-2, §17-30-3, §17-30-4, and §17-30-5, all relating to enhancing maintenance and repair of the state’s roads and highways generally; establishing roads accountability and transparency; directing the State Auditor to develop and maintain a searchable website of funding actions and expenditures relating state and public roads; setting forth the minimum content to be contained in the website; directing the Commissioner of Highways to provide information and data to the State Auditor; requiring an annual update to the Joint Committee on Government and Finance; creating the Special Road Repair Fund as a sub-account of the State Road Fund; authorizing the Commissioner to transfer certain funds into the sub-account for certain purposes; creating the Enhanced Road Repair and Maintenance Program; stating legislative finding and purpose of program; requiring Division of Highways county supervisors consult with county commissions and legislators to submit project requests to the Division of Highways; setting forth a funding formula; setting forth requirements concerning bidding, vendors, and contracts with private vendors; specifying uses of Special Road Repair Fund; defining terms; providing requirements for Commissioner of Highways and districts; requiring for rulemaking; and requiring reporting by Division of Highways and Legislative Auditor.”

And,

That the Senate agree to the remaining amendments of the House of Delegates to the bill.

Respectfully submitted,

Vernon Criss, *Chair*,

Craig P. Blair, *Chair*,

Daniel Linville,

Randy Smith,

Jason Barrett,

Robert H. Plymale,

*Conferees on the part
of the Senate.*

*Conferees on the part
of the House of Delegates.*

On motion of Delegate Criss, the report of the Committee of Conference was adopted.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 752**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Jennings.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 522) passed.

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced the adoption of the report of the Committee of Conference on, and the passage, as amended by said report, and requested the concurrence of the House of Delegates in the passage, of

S. B. 596, Adjusting voluntary contribution amounts on certain DMV forms.

Conference Committee Report

Delegate Harshbarger, from the Committee of Conference on matters of disagreement between the two houses, as to

S. B. 596, Adjusting voluntary contribution amounts on certain DMV forms,

Submitted the following report, which was received:

Your Committee of Conference on the disagreeing votes of the two houses as to the amendment of the House to Senate Bill No. 596 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That the House of Delegates recede from its amendments to the bill;

And,

That both houses recede from their respective positions as to the title of the bill and agree to the same as follows:

S. B. 596 - "A Bill to amend and reenact §17A-2-12a of the Code of West Virginia, 1931, as amended, relating to the ability of applicants to make voluntary contributions of specified dollar amounts to the West Virginia Department of Veterans Assistance on forms created by the Division of Motor Vehicles and adding thereto a category for unspecified amounts."

Respectfully submitted,

Ryan W. Weld, *Chair*,

Jason Harshbarger, *Chair*,

Dave Sypolt,

Chris Phillips,

Glenn Jeffries,

William G. Hartman,

*Conferees on the part
of the Senate.*

*Conferees on the part
of the House of Delegates.*

On motion of Delegate Harshbarger, the report of the Committee of Conference was adopted.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 753**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Cooper.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 596) passed.

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

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced the adoption of the report of the Committee of Conference on, and the passage, as amended by said report, and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 405, Increasing limit on additional expenses incurred in preparing notice list for redemption.

Conference Committee Report

Delegate Pack, from the Committee of Conference on matters of disagreement between the two houses, as to

Com. Sub. for S. B. 405, Increasing limit on additional expenses incurred in preparing notice list for redemption,

Submitted the following report, which was received:

Your Committee of Conference on the disagreeing votes of the two houses as to the amendment of the Senate to Engrossed Com. Sub. for Senate Bill 405 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That both houses recede from their respective positions as to the amendment of the Senate, striking out everything after the enacting clause, and agree to the same as follows:

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHEATED AND WASTE AND UNAPPROPRIATED LANDS

§11A-3-23. Redemption from purchase; receipt; list of redemptions; lien; lien of person redeeming interest of another; record.

(a) After the sale of any tax lien on any real estate pursuant to §11A-3-5 of this code, the owner of, or any other person who was entitled to pay the taxes on, any real estate for which a tax lien on the real estate was purchased by an individual may redeem at any time before a tax deed is issued for the real estate. In order to redeem, he or she shall pay to the State Auditor the following amounts:

(1) An amount equal to the taxes, interest and charges due on the date of the sale, with interest at the rate of one percent per month from the date of sale;

(2) All other taxes which have since been paid by the purchaser, his or her heirs or assigns, with interest at the rate of one percent per month from the date of payment;

(3) Any additional expenses incurred from January 1 of the year following the sheriff's sale to the date of redemption for the preparation of the list of those to be served with notice to redeem and any written documentation used for the preparation of the list, with interest at the rate of one percent per month from the date of payment for reasonable legal expenses incurred for the services of an attorney who has performed an examination of the title to the real estate and rendered written documentation used for the preparation of the list: ~~Provided, That the~~ The maximum amount the owner or other authorized person shall pay, excluding the interest, for the expenses incurred for the preparation of the list of those to be served required by §11A-3-19 of this code is ~~\$300~~ \$500: ~~Provided however, That the~~ An attorney may only charge a fee for legal services actually performed and must certify that he or she conducted an examination to determine the list of those to be served required by §11A-3-19 of this code; and

(4) All additional statutory costs paid by the purchaser.

(b) Where the State Auditor has not received from the purchaser satisfactory proof of the expenses incurred in preparing the notice to redeem, and any written documentation used for the preparation of the list of those to be served with notice to redeem, including the certification required in subdivision (3), subsection (a) of this section, incident thereto, in the form of receipts or other evidence of legal expenses, incurred as provided in section nineteen of this article, the person redeeming shall pay the State Auditor the sum of ~~\$300~~ \$500 plus interest at the rate of one percent per month from January 1 of the year following the sheriff's sale for disposition by the sheriff pursuant to the provisions of §11A-3-10, §11A-3-24, §11A-3-25, and §11A-3-32 of this code.

(c) The person redeeming shall be given a receipt for the payment and the written opinion or report used for the preparation of the list of those to be served with notice to redeem required by section nineteen of this article.

(d) Any person who, by reason of the fact that no provision is made for partial redemption of the tax lien on real estate purchased by an individual, is compelled in order to protect himself or herself

to redeem the tax lien on all of the real estate when it belongs, in whole or in part, to some other person, shall have a lien on the interest of that other person for the amount paid to redeem the interest. He or she shall lose his or her right to the lien, however, unless within thirty days after payment he or she files with the clerk of the county commission his or her claim in writing against the owner of the interest, together with the receipt provided in this section. The clerk shall docket the claim on the judgment lien docket in his or her office and properly index the claim. The lien may be enforced as other judgment liens are enforced.

(e) Before a tax deed is issued, the county clerk may accept, on behalf of the State Auditor, the payment necessary to redeem any real estate encumbered with a tax lien and write a receipt. The amount of the payment necessary to redeem any real estate encumbered with a tax lien shall be provided by the State Auditor and the State Auditor shall update the required payments plus interest at least monthly.

(f) On or before the tenth day of each month, the county clerk shall deliver to the State Auditor the redemption money paid and the name and address of the person who redeemed the property on a form prescribed by the State Auditor.

§11A-3-25. Distribution of surplus to purchaser.

(a) Where the land has been redeemed in the manner set forth in §11A-3-23 of this code, and the State Auditor has delivered the redemption money to the sheriff pursuant to §11A-3-24 of this code, the sheriff shall, upon receipt of the sum necessary to redeem, promptly notify the purchaser or his or her heirs or assigns, by mail, of the fact of the redemption and pay to the purchaser or his or her heirs or assigns the following amounts:

(1) From the sale of tax lien surplus fund provided by §11A-3-10 of this code:

(A) The surplus of money paid in excess of the amount of the taxes, interest and charges paid by the purchaser to the sheriff at the sale; and

(B) The amount of taxes, interest and charges paid by the purchaser on the date of the sale, plus the interest at the rate of one percent per month from the date of sale to the date of redemption;

(2) All other taxes on the land which have since been paid by the purchaser or his or her heirs or assigns, with interest at the rate of one percent per month from the date of payment to the date of redemption;

(3) Any additional reasonable expenses that the purchaser may have incurred from January 1 of the year following the sheriff's sale to the date of redemption for the preparation of the list of those to be served with notice to redeem and any written documentation used for the preparation of the list, in accordance with §11A-3-19 of this code, with interest at the rate of one percent per month from the date of payment, but the amount which shall be paid, excluding the interest, for the expenses incurred for the preparation of the list of those to be served with notice to redeem required by §11A-3-19 of this code shall not exceed the amount actually incurred by the purchaser or ~~\$300~~ \$500, whichever is less: *Provided*, That the attorney may only charge a fee for legal services actually performed and must certify that he or she conducted an examination to determine the list of those to be served required by §11A-3-19 of this code; and

(4) All additional statutory costs paid by the purchaser.

(b) (1) The notice shall include:

(A) A copy of the redemption certificate issued by the State Auditor;

(B) An itemized statement of the redemption money to which the purchaser is entitled pursuant to the provisions of this section; and

(C) Where, at the time of the redemption, the State Auditor has not received from the purchaser satisfactory proof of the expenses incurred in preparing the list of those to be served with notice to redeem and any written documentation used for the preparation of the list in accordance with §11A-3-19 of this code, the State Auditor shall also include instructions to the purchaser as to how these expenses may be claimed.

(2) Subject to the limitations of this section, the purchaser is entitled to recover any expenses incurred in preparing the list of those to be served with notice to redeem and any written documentation used for the preparation of the list from January 1 of the year following the sheriff's sale to the date of the sale to the date of the redemption.

(c) Where, pursuant to §11A-3-23 of this code, the State Auditor has not received from the purchaser satisfactory proof of the expenses incurred in preparing the list of those to be served with notice to redeem, including written documentation used for preparation of the list, in the form of receipts or other evidence within thirty days from the date of notification by the State Auditor, the sheriff shall refund the amount to the person redeeming and the purchaser is barred from any claim. Where, pursuant to that section, the State Auditor has received from the person redeeming and therefore delivered to the sheriff the sum of ~~\$300~~ \$500 plus interest at the rate of one percent per month from January 1 of the year following the sheriff's sale to the date of the sale to the date of redemption, and the purchaser provides the sheriff within thirty days from the date of notification satisfactory proof of the expenses, and the amount of the expenses is less than the amount paid by the person redeeming, the sheriff shall refund the difference to the person redeeming.

§11A-3-36. Operating fund for land department in Auditor's office.

(a) The Auditor shall establish a special operating fund for the land department in his or her office. He or she shall pay into such fund all redemption fees, all publication or other charges collected by him or her, if such charges were paid by or were payable to him or her, the unclaimed surplus proceeds received by him or her from the sale of delinquent and other lands pursuant to this article, and all payments made to him or her under the provisions of §11A-3-64 and §11A-3-65 of this code, except such part thereof as represents state taxes and interest. All payments so excepted shall be credited by the Auditor to the general school fund or other proper state fund.

(b) The operating fund shall be used by the Auditor in cases of deficits in land sales to pay any balances due to deputy commissioners for services rendered, and any unpaid costs including those for publication which have accrued or will accrue under the provisions of this article, to pay fees due surveyors under the provisions of §11A-3-43, and to pay for the operation and maintenance of the land department in his or her office. ~~The surplus over and above the amount of \$100,000, remaining in the fund at the end of any fiscal year, shall be paid by the Auditor into the general school fund. The surplus over and above the amount of 20 percent of gross revenue from operation of the fund from the prior year, remaining at the end of any fiscal year, shall be paid by the Auditor into the General School Fund.~~

§11A-3-56. Redemption from purchase; receipt; list of redemptions; lien; lien of person redeeming interest of another; record.

(a) After the sale of any tax lien on any real estate pursuant to 11A-3-45 or §11A-3-48 of this code, the owner of, or any other person who was entitled to pay the taxes on, any real estate for

which a tax lien thereon was purchased by an individual, may redeem at any time before a tax deed is issued therefor. In order to redeem, he or she must pay to the deputy commissioner the following amounts:

(1) An amount equal to the taxes, interest and charges due on the date of the sale, with interest thereon at the rate of one percent per month from the date of sale;

(2) ~~all~~ All other taxes thereon, which have since been paid by the purchaser, his or her heirs or assigns, with interest at the rate of one percent per month from the date of payment;

(3) ~~such~~ Such additional expenses as may have been incurred in preparing the list of those to be served with notice to redeem, and for any licensed attorney's title examination incident thereto, with interest at the rate of one percent per month from the date of payment, but the amount he or she shall be required to pay, excluding said interest, for such expenses incurred for the preparation of the list of those to be served with notice to redeem required by §11A-3-52 of this code, and for any licensed attorney's title examination incident thereto, shall not exceed ~~\$200~~ \$500. An attorney may only charge a fee for legal services actually performed and must certify that he or she conducted an examination to determine the list of those to be served required by §11A-3-52 of this code;

(4) ~~all~~ All additional statutory costs paid by the purchaser; and

(5) ~~the~~ The deputy commissioner's fee and commission as provided by §11A-3-66 of this code. Where the deputy commissioner has not received from the purchaser satisfactory proof of the expenses incurred in preparing the notice to redeem, ~~and any examination of title or of any licensed attorney's title examination~~ incident thereto, in the form of receipts or other evidence thereof, the person redeeming shall pay the deputy commissioner the sum of ~~\$200~~ \$500 plus interest thereon at the rate of one percent per month from the date of the sale for disposition pursuant to the provisions of §11A-3-57, §11A-3-58, and §11A-3-64 of this code. Upon payment to the deputy commissioner of those and any other unpaid statutory charges required by this article, and of any unpaid expenses incurred by the sheriff, the Auditor and the deputy commissioner in the exercise of their duties pursuant to this article, the deputy commissioner shall prepare an original and five copies of the receipt for the payment and shall note on said receipts that the property has been redeemed. The original of such receipt shall be given to the person redeeming. The deputy commissioner shall retain a copy of the receipt and forward one copy each to the sheriff, assessor, the Auditor and the clerk of the county commission. The clerk shall endorse on the receipt the fact and time of such filing and note the fact of redemption on his or her record of delinquent lands.

(b) Any person who, by reason of the fact that no provision is made for partial redemption of the tax lien on real estate purchased by an individual, is compelled in order to protect himself or herself to redeem the tax lien on all of such real estate when it belongs, in whole or in part, to some other person, shall have a lien on the interest of such other person for the amount paid to redeem such interest. He or she shall lose his or her right to the lien, however, unless within thirty days after payment he or she shall file with the clerk of the county commission his or her claim in writing against the owner of such interest, together with the receipt provided for in this section. The clerk shall docket the claim on the judgment lien docket in his or her office and properly index the same. Such lien may be enforced as other judgment liens are enforced.

§11A-3-57. Notice of redemption to purchaser; moneys received by sheriff.

(a) Upon payment of the sum necessary to redeem, the deputy commissioner shall promptly deliver to the sheriff the redemption money paid and the name and address of the purchaser, his or her heirs or assigns.

(b) Of the redemption money received by the sheriff pursuant to this section, the sheriff shall hold as surplus to be disposed of pursuant to §11A-3-64 of this code an amount thereof equal to the amount of taxes, interest and charges due on the date of the sale, plus the interest at the rate of one percent per month thereon from the date of sale to the date of redemption.

§11A-3-58. Distribution to purchaser.

(a) Where the land has been redeemed in the manner set forth in §11A-3-56 of this code, and the deputy commissioner has delivered the redemption money to the sheriff pursuant to §11A-3-57 of this code, the sheriff shall, upon delivery of the sum necessary to redeem, promptly notify the purchaser, his or her heirs or assigns, by mail, of the redemption and pay to the purchaser, his or her heirs or assigns, the following amounts:

(1) The amount paid to the deputy commissioner at the sale;

(2) all other taxes thereon, which have since been paid by the purchaser, his or her heirs or assigns, with interest at the rate of one percent per month from the date of payment;

(3) such additional expenses as may have been incurred in preparing the list of those to be served with notice to redeem, and for any licensed attorney's title examination incident thereto, with interest at the rate of one percent per month from the date of payment, but the amount which shall be paid, excluding said interest, for such expenses incurred for the preparation of the list of those to be served with notice to redeem required by §11A-3-52 of this code, and for any licensed attorney's title examination incident thereto, shall not exceed ~~\$200~~ \$500; and

(4) all additional statutory costs paid by the purchaser.

(b) (1) The notice shall include:

(A) A copy of the redemption certificate issued by the deputy commissioner;

(B) An itemized statement of the redemption money to which the purchaser is entitled pursuant to the provisions of this section; and

(C) Where, at the time of the redemption, the deputy commissioner has not received from the purchaser satisfactory proof of the expenses incurred in preparing the list of those to be served with notice to redeem ~~and any or for any licensed attorney's~~ and any or for any licensed attorney's title examination incident thereto, the deputy commissioner shall also include instructions to the purchaser as to how these expenses may be claimed.

(2) Subject to the limitations of this section, the purchaser is entitled to recover any expenses incurred in preparing the list of those to be served with notice to redeem and for any licensed attorney's title examination incident thereto from the date of the sale to the date of the redemption.

(c) Where, pursuant §11A-3-56 of this code, the deputy commissioner has not received from the purchaser satisfactory proof of the expenses incurred in preparing the notice to redeem, in the form of receipts or other evidence of legal expenses, and any or for any licensed attorney's title examination ~~and rendered written documentation used for the preparation of the list~~ incident thereto, in the form of receipts or other evidence thereof, and therefore received from the purchaser as required by said section and delivered to the sheriff the sum of ~~\$200~~ \$500 plus interest thereon at the rate of one percent per month from the date of the sale to the date of redemption, and the sheriff has not received from the purchaser such satisfactory proof of such expenses within thirty days from the date of notification, the sheriff shall refund such amount to the person redeeming and the purchaser

is barred from any claim thereto. Where, pursuant to §11A-3-56 of this code, the deputy commissioner has received from the purchaser and therefore delivered to the sheriff said sum of ~~\$200~~ \$500 plus interest thereon at the rate of one percent per month from the date of the sale to the date of redemption, and the purchaser provides the sheriff within thirty days from the date of notification such satisfactory proof of such expenses, and the amount of such expenses is less than the amount paid by the person redeeming, the sheriff shall refund the difference to the person redeeming.

§11A-3-59. Deed to purchaser; record.

If the real estate described in the notice is not redeemed within the time specified therein, but in no event prior to 30 days after notices to redeem have been personally served, or an attempt of personal service has been made, or such notices have been mailed or, if necessary, published in accordance with the provisions of §11A-3-55 of this code, following the deputy commissioner's sale, the deputy commissioner shall, upon the request of the purchaser, make and deliver to the person entitled thereto a quitclaim deed for such real estate in form or effect as follows:

This deed, made this _____ day of _____, 20____, by and between _____, deputy commissioner of delinquent and nonentered lands of _____ County, West Virginia, grantor, and _____, purchaser (or _____ heir, devisee, assignee of _____, purchaser) grantee, witnesseth, that

Whereas, in pursuance of the statutes in such case made and provided, _____, deputy commissioner of delinquent and nonentered lands of _____ County, did, on the _____ day of _____, 20____, sell the real estate hereinafter mentioned and described for the taxes delinquent thereon for the year(s) 20____, (or as nonentered land for failure of the owner thereof to have the land entered on the land books for the years _____, or as property escheated to the State of West Virginia, or as waste or unappropriated property) for the sum of \$_____, that being the amount of purchase money paid to the deputy commissioner, and _____ (here insert name of purchaser) did become the purchaser of such real estate, which was returned delinquent in the name of _____ (or nonentered in the name of, or escheated from the estate of, or which was discovered as waste or unappropriated property); and

Whereas, the deputy commissioner has caused the notice to redeem to be served on all persons required by law to be served therewith; and

Whereas, the real estate so purchased has not been redeemed in the manner provided by law and the time for redemption set forth in such notice has expired.

Now, therefore, the grantor for and in consideration of the premises recited herein, and pursuant to the provisions of Article 3, Chapter 11A of the West Virginia Code, doth grant unto _____, grantee, his or her heirs and assigns forever, the real estate so purchased, situate in the County of _____, bounded and described as follows: _____ (here insert description of property)

Witness the following signature:

Deputy Commissioner of Delinquent and Nonentered Lands of _____ County

Except when ordered as provided in §11A-3-60 of this code, the deputy commissioner shall execute and deliver a deed within 120 days after the purchaser's right to the deed accrued.

For the preparation and execution of the deed and for all the recording required by this section, a fee of \$50 and the recording expenses shall be charged, to be paid by the grantee upon delivery of the deed. The deed, when duly acknowledged or proven, shall be recorded by the clerk of the county commission in the deed book in his or her office, together with the assignment from the purchaser, if one was made, the notice to redeem, the return of service of such notice, the affidavit of publication, if the notice was served by publication, and any return receipts for notices sent by certified mail.

Upon payment of the final costs and fees required by this article, the purchaser shall have the right to inspect and perform necessary and reasonable repairs for the preservation of the real property: *Provided*, That the current occupant has a duty to preserve the property to the best of his or her ability and control.

And,

That both houses recede from their respective positions as to the title of the bill and agree to the same as follows:

Com. Sub. for S. B. 405 - "A Bill to amend and reenact §11A-3-23, §11A-3-25, §11A-3-56, §11A-3-57, §11A-3-58, and §11A-3-59 of the Code of West Virginia, 1931, as amended, all relating to increasing the limit to \$500 on additional expenses a purchaser may recover in preparing notice list for redemption of purchase and for licensed attorney's title examination."

Respectfully submitted,

Gregory L. Boso, *Chair*,

Jeffrey Pack, *Chair*,

Dave Sypolt,

Tom Bibby,

Corey Palumbo,

Tim Tomblin,

*Conferees on the part
of the Senate.*

*Conferees on the part
of the House of Delegates.*

On motion of Delegate Pack, the report of the Committee of Conference was adopted.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 754**), and there were—yeas 78, nays 21, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Angelucci, S. Brown, Campbell, Canestraro, Caputo, Diserio, Doyle, Estep-Burton, Fleischauer, Hansen, Longstreth, Lovejoy, Miley, Miller, Pushkin, Robinson, Rowe, Steele, Walker, Williams and Zukoff.

Absent and Not Voting: Cooper.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 405) passed.

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

Delegate Summers asked and obtained unanimous consent to return to further consideration of **Com. Sub. for S. B. 522**, Creating Special Road Repair Fund.

Delegate Summers then moved that the bill take effect July 1, 2019.

On this question, the yeas and nays were taken (**Roll No. 755**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Cooper.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 522) takes effect July 1, 2019.

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

On motion of Delegate Summers, at 11:16 p.m., the House of Delegates recessed for fifteen minutes.

* * * * *

Evening Session

* * * * *

-continued-

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

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

S. B. 435 - "A Bill supplementing and amending by increasing an existing item of appropriation and adding new item of appropriation of public moneys out of the Treasury in the State Fund, General Revenue, to the State Board of Education, State Department of Education, fund 0313, fiscal year 2019, organization 0402, and to the State Board of Education, Vocational Division, fund 0390, fiscal year 2019, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019."

At the respective requests of Delegate Summers, and by unanimous consent, the bill (S. B. 435) was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Summers moved to dispense with the constitutional rule requiring the bill to be fully and distinctly read on three different days.

On this question, the yeas and nays were taken (**Roll No. 756**), and there were—yeas 90, nays 9, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Barrett, Bates, S. Brown, Fast, Kump, Malcolm, P. Martin, Paynter and Staggers.

Absent and Not Voting: Cooper.

So, four fifths of the members present having voted in the affirmative, the constitutional rule was dispensed with.

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

The bill was then read a third time and put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 757**), and there were—yeas 77, nays 22, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Barrett, Bates, Bibby, S. Brown, Butler, Canestraro, Fast, Foster, Graves, Hill, D. Jeffries, J. Jeffries, Jennings, Malcolm, P. Martin, McGeehan, Pack, Paynter, Phillips, Waxman, Worrell and Zukoff.

Absent and Not Voting: Cooper.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 435) passed.

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

On this question, the yeas and nays were taken (**Roll No. 758**), and there were—yeas 84, nays 15, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Barrett, Bibby, S. Brown, Butler, Fast, Graves, D. Jeffries, J. Jeffries, Jennings, C. Martin, P. Martin, McGeehan, Paynter, Waxman and Worrell.

Absent and Not Voting: Cooper.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 435) takes effect from its passage.

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

On motion of Delegate Summers, the Speaker was authorized to appoint a committee of three to notify the Senate that the House of Delegates had completed the business of this First Regular Session of the 84th Legislature and was ready to adjourn *sine die*.

Whereupon,

The Speaker appointed as members of said committee the following:

Delegates Foster, Sypolt and Boggs.

On motion of Delegate Summers, the Speaker was authorized to appoint a committee of three on the part of the House of Delegates, to join with a similar committee of the Senate, to inform His Excellency, the Governor, that the Legislature was ready to adjourn *sine die*.

The Speaker appointed as members of such committee the following:

Delegates J. Kelly, Phillips and Byrd.

Miscellaneous Business

Delegate Porterfield announced a vote explanation regarding Roll No. 679, indicating that he inadvertently voted "Yea".

Delegate Jennings noted to the Clerk that he was absent on today when the vote was taken on Roll No. 752 and had he been present he would have voted "Yea" thereon.

Delegate Rohrbach noted to the Clerk that he was absent on today when the vote was taken on Roll Nos. 667 through 692 and had he been present he would have voted "Yea" thereon, with the exception of Roll No. 674 on which he would have voted "Nay".

Pursuant to House Rule 132, consent was requested and obtained to print the remarks of the following Members in the Appendix to the Journal:

- Delegate Sypolt regarding Preston County teen's death attributed to road conditions
- Delegate Kump regarding H. C. R. 33

Messages from the Senate

A message from the Senate, by

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

Com. Sub. for H. B. 2486, Using records of criminal conviction to disqualify a person from receiving a license for a profession or occupation.

A message from the Senate, by

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

H. B. 3044, Requiring the Commissioner of Highways to develop a formula for allocating road funds.

A message from the Senate, by

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

H. B. 3141, Requiring capitol building commission authorization for certain renovations.

A message from the Senate, by

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

Com. Sub. for H. B. 2540, Prohibiting the waste of game animals, game birds or game fish.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of a concurrent resolution of the House of Delegates as follows:

H. C. R. 108, Study of the peer-to-peer car sharing program.

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

Com. Sub. for S. B. 1, Increasing access to career education and workforce training.

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

Com. Sub. for S. B. 30, Eliminating tax on annuity considerations collected by life insurer.

A message from the Senate, by
The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, to take effect July 1, 2019, of

S. B. 36, Allowing adjustment of gross income for calculating personal income liability for certain retirees.

A message from the Senate, by
The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, to take effect July 1, 2019, of

Com. Sub. for S. B. 103, Relating generally to Public Defender Services.

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

Com. Sub. for S. B. 147, Shifting funding from Landfill Closure Assistance Fund to local solid waste authorities.

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

Com. Sub. for S. B. 152, Relating generally to criminal offense expungement.

A message from the Senate, by
The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, to take effect July 1, 2019, of

Com. Sub. for S. B. 291, Relating generally to survivor benefits for emergency response providers.

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

Com. Sub. for S. B. 345, Relating to fire service equipment and training funds for VFDs.

A message from the Senate, by
The Clerk of the Senate, announced concurrence in the further title amendment of the House of Delegates and the passage, as amended, of

Com. Sub. for S. B. 402, Authorizing Division of Forestry investigate and enforce timber theft violations.

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

Com. Sub. for S. B. 496, Transferring authority to regulate milk from DHHR to Department of Agriculture.

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

S. B. 499, Amending WV tax laws to conform to changes in partnerships for federal income tax purposes.

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

Com. Sub. for S. B. 529, Clarifying provisions of Nonintoxicating Beer Act.

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

Com. Sub. for S. B. 537, Creating workgroup to review hospice need standards.

A message from the Senate, by
The Clerk of the Senate, announced concurrence in the titlr amendment of the House of Delegates and the passage, as amended, of

Com. Sub. for S. B. 538, Relating to WV Highway Design-Build Pilot Program.

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

Com. Sub. for S. B. 539, Relating to accrued benefit of retirees in WV State Police Retirement System Plan B.

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

S. B. 550, Declaring certain claims to be moral obligations of state.

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

S. B. 554, Removing salary caps for director of State Rail Authority.

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

Com. Sub. for S. B. 600, Relating to preservation of biological evidence obtained through criminal investigations and trials.

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

Com. Sub. for S. B. 603, Exempting certain activities from licensing requirements for engaging in business of currency exchange.

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

Com. Sub. for S. B. 613, Requiring DNR include election of organ donation on hunting licenses.

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

S. B. 633, Authorizing Board of Physical Therapy conduct criminal background checks on applicants for licenses.

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

S. B. 635, Relating generally to coal mining activities.

A message from the Senate, by
The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, to take effect July 1, 2019, of

S. B. 656, Relating to electronic filing of tax returns.

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

S. B. 669, Allowing appointment of commissioners to acknowledge signatures.

A message from the Senate, by

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

S. B. 677, Supplemental appropriation to Division of Health and Division of Human Services.

A message from the Senate, by

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

S. B. 679, Supplemental appropriation to Division of Finance.

A message from the Senate, by

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

S. B. 680, Supplemental appropriations to various divisions in DMAPS.

A message from the Senate, by

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

Com. Sub. for S. C. R. 4, US Marine Corps Lt. Col. Dennis Ray Blankenship Memorial Road.

A message from the Senate, by

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

Com. Sub. for S. C. R. 40, US Army CPL Roy E. Clark Memorial Bridge.

Committee Reports

In accordance with House Rule 68, Delegate Capito, Chair of the Joint Committee on Enrolled Bills, filed the following reports with the Clerk:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled and, on the dates listed, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

March 9, 2016

Com. Sub. for H. B. 2183, Clarifying where a charge of DUI may be brought against an individual,

Com. Sub. for H. B. 2359, Relating to exemptions to the commercial driver's license requirements,

Com. Sub. for H. B. 2439, Relating to fire service equipment and training funds for volunteer and part-volunteer fire companies,

Com. Sub. for H. B. 2531, Permitting trained nurses to provide mental health services in a medication-assisted treatment program,

Com. Sub. for H. B. 2538, Providing banking services for medical cannabis,

Com. Sub. for H. B. 2609, Relating to presumptions of abandonment and indication of ownership in property,

And,

Com. Sub. for H. B. 2734, Relating to reduced rates for low-income residential customers of privately owned sewer and combined water and sewer utilities.

March 11, 2019

Com. Sub. for H. B. 3007, Authorizing the Commissioner of Agriculture to require background checks,

Com. Sub. for H. B. 3021, Relating to the disposition of permit fees, registration fees and civil penalties imposed against thoroughbred horse racing licensees,

H. B. 3045, Exempting certain complimentary hotel rooms from hotel occupancy tax,

H. B. 3083, Adding temporary work during the legislative session as exclusion to the term employment for purposes of unemployment compensation,

H. B. 3095, Establishing a minimum monthly retirement annuity for certain retirants,

And,

H. B. 3148, Making a supplementary appropriation to the Department of Health and Human Resources, Division of Human Services.

March 11, 2019

Com. Sub. for S. B. 72, Creating Sexual Assault Victims' Bill of Right,

Com. Sub. for S. B. 310, Establishing certain requirements for dental insurance,

Com. Sub. for S. B. 393, Protecting right to farm,

Com. Sub. for S. B. 408, Determining indigency for public defender services,

Com. Sub. for S. B. 441, Relating to higher education campus police officers,

Com. Sub. for S. B. 520, Requiring entities report drug overdoses,

S. B. 636, Authorizing legislative rules for Higher Education Policy Commission,

And,

Com. Sub. for S. B. 641, Relating to Primary Care Support Program.

March 13, 2019

Com. Sub. for H. B. 2020, Budget Bill, making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the Constitution.

March 13, 2019

H. B. 2665, Supplemental appropriation for PEIA Rainy Day Fee.

March 13, 2019

H. B. 2667, Supplemental appropriation to the Department of Military Affairs and Public Safety, Division of Corrections,

And,

H. B. 3135, Expiring funds to the balance of the Department of Commerce, Development Office.

March 13, 2019

S. B. 424, Supplemental appropriation to Civil Contingent Fund,

S. B. 435, Supplemental appropriation to State Department of Education and Vocational Division,

S. B. 677, Supplemental appropriation to Division of Health and Division of Human Services,

S. B. 678, Supplemental appropriation from State Excess Lottery Revenue Fund to Office of Technology,

S. B. 679, Supplemental appropriation to Division of Finance,

And,

S. B. 680, Supplemental appropriations to various divisions in DMAPS.

March 18, 2019

Com. Sub. for H. B. 2363, Relating to the Upper Kanawha Valley Resiliency and Revitalization Program,

Com. Sub. for H. B. 2452, Creating the West Virginia Cybersecurity Office,

H. B. 2515, Exempting the sale and installation of mobility enhancing equipment from the sales and use tax,

And,

H. B. 2525, Tobacco Cessation Therapy Access Act.

March 19, 2019

Com. Sub. for H. B. 2550, Creating a matching program for the Small Business Innovation and Research Program and the Small Business Technology Transfer Program.

March 19, 2019

H. B. 2311, Exempting short-term license holders to submit information to the State Tax Commission once the term of the permit has expired,

Com. Sub. for H. B. 2362, Ardala Miller Memorial Act,

Com. Sub. for H. B. 2405, Imposing a healthcare related provider tax on certain health care organizations,

And,

H. B. 2509, Clarifying that theft of a controlled substance is a felony.

March 19, 2019

H. B. 2530, Creating a voluntary certification for recovery residences,

H. B. 2547, Relating to the election prohibition zone,

H. B. 2872, Authorizing law-enforcement officers to assist the State Fire Marshal,

And,

H. B. 2958, Authorizing the State Auditor to conduct regular financial examinations or audits of all volunteer fire companies.

March 19, 2019

Com. Sub. for S. B. 101, Equalizing penalties for intimidating and retaliating against certain public officers and other persons,

Com. Sub. for S. B. 237, Improving ability of law enforcement to locate and return missing persons,

Com. Sub. for S. B. 330, Requiring contact information be listed on agency's online directory and website,

Com. Sub. for S. B. 344, Relating to operation of state-owned farms,

And,

Com. Sub. for S. B. 491, Extending effective date for voter registration in conjunction with driver licensing.

March 19, 2019

S. B. 493, Correcting terminology referring to racing vehicles illegally on street,

Com. Sub. for S. B. 511, Creating alternating wine proprietorships,

Com. Sub. for S. B. 537, Creating workgroup to review hospice need standards,

Com. Sub. for S. B. 597, Conforming state law to federal law for registration of appraisal management companies,

S. B. 625, Clarifying and defining authority of State Athletic Commission,

S. B. 633, Authorizing Board of Physical Therapy conduct criminal background checks on applicants for licenses,

S. B. 655, Relating to conservation districts generally,

And,

Com. Sub. for S. B. 657, Providing consumer protection regarding self-propelled farm equipment.

March 19, 2019

Com. Sub. for S. B. 60, Licensing practice of athletic training,

Com. Sub. for S. B. 187, Authorizing Department of Revenue to promulgate legislative rules,

Com. Sub. for S. B. 285, Relating to sale of homemade food items,

S. B. 617, Relating to method of payment to Municipal Pensions Security Fund,

Com. Sub. for S. B. 653, Relating generally to practice of medical corporations,

And,

S. B. 676, Relating to off-road vehicle recreation.

March 20, 2019

H. B. 2954, Defining certain terms used in insurance,

And,

Com. Sub. for H. B. 2975, Relating to imposition of sexual acts on persons incarcerated.

March 20, 2019

Com. Sub. for S. B. 3, Establishing WV Small Wireless Facilities Deployment Act,

Com. Sub. for S. B. 100, Increasing court fees to fund law-enforcement standards training and expenses,

Com. Sub. for S. B. 163, Authorizing DEP promulgate legislative rules,

Com. Sub. for S. B. 175, Authorizing DHHR promulgate legislative rules,

S. B. 190, DOH promulgate legislative rule relating to employment procedures,

Com. Sub. for S. B. 223, Authorizing Department of Commerce promulgate legislative rules,

Com. Sub. for S. B. 316, Preserving previously approved state Municipal Policemen's or Firemen's pensions,

Com. Sub. for S. B. 373, Relating to financial responsibility of inmates,

S. B. 519, Requiring county emergency dispatchers complete course for telephonic cardiopulmonary resuscitation,

S. B. 531, Relating generally to workers' compensation claims,

S. B. 664, Authorizing certain members of federal judiciary perform marriages,

And,

S. B. 667, Creating WV Motorsport Committee.

March 20, 2019

S. B. 28, Removing hotel occupancy tax limit collects for medical care and emergency services,

Com. Sub. for S. B. 30, Eliminating tax on annuity considerations collected by life insurer,

Com. Sub. for S. B. 40, Establishing Military Service Members Court program,

Com. Sub. for S. B. 90, Transferring Safety and Treatment Program from DHHR to DMV.

Com. Sub. for S. B. 147, Shifting funding from Landfill Closure Assistance Fund to local solid waste authorities,

And,

Com. Sub. for S. B. 352, Relating to Division of Corrections and Rehabilitation acquiring and disposing of services, goods, and commodities.

March 20, 2019

Com. Sub. for S. B. 152, Relating generally to criminal offense expungement,

Com. Sub. for S. B. 241, Permitting county court clerks scan certain documents in electronic form,

Com. Sub. for S. B. 295, Relating to crimes against public justice,

Com. Sub. for S. B. 345, Relating to fire service equipment and training funds for VFDs,

Com. Sub. for S. B. 398, Relating to compensation for senior judges,

Com. Sub. for S. B. 502, Exempting sales of investment metal bullion and coins,

And,

S. B. 635, Relating generally to coal mining activities.

March 20, 2019

Com. Sub. for S. B. 1, Increasing access to career education and workforce training,

Com. Sub. for S. B. 61, Adding certain crimes for which prosecutor may apply for court order authorizing interception of communications,

Com. Sub. for S. B. 546, Creating tax on certain acute care hospitals,

S. B. 587, Relating to PEIA reimbursement of air ambulance providers,

S. B. 668, Relating to physician assistants collaborating with physicians in hospitals,

And,

S. B. 675, Requiring DEP create and implement Adopt-A-Stream Program.

March 21, 2019

H. B. 2209, Allowing military veterans who meet certain qualifications to qualify for examination for license as an emergency medical technician,

Com. Sub. for H. B. 2378, Relating generally to grounds for revocation of a teaching certificate,

Com. Sub. for H. B. 2396, West Virginia Fresh Food Act.

And,

H. B. 2412, Relating to criminal acts concerning government procurement of commodities and services.

March 21, 2019

H. B. 3044, Requiring the Commissioner of Highways to develop a formula for allocating road funds,

And,

Com. Sub. for H. B. 3057, Relating to the Adult Drug Court Participation Fund.

March 21, 2019

Com. Sub. for H. B. 2001, Relating to exempting social security benefits from personal income tax,

Com. Sub. for H. B. 2049, Relating to a prime contractor's responsibility for wages and benefits,

Com. Sub. for H. B. 2490, Preventing proposing or enforcing rules that prevent recreational water facilities from making necessary upgrades,

And,

Com. Sub. for H. B. 2540, Prohibiting the waste of game animals, game birds or game fish.

March 21, 2019

Com. Sub. for H. B. 2010, Relating to foster care.

March 21, 2019

Com. Sub. for H. B. 2422, Relating to the time for the observation of "Celebrate Freedom Week",

Com. Sub. for H. B. 2541, Requiring certain safety measures be taken at public schools,

Com. Sub. for H. B. 2601, Relating to the review and approval of state property leases,

And,

Com. Sub. for H. B. 2661, Relating to natural gas utilities.

March 21, 2019

Com. Sub. for H. B. 2662, Relating to certificates or employment of school personnel,

Com. Sub. for H. B. 2715, Relating to Class Q special hunting permit for disabled persons,

H. B. 2716, Relating to vessel lighting and equipment requirements,

H. B. 2739, Relating to contributions on behalf of employees to a retirement plan administered by the Consolidated Public Retirement Board,

And,

H. B. 2992, Relating to governmental websites.

March 21, 2019

Com. Sub. for H. B. 2579, Relating to the collection of tax and the priority of distribution of an estate or property in receivership,

Com. Sub. for H. B. 2617, Relating to the form for making offer of optional uninsured and underinsured coverage by insurers,

H. B. 2647, Self Storage Limited License Act,

And,

Com. Sub. for H. B. 2907, Requiring a form of a certified commitment order to the Division of Corrections and Rehabilitation.

March 22, 2019

Com. Sub. for H. B. 2486, Using records of criminal conviction to disqualify a person from receiving a license for a profession or occupation.

March 22, 2019

Com. Sub. for S. B. 4, Relating generally to Municipal Home Rule Program,

Com. Sub. for S. B. 538, Relating to WV Highway Design-Build Pilot Program,

S. B. 550, Declaring certain claims to be moral obligations of state,

Com. Sub. for S. B. 613, Requiring DNR include election of organ donation on hunting licenses,

Com. Sub. for S. B. 624, Allowing county boards of education use alternative assessment provided in Every Student Succeeds Act.

And,

S. B. 627, Relating generally to Rural Rehabilitation Loan Program.

March 22, 2019

S. B. 16, Authorizing expenditure of surplus funds by Wyoming County Commission,

Com. Sub. for S. B. 199, Authorizing certain miscellaneous agencies and boards promulgate legislative rules,

Com. Sub. for S. B. 264, Requiring courts to order restitution to crime victims where economically practicable,

Com. Sub. for S. B. 329, Relating to agricultural education in high schools,

Com. Sub. for S. B. 340, Repealing obsolete provisions of code relating to WV Physicians Mutual Insurance Company,

Com. Sub. for S. B. 369, Relating to generic drug products,

Com. Sub. for S. B. 396, Waiving occupational licensing fees for low-income individuals and military families,

Com. Sub. for S. B. 529, Clarifying provisions of Nonintoxicating Beer Act,

Com. Sub. for S. B. 564, Expanding comprehensive coverage for pregnant women through Medicaid,

And,

S. B. 605, Permitting Secondary Schools Athletic Commission discipline schools for not following protocol for concussions and head injuries.

March 22, 2019

S. B. 36, Allowing adjustment of gross income for calculating personal income liability for certain retirees,

Com. Sub. for S. B. 103, Relating generally to Public Defender Services,

Com. Sub. for S. B. 291, Relating generally to survivor benefits for emergency response providers,

Com. Sub. for S. B. 405, Increasing limit on additional expenses incurred in preparing notice list for redemption,

Com. Sub. for S. B. 481, Relating to Judicial Vacancy Advisory Commission,

Com. Sub. for S. B. 487, Relating to admissibility of health care staffing requirements in litigation,
And,

Com. Sub. for S. B. 522, Creating Special Road Repair Fund.

March 22, 2019

S. B. 153, Providing greater flexibility for making infrastructure project grants,

Com. Sub. for S. B. 154, Using school facilities for funeral and memorial services for certain community members,

Com. Sub. for S. B. 238, Increasing certain penalties for illegally passing stopped school bus,

Com. Sub. for S. B. 318, Transferring Medicaid Fraud Control Unit to Attorney General's office,

Com. Sub. for S. B. 357, Relating generally to Division of Administrative Services,

Com. Sub. for S. B. 360, Relating to third-party litigation financing,

Com. Sub. for S. B. 400, Allowing Board of Dentistry create specialty licenses,

Com. Sub. for S. B. 404, Relating generally to sediment control during commercial timber harvesting operations,

S. B. 421, Relating to annual legislative review of economic development tax credit,

And,

Com. Sub. for S. B. 485, Clarifying notification requirements for property insurance purposes.

March 22, 2019

Com. Sub. for S. B. 317, Authorizing three or more adjacent counties form multicounty trail network authority,

Com. Sub. for S. B. 539, Relating to accrued benefit of retirees in WV State Police Retirement System Plan B,

Com. Sub. for S. B. 543, Relating generally to automobile warranties and inspections,

S. B. 544, Increasing salaries for members of WV State Police over three-year period,

Com. Sub. for S. B. 632, Improving student safety,

S. B. 656, Relating to electronic filing of tax returns,

And,

S. B. 673, Relating to public higher education accountability and planning.

March 22, 2019

Com. Sub. for S. B. 402, Authorizing Division of Forestry investigate and enforce timber theft violations,

S. B. 554, Removing salary caps for director of State Rail Authority,

S. B. 566, Relating to compensation for State Athletic Commission members,

S. B. 596, Adjusting voluntary contribution amounts on certain DMV forms,

Com. Sub. for S. B. 603, Exempting certain activities from licensing requirements for engaging in business of currency exchange,

Com. Sub. for S. B. 640, Regulating sudden cardiac arrest prevention,

S. B. 669, Allowing appointment of commissioners to acknowledge signatures,

And,

S. B. 670, Relating to WV College Prepaid Tuition and Savings Program.

March 22, 2019

S. B. 461, Relating generally to lottery prizes,

Com. Sub. for S. B. 496, Transferring authority to regulate milk from DHHR to Department of Agriculture,

Com. Sub. for S. B. 600, Relating to preservation of biological evidence obtained through criminal investigations and trials,

Com. Sub. for S. B. 601, Relating to mandatory supervision of adult inmates,

S. B. 658, Relating to motor vehicle salesperson licenses,

And,

S. B. 672, Authorizing School Building Authority to promulgate legislative rules.

March 22, 2019

S. B. 499, Amending WV tax laws to conform to changes in partnerships for federal income tax purposes,

Com. Sub. for S. B. 561, Permitting Alcohol Beverage Control Administration request assistance of local law enforcement,

And,

Com. Sub. for S. B. 622, Relating generally to regulation and control of financing elections.

March 25, 2019

Com. Sub. for H. B. 2004, Providing for a program of instruction in workforce preparedness,

H. B. 2009, Creating a new category of Innovation in Education grant program,

H. B. 2846, Relating to special vehicle registration plates,

And,

H. B. 2850, Relating to qualifications for commercial driver's license.

March 25, 2019

Com. Sub. for H. B. 2079, Removing certain limitations on medical cannabis grower, processor and dispensary licenses,

Com. Sub. for H. B. 2083, Providing an identification card for released inmates who do not have a West Virginia identification card or driver's license,

Com. Sub. for H. B. 2193, Providing a specific escheat of US savings bonds,

And,

H. B. 2480, Relating to the regulation of an internationally active insurance group.

March 25, 2019

H. B. 2474, Relating to a reserving methodology for health insurance and annuity contracts,

Com. Sub. for H. B. 2503, Relating to court actions,

H. B. 2934, West Virginia Lottery Interactive Wagering Act,*

And,

H. B. 3132, Relating to exempting providers that serve no more than 30 patients with office-based medication-assisted treatment.

(*NOTE: H. B. 2934 became law without the signature of the Governor.)

March 25, 2019

Com. Sub. for H. B. 2524, Permitting a pharmacist to convert prescriptions authorizing refills under certain circumstances.

March 25, 2019

Com. Sub. for H. B. 2583, Family Planning Access Act,

Com. Sub. for H. B. 2618, Including undue influence as a factor in the definition of financial exploitation of an elderly person or protected person,

H. B. 2604, Permitting service credit in the Teachers Retirement System to persons with alternative school teaching experience,

Com. Sub. for H. B. 2673, Creating the Oil and Gas Abandoned Well Plugging Fund,

And,

H. B. 2709, Relating to hunting licenses.

March 25, 2019

Com. Sub. for H. B. 2600, Relating to publication of sample ballots,

Com. Sub. for H. B. 2479, Corporate Governance Annual Disclosure Act,

Com. Sub. for H. B. 2761, Modernizing the self-service storage lien law,

Com. Sub. for H. B. 2768, Reducing the use of certain prescription drugs,

And,

Com. Sub. for H. B. 2770, Fairness in Cost-Sharing Calculation Act.

March 25, 2019

Com. Sub. for H. B. 2674, Creating a student loan repayment program for a mental health provider,

H. B. 2828, Relating to Qualified Opportunity Zones,

Com. Sub. for H. B. 2933, Modifying the criminal penalties imposed on a parent, guardian or custodian for child abuse resulting in injury,

Com. Sub. for H. B. 2982, Amending and updating the laws relating to auctioneers,

And,

Com. Sub. for H. B. 3016, Relating to the State Aeronautics Commission.

March 25, 2019

Com. Sub. for H. B. 2809, Relating to prohibited acts and penalties in the Hatfield-McCoy Recreation Area,

Com. Sub. for H. B. 2813, Relating generally to collection of use tax,

H. B. 2816, Removing the terms “hearing impaired,” “hearing impairment,” and “deaf mute” from the West Virginia Code and substituting terms,

And,

H. B. 3020, Relating to sole source contracts for goods and services with nonprofit corporations affiliated with the respective education institutions.

March 25, 2019

Com. Sub. for H. B. 2831, Finding and declaring certain claims against the state and its agencies to be moral obligations of the state.

March 25, 2019

Com. Sub. for H. B. 2849, Establishing different classes of pharmacy technicians,

H. B. 2856, Relating to the administration of the operating fund of the securities division of the Auditor’s office,

Com. Sub. for H. B. 2945, Relating to vendors paying a single annual fee for a permit issued by a local health department,

And,

Com. Sub. for H. B. 2947, Relating generally to telemedicine prescription practice requirements and exceptions.

March 25, 2019

H. B. 2853, Establishing the West Virginia Program for Open Education Resources,

H. B. 2926, Requiring the Secretary of the Department of Veterans’ Affairs to study the housing needs of veterans,

H. B. 3139, Relating to funding of the Public Employees Health Insurance Program,

And,

H. B. 3141, Requiring capitol building commission authorization for certain renovations.

March 25, 2019

H. B. 2968, Adding remote service unit to the definition of customer bank communications terminals,

Com. Sub. for H. B. 3024, West Virginia Business Ready Sites Program,

Com. Sub. for H. B. 3131, Relating to providing salary adjustments to employees of the Department of Health and Human Resources,

And,

H. B. 3144, North Central Appalachian Coal Severance Tax Rebate Act.

March 25, 2019

H. B. 3142, Relating to reducing the severance tax on thermal or steam coal,

And,

H. B. 3143, Relating to requirements for consumer loans in West Virginia.

Messages from the Executive

Actions of His Excellency, the Governor, on other bills following adjournment of the session as indicated in communications addressed to the Secretary of State, as follows:

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 27, 2019

Veto Message

The Honorable Mac Warner
Secretary of State
Building 1 , Suite 157-K
State Capitol
Charleston, West Virginia 25305

RE: Enrolled Committee Substitute for Senate Bill No. 624

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for Senate Bill No. 624.

Enrolled Committee Substitute for Senate Bill No. 624 provides an assessment option for county boards of education to use as an alternative to the currently contracted assessment in statewide contract with a vendor selected by a competitive bid process.

Enrolled Community Substitute for Senate Bill 624 is concerning because it directly conflicts with West Virginia Code §18-2E-5(d)(7) and would put the WV Board of Education in the untenable position of having to decide which statute to follow. WV Code §18-2E-5(d)(7) requires that “the comprehensive statewide student assessment adopted prior to the testing window of the 2017-2018 school year shall continue to be used for at least a total of four consecutive years.” By allowing county boards of education to utilize an alternative assessment option during the period of time implicated in the statute for at least a four-year period of assessment consistency, the WV Board of Education would be violating their statutory mandate already in effect.

Having a statutory conflict in place in the provision of statewide student assessment, would not only cause confusion between county boards of education but could encourage litigation between counties and the state in an attempt to address the conflict. Further, the statutory conflict could give rise to contractual litigation between the state and the current vendor of the statewide contract, who was chosen by a competitive bid process, and any other vendor able to provide an alternative assessment option.

Additionally, the West Virginia Department of Education recently received a letter from the United States Department of Education (USDE) advising that the ACT assessment was conditionally approved to be used as a locally selected assessment in lieu of the statewide assessment. The letter was accompanied by a specific list of items the WV Department of Education is required to submit to receive full USDE approval. Not only does the USDE's letter render SB624 unnecessary but given the clear set of instructions provided to the WV Department of Education, there is no need to add unnecessary statutory language that may work to impede on the WV Department of Education's ability to adhere to those instructions.

For these reasons, I must disapprove and return Enrolled Committee Substitute for Senate Bill No. 624.

Sincerely,

Jim Justice,
Governor.

Action of His Excellency, the Governor, on other bills following adjournment of the session, is indicated in communications addressed to the Secretary of State, as follows:

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 14, 2019

Veto Message

The Honorable Mac Warner
Secretary of State
State of West Virginia
Building 1, Suite 157-K
State Capitol
Charleston, WV 25305

Re: Enrolled Committee Substitute for House Bill 2020

Dear Secretary of State Warner:

Pursuant to the provisions of Section fifty-one, Article VI of the Constitution of West Virginia, I hereby return Enrolled Committee Substitute for House Bill No. 2020, passed March 8, 2019, approved with the following objections:

My first objection to the Bill is contained in Item 45, page 34, line 2, which states:

“Teachers’ Retirement Savings Realized 09500 42,954,000”

The above appropriation includes funding above what is necessary as certified by the Consolidated Public Retirement Board. Therefore, I am reducing the appropriation by the amount of \$5,372,000 to \$37,582,000.

My second objection to the Bill is contained in Item 75, page 60, line 2, which states:

“Unclassified (R).....09900 5,837”

The above appropriation includes an indication of Reappropriation which is contradictory to the directive language included below the fund. Therefore, I am striking the “(R)”.

My third objection to the Bill is contained in Item 75, page 60, line 8 through line 10, which state:

“Any unexpended balance remaining in the appropriation for Unclassified – Total (fund 0465, appropriation 09900) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.”

The appropriation for “Unclassified – Total” is not assigned to appropriation code “09900”, therefore I am striking “09900” in line 9.

My fourth objection to the Bill is contained in Item 141, page 86, line 1, which states:

“Current Expenses.....13000 \$42,954,000

Due to the reduction of appropriation contained in my first objection, spending authority for this item is reduced to reflect the difference. Therefore, I am reducing the appropriation by the amount of \$5,372,000 to \$37,582,000.

For these reasons stated herein, I have approved, subject to the above objections, Enrolled Committee Substitute for House Bill No. 2020

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 14, 2019

Veto Message

The Honorable Mac Warner
Secretary of State
State of West Virginia
Building 1, Suite 157-K
State Capitol

Charleston, West Virginia 25305

Re: Enrolled House Bill 3148

Dear Secretary of State Warner:

Pursuant to the provisions of Section fifty-one, Article VI of the Constitution of West Virginia, I hereby disapprove and return Enrolled House Bill 3148. This supplemental takes fifty-three million dollars out of General Revenue and appropriates it to the Department of Health and Human Resources, Division of Human Services. WV DHHR already projects a Medicaid surplus balance for the Department of Health and Human Resources reaching approximately one hundred ninety million dollars for Fiscal Year 2020. I believe that there are other matters in our state that can benefit from the fifty-three million dollars in Fiscal Year 2019.

For these reasons, I hereby disapprove and return Enrolled House Bill 3148.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 27, 2019

Veto Message

The Honorable Mac Warner
Secretary of State
Building 1, Suite 157-K
State Capitol
Charleston, WV 25305

Re: Enrolled Committee Substitute for House Bill 2079

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for House Bill 2079, relating to medical cannabis.

The bill imposes excise taxes on growers, processors, and dispensaries of medical cannabis that favors wholly vertically integrated businesses. While the Legislature has authority to classify different businesses and to tax them differently, the classifications must be (1) reasonable, (2) based on pertinent and real differences, and (3) have as their object a purpose that is germane to the enabling legislation. See *United Fuel Gas Co. v. Battle*, 167 S.E.2d 890 (1969), *cert. denied*, *United Fuel Gas Co. v. Haden*, 396 U.S. 116 (1969). Applying this test, it is impossible to justify the classifications in the bill.

For this reason, I must disapprove and return Enrolled Committee Substitute for House Bill 2079. However, because I support the medical cannabis program for those West Virginias that need it, therefore I encourage the Legislature to address the constitutional issues above and present a bill for signature that treats all taxpayers that will be engaged in this industry in West Virginia fairly.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 27, 2019

Veto Message

The Honorable Mac Warner
Secretary of State
Suite 157-K
State Capitol
Charleston, WV 25305

Re: Enrolled Committee Substitute for House Bill 2363

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for House Bill 2363, which is intended to extend the Upper Kanawha Valley Resiliency and Revitalization Program until 2024 and which further requires an assessment by members of a revitalization council to “assess the option of utilizing the authority granted in W.Va. Code §18-5-11 of the Code to allow Kanawha County and Fayette County to jointly create or maintain schools that serve the Upper Kanawha Valley” and to “determine whether students in the Upper Kanawha Valley can receive their Constitutionally protected education in the Upper Kanawha Valley.”

Certain provisions of Enrolled Committee Substitute for House Bill 2363 attempt to encroach upon the authority of the West Virginia Board of Education, and the State Superintendent as its chief executive officer, to provide for the general supervision of public schools in West Virginia, which authority must be equitably exercised across the state without disparate treatment between districts.

For these reasons I must disapprove and return Enrolled Committee Substitute for House Bill 2363.

Sincerely,

Jim Justice,
Governor.

State of West Virginia

Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 27, 2019

Veto Message

The Honorable Mac Warner
Secretary of State
Building I, Suite 157-K
State Capitol
Charleston, West Virginia 25305

RE: Enrolled House Bill No. 2412

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled House Bill No. 2412.

Enrolled House Bill No. 2412 amends §61-5B-1 to move statutes regarding prohibited acts in government procurement from Chapter 5A, Article 3 to Chapter 61, the chapter containing statutes outlining criminal acts. While the statute, when contained in Chapter 5A, applied to procurement officers contained in the WV Department of Administration's Purchasing Division, its application is not so clear when moved to Chapter 61, the criminal code. For example, the statute reads "no person purchasing or contracting for the purchase of commodities..." (§61-5B-2) could be broadly applied to anyone in a chain of people who are part of the buying and ordering process required in the purchasing of government goods.

Furthermore, the statute makes it a crime for a person to accept "*anything of value*" from a "business entity offering to sell, providing or contracting to sell...commodities." 'Anything of value' is too vague a term to give notice to a person that they are about to commit a crime. Without some monetary framework for this term, it would be unenforceable for prosecutors and would result in confusion and wasted resources in the attempt to prosecute these crimes.

Creating this prohibition within the criminal chapter of the West Virginia Code requires the statute to give clear notice of who and what is in jeopardy of violation of this criminal offense. This statute does not rise to that level and cannot stand. I request that the Legislature address these issues and resubmit the bill in the future.

For these reasons, I must disapprove and return Enrolled House Bill No. 2412.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 27, 2019

Veto Message

The Honorable Mac Warner
Secretary of State
Building 1, Suite 157-K
State Capitol
Charleston, WV 25305

Re: Enrolled House Bill 2486

Dear Secretary Warner:

Pursuant to the provisions of Section fifty-one, Article VI of the Constitution of West Virginia, I hereby disapprove and return Enrolled House Bill 2486.

The intended purpose of Enrolled House Bill 2486 is to preclude certain prior criminal history from being the basis for a denial of a professional license. However, the bill is in conflict to some extent with W.Va. Code §30-1D-1, "Lynette's Law", which mandates certain boards conduct a criminal background check for applicants. Of the boards subject to the requirements in "Lynette's Law", only Board of Medicine and Board of Osteopathy are exempted from the language of Enrolled House Bill 2486. So, the Board of Dentistry, Board of Pharmacy, Board of Examiners for Registered Professional Nurses, Board of Examiners for Licensed Practical Nurses, Board of Optometry, Board of Veterinary Medicine, and Board of Psychology are left in the untenable position of requiring applicants to submit to a background check, yet precluding the Boards from acting on any prior criminal history unrelated to the practice being regulated by the Board. The Boards that would be subject to the conflicting statutes have promulgated rules governing evaluation of the criminal history in relation to the practice, which would be null and void by the passage of this bill.

Additionally, determination for whether the past criminal conduct of an applicant is related to the profession is vague and subjective, and could result in litigation for boards that issue an unfavorable decision on an applicant.

For these reasons, I disapprove and return Enrolled House Bill 2486.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 27, 2019

Veto Message

The Honorable Mac Warner
Secretary of State
Building 1, Suite 157-K

State Capitol
Charleston, West Virginia 25305

Re: Enrolled Committee Substitute for House Bill 2503

Dear Secretary Warner:

Pursuant to the provisions of section fourteen, article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for House Bill 2674. This bill would require a petition alleging abuse or neglect of a child to name each parent, guardian, or custodian and to specifically state which are alleged to have abused or neglected the child, and would make provision for counsel to be provided in such hearings, among other things.

While I certainly appreciate the intent of this bill, the bill is technically flawed because its title is defective. See *State ex rel. Davis v. Oakley*, 156 W.Va. 154, 191 S.E.2d 610 (1972) (requiring bill titles to provide notice of a bill's contents). Specifically, the title provides that the bill requires "that notice be given by courts that a hearing required by subsection (a) of this section has been held." It is unclear to what subsection that title provision is meant to relate as the bill amends two different sections, neither of which specifically provides for a hearing under their respective subsections (a).

As a result of this flaw, I must disapprove and return Enrolled Committee Substitute for House Bill 2503, and would welcome a similar bill to be submitted in a subsequent legislative session to correct the error noted above.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 27, 2019

Veto Message

The Honorable Mac Warner
Secretary of State
Building I, Suite 157-K
State Capitol
Charleston, West Virginia 25305

RE: Enrolled House Bill No. 2530

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled House Bill No. 2530.

Enrolled House Bill No. 2530 creates a voluntary certification process for drug and alcohol-free recovery residences. It provided for inspection standards, regulations, fees, criminal penalties, fines

and rulemaking. In §16-56-2, the “certifying agency” is granted rulemaking authority, after consultation with WV Department of Health and Human Resources. ‘Certifying agency’ is undefined but is required to be under contract with DHHR.

Legislative rules under §29A-1-1 et seq. act with the force of law. An undefined “certifying agency” who acts as a contractor with DHHR could be a governmental agency but that is not a requirement of the bill. If the contract was awarded to a for profit business or even nonprofit corporation, how could they effectuate laws through the promulgation of rules. Constitutionally, the force of law cannot be promulgated by a private entity.

Although this bill had unanimous support and was with a well-intended purpose, this rulemaking issue would cause legal and constitutional conflicts that are untenable. I request that this bill be corrected of these issues and be submitted again for legislative approval.

For these reasons, I must disapprove and return Enrolled House Bill No. 2530.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 27, 2019

Veto Message

The Honorable Mac Warner
Secretary of State
Building I, Suite 157-K
State Capitol
Charleston, West Virginia 25305

RE: Enrolled Committee Substitute for House Bill No. 2531

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for House Bill No. 2531.

Enrolled Committee Substitute for House Bill No. 2531 allows additional health care professionals to provide counseling in medication -assisted treatment settings for substance use disorders. This bill serves an important purpose and is needed; however, it contains a severe technical flaw that renders it void.

The enrolled version of this bill omits subsection (f) through (s) of WV Code §16-5Y-5, with no evidence of strike-throughs. The bill’s enrolled version eliminates 14 sections of current West Virginia Code. If approved, this bill would effectively delete current sections of West Virginia Code with no notice to the members of the legislature who voted for this bill.

For these reasons, I must disapprove and return Enrolled Committee Substitute for House Bill No. 2531.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 27, 2019

Veto Message

The Honorable Mac Warner
Secretary of State
Building 1, Suite 157-K
State Capitol
Charleston, WV 25305

Re: Enrolled Committee Substitute for House Bill 2579

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for House Bill 2579, which undoes historic tax policy in this State at the expense of the State of West Virginia.

Enrolled Committee Substitute for House Bill 2579 destroys the trust fund nature of collected consumers sales and service taxes, withheld employer withholding taxes and collected motor fuel excise taxes held in trust for the State by a business that is in bankruptcy, foreclosure or receivership; and eliminates the personal liability of a fiduciary for failing to remit collected trust fund taxes. The bill allows these public monies to be used for purely private purposes in violation of Article X, § 6 of the Constitution of West Virginia.

For these reasons I must disapprove and return Enrolled Committee Substitute for House Bill 2579.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 27, 2019

Veto Message

The Honorable Mac Warner
Secretary of State
Suite 157-K
State Capitol
Charleston, WV 25305

Re: Enrolled Committee Substitute for House Bill 2661

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for House Bill 2661. The bill would permit a gas utility to petition the Public Service Commission for approval of requests for proposals containing proposed incentives for the drilling of new natural gas wells and/or increasing production from existing natural gas well to procure dependable supplies of natural gas to serve gas utility customers where such dependable, lower-priced supplies of natural gas are not readily available to serve those customers. The bill would also allow utilities to defer their actual expenditures attributable to the cost reasonably necessary to convert customers to a different source of energy in the event the Public Service Commission determines that abandoning gas services is in the public interest, subject only to Public Service Commission review of whether those costs are reasonably necessary to convert each customer and are not reflected in current base rates or have not been otherwise pursuant to filings.

The bill is technically flawed because its title is defective. See *State ex rel. Davis v. Oakley*, 156 W.Va. 154, 191 S.E.2d 610 (1972) (requiring bill titles to provide notice of a bill's contents). Specifically, the title notes that a utility may make a request for incentivized drilling, but fails to note that the bill also requires the Public Service Commission to approve such request upon the sole finding that dependable, lower-priced supplies of natural gas are not available and that the winning proposal will be deemed to be the utility's reasonable cost to dependably serve at the lowest available price. The title also fails to note that the bill allows utilities to defer their expenditures for abandonment of service and conversion to another source until a future rate case or an adjustment filing, subject only to Public Service Commission review of whether those costs were reasonably necessary. Further, the bill unnecessarily constrains the Public Service Commission in its ratemaking authority and obstructs existing statutory provisions that protect natural gas customers from paying unreasonable rates.

For these reasons I must disapprove and return Enrolled Committee Substitute for House Bill 2661.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 27, 2019

Veto Message

The Honorable Mac Warner
Secretary of State
Building I, Suite 157-K
State Capitol
Charleston, West Virginia 25305

Re: Enrolled Committee Substitute for House Bill 2673

Dear Secretary Warner:

Pursuant to the provisions of section fourteen, article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for House Bill 2673. This bill would reduce to 2.5% the severance tax rate on natural gas or oil for any natural gas produced from a well which produced an average between 5,000 and 60,000 cubic feet of gas and for any oil produced from any well which produced an average between one-half barrel and ten barrels per day, each calculated from the calendar year immediately preceding the beginning date of a given tax year. The bill also would direct the proceeds of this reduced 2.5% severance tax rate to an Oil and Gas Abandoned Well Plugging Fund, for use by the Department of Environmental Protection to plug abandoned oil and gas wells and reclaim property disturbed by the plugging.

The goal of providing additional needed funding to the Department of Environmental Protection to plug abandoned oil and gas wells and reclaim property disturbed by the plugging is a goal that needs to be pursued and achieved. However, this needed funding should come from general revenues generated by the current severance tax rate, among other sources, rather than from significantly diminished revenues generated by a 50% tax rate cut, which, under the bill, effectively becomes a 100% tax rate cut when \$4 million is in the Fund. I believe it would be to the detriment of the State and to the many causes to which general revenues are put to allow for such an increase in the amount of natural gas and oil produced with an effective tax rate of 0% once \$4 million has been deposited to the Fund, in order to direct funding to a purpose more efficiently funded from general revenues.

Further, there is potential conflict regarding the dedication of the severance tax proceeds from the privilege of producing oil and natural gas. Currently, 10% of the severance tax attributable to the severance tax on oil and natural gas is dedicated for the use and benefit of the counties and municipalities of the State, and of that amount 75% is to go to the oil and natural gas producing counties. As enacted, this bill would affect the amount available for these distributions needed to provide funds to counties and municipalities throughout the State.

For the reasons provided above, I disapprove and return Enrolled Committee Substitute for House Bill 2673.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 27, 2019

Veto Message

The Honorable Mac Warner
Secretary of State
Building I, Suite 157-K
State Capitol
Charleston, West Virginia 25305

Re: Enrolled Committee Substitute for House Bill 2674

Dear Secretary Warner:

Pursuant to the provisions of section fourteen, article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for House Bill 2674. This bill purports to establish a student loan repayment program for mental health providers residing in West Virginia and practicing in underserved areas of the state, and to allow two nonresident students per year, in each cohort, to attend each of the state's medical schools at the in-state tuition rate.

The aim of this bill is laudable: to get mental health providers into practice in underserved areas throughout the state. The bill, however, is technically flawed because its title is defective. *See State ex rel. Davis v. Oakley*, 156 W.Va. 154, 191 S.E.2d 610 (1972) (requiring bill titles to provide notice of a bill's contents). Specifically, the title notes that the bill authorizes legislative rules to be promulgated, but the bill authorizes the Commissioner of the Higher Education Policy Commission to promulgate rules.

As a result of this flaw, I disapprove and return Enrolled Committee Substitute for House Bill 2674, but welcome a similar bill in a subsequent legislative session to achieve its purposes.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 27, 2019

Veto Message

The Honorable Mac Warner
Secretary of State
Building I, Suite 157-K
State Capitol
Charleston, West Virginia 25305

Re: Enrolled Committee Substitute for House Bill 2703

Dear Secretary Warner:

Pursuant to the provisions of section fourteen, article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for House Bill 2703. This bill would provide an increase in the allowable refund of up to 1% for tax collected for fuels lost to evaporation.

Although I appreciate the intent of this bill, it is technically flawed because its title is defective. See *State ex rel. Davis v. Oakley*, 156 W.Va. 154, 191 S.E.2d 610 (1972) (requiring bill titles to provide notice of a bill's contents). Specifically, the bill amends W.Va. Code §11-14C-30, but the title states that the bill amends W.Va. Code §11-14-10.

As a result of this flaw, I disapprove and return Enrolled Committee Substitute for House Bill 2703, but would welcome a similar bill correcting the error noted above in a subsequent legislative session.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 27, 2019

Veto Message

The Honorable Mac Warner
Secretary of State
Suite 157-K
State Capitol
Charleston, WV 25305

Re: Enrolled Committee Substitute for House Bill 2734

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for House Bill 2734, which is intended to provide business and occupation tax credit and corporation net income tax credit to certain public service businesses for reducing sewer utility rates for low-income residential customers.

Enrolled Committee Substitute for House Bill 2734 is technically flawed because its title is defective. See *State ex rel. Davis v. Oakley*, 156 W. Va. 154, 191 S.E.2d 610 (requiring bill titles to provide notice of a bill's content). Specifically, the title does not mention that credits are allowable for taxable years beginning on and after January 1, 2019 or that the bill defines certain terms. Additionally, there are other technical flaws in the bill. The bill includes erroneous code references. The language in §11-13F-3(a) and (b) in the bill erroneously refers to §24-13-I et seq. when the correct reference is to §11-13-1 et seq. Additionally, within the bill, §11-13F-2(a)(2) and §11-13F-3(a) refer to §24-2A-3 when they should refer to §24-2A2.

For these reasons I must disapprove and return Enrolled Committee Substitute for House Bill 2734. However, I support the underlying policy in the bill, and encourage the Legislature to present a bill for signature that addresses the technical deficiencies mentioned above.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 27, 2019

Veto Message

The Honorable Mac Warner
Secretary of State
Suite 157-K
State Capitol
Charleston, WV 25305

Re: Enrolled Committee Substitute for House Bill 2807

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for House Bill 2807 the purposes of which is to allow electing small business corporations (S corporations) and limited liability companies that are financial organizations to claim certain decreasing modifications when determining their West Virginia adjusted federal taxable income that they could have claimed had they been subject to the West Virginia corporation net income tax.

Enrolled Committee Substitute for House Bill 2807 includes numerous technical flaws. For example, while attempting to update W. Va. Code §11-21-17a to incorporate the current way of citing to the West Virginia Code, a technical error was made in the bill — the bill changed references to subsections (b), (c) and (d) of W. Va. Code §11-21-12, to reference §11-21-12b, §11-21-12c, and §11-21-12d, thereby changing the meaning of Bill §11-21-17a. The reference to the definition of “financial organizations” is also incorrect, as are other Code sections referenced in the bill.

For these reasons I must disapprove and return Enrolled Committee Substitute for House Bill 2807, but welcome a similar bill to be introduced in a subsequent legislative session to correct the issues noted above.

Sincerely yours,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 27, 2019

Veto Message

The Honorable Mac Warner
Secretary of State
Suite 157-K
State Capitol
Charleston, WV 25305

Re: Enrolled House Bill 2828

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled House Bill 2828, which is intended to promote, through tax incentives, investment and business growth in the state's low-income communities.

While Enrolled House Bill 2828 certainly has laudable purposes, it contains numerous technical flaws. For example, the title of the Bill is materially defective because it (1) does not state that the Bill creates an insurance premiums tax credit for qualified community development entities making qualified equity investments; (2) does not refer to the 60-million-dollar limit on certification for qualified equity investments; and (3) does not say that under certain circumstances the credit can be recaptured by the Insurance Commissioner. Within new article 31-15D in the Bill there are several references to 26 U.S.C. § 45D, as amended. This is an unconstitutional delegation of the Legislature's authority to the United States Congress. See Syl. Pt. 1, *State v. Grinstead*, 157 W. Va. 1001, 206 S.E.2d 912 (1974). Additionally, while the Bill allows credit for qualified community development entities making qualified investments, only insurance companies pay the insurance premiums tax to the Insurance Commissioner, which makes the credit impossible to administer as written.

For these reasons I must disapprove and return Enrolled House Bill 2828, but welcome a similar bill in a subsequent legislative session, correcting the technical errors noted above.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 27, 2019

Veto Message

The Honorable Mac Warner
Secretary of State
Building I, Suite 157-K
State Capitol
Charleston, West Virginia 25305

Re: Enrolled Committee Substitute for House Bill 2933

Dear Secretary Warner:

Pursuant to the provisions of section fourteen, article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for House Bill 2933. This bill purports to modify the criminal penalties imposed on a parent, guardian, or custodian for child abuse resulting in injury and child abuse or neglect creating risk of injury.

Although I support the intent of the bill, Enrolled Committee Substitute for House Bill 2933 is technically flawed because either its title is defective, *see State ex rel. Davis v. Oakley*, 156 W.Va. 154, 191 S.E.2d 610 (1972) (requiring bill titles to provide notice of a bill's contents), or the bill inadvertently makes ambiguous or ineffective certain limitations on penalties for conviction under W.Va. Code §61-8D-4. Specifically, the bill repeals language creating a "misdemeanor" for certain offenses, but fails to repeal or amend subsection (f) which provides certain limitations on the penalties to be assessed against those "convicted of a misdemeanor." The title does not provide notice of the repeal of these limitations (i.e., that one may now be required to register pursuant to the requirements of W.Va. Code §15-13-1 et seq. or, solely by virtue of conviction under the section, have their custody, visitation, or parental rights automatically restricted), or the bill makes ambiguous or ineffective these certain limitations, and, therefore, is technically flawed.

As a result of the flaws noted above, I disapprove and return Enrolled Committee Substitute 2933, but welcome a similar bill in a subsequent legislative session, correcting or clarifying this issue.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 27, 2019

Veto Message

The Honorable Mac Warner
Secretary of State
Building 1, Suite 157-K
State Capitol
Charleston, WV 25305

Re: Enrolled House Bill 2992

Dear Secretary Warner:

Pursuant to the provisions of Section fifty-one, Article VI of the Constitution of West Virginia, I hereby disapprove and return Enrolled House Bill 2992.

Two years ago, I vetoed HB 2446, a bill with the same language. This bill is overly broad in its application, requiring "contact information of each staff member, including office location." There is no exception for employees who are engaged in undercover law enforcement operations, for employees whose office location is their personal residence, or for employees whose safety would be at risk by publishing their office location.

I understand the importance of providing the public with readily accessible information about state and local government, as intended by this bill. However, the bill should provide some flexibility for those employees to protect their safety, the safety of their coworkers or the integrity of law enforcement operations. I encourage the Legislature to revisit this bill and present it for signature with the exemptions necessary to protect certain employees.

For these reasons, I disapprove and return Enrolled House Bill 2992.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 27, 2019

Veto Message

The Honorable Mac Warner
Secretary of State
Building I, Suite 157-K
State Capitol
Charleston, West Virginia 25305

Re: Enrolled Committee Substitute for House Bill 3024

Dear Secretary Warner:

Pursuant to the provisions of section fourteen, article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for House Bill 3024. This bill purports to create a pilot program to encourage utility infrastructure development to industrial sites throughout West Virginia.

Although the bill's purpose is certainly important and encouraged, the bill is technically flawed because its title is defective. See *State ex rel. Davis v. Oakley*, 156 W.Va. 154, 191 S.E.2d 610 (1972) (requiring bill titles to provide notice of a bill's contents). Specifically, the bill requires the West Virginia Development Office to certify sites as having the potential for industrial development without adequate public utility services from one or more public utilities regulated by the Public Service

Commission; requires the Public Service Commission to receive and review for approval applications for multi-year comprehensive plans for infrastructure development to construct public utility infrastructure, which applications are in lieu of a proceeding under W.Va. Code §24-2-11; and requires an applicant for approval of a site as an industrial development site to publish the anticipated rates and any rate increase under the proposal as a Class I legal advertisement in compliance with the provisions of W.Va. Code §59-3-1 et seq., none of which is adequately noticed in the title, which only provides an overly general and vague description of the pilot program authorized under the bill.

As a result of these flaws, I disapprove and return Enrolled Committee Substitute for House Bill 3024, but welcome a similar bill in a subsequent legislative session to correct the issues described above.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 27, 2019

Veto Message

The Honorable Mac Warner
Secretary of State
Suite 157-K
State Capitol
Charleston, WV 25305

Re: Enrolled House Bill 3044

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled House Bill 3044, which is intended to require the Commissioner of Highways to develop a formula for the effective and efficient allocation of state and federal road funds among the districts and counties of the state, which formula must include factors including county population, county population growth projections, total lane miles, heavy truck use, and bridge numbers and bridge conditions in a given county.

The West Virginia Division of Highways is a maintenance organization first and foremost, dedicated to keeping the roads and highways of this state in good working order and repair. While a formula may prove useful in predicting where federal and state road money should be spent over a long period, I believe being required to follow a formula for the actual dollar allocation would limit the Division's ability to dedicate funds to maintenance projects where and when needed around the state.

For these reasons I must disapprove and return Enrolled House Bill 3044.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 27, 2019

Veto Message

The Honorable Mac Warner
Secretary of State
Building I, Suite 157-K
State Capitol
Charleston, West Virginia 25305

RE: Enrolled Committee Substitute for Senate Bill No. 147

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for Senate Bill No. 147.

Enrolled Committee Substitute for Senate Bill No. 147 shifts \$1.00 of the solid waste assessment fee imposed by §22-16-4, currently \$3.50, to county and regional solid waste authorities. The \$1.00 per ton reduction in the assessment would affect the Landfill Closure Assistance Fund administered by Department of Environmental Protection, which is used to close landfills in an environmentally protective and sound manner and to pay ongoing maintenance costs on the closed landfills as they age. The annual reduction in this Fund is approximately \$2.1 million dollars.

Enrolled Community Substitute for Senate Bill 147 is concerning because the fee reduction to the Closure Fund will severely impair the DEP's ability to continue maintenance on the already closed landfills and to the ability to close the upcoming ones in a safe manner; posing a threat to the health and safety of our citizens. Putting public health at risk for West Virginians is a bad policy choice, and one that I cannot endorse.

For these reasons, I must disapprove and return Enrolled Committee Substitute for Senate Bill No. 147.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 27, 2019

Veto Message

The Honorable Mac Warner
Secretary of State
Building 1, Suite 157-K
State Capitol
Charleston, WV 25305

Re: Enrolled Senate Bill 190

Dear Secretary Warner:

Pursuant to the provisions of Section fifty-one, Article VI of the Constitution of West Virginia, I hereby disapprove and return Enrolled Senate Bill 190. The rule at issue in the bill makes only one substantive change, which is to allow both salaried and hourly classified services employees to be paid overtime when they have taken leave earlier in the work week.

The intent of the rule appears to be to avoid having employees lose annual leave that cannot be carried forward into the next calendar year. This issue is not unique to Division of Highways employees and has been addressed by this administration through an executive order that allowed Division of Corrections employees, many of whom worked mandatory overtime due to staffing shortages, to carry forward more than the limit of annual leave hours. If the inability of employees to use annual leave by the end of the calendar year is a systemic problem due to snow removal duties, a similar executive order could address the issue on a year-to-year basis.

The other problem with the rule is that it fails to recognize the difference between employees entitled to overtime under the federal Fair Labor Standards Act (FLSA), and those employees that are exempt from the overtime requirements of the act. Employees that are exempt from FLSA are not entitled to earn overtime, although an employer can elect to pay those employees overtime. Employees who are exempt from FLSA are those who are employed in a "bona fide executive, administrative or professional capacity." *29 CFR 541.0(a)*. These types of positions are not typically involved with emergency response or public safety functions, therefore overtime for these employees would generally be unnecessary. By excluding these FLSA-exempt employees from eligibility to receive overtime, unnecessary costs to the State Road Fund are saved, allowing for those funds to instead be available for more roads projects.

For these reasons, I disapprove and return Enrolled Senate Bill 190.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 27, 2019

Veto Message

The Honorable Mac Warner

Secretary of State
Building I, Suite 157-K
State Capitol
Charleston, West Virginia 25305

RE: Enrolled Senate Bill 440

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Senate Bill No. 440.

I applaud the Legislature for tackling the issue of hazing at our universities, however the language included in this bill is overly broad and encompasses numerous organizations outside of the higher education community. For example, the following broad language appearing in the definitions of the bill: "any organization whose members include students of an institution of higher education," could include organizations such as the West Virginia Legislature or the American Civil Liberties Union, if any of their members were enrolled in classes at an institution of higher education in the state.

I believe Enrolled Senate Bill 440 contains overly-general language that encompasses a greater number of organizations than intended. For this reason, I must disapprove and return Enrolled Senate Bill No. 440. However, I encourage the Legislature to revisit the issue in the next Regular Session.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 27, 2019

Veto Message

The Honorable Mac Warner
Secretary of State
Building I, Suite 157-K
State Capitol
Charleston, West Virginia 25305

RE: Enrolled Committee Substitute for Senate Bill No. 487

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for Senate Bill No. 487.

Enrolled Committee Substitute for Senate Bill No. 487 amends §55-7B-7a the Medical Professional Liability Act, which involves liability cases from injuries or deaths resulting from falls in

a healthcare facility. SB 487 provides a *conclusive presumption* that “appropriate staffing was provided” in any legal action alleging inappropriate staffing if a health care facility or provider demonstrates compliance with minimum staffing requirements under West Virginia law. Furthermore, Enrolled Committee Substitute for Senate Bill 487 also provides a rebuttable presumption that adequate supervision of patients to prevents falls was provided if minimum staffing levels are met.

The presumptions created in Enrolled Committee Substitute for Senate Bill 487 are poor public policy because compliance with minimum staffing state regulations do not ensure adequate and competent care to meet the needs of West Virginia’s nursing home population. Quality of care, based on the needs of the patient and their care plan, must be considered, in addition to nurse staffing levels.

Furthermore, West Virginia state nurse staffing levels are often lower than federal staffing regulations or Centers for Medicare & Medicaid Services (CMS) recommendations. Granting an irrefutable presumption for all nurse staffing litigation based solely on state nursing regulations could result in dismissing litigation based on the staffing levels recommended by federal regulations or CMS recommendations when the state staffing levels are lower than the federal standards.

Establishing a conclusive presumption that cannot be refuted for nurse staffing levels is not justified by merely meeting the minimum staffing levels as defined by state law without taking quality of care provided the residents into consideration. Caring for West Virginia’s vulnerable elderly population is of the utmost importance and requires better.

For these reasons, I must disapprove and return Enrolled Committee Substitute for Senate Bill No. 487.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 27, 2019

Veto Message

The Honorable Mac Warner
Secretary of State
Building 1, Suite 157-K
State Capitol
Charleston, WV 25305

Re: Enrolled Senate Bill 522

Dear Secretary Warner:

Pursuant to the provisions of Section fifty-one, Article VI of the Constitution of West Virginia, I hereby disapprove and return Enrolled Senate Bill 522.

The purpose of the bill, while well-intentioned, is problematic because it represents a legislative encroachment into executive functions. The bill would have the county supervisor, with consultation of the county commission and the legislators representing that county to compile a list of secondary roads projects in the county and prioritize those projects.

Maintaining our state and secondary roads system, including assigning priority to particular projects, is without question an executive function. "The separation of powers provision of the State Constitution, which prohibits any one department of the State government from exercising the powers of the others, is not merely a suggestion; it is part of the fundamental law of the State, and as such, it must be strictly construed and closely followed." *State ex rel West Virginia Citizens Action Group v. West Virginia Economic Development Grant Committee*, 213 W.Va. 255 (2003). Much like the authority of presiding officers of both houses to appoint members to the Economic Development Grant Committee, which the court found to be a legislative assertion of post-enactment control over executive branch decisions, allowing sitting legislators to assume an executive role and assist in making decisions about which roads deserve attention and in what order certainly violates the separation of powers.

For these reasons, I disapprove and return Enrolled Senate Bill 522.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 27, 2019

Veto Message

The Honorable Mac Warner
Secretary of State
Building I, Suite 157-K
State Capitol
Charleston, West Virginia 25305

RE: Enrolled Committee Substitute for Senate Bill No. 624

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for Senate Bill No. 624.

Enrolled Committee Substitute for Senate Bill No. 624 provides an assessment option for county boards of education to use as an alternative to the currently contracted assessment in statewide contract with a vendor selected by a competitive bid process.

Enrolled Community Substitute for Senate Bill 624 is concerning because it directly conflicts with West Virginia Code §18-2E-5(d)(7) and would put the WV Board of Education in the untenable position of having to decide which statute to follow. WV Code §18-2E-5(d)(7) requires that "the

comprehensive statewide student assessment adopted prior to the testing window of the 2017-2018 school year shall continue to be used for at least a total of four consecutive years.” By allowing county boards of education to utilize an alternative assessment option during the period of time implicated in the statute for at least a four-year period of assessment consistency, the WV Board of Education would be violating their statutory mandate already in effect.

Having a statutory conflict in place in the provision of statewide student assessment, would not only cause confusion between county boards of education but could encourage litigation between counties and the state in an attempt to address the conflict. Further, the statutory conflict could give rise to contractual litigation between the state and the current vendor of the statewide contract, who was chosen by a competitive bid process, and any other vendor able to provide an alternative assessment option.

Additionally, the West Virginia Department of Education recently received a letter from the United States Department of Education (USDE) advising that the ACT assessment was conditionally approved to be used as a locally selected assessment in lieu of the statewide assessment. The letter was accompanied by a specific list of items the WV Department of Education is required to submit to receive full USDE approval. Not only does the USDE’s letter render SB624 unnecessary but given the clear set of instructions provided to the WV Department of Education, there is no need to add unnecessary statutory language that may work to impede on the WV Department of Education’s ability to adhere to those instructions.

For these reasons, I must disapprove and return Enrolled Committee Substitute for Senate Bill No. 624.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 27, 2019

Veto Message

The Honorable Mac Warner
Secretary of State
Building I, Suite 157-K
State Capitol
Charleston, West Virginia 25305

RE: Enrolled Senate Bill 633

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Senate Bill 633.

Enrolled Senate Bill No. 633 allows for the WV Board of Physical Therapy to conduct criminal background checks on applicants for a license. Further, the bill allows for disqualification for licensure and prohibition from disqualification based on certain crimes if found as a result of the background check. It is these crimes and how they affect the issuance of a license, that is missing from the bill's title.

The bill is technically flawed because its title is defective. See *State ex rel. Davis v. Oakley*, 156 W. Va. 154, 191 S.E.2d 610 (1972) (requiring bill title to provide notice of bill's contents). Specifically, there are nine subsections that are not reflected in the title of the bill and therefore does not provide the notice required of the bill's contents. The passage of this bill is very important to the operation of the WV Physical Therapy Board as it implements the multi-state compact that was approved by the legislature in 2018. Therefore, I ask that this bill be corrected and resubmitted to the legislature for approval.

For these reasons, I must disapprove and return Enrolled Senate Bill No. 633.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 27, 2019

Veto Message

The Honorable Mac Warner
Secretary of State
Building I, Suite 157-K
State Capitol
Charleston, West Virginia 25305

RE: Enrolled Senate Bill 676

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Senate Bill 676.

Enrolled Senate Bill No. 676 revises existing road classification categories currently contained on the Division of Highways digital road map. Division of Highways already creates and publishes a digital road map with road classifications very similar to these categories and therefore, this bill is unnecessary, and duplicative.

For these reasons, I must disapprove and return Enrolled Senate Bill No. 676.

Sincerely,

Jim Justice,
Governor.

Messages from the Executive

Subsequent to the adjournment of the session, communications were received from His Excellency, the Governor, advising that on **March 9, 2019**, he approved H. B. 2036 and Com. Sub. for H. B. 2821; on **March 14, 2019**, he approved H. B. 2665, H. B. 3135, S. B. 424, S. B. 435, S. B. 677, S. B. 678, S. B. 679, S. B. 680 and S. B. 681; on **March 19, 2019**, he approved Com. Sub. for H. B. 2204, Com. Sub. for H. B. 2359, H. B. 2547, H. B. 2608, Com. Sub. for H. B. 2737, H. B. 2827, Com. Sub. for H. B. 2854, Com. Sub. for H. B. 3007, H. B. 3045, H. B. 3095 and H. B. 3083; on **March 22, 2019**; he approved Com. Sub. for H. B. 2396, Com. Sub. for H. B. 2422, Com. Sub. for H. B. 2476, Com. Sub. for H. B. 2601, Com. Sub. for H. B. 2715, H. B. 2716, H. B. 2743, Com. Sub. for H. B. 2907, S. B. 16, S. B. 36, Com. Sub. for S. B. 199, S. B. 223, Com. Sub. for S. B. 241, Com. Sub. for S. B. 264, Com. Sub. for S. B. 291, Com. Sub. for S. B. 329, Com. Sub. for S. B. 340, Com. Sub. for S. B. 357, Com. Sub. S. B. 400, Com. Sub. for S. B. 408, S. B. 421, Com. Sub. for S. B. 441, Com. Sub. for S. B. 518, S. B. 544, S. B. 617 and S. B. 627; on **March 25, 2019**, he approved H. B. 2209, H. B. 2311, Com. Sub. for H. B. 2362, Com. Sub. for H. B. 2452, Com. Sub. for H. B. 2490, H. B. 2515, Com. Sub. for H. B. 2540. Com. Sub. for H. B. 2541, Com. Sub. for H. B. 2609, Com. Sub. for H. B. 2617, Com. Sub. for H. B. 2690, H. B. 2691, Com. Sub. for H. B. 2740, H. B. 2746, H. B. 2872 H. B. 2954, H. B. 2958, Com. Sub. for H. B. 2975, Com. Sub. for H. B. 3021, H. B. 3093, Com. Sub. for S. B. 40, Com. Sub. for S. B. 101, S. B. 153, Com. Sub. for S. B. 154, Com. Sub. for S. B. 238, Com. Sub. for S. B. 285, Com. Sub. for S. B. 295, Com. Sub. for S. B. 317, Com. Sub. for S. B. 369, Com. Sub. for S. B. 396, Com. Sub. for S. B. 398, Com. Sub. for S. B. 405, S. B. 461, Com. Sub. for S. B. 491, S. B. 531, S. B. 566, S. B. 593, S. B. 596, Com. Sub. for S. B. 601, S. B. 625, Com. Sub. for S. B. 653, S. B. 658, S. B. 667 and S. B. 670; on **March 27, 2019**, he approved Com. Sub. for H. B. 2001, Com. Sub. for H. B. 2010, Com. Sub. for H. B. 2049, Com. Sub. for H. B. 2183, Com. Sub. for H. B. 2193, Com. Sub. for H. B. 2378, Com. Sub. for H. B. 2439, Com. Sub. for H. B. 2479, H. B. 2510, Com. Sub. for H. B. 2524, Com. Sub. for H. B. 2583, Com. Sub. for H. B. 2618, H. B. 2647, Com. Sub. for H. B. 2662, Com. Sub. for H. B. 2694, H. B. 2739, H. B. 2759, Com. Sub. for H. B. 2761, Com. Sub. for H. B. 2768, Com. Sub. for H. B. 2770, Com. Sub. for H. B. 2813, H. B. 2816, H. B. 2829, Com. Sub. for H. B. 2849, H. B. 2853, H. B. 2856, Com. Sub. for H. B. 2945, Com. Sub. for H. B. 2947, H. B. 2968, Com. Sub. for H. B. 2982, Com. Sub. for H. B. 3016, H. B. 3020, Com. Sub. for H. B. 3057, Com. Sub. for H. B. 3131, H. B. 3132, H. B. 3140, H. B. 3141, H. B. 3142, H. B. 3143, H. B. 3144, Com. Sub. for S. B. 1, Com. Sub. for S. B. 4, S. B. 28, Com. Sub. for S. B. 30, Com. Sub. for S. B. 90, Com. Sub. for S. B. 100, Com. Sub. for S. B. 152, Com. Sub. for S. B. 237, Com. Sub. for S. B. 310, Com. Sub. for S. B. 316, Com. Sub. for S. B. 318, Com. Sub. for S. B. 330, Com. Sub. for S. B. 345, Com. Sub. for S. B. 352, Com. Sub. for S. B. 360, Com. Sub. for S. B. 373, Com. Sub. for S. B. 393, Com. Sub. for S. B. 402, Com. Sub. for S. B. 404. S. B. 453, Com. Sub. for S. B. 485, Com. Sub. for S. B. 496, S. B. 499, Com. Sub. for S. B. 510, Com. Sub. for S. B. 511, Com. Sub. for S. B. 520, Com. Sub. for S. B. 529, Com. Sub. for S. B. 537, Com. Sub. for S. B. 539, Com. Sub. for S. B. 543, Com. Sub. for S. B. 546, S. B. 554, Com. Sub. for S. B. 561, Com. Sub. for S. B. 564, S. B. 587, Com. Sub. for S. B. 597, S. B. 600, Com. Sub. for S. B. 603, S. B. 605, Com. Sub. for S. B. 632, S. B. 635, Com. Sub. for S. B. 640, Com. Sub. for S. B. 641, S. B. 655, Com. Sub. for S. B. 656, Com. Sub. for S. B. 657, S. B. 669, S. B. 673, S. B. 675 and S. B. 668.

At 11:55 p.m., on motion of Delegate Summers, the House of Delegates adjourned *sine die*.



We hereby certify that the forgoing record of the proceedings of the House of Delegates, First Regular Session, 2019, is the Official Journal of the House of Delegates for said session.

Roger Hanshaw
Speaker of the House of Delegates

Stephen J. Harrison
Clerk of the House of Delegates

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