

WEST VIRGINIA LEGISLATURE

# SENATE JOURNAL

EIGHTY-FOURTH LEGISLATURE  
REGULAR SESSION, 2020  
FORTY-FIRST DAY

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Charleston, West Virginia, Monday, February 17, 2020

The Senate met at 11:16 a.m.

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

Prayer was offered by the Reverend Eric Porterfield, Fifth Avenue Baptist Church, Huntington, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Bill Hamilton, a senator from the eleventh district.

Pending the reading of the Journal of Friday, February 14, 2020,

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

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

On motion of Senator Takubo, at 11:27 a.m., the Senate recessed to permit Logan Casto and Tyler Faulstick to address the Senate on behalf of the Governor's School for the Arts and Isabel Menon on behalf of the Governor's Honors Academy.

The Senate reconvened at 11:34 a.m. and proceeded to the third order of business.

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

**Eng. Senate Bill 300**, Updating certain terms in WV Corporation Net Income Tax Act.

A message from the Clerk of the House of Delegates announced the passage by that body, without amendment, to take effect from passage, and requested the concurrence of the Senate in the changed effective date, as to

**Eng. Senate Bill 310**, Updating certain terms used in WV Personal Income Tax Act.

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

On further motion of Senator Takubo, the Senate concurred in the changed effective date of the bill, that being to take effect from passage, instead of July 1, 2020.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Mann and Palumbo—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 310) takes effect from passage.

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

A message from the Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Com. Sub. for Senate Bill 560**, Permitting nursing home use trained individuals administer medication.

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

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

On page six, section five, line eight, after the word “promulgated” by inserting the words “by the authorizing agency”;

And,

On page six, section five, line nine, by striking out the words “to implement” and inserting in lieu thereof the words “relating to”.

On motion of Senator Maroney, the following amendment to the House of Delegates amendments to the bill (Eng. Com. Sub. for S. B. 560) was reported by the Clerk and adopted:

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

**Eng. Com. Sub. for Senate Bill 560**—A Bill to repeal §30-7D-1, §30-7D-2, §30-7D-3, §30-7D-4, §30-7D-5, §30-7D-6, §30-7D-7, §30-7D-8, §30-7D-9, §30-7D-10, §30-7D-11, §30-7D-12, and §30-7D-13 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §16-5AA-1, §16-5AA-2, §16-5AA-3, §16-5AA-4, §16-5AA-5, §16-5AA-6, §16-5AA-7, §16-5AA-8, §16-5AA-9, and §16-5AA-10, all relating to permitting a nursing home to use trained individuals to administer medication under the direction of a registered professional nurse; defining terms; authorizing approved medication assistive personnel (AMAP) to administer medication in nursing homes; providing certain exemptions from chapter 30 licensing requirements; establishing requirements for training curricula and national

medication aide certification examination procedures; establishing eligibility criteria; establishing requirements for AMAP to administer medication; requiring compliance with legislative rules promulgated by the authorizing agency; requiring nursing homes using AMAP to establish an administrative monitoring system; permitting a registered professional nurse to withdraw authorization for AMAP to administer medications in certain circumstances; allowing certain fees to be collected; providing limits on administration of medication by AMAP; providing that use of AMAP in nursing homes is permissive; and repealing a pilot program designed to monitor the practice of unlicensed personnel administering medication in a nursing home setting.

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

Engrossed Committee Substitute for Senate Bill 560, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Clements, Cline, Facemire, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Plymale, Prezioso, Roberts, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, and Carmichael (Mr. President)—27.

The nays were: Baldwin, Hamilton, Pitsenbarger, Romano, and Unger—5.

Absent: Mann and Palumbo—2.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 560) passed with its Senate amended title.

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

A message from the Clerk of the House of Delegates announced that that body had refused to concur in the Senate amendments to, and requested the Senate to recede therefrom, as to

**Eng. House Bill 4179**, Recognition of Emergency Medical Services Personnel Licensure Interstate Compact.

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

On further motion of Senator Takubo, the Senate acceded to the request of the House of Delegates and receded from its amendments to the bill.

Engrossed House Bill 4179, as amended by deletion, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Mann and Palumbo—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4179) passed with its title.

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

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

**Eng. Com. Sub. for House Bill 4198**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-53-2, relating to required insurance coverage; permitting a person to obtain a 12-month supply of contraceptive drugs; defining terms; and providing exclusions.

Referred to the Committee on Health and Human Resources.

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

**Eng. Com. Sub. for House Bill 4217**—A Bill to amend and reenact §64-3-1 et seq. of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies of the Department of Environmental Protection to promulgate legislative rules; authorizing the rules as filed, as modified by the Legislative Rule-Making Review Committee, and as amended by the Legislature; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to ambient air quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of air pollution from hazardous waste treatment, storage, and disposal facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of ozone season nitrogen oxides emissions; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to West Virginia surface mining reclamation rule; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to groundwater protection rules for coal mining operations; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to hazardous waste management system; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to voluntary remediation and redevelopment rule; and authorizing the Oil and Gas Conservation Commission to promulgate a legislative rule relating to rules of the commission.

Referred to the Committee on the Judiciary.

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

**Eng. House Bill 4406**—A Bill to amend and reenact §31A-4-35 of the Code of West Virginia, 1931, as amended, relating to the reproduction of checks and other records, and the preservation and disposition of originals.

Referred to the Committee on Banking and Insurance.

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

**Eng. Com. Sub. for House Bill 4513**—A Bill to amend and reenact §20-2-5a of the Code of West Virginia, 1931, as amended, relating to increasing the replacement costs required of a person causing injury or death of game or protected species; providing additional replacement costs for antlered deer; and requiring revocation of hunting and fishing licenses for conviction of described offenses.

Referred to the Committee on the Judiciary.

The Senate proceeded to the fourth order of business.

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

Your Committee on the Judiciary has had under consideration

**Senate Bill 502**, Relating to methamphetamine criminal penalty.

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

**Com. Sub. for Senate Bill 502** (originating in the Committee on the Judiciary)—A Bill to amend and reenact §60A-4-401 of the Code of West Virginia, 1931, as amended, relating to methamphetamine; and amending criminal penalty.

And,

**Senate Bill 692**, Clarifying persons indicted or charged jointly for felony offense can move to have separate trial.

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

**Com. Sub. for Senate Bill 692** (originating in the Committee on the Judiciary)—A Bill to amend and reenact §62-3-8 of the Code of West Virginia, 1931, as amended, relating to clarifying that persons charged with a felony offense or offenses are entitled to a separate trial as to their guilt or innocence upon moving therefor; and clarifying that the statutory right to a separate trial preempts any provisions of law or judicial rule to the contrary.

With the recommendation that the two committee substitutes do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

**Senate Bill 562**, Expunging certain criminal convictions.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

**Senate Bill 610**, Removing resident manager requirement for Alcohol Beverage Control Administration.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

The Senate proceeded to the sixth order of business.

At the request of Senator Takubo, unanimous consent being granted, the following bills were considered introduced, read by their titles, and referred to the appropriate committees:

**By Senator Takubo:**

**Senate Bill 797**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-5B-19; to amend and reenact §17C-1-6 of said code; and to amend and reenact §30-29-1, §30-29-5, and §30-29-8 of said code, all relating generally to the authorization by governing boards of public and private hospitals to appoint and employ hospital police officers; providing for the qualifications, training, authority, compensation, and removal of hospital police officers; providing for the assistance of local law-enforcement agencies upon request; and providing limitations on liability of hospital police officers.

Referred to the Committee on Health and Human Resources.

**By Senator Sypolt:**

**Senate Bill 798**—A Bill to amend and reenact §19-37-2 of the Code of West Virginia, 1931, as amended, relating to adding pasteurized milk and other dairy foods produced or processed in West Virginia to the list of items required to be purchased by all state-funded institutions, such as schools, colleges, correctional facilities, governmental agencies, and state parks.

Referred to the Committee on Finance.

**By Senator Maynard:**

**Senate Bill 799**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5B-9-1, relating to establishing the West Virginia Convention and Visitor's Bureau Oversight Council; establishing membership of council; providing for the appointment of members; and establishing the council's duties.

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

**By Senators Romano and Facemire:**

**Senate Bill 800**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31G-4-5a, relating to authorizing electric utilities to construct and operate a project within the electric utility distribution system.

Referred to the Committee on Economic Development.

**By Senator Palumbo:**

**Senate Bill 801**—A Bill to amend and reenact §18-7A-17a of the Code of West Virginia, 1931, as amended, relating to providing a 12-month window to permit members of the State Teachers Retirement System to purchase qualified military service credits that had been previously forfeited.

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

**By Senator Swope:**

**Senate Bill 802**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-1-10, relating to the regulation of public utilities generally; providing legislative findings; providing that certain large volume end users may receive natural gas service without the permission, consent, control, review, or input of the West Virginia Public Service Commission; providing that the end user shall make certain certifications to the commission; providing that the commission shall receive, file, and retain all end user certifications; providing that no person, entity, or body shall be a public utility, intrastate pipeline, common carrier, or otherwise subject to the jurisdiction of the commission as a result of supplying such end users; and providing that provisions shall not prevent or impede the commission's safety regulation of pipelines.

Referred to the Committee on Government Organization.

**By Senators Carmichael (Mr. President) and Prezioso (By Request of the Executive):**

**Senate Bill 803**—A Bill supplementing and amending the appropriations of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Health and Human Resources, Division of Health – Central Office, fund 0407, fiscal year 2020, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2020.

Referred to the Committee on Finance.

**By Senators Carmichael (Mr. President) and Prezioso (By Request of the Executive):**

**Senate Bill 804**—A Bill making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2020, to the Public Service Commission, Consumer Advocate Fund, fund 8627, fiscal year 2020, organization 0926, by supplementing and amending the appropriations for the fiscal year ending June 30, 2020.

Referred to the Committee on Finance.

**By Senators Carmichael (Mr. President) and Prezioso (By Request of the Executive):**

**Senate Bill 805**—A Bill making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June

30, 2020, to the Department of Transportation, Division of Highways, A. James Manchin Fund, fund 8319, fiscal year 2020, organization 0803, and to the Department of Transportation, State Rail Authority, West Virginia Commuter Rail Access Fund, fund 8402, fiscal year 2020, organization 0804, by supplementing and amending the appropriations for the fiscal year ending June 30, 2020.

Referred to the Committee on Finance.

**By Senators Carmichael (Mr. President) and Prezioso (By Request of the Executive):**

**Senate Bill 806**—A Bill supplementing and amending by adding a new appropriation of federal funds out of the Treasury to the Department of Transportation, fund 8831, fiscal year 2020, organization 0807, by supplementing, amending, and adding a new appropriation for the fiscal year ending June 30, 2020.

Referred to the Committee on Finance.

**By Senators Beach, Baldwin, Facemire, Hamilton, and Unger:**

**Senate Bill 807**—A Bill to amend and reenact §18-5-18b of the Code of West Virginia, 1931 as amended; and to amend and reenact §18-9A-8 of said code, all relating to requiring a statewide full-time professional counselor to student ratio of one to every 250 students; and requiring that every public school in the state have at least one professional counselor.

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

**By Senator Stollings:**

**Senate Bill 808**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-13Q-10b, relating to authorizing a tax credit for business entities that invest in certain fresh food retailers located in underserved communities and similar areas.

Referred to the Committee on Finance.

**By Senator Ihlenfeld:**

**Senate Bill 809**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18A-2A-1, §18A-2A-2, §18A-2A-3, §18A-2A-4, §18A-2A-5, §18A-2A-6, and §18A-2A-7, all relating to persons not eligible for employment in public schools.

Referred to the Committee on Education.

**By Senator Smith:**

**Senate Bill 810**—A Bill to amend and reenact §22-5-20 of the Code of West Virginia, 1931, as amended, relating to adoption of a state plan implementing the federal Affordable Clean Energy rule pursuant to section 111(d) of the federal Clean Air Act.

Referred to the Committee on Energy, Industry, and Mining; and then to the Committee on the Judiciary.

**By Senator Tarr:**

**Senate Bill 811**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5B-1-9, relating to creating the Economic Diversification Act of 2020 for the purpose of income tax relief, by state, county, and municipal government, to new or existing businesses whose product or service offered is not currently offered in the state;



requiring the Secretary of Commerce to appoint a commission to determine eligibility; providing that commission to be composed of government officials and private citizens; limiting the tax relief to a maximum period of eight years; and providing for rulemaking.

Referred to the Committee on Economic Development; and then to the Committee on Finance.

**By Senators Carmichael (Mr. President) and Prezioso (By Request of the Executive):**

**Senate Bill 812**—A Bill making a supplementary appropriation of Lottery Net Profits from the balance of moneys remaining as an unappropriated balance in Lottery Net Profits to the Bureau of Senior Services - Lottery Senior Citizens Fund, fund 5405, fiscal year 2020, organization 0508, by supplementing and amending the appropriations for the fiscal year ending June 30, 2020.

Referred to the Committee on Finance.

**By Senator Maynard:**

**Senate Bill 813**—A Bill to amend and reenact §31D-1-131 of the Code of West Virginia, 1931, as amended, relating to the Secretary of State; and requiring the establishment of searchable databases for West Virginia registered corporation and sole proprietorship information.

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

**By Senators Romano, Baldwin, Beach, Facemire, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Palumbo, Plymale, Prezioso, Stollings, Unger, and Woelfel:**

**Senate Bill 814**—A Bill to amend and reenact §18A-4-2 of the Code of West Virginia, 1931, as amended, relating to providing pay raises to public school teachers.

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

**By Senator Blair:**

**Senate Bill 815**—A Bill to amend and reenact §17-2A-2 of the Code of West Virginia, 1931, as amended, relating to removing the residency requirement for the Commissioner of the Division of Highways.

Referred to the Committee on Transportation and Infrastructure.

**By Senator Blair:**

**Senate Bill 816**—A Bill to amend and reenact §11-6F-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-13S-3 of said code, all relating generally to updating the North American Industry Classification System code references; and making other technical changes to conform to new bill-drafting requirements.

Referred to the Committee on Finance.

**By Senator Cline:**

**Senate Bill 817**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-15C-2; and to amend said code by adding thereto a new section, designated §33-51-11, all relating to reducing the cost of prescription drugs; providing consumers with an insulin cost cap for a 30-day supply; and requiring certain compensation received from a pharmaceutical manufacturer, developer, or labeler to be used for benefit of covered persons.

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

**By Senator Roberts:**

**Senate Bill 818**—A Bill to authorize and empower the State of West Virginia to transfer Little Beaver State Park in Raleigh County to the Raleigh County Commission.

Referred to the Committee on Natural Resources.

**By Senator Cline:**

**Senate Bill 819**—A Bill to amend and reenact §17C-17A-2, §17C-17A-3, §17C-17A-5, and §17C-17A-12 of the Code of West Virginia, 1931, as amended, all relating generally to the Commissioner of the Division of Highways to effectively manage the Coal Resource Transportation roads; defining certain terms; requiring reports be filed with the Legislative Oversight Commission on Department of Transportation Accountability; specifying information to be provided; Creating the Coal Resource Transportation Advisory Committee; simplifying process for the commissioner to designate or decertify a road in the Coal Resource Transportation System; revising reporting requirements; specifying information to be provided; and correcting technical errors.

Referred to the Committee on Transportation and Infrastructure.

**By Senator Takubo:**

**Senate Bill 820**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §27-2A-2, relating to authorizing the Department of Health and Human Resources to transfer comprehensive community mental health centers and comprehensive intellectual disability facilities to regional mental health centers or regional intellectual disability facilities.

Referred to the Committee on Health and Human Resources.

**By Senator Takubo:**

**Senate Bill 821**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §55-7K-1, §55-7K-2, and §55-7K-3, all relating to providing immunity from civil liability to facilities and employees providing crisis stabilization and/or drug and alcohol detoxification services, substance use disorder services, and/or drug overdose services on a short-term basis.

Referred to the Committee on the Judiciary.

**By Senator Mann:**

**Senate Bill 822**—A Bill to amend and reenact §7-14-17c of the Code of West Virginia, 1931, as amended, relating to increasing the annual longevity-based salary increase for civil service deputy sheriffs to \$50 per month for every year of service.

Referred to the Committee on Finance.

**By Senator Hamilton:**

**Senate Bill 823**—A Bill to amend and reenact §15-2-5 of the Code of West Virginia, 1931, as amended, relating to increasing salaries for members of the West Virginia State Police over a three-year period; increasing the annual interval salary increase; and setting effective dates.

Referred to the Committee on Finance.

**By Senator Romano:**

**Senate Bill 824**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5D-6, relating to establishing the Summer Feeding for All Program; providing findings; directing a county-by-county assessment of nonschool day student initiative; food insecurities; empowering county school boards to develop initiatives and programs for feeding students in need during summer and other nonschool time periods; providing county board reporting requirements to the Office of Child Nutrition; and directing the Office of Child Nutrition to collect and distribute information regarding available food resources.

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

**By Senator Maynard:**

**Senate Bill 825**—A Bill to amend and reenact §11A-1-9 of the Code of West Virginia, 1931, as amended, relating to payment of taxes by co-owners.

Referred to the Committee on the Judiciary.

**By Senator Baldwin:**

**Senate Bill 826**—A Bill to amend and reenact §3-1-16 of the Code of West Virginia, 1931, as amended; and to amend said code by adding a new article, designated §3-13-1, §3-13-2, §3-13-3, §3-13-4, and §3-13-5, all relating to implementing a system for ranked choice voting for the election of justices to the West Virginia Supreme Court of Appeals.

Referred to the Committee on the Judiciary.

**By Senator Jeffries:**

**Senate Bill 827**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17-30-1, §17-30-2, §17-30-3, and §17-30-4; and to amend and reenact §22-1-6 of said code, all relating to the protection and repair of damage caused by the oil and gas industry to our state roads; stating legislative findings and intent; defining terms; prohibiting issuance of any permit under chapter 22 of this code until Division of Highways agreement and permit issued; requiring a road use agreement and permit; specifying terms and conditions for road use agreement and permit; requiring surety; specifying minimum bond amounts; authorizing commissioner to increase bond requirements; and authorizing the oil and gas operation to choose form of security provided.

Referred to the Committee on Transportation and Infrastructure; and then to the Committee on the Judiciary.

**By Senator Jeffries:**

**Senate Bill 828**—A Bill to amend and reenact §8-13-5 of the Code of West Virginia, 1931, as amended, relating to clarifying municipal business and occupation taxation where business activity occurs in more than one location; defining terms to reflect the changing national economy; and authorizing the Tax Commissioner to promulgate any necessary regulations.

Referred to the Committee on Finance.

**By Senator Maynard:**

**Senate Bill 829**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5B-2I-9, relating to establishing the Overland Recreation Fund as a special fund; specifying the purposes for which the fund may be used; and defining terms.

Referred to the Committee on Finance.

**By Senator Blair:**

**Senate Bill 830**—A Bill to repeal §5-5-4a of the Code of West Virginia, 1931, as amended, relating to eliminating a special merit-based employment system for health care professionals in state-operated health care facilities.

Referred to the Committee on Health and Human Resources.

**By Senator Swope:**

**Senate Bill 831**—A Bill to amend and reenact §31-15-5 and §31-15-6 of the Code of West Virginia, 1931, as amended, all relating to clarifying the ability of the Economic Development Authority Board of Directors to enter into any contracts necessary to carry out its duties; clarifying the ability of the board of directors to delegate to the executive director the authority to enter into said contracts; and to clarify the exemption from the requirements to use the Purchasing Division for contracts made in furtherance of the agency's statutory purpose.

Referred to the Committee on Economic Development.

**By Senator Maynard:**

**Senate Bill 832**—A Bill to repeal §11-9-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-15-3, §11-15-4, §11-15-4a, §11-15-4b, and §11-15-13 of said code; and to amend and reenact §11-15A-5, §11-15A-6, and §11-15A-8 of said code, all relating to permitting retailers to assume or absorb any sales or use tax assessed on tangible personal property.

Referred to the Committee on Finance.

**By Senator Cline:**

**Senate Bill 833**—A Bill to amend and reenact §18-5-20 of the Code of West Virginia, 1931, as amended, relating to all county boards of education requiring all schools in the county to have a library; and requiring all county boards of education require all schools in the county employ a full-time librarian.

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

**By Senator Maynard:**

**Senate Bill 834**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated 17-13-1, relating to the operation of street-legal special purpose vehicles; permitting the operation of street-legal special purpose vehicles on highways; providing for registration of street-legal special purpose vehicles on highways; providing for registration of street-legal special purpose vehicles; establishing licensing and equipment requirements for street-legal special purpose vehicles; defining terms; and requiring rulemaking.

Referred to the Committee on Transportation and Infrastructure.

**By Senators Tarr and Plymale:**

**Senate Bill 835**—A Bill to amend and reenact §5A-6-4 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §5A-6-9; to amend and reenact §18B-2B-6 of said code; to amend and reenact §18B-4-2 of said code; and to amend

and reenact §18B-6-1a of said code, all relating to transferring the West Virginia Network for Educational Telecomputing and all its property and personnel to the Office of Technology.

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

**By Senator Sypolt:**

**Senate Bill 836**—A Bill to amend and reenact §20-2-5 of the Code of West Virginia, 1931, as amended, relating to providing rule-making power to Director of the Division of Natural Resources for the purposes of regulating the training of dogs that pursue or track bear.

Referred to the Committee on Natural Resources.

Senators Baldwin and Mann offered the following resolution:

**Senate Concurrent Resolution 39**—Requesting the Division of Highways name bridge number 13-60-1.43 (13A103), locally known as Little Sewell Creek Bridge, carrying US 60 over Little Sewell Creek in Greenbrier County, the “U.S. Navy PO1 Jeffrey S. Taylor Memorial Bridge”.

Whereas, U.S. Navy Petty Officer 1st Class E-6 Jeffrey S. Taylor was born May 18, 1975, in Midway West Virginia. He enlisted in the U.S. Navy on July 23, 1993, and attended basic training at NTC Great Lakes, Illinois, from June to August 1994. Petty Officer Taylor completed Hospital Corpsman training in December 1994, followed by service at the Naval Medical Center in Portsmouth, Virginia, from January 1995 to December 1996. Petty Officer Taylor attended the Field Medical Service School at Camp Lejeune, North Carolina, from January to February 1997, and then served as Corpsman with the Marine Corps’ 2d Marine Division at Camp Lejeune from February 1997 to July 1999; and

Whereas, Petty Officer Taylor entered Basic Underwater Demolition/SEAL training at the end of July 1999, and after completing BUD/S training, Jump School, and SEAL Qualification training, he served with SEAL Team Eight at the Naval Amphibious Base (NAB) Little Creek, Virginia, from September 2000 to October 2001. His next assignment was aboard the aircraft carrier USS Theodore Roosevelt (CVN-71) from October 2001 to June 2002, followed by service at the John F. Kennedy Special Warfare Center at Fort Bragg, North Carolina, from July 2002 to February 2003; and

Whereas, While serving aboard the USS Theodore Roosevelt, Petty Officer Taylor deployed to Afghanistan with SEAL Team Three in November 2001. His final assignment was with SEAL Team Ten at NAB Little Creek from February 2003 until he was killed in action on June 28, 2005 while deployed to Afghanistan when the MH-47 Chinook helicopter he was aboard was shot down by an enemy rocket-propelled grenade during Operation Red Wings. Petty Officer Taylor was buried in Arlington National Cemetery; and

Whereas, Petty Officer Taylor’s Bronze Star Medal with Valor Citation reads: “For heroic achievement in connection with combat operations against the enemy while serving as Leading Platoon Petty Officer, SEAL Team Ten, while deployed to Afghanistan in support of Operation Enduring Freedom on 28 June 2005. As part of a Quick Reaction Force, Petty Officer Taylor was sent to reinforce a Navy SEAL Special Reconnaissance element engaged in a fierce firefight against a numerically superior Anti-Coalition Militia near Asadabad, Konor Province, Afghanistan. The Special Reconnaissance element was under siege from enemy fire in extremely rugged and unforgiving terrain. Demonstrating exceptional resolve and fully comprehending the ramifications

of the mission, Petty Officer Taylor's element launched aboard a Helicopter for direct insertion onto an active battlefield, ready to engage and destroy the enemy in order to protect the lives of their fellow SEALs. While airborne Petty Officer Taylor continued working with member of his team to develop the plan of attack to support both a Quick Reaction Force and an urgent execution of the intended deliberate assault. As the helicopter hovered in preparation for a daring fast-rope insertion of the SEALs, the aircraft was struck by an enemy rocket-propelled grenade fired by Anti-Coalition Militia. The resulting explosion and impact caused the tragic and untimely loss of life of all onboard. Petty Officer Taylor's bravery and heroism in the face of severe danger while fighting the Global War on Terrorism was extraordinary. By his courageous actions, zealous initiative and loyal dedication to duty, Petty Officer Taylor reflected great credit upon himself and upheld the highest traditions of the United States Navel Service"; and

Whereas, In 2007 the book Lone Survivor: The Eyewitness Account of Operation Redwing and the Lost Heroes of SEAL Team 10, written by Marcus Luttrell with Patrick Robinson, was published by Little, Brown and Company. That book was the basis for the motion picture Lone Survivor, released in 2013 and directed by Peter Berg. Both the book and the motion picture told the story of Petty Officer Taylor's last mission; and

Whereas, It is fitting that an enduring memorial be established to commemorate U. S. Navy Petty Officer 1st Class E-6 Jeffrey S. Taylor's contributions to our state and country, and for having made the ultimate sacrifice; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 13-60-1.43 (13A103), locally known as Little Sewell Creek Bridge, carrying US 60 over Little Sewell Creek in Greenbrier County, the "U.S. Navy PO1 Jeffrey S. Taylor 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. Navy PO1 Jeffrey S. Taylor 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.

Which, under the rules, lies over one day.

Senator Boley offered the following resolution:

**Senate Resolution 45**—Congratulating the St. Mary's High School golf team for winning the 2019 West Virginia Class A state golf championship.

Whereas, The St. Mary's golf team had an outstanding year on the links which culminated in the team winning the school's first golf state championship since 1989; and

Whereas, The St. Mary's golf team captured their state championship in dominant fashion with a 21-stroke victory over their nearest competitor at the Speidel Golf Club at Oglebay Resort – Jones Course, in Wheeling, West Virginia; and

Whereas, The St. Mary's golf team is coached by Catie Hamilton and Blaze Armstrong and consists of team members: Grant Barnhart, Ethan Bennett, Ethan Davis, Brandon Lawhon, Luke Webb, Brayden Hall, and Kyle Jones; and

Whereas, The St. Mary's golf team displayed their strong will and determination for an entire season and is a shining example of what can be accomplished with dedication, commitment, and teamwork; and

Whereas, The St. Mary's golf team will be remembered as one of the best teams ever assembled in West Virginia high school golf history; therefore, be it

*Resolved by the Senate:*

That the Senate hereby congratulates the St. Mary's High School golf team for winning the 2019 West Virginia Class A state golf championship; and, be it

*Further Resolved*, That the Clerk is hereby directed to forward a copy of this resolution to the St. Mary's High School golf team.

Which, under the rules, lies over one day.

### **Petitions**

Senator Sypolt presented a petition from Robert L. Kelly and 93 West Virginia residents, supporting Committee Substitute for Senate Bill 160 (*Creating Voluntary WVU Rifle Team Check-Off Program on hunting and fishing licenses*).

Referred to the Committee on Finance.

The Senate proceeded to the seventh order of business.

**Senate Concurrent Resolution 25**, Requesting study on impact of future electromagnetic pulse catastrophe.

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

The question being on the adoption of the resolution, the same was put and prevailed.

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

Thereafter, at the request of Senator Takubo, and by unanimous consent, the remarks by Senator Azinger regarding the adoption of Senate Concurrent Resolution 25 were ordered printed in the Appendix to the Journal.

**Senate Concurrent Resolution 33**, US Air Force MSGT Dvon Duncan Memorial Bridge.

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

**Senate Concurrent Resolution 34**, US Army CPL Dane Hampton Hamric Memorial Bridge.

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

**Senate Concurrent Resolution 35**, Veterans Memorial Drive.

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

**Senate Concurrent Resolution 36**, Shafer Brothers US Military Veterans Memorial Bridge.

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

**Senate Concurrent Resolution 37**, Naming intersection in Hanover, Wyoming County, "Godfrey's Corner".

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

**Senate Resolution 41**, Designating February 17, 2020, as Pancreatic Cancer Day.

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

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

Thereafter, at the request of Senator Takubo, and by unanimous consent, the remarks by Senators Smith and Stollings regarding the adoption of Senate Resolution 41 were ordered printed in the Appendix to the Journal.

On motion of Senator Takubo, at 11:53 a.m., the Senate recessed to present Senate Resolution 41.

The Senate reconvened at 11:57 a.m. and resumed business under the seventh order.

**Senate Resolution 42**, Commemorating centennial of ratification of 19th Amendment to the US Constitution.

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

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

Thereafter, at the request of Senator Takubo, and by unanimous consent, the remarks by Senators Boley and Cline regarding the adoption of Senate Resolution 42 were ordered printed in the Appendix to the Journal.

On motion of Senator Takubo, at 12:03 p.m., the Senate recessed to present Senate Resolution 42.

The Senate reconvened at 12:08 p.m. and resumed business under the seventh order.



**Senate Resolution 43**, Recognizing President George Washington and President Abraham Lincoln on President's Day.

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

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

Thereafter, at the request of Senator Takubo, and by unanimous consent, the remarks by Senator Azinger regarding the adoption of Senate Resolution 43 were ordered printed in the Appendix to the Journal.

**Senate Resolution 44**, Urging Major League Baseball rescind ill-advised proposal that threatens future of professional baseball in WV.

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

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

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

The roll being taken, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Mann and Palumbo—2.

So, a majority of those present and voting having voted in the affirmative, the President declared the resolution (S. R. 44) adopted.

Thereafter, at the request of Senator Takubo, and by unanimous consent, the remarks by Senators Lindsay and Beach regarding the adoption of Senate Resolution 44 were ordered printed in the Appendix to the Journal.

At the request of Senator Blair, unanimous consent being granted, the Senate returned to the second order of business and the introduction of guests.

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for Senate Bill 265**, Authorizing DEP to develop Reclamation of Abandoned and Dilapidated Properties Program.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard,

Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Mann and Palumbo—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 265) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 279**, Requiring dental insurance plans honor assignment made in writing by person covered.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Mann and Palumbo—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 279) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 306**, Licensing of drivers utilizing bioptic telescopic devices.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Mann and Palumbo—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 306) passed with its title.

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

**Eng. Com. Sub. for Com. Sub. for Senate Bill 490**, Relating to criminal offenses against agricultural facilities.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Mann and Palumbo—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 490) passed.

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

**Eng. Com. Sub. for Com. Sub. for Senate Bill 490**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-3B-7, relating to creating the offenses of trespass upon an animal or crop facility and conspiracy to trespass upon an animal or crop facility; defining terms; establishing criminal penalties; creating an enhanced felony offense for second and subsequent violations; authorizing double damages for injuries to animal and crop facilities and equipment; and allowing injunctive relief.

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

**Eng. Com. Sub. for Senate Bill 589**, Creating Critical Needs/Failing Systems Sub Account.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Mann and Palumbo—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 589) passed with its title.

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

**Eng. Com. Sub. for Com. Sub. for Senate Bill 597**, Relating to judicial branch members' salaries and pensions.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Committee Substitute for Senate Bill 597 pass?”

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—29.

The nays were: Baldwin, Beach, and Tarr—3.

Absent: Mann and Palumbo—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 597) passed with its title.

Senator Takubo moved that the bill take effect July 1, 2020.

On this question, the yeas were: Azinger, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—29.

The nays were: Baldwin, Beach, and Tarr—3.

Absent: Mann and Palumbo—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 597) takes effect July 1, 2020.

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

**Eng. Com. Sub. for Senate Bill 702**, Designating specific grade levels in which nutrition and physical fitness programs are taught.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Mann and Palumbo—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 702) passed with its title.

Senator Takubo moved that the bill take effect July 1, 2020.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Mann and Palumbo—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 702) takes effect July 1, 2020.

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

**Eng. Senate Bill 703**, Increasing earning limit for employees who accept separation incentive.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Mann and Palumbo—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 703) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Mann and Palumbo—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 703) takes effect from passage.

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

**Eng. Com. Sub. for Senate Bill 706**, Clarifying duties of law-enforcement training and certification subcommittee.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Mann and Palumbo—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 706) passed with its title.

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

**Eng. Senate Bill 712**, Correcting name of Forensic Analysis Laboratory.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Mann and Palumbo—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 712) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Mann and Palumbo—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 712) takes effect from passage.

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

**Eng. Com. Sub. for Senate Bill 746**, Providing contracted managed care companies access to uniform maternal screening tool.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Mann and Palumbo—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 746) passed with its title.

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

**Eng. Com. Sub. for House Bill 2497**, Relating to the whistle-blower law.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Mann and Palumbo—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2497) passed.

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

**Eng. Com. Sub. for House Bill 2497**—A Bill to amend and reenact §6C-1-3, §6C-1-4, and §6C-1-7 of the Code of West Virginia, 1931, as amended, all relating to the whistle-blower law; protecting promotion or increase in compensation; lengthening the statute of limitations; allowing the use of grievance procedure; protecting use of other right or legal action; protecting rights related to political activity; and protecting rights related to membership in organizations of employees.

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

**Eng. House Bill 4166**, Prohibiting certain sex offenders from being in a supervisory position over children.

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

Pending discussion,

The question being “Shall Engrossed House Bill 4166 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Mann and Palumbo—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4166) passed with its title.

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

**Eng. House Bill 4381**, Relating to lifetime hunting, fishing and trapping licenses for adopted children.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Mann and Palumbo—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4381) passed with its title.

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

**Eng. Com. Sub. for House Bill 4470**, Relating to persons 18 years of age or older in the custody of the Bureau of Juvenile Services.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 4470 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Mann and Palumbo—2.



So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4470) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Mann and Palumbo—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4470) takes effect from passage.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence in the changed effective date.

**Eng. House Bill 4476**, Providing for the timely and efficient collection, submission, testing, retention, and disposition of forensic evidence in sexual assault cases.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—31.

The nays were: None.

Absent: Beach, Mann, and Palumbo—3.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4476) passed.

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

**Eng. House Bill 4476**—A Bill to amend and reenact §15-9B-1 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto 2 new sections, designated §15-9B-1a and §15-9B-5; and to amend and reenact §15-9B-2 and §15-9B-4 of said code, all relating to providing for the collection, submission, testing, retention, and disposition of forensic evidence in sexual assault cases; transferring some duties of the Division of Justice and Community Services to the Division of Administrative Services; defining terms; requiring sexual assault forensic examination kits collected by health care providers to be directly submitted to the West Virginia State Police Forensic Laboratory; requiring certain kits to be transported to Marshall University Forensic Science Center; establishing protocols for storage, retention, transmission and disposal of kits; notice to victim regarding disposal; establishing misdemeanor penalties; and granting rule-making authority.

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

The Senate proceeded to the ninth order of business.

**Com. Sub. for Senate Bill 285**, Eliminating WV Greyhound Breeding Development Fund.

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

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

**Senate Bill 572**, Expiring funds from General Revenue and Lottery Net Profits to various accounts.

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

**Com. Sub. for Senate Bill 717**, Relating generally to adult protective services.

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

**Senate Bill 725**, Supplemental appropriation to various Department of Education accounts.

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

**Senate Bill 778**, Supplemental appropriation expiring funds from State Excess Lottery Revenue Fund to DHHR.

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

**Senate Bill 779**, Supplemental appropriation expiring funds in State Excess Lottery Revenue to Department of Veterans' Assistance.

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

**Senate Bill 780**, Supplemental appropriation by decreasing and adding new appropriation out of Treasury to DMAPS.

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

**Eng. House Bill 4353**, Creating a rational nexus requirement between prior criminal conduct and initial licensure decision making.

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

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

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

**CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.**

**ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS.**

**§17A-6-6. Refusal or issuance of license certificate; license certificate not transferable.**

(a) Upon the review of the application and all other information before him or her, the commissioner may make and enter an order denying an application for a license certificate and refuse the license certificate sought. A denial and refusal are final and conclusive unless an appeal is made in accordance with the provisions of rules proposed for legislative approval in accordance with the provisions of §29A-3-1 *et seq.*, of this code. The commissioner shall make and enter an order denying or refusing a license, if the commissioner finds that the applicant (individually, if an individual, or the partners, if a co-partnership, or the officers and directors, if a corporation):

(1) Has failed to furnish the required bond unless otherwise exempt under the provisions of §17A-2-2a of this code;

(2) Has failed to furnish the required certificate of insurance;

(3) Has knowingly made false statement of a material fact in his or her application;

(4) Has habitually defaulted on financial obligations in this state or any other state or jurisdiction;

(5) Has been convicted of a felony: ~~*Provided, That upon appeal, the Motor Vehicle Dealers Advisory Board established pursuant to the provisions of section eighteen a of this article may grant an exemption of this restriction if the felony did not involve financial matters, the motor vehicle industry or matters of moral turpitude*~~ *Provided, That the commissioner shall apply §17A-6-6(c) and §17A-6-6(d) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the license being sought;*

(6) So far as can be ascertained, has not complied with and will not comply with the registration and title laws of this state or any other state or jurisdiction;

(7) Does not or will not have or maintain at each place of business, subject to the qualification contained in 17A-6-1(a)(17) of this code with respect to a new motor vehicle dealer (an established place of business as defined for the business in question) in that section;

(8) Has been convicted of any fraudulent act in connection with the business of new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer, or wrecker or dismantler in this state or any other state or jurisdiction: *Provided, That the commissioner shall apply §17A-6-6(c) and §17A-6-6(d) of*

this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the license being sought;

(9) Has done any act or has failed or refused to perform any duty for which the license certificate sought could be suspended or revoked were it then issued and outstanding;

(10) Is not age 18 years or older;

(11) Is delinquent in the payment of any taxes owed to the United States, the State of West Virginia, or any political subdivision of the state;

(12) Has been denied a license in another state or has been the subject of license revocation or suspension in another state;

(13) Has committed any action in another state which, if it had been committed in this state, would be grounds for denial and refusal of the application for a license certificate;

(14) Has failed to pay any civil penalty assessed by this state or any other state;

(15) Has failed to reimburse when ordered, any claim against the dealer recovery fund as prescribed in §17A-6-2a of this code; or

(16) Has failed to comply with the provisions of §17A-6E-1 *et seq.* of this code, pertaining to the employment of licensed salespersons.

Otherwise, the commissioner shall issue to the applicant the appropriate license certificate which entitles the licensee to engage in the business of new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer, or wrecker or dismantler, as the case may be.

(b) A license certificate issued in accordance with the provisions of this article is not transferable.

(c) The commissioner may not disqualify an applicant from initial licensure because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the activity requiring licensure. In determining whether a criminal conviction bears a rational nexus to a profession or occupation, the commissioner shall consider at a minimum:

(1) The nature and seriousness of the crime for which the individual was convicted;

(2) The passage of time since the commission of the crime;

(3) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and

(4) Any evidence of rehabilitation or treatment undertaken by the individual.

(d) Notwithstanding any other provision of this code to the contrary, if an applicant is disqualified from licensure because of a prior criminal conviction, the commissioner shall permit the applicant to apply for initial licensure if:

(1) A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;

(2) The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and

(3) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure, to be determined by the commissioner.

(e) An individual with a criminal record who has not previously applied for licensure 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. 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 provide the determination within 60 days of receiving the petition from the applicant. The commissioner may charge a fee to recoup its costs for each petition.

## CHAPTER 19. AGRICULTURE.

### ARTICLE 23. HORSE AND DOG RACING.

#### **§19-23-8. Consideration of application for license or permit; issuance or denial; contents of license or permit; grounds for denial of application; determination of racing dates; license or permit not transferable or assignable; limitation on license; validity of permit.**

(a) The Racing Commission shall promptly consider any application for a license or permit, as the case may be. Based upon such application and all other information before it, the Racing Commission shall make and enter an order either approving or denying the application. The application may be denied for any reason specified in subsection (b) of this section. If an application for a license is approved, the Racing Commission shall issue a license to conduct a horse or dog race meeting and shall designate on the face of the license the kind or type of horse or dog racing for which the same is issued, the racing association to which the same is issued, the dates upon which the horse or dog race meeting is to be held or conducted (which may be any weekdays, or week-nights, including Sundays), the location of the horse or dog racetrack, place or enclosure where the horse or dog race meeting is to be held or conducted, and other information as the Racing Commission shall consider proper. If an application for a permit is approved, the Racing Commission shall issue a permit and shall designate on the face of the permit such information as the Racing Commission considers proper.

(b) The Racing Commission may deny the application and refuse to issue the license or permit, as the case may be, which denial and refusal is final and conclusive unless a hearing is demanded in accordance with the provisions of §19-23-16 of this code, if the Racing Commission finds that the applicant individually, if an individual, or the partners or members, if a partnership, firm, or association, or the owners and directors, if a corporation:

(1) Has knowingly made false statement of a material fact in the application or has knowingly failed to disclose any information called for in the application;

(2) Is or has been guilty of any corrupt or fraudulent act, practice, or conduct in connection with a horse or dog race meeting in this or any other state;

(3) Has been convicted, within 10 years prior to the date of the application, of an offense which under the law of this state, of any other state, or of the United States of America, shall constitute a felony: ~~or a crime involving moral turpitude~~ Provided, That the Racing Commission shall apply §19-23-8(g) and §19-23-8(h) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the license or permit being sought;

(4) Has failed to comply with the provisions of this article or any reasonable rules of the Racing Commission;

(5) Has had a license to hold or conduct a horse or dog race meeting or a permit to participate therein denied for just cause, suspended, or revoked in any other state;

(6) Has defaulted in the payment of any obligation or debt due to this state under the provisions of this article;

(7) Is, if a corporation, neither incorporated under the laws of this state nor qualified to do business within this state;

(8) In the case of an application for a license, has failed to furnish bond or other adequate security, if the same is required by the Racing Commission under the provisions of §19-23-7 of this code;

(9) In the case of an application for a permit, is unqualified to perform the duties required for the permit sought; or

(10) In the case of an application for a permit, is, for just cause, determined to be undesirable to perform the duties required of the applicant.

(c) In issuing licenses and fixing dates for horse or dog race meetings at the various horse racetracks and dog racetracks in this state, the Racing Commission shall consider the horse racing circuits and dog racing circuits with which the horse racetracks and dog racetracks in this state are associated or contiguous to and shall also consider dates which are calculated to increase the tax revenues accruing from horse racing and dog racing.

(d) A license issued under the provisions of this article is neither transferable nor assignable to any other racing association and may not permit the holding or conducting of a horse or dog race meeting at any horse or dog racetrack, place, or enclosure not specified thereon. However, if the specified horse or dog racetrack, place, or enclosure becomes unsuitable for the horse or dog race meeting because of flood, fire, or other catastrophe, or cannot be used for any reason, the Racing Commission may, upon application, authorize the horse or dog race meeting, or any remaining portion thereof, to be conducted at any other racetrack, place, or enclosure available for that purpose, provided that the owner of the racetrack, place, or enclosure willingly consents to the use.

(e) No type of horse racing or dog racing shall be conducted by a licensee at any race meeting other than that type for which a license was issued.

(f) Each permit issued under the provisions of this section shall be for a period of one year, unless approved otherwise by the commission. Effective January 1, 2012, each permit shall be renewed according to the following schedule: Permits issued to persons whose date of birth is

January 1 through and including April 30 shall be renewed no later than April 30 of each year; permits issued to persons whose date of birth is May 1 through and including August 31 shall be renewed no later than August 31 of each year; and permits issued to persons whose date of birth is September 1 through and including December 31 shall be renewed no later than December 31 of each year. Each permit shall be valid at all horse or dog race meetings during the period for which it was issued unless it be sooner suspended or revoked in accordance with the provisions of this article. A permit issued under the provisions of this article is neither transferable nor assignable to any other person.

(g) The Racing Commission may not disqualify an applicant from an initial license or permit because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the activity requiring a license or permit. In determining whether a criminal conviction bears a rational nexus to a profession or occupation, the Racing Commission shall consider at a minimum:

(1) The nature and seriousness of the crime for which the individual was convicted;

(2) The passage of time since the commission of the crime;

(3) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and

(4) Any evidence of rehabilitation or treatment undertaken by the individual.

(h) Notwithstanding any other provision of this code to the contrary, if an applicant is disqualified from a license or permit because of a prior criminal conviction, the commissioner shall permit the applicant to apply for an initial license or permit if:

(1) A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;

(2) The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and

(3) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure, to be determined by the commissioner.

(i) An individual with a criminal record who has not previously applied for a license or permit may petition the Racing Commission at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license or permit. This petition shall include sufficient details about the individual's criminal record to enable the Racing Commission to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction. The Racing Commission shall provide the determination within 60 days of receiving the petition from the applicant. The Racing Commission may charge a fee to recoup its costs for each petition.

(g)(j) The Racing Commission shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code which establish the criteria for the approval or denial of a license or permit.

**CHAPTER 21. LABOR.****ARTICLE 1. DIVISION OF LABOR.****§21-1-6. Use of criminal records as disqualification from authorization to engage in licensed profession or occupation.**

(a) The commissioner may not disqualify an applicant from initial licensure, as required in this chapter, because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the activity requiring licensure. In determining whether a criminal conviction bears a rational nexus to a profession or occupation, the commissioner shall consider at a minimum:

(1) The nature and seriousness of the crime for which the individual was convicted;

(2) The passage of time since the commission of the crime;

(3) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and

(4) Any evidence of rehabilitation or treatment undertaken by the individual.

(b) Notwithstanding any other provision of this code to the contrary, if an applicant is disqualified from licensure because of a prior criminal conviction, the commissioner shall permit the applicant to apply for initial licensure if:

(1) A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;

(2) The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and

(3) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure, to be determined by the commissioner.

(c) An individual with a criminal record who has not previously applied for licensure 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. 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 provide the determination within 60 days of receiving the petition from the applicant. The commissioner may charge a fee to recoup its costs for each petition.

**ARTICLE 2. EMPLOYMENT AGENCIES.****§21-2-9. Refusal to issue license.**

The State Tax Commissioner shall refuse to issue a license if, upon investigation, he or she finds that the applicant is unfit to engage in the business or has had a license previously revoked, or that the business is to be conducted on or immediately adjoining what is considered by him or her to be unsuitable premises, or that any other good reason exists within the meaning of the law:



Provided, That the commissioner shall apply §21-1-6 of this code when determining to refuse a license.

## ARTICLE 5. WAGE PAYMENT AND COLLECTION.

### **§21-5-5c. License required for psychophysiological detection of deception examiners; qualifications; promulgation of rules governing administration of psychophysiological detection of deception examinations.**

(a) No person, firm, or corporation shall administer a psychophysiological detection of deception examination, lie detector, or other similar examination utilizing mechanical or electronic measures of physiological reactions to evaluate truthfulness without holding a current valid license to do so as issued by the Commissioner of Labor. No examination shall be administered by a licensed corporation except by an officer or employee thereof who is also licensed.

(b) A person is qualified to receive a license as an examiner if he or she:

(1) Is at least 21 years of age;

(2) Is a citizen of the United States;

(3) Has not been convicted of ~~a misdemeanor involving moral turpitude or a felony~~: Provided, That the commissioner shall apply §21-1-6 of this code to determine if the prior criminal conviction bears a rational nexus to the license being sought;

(4) Has not been released or discharged with other than honorable conditions from any of the armed services of the United States or that of any other nation;

(5) Has passed an examination conducted by the Commissioner of Labor or under his or her supervision to determine his or her competency to obtain a license to practice as an examiner;

(6) Has satisfactorily completed not less than six months of internship training; and

(7) Has met any other qualifications of education or training established by the Commissioner of Labor in his or her sole discretion which qualifications are to be at least as stringent as those recommended by the American Polygraph Association.

(c) The Commissioner of Labor may designate and administer any test he or she considers appropriate to those persons applying for a license to administer psychophysiological detection of deception, lie detector, or similar examination. The test shall be designed to ensure that the applicant is thoroughly familiar with the code of ethics of the American Polygraph Association and has been trained in accordance with association rules. The test must also include a rigorous examination of the applicant's knowledge of and familiarity with all aspects of operating psychophysiological detection of deception equipment and administering psychophysiological detection of deception examinations.

(d) The license to administer psychophysiological detection of deception, lie detector, or similar examinations to any person shall be issued for a period of one year. It may be reissued from year to year. The licenses to be issued are:

(1) "Class I license" which authorizes an individual to administer psychophysiological detection of deception examinations for all purposes which are permissible under the provisions of this article and other applicable laws and rules.

(2) "Class II license" which authorizes an individual who is a full-time employee of a law-enforcement agency to administer psychophysiological detection of deception examinations to its employees or prospective employees only.

(e) The Commissioner of Labor shall charge an annual fee to be established by legislative rule. All fees paid pursuant to this section shall be paid to the Commissioner of Labor and deposited in an appropriated special revenue account hereby created in the State Treasury to be known as the Psychophysiological Examiners Fund and expended for the implementation and enforcement of this section. Through June 30, 2019, amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this section may be utilized by the commissioner as needed to meet the division's funding obligations: *Provided*, That beginning July 1, 2019, amounts collected may not be utilized by the commissioner as needed to meet the division's funding obligations. In addition to any other information required, an application for a license shall include the applicant's Social Security number.

(f) The Commissioner of Labor shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code governing the administration of psychophysiological detection of deception, lie detector, or similar examination to any person: *Provided*, That all applicable rules in effect on the effective date of §21-5-5a, §21-5-5b, §21-5-5c, and §21-5-5d of this code will remain in effect until amended, withdrawn, revoked, repealed, or replaced. The legislative rules shall include:

(1) The type and amount of training or schooling necessary for a person before which he or she may be licensed to administer or interpret a psychophysiological detection of deception, lie detector, or similar examination;

(2) Testing requirements, including the designation of the test to be administered to persons applying for licensure;

(3) Standards of accuracy which shall be met by machines or other devices to be used in psychophysiological detection of deception, lie detector, or similar examination;

(4) The conditions under which a psychophysiological detection of deception, lie detector, or similar examination may be administered;

(5) Fees for licenses, renewals of licenses, and other services provided by the commissioner;

(6) Any other qualifications or requirements, including continuing education, established by the commissioner for the issuance or renewal of licenses; and

(7) Any other purpose to carry out the requirements of §21-5-5a, §21-5-5b, §21-5-5c, and §21-5-5d of this code.

#### **ARTICLE 14. SUPERVISION OF PLUMBING WORK.**

##### **§21-14-6. Denial, suspension, and revocation of license.**

(a) The Commissioner of Labor may deny a license to any applicant who fails to comply with the rules established by the Commissioner of Labor, or who lacks the necessary qualifications: *Provided*, That the commissioner shall apply §21-1-6 of this code to determine if the prior criminal conviction bears a rational nexus to the license being sought.

(b) The Commissioner of Labor may, upon complaint or upon his or her own inquiry, and after notice to the licensee, suspend or revoke a licensee's license if:

(1) The license was granted upon an application or documents supporting the application which materially misstated the terms of the applicant's qualifications or experience;

(2) The licensee subscribed or vouched for a material misstatement in his or her application for licensure;

(3) The licensee incompetently or unsafely performs plumbing work; or

(4) The licensee violated any statute of this state, any legislative rule or any ordinance of any municipality or county of this state which protects the consumer or public against unfair, unsafe, unlawful, or improper business practices.

## **ARTICLE 16. REGULATION OF HEATING, VENTILATING, AND COOLING WORK.**

### **§21-16-7. Denial, suspension, and revocation of license.**

(a) The Commissioner of Labor may deny a license to any applicant who fails to comply with the provisions of this article or the rules established by the Commissioner of Labor, or who lacks the necessary qualifications: Provided, That the commissioner shall apply §21-1-6 of this code to determine if the prior criminal conviction bears a rational nexus to the license being sought.

(b) The Commissioner of Labor may, upon complaint or upon his or her own inquiry, and after notice to the licensee, suspend or revoke a licensee's license if:

(1) The license was granted upon an application or documents supporting the application which materially misstated the terms of the applicant's qualifications or experience;

(2) The licensee subscribed or vouched for a material misstatement in his or her application for licensure;

(3) The licensee incompetently or unsafely performs heating, ventilating, and cooling work; or

(4) The licensee violated any statute of this state, any legislative rule, or any ordinance of any municipality or county of this state which protects the consumer or public against unfair, unsafe, unlawful, or improper business practices.

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

### **ARTICLE 22. STATE LOTTERY ACT.**

#### **§29-22-8. Lottery director; powers and duties; deputy directors; hiring of staff; civil service coverage; submission of proposed appropriations.**

(a) The director shall have the authority to:

(1) Appoint, with the approval of the commission, a deputy director for each of the divisions established in this article. The deputy directors appointed shall serve at the will and pleasure of the director at an annual salary established by the commission. Deputy directors shall not be eligible for civil service coverage as provided in §29-6-4 of this code;

(2) The director shall hire, pursuant to the approval of the commission, such professional, clerical, technical, and administrative personnel as may be necessary to carry out the provisions of this article. ~~No person shall be employed by the lottery who has been convicted of a felony or other crime involving moral turpitude~~ Each person employed by the commission shall execute an authorization to allow an investigation of that person's background: Provided, That the director and the commission shall apply §29-22-8(d) and §29-22-8(e) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the occupation being sought.

(3) Designate the number and types of locations at which tickets may be sold.

(b) Effective July 1, 1986, all employees of the commission, except as otherwise provided herein, shall be in the classified service under the provisions of §29-6-1 *et seq.* of this code.

(c) The director shall, pursuant to the approval of the commission, prepare and submit the annual proposed appropriations for the commission to the Governor.

(d) The director and the Lottery Commission may not disqualify an applicant from initial employment because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the activity required for employment. In determining whether a criminal conviction bears a rational nexus to a profession or occupation, the director and the Lottery Commission shall consider at a minimum:

(1) The nature and seriousness of the crime for which the individual was convicted;

(2) The passage of time since the commission of the crime;

(3) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and

(4) Any evidence of rehabilitation or treatment undertaken by the individual.

(e) Notwithstanding any other provision of this code to the contrary, if an applicant is disqualified from employment because of a prior criminal conviction, the director and the Lottery Commission shall permit the applicant to apply for initial employment if:

(1) A period of five years has elapsed (1) from the date of conviction or the date of release from incarceration, whichever is later;

(2) The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and

(3) The conviction was not for an offense of a violent or sexual nature: *Provided, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from employment, to be determined by the Lottery Commission.*

(f) An individual with a criminal record who has not previously applied for employment may petition the Lottery Commission at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining employment. This petition shall include sufficient details about the individual's criminal record to enable the Lottery Commission to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction. The Lottery Commission shall provide the determination within 60 days of receiving

the petition from the applicant. The Lottery Commission may charge a fee to recoup its costs for each petition.

## **ARTICLE 22A. RACETRACK VIDEO LOTTERY.**

### **§29-22A-7. License and permit qualifications; individual qualifications; applicant required to furnish information; waiver of liability; oath or affirmation; duty to provide accurate and material information.**

(a) No video lottery license or permit may be granted unless the commission has determined that the applicant satisfies all of the following qualifications:

(1) An applicant for a video lottery license must hold a valid racing license granted by the West Virginia Racing Commission under provisions of §19-23-1 *et seq.* of this code.

(2) An applicant must be a person of good character and integrity.

(3) An applicant must be a person whose background, including criminal record, reputation, and associations, does not pose a threat to the security and integrity of the lottery or to the public interest of the state. All new applicants for licenses and permits issued by the commission shall furnish 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 any applicant seeking the renewal of a license or permit to furnish fingerprints for a national criminal records check by the Criminal Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation: Provided, That the Lottery Commission shall apply §29-22A-7(g) and §29-22A-7(h) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the license or permit being sought. A person who has been convicted of any violation of §29-22-1 *et seq.* of this code or of this article or of any crime related to theft, bribery, gambling or involving moral turpitude is not eligible for any license or permit. The commission shall revoke the license or permit of any person who is convicted of any such crime after a license or permit is granted

(4) An applicant must be a person who demonstrates the business ability and experience necessary to establish, operate, and maintain the business for which a video lottery license or permit application is made.

(5) An applicant must be a person who has secured adequate financing for the business for which a video lottery license or permit application is made. The commission shall determine whether financing is from a source which meets the qualifications of this section and is adequate to support the successful performance of the duties and responsibilities of the licensed racetrack or permit holder. An applicant for a video lottery license shall disclose all financing or refinancing arrangements for the purchase, lease, or other acquisition of video lottery terminals and associated equipment in the degree of detail requested by the commission. A licensed racetrack shall request commission approval of any change in financing or lease arrangements at least 30 days before the effective date of the change.

(6) A racetrack applying for a video lottery license or a license renewal must present to the commission evidence of the existence of an agreement, regarding the proceeds from video lottery terminals, between the applicant and the representative of a majority of the horse owners and

trainers, the representative of a majority of the pari-mutuel clerks and the representative of a majority of the breeders or the representative of a majority of the kennel owners for the applicable racetrack who hold permits required by §19-23-2 of this code.

(7) A racetrack applying for a video lottery license or a license renewal must file with the commission a copy of any current or proposed agreement between the applicant and any manufacturer for the sale, lease, or other assignment to the racetrack of video lottery terminals, the electronic computer components of the terminals, the random number generator of the terminals, or the cabinet in which it is housed. Once filed with the commission, the agreement is a public document subject to the provisions of §29B-1-1 *et seq.* of this code.

(b) No video lottery license or permit may be granted to an applicant until the commission determines that each person who has control of the applicant meets all applicable qualifications of subsection (a) of this section. 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, but not including a bank or other licensed lending institution which holds a mortgage or other lien acquired in the ordinary course of business, who has the ability to control the activities of the corporate applicant or elect a majority of the board of directors of that corporation.

(2) Each person associated with a noncorporate applicant who directly or indirectly holds any beneficial or proprietary interest in the applicant or ~~who~~ whom the commission determines to have the ability to control the applicant.

(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) Applicants must furnish all information, including financial data and documents, certifications, consents, waivers, individual history forms, and other materials requested by the commission for purposes of determining qualifications for a license or permit. No video lottery license or permit may be granted to an applicant who fails to provide information and documentation requested by the commission. The burden of proving qualification for any video lottery license or permit is on the applicant.

(d) Each applicant bears all risks of adverse public notice, embarrassment, criticism, damages, or financial loss which may result from any disclosure or publication of any material or information obtained by the commission pursuant to action on an application. The applicant shall, as a part of its application, expressly waive any and all claims against the commission, the State of West Virginia and the employees of either for damages as a result of any background investigation, disclosure, or publication relating to an application for a video lottery license or permit.

(e) All application, registration, and disclosure forms and other documents submitted to the commission by or on behalf of the applicant for purposes of determining qualification for a video lottery license or permit shall be sworn to or affirmed before an officer qualified to administer oaths.

(f) An applicant who knowingly fails to reveal any fact material to qualification or who knowingly submits false or misleading material information is ineligible for a video lottery license or permit.

(g) The Lottery Commission may not disqualify an applicant from an initial license or permit because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the activity requiring a license or permit. In determining whether a criminal conviction bears a rational nexus to a profession or occupation, the Lottery Commission shall consider at a minimum:

(1) The nature and seriousness of the crime for which the individual was convicted;

(2) The passage of time since the commission of the crime;

(3) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and

(4) Any evidence of rehabilitation or treatment undertaken by the individual.

(h) Notwithstanding any other provision of this code to the contrary, if an applicant is disqualified from a license or permit because of a prior criminal conviction, the Lottery Commission shall permit the applicant to apply for an initial license or permit if:

(1) A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;

(2) The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and

(3) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from a license or permit, to be determined by the Lottery Commission.

(i) An individual with a criminal record who has not previously applied for a license or permit may petition the Lottery Commission at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license or permit. This petition shall include sufficient details about the individual's criminal record to enable the Lottery Commission to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction. The Lottery Commission shall provide the determination within 60 days of receiving the petition from the applicant. The Lottery Commission may charge a fee to recoup its costs for each petition.

## **ARTICLE 22B. LIMITED VIDEO LOTTERY.**

### **§29-22B-502. General qualifications for all types of limited video lottery licenses.**

(a) No limited video lottery license or license renewal may be granted unless the Lottery Commission has determined that the applicant satisfies all of the following qualifications:

(1) The applicant is a person of good character, honesty, and integrity;

(2) The applicant is a person whose background, criminal record, if any, reputation, habits, and associations, do not threaten to (A) compromise the public interest of the citizens of the state, (B) weaken the effective regulation and control of video gaming, (C) breach the security and integrity of the lottery, or (D) introduce corrupt, unfair, or illegal practices, methods, and activities into the operation of video gaming or the business or financial transactions incidental to the operation of video gaming;

(3) The applicant has not been convicted of any violation of §29-22B-101 *et seq.*, §19-23-1 *et seq.*, §29-22-1 *et seq.*, §29-22A-1 *et seq.*, §29-25-1 *et seq.* of this code, or any felony related to theft, bribery, or gambling or involving moral turpitude in this or in any other state or foreign country: Provided, That the Lottery Commission shall apply §29-22B-502(b) and §29-22B-502(c) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the license being sought.

(4) The applicant has disclosed to the Lottery Commission the identity of each person who has control of the applicant, as control is described in §29-22B-507 of this code, and those persons satisfy all qualifications required by this section and any applicable qualifications required by §29-22B-503 through §29-22B-506 of this code;

(5) The applicant has provided a set of fingerprints and has completed and signed the statement provided for in §29-22B-602 of this code;

(6) The applicant has furnished all information, including financial data and documents, certifications, consents, waivers, individual history forms, and other materials requested by the Lottery Commission for purposes of determining qualifications for a license.

(b) The Lottery Commission may not disqualify an applicant from initial licensure because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the activity requiring licensure. In determining whether a criminal conviction bears a rational nexus to a profession or occupation, the Lottery Commission shall consider at a minimum:

(1) The nature and seriousness of the crime for which the individual was convicted;

(2) The passage of time since the commission of the crime;

(3) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and

(4) Any evidence of rehabilitation or treatment undertaken by the individual.

(c) Notwithstanding any other provision of this code to the contrary, if an applicant is disqualified from licensure because of a prior criminal conviction, the Lottery Commission shall permit the applicant to apply for initial licensure if:

(1) A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;

(2) The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and



(3) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure, to be determined by the Lottery Commission.

(d) An individual with a criminal record who has not previously applied for licensure may petition the Lottery Commission at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license. This petition shall include sufficient details about the individual's criminal record to enable the Lottery Commission to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction. The Lottery Commission shall provide the determination within 60 days of receiving the petition from the applicant. The Lottery Commission may charge a fee to recoup its costs for each petition.

## **ARTICLE 22C. WEST VIRGINIA LOTTERY RACETRACK TABLE GAMES ACT.**

### **§29-22C-15. License or registration prohibitions.**

(a) The commission may not grant any license or registration 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 or registration revoked by any governmental authority of a state of the United States having responsibility for the regulation of gambling or gaming activities; or

(3) Has been convicted of a crime, ~~of moral turpitude~~ 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: *Provided*, That the Lottery Commission shall apply §29-22C-15(d) and §29-22C-15(e) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the license being sought.

(b) In the case of an applicant for a license to supply a racetrack with West Virginia Lottery table games, 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 a racetrack table games license, the commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license:

(1) If the applicant or licensee knowingly employs an individual in a job classification which includes West Virginia Lottery table games management duties who has been convicted of a ~~crime of moral turpitude~~ a gambling-related offense, or a theft, or fraud offense under the laws of this state, another state, the United States or a territory of the United States or knowingly employs any individual in a job classification which includes West Virginia Lottery table games management duties who has had a license relating to the operation of a gaming activity revoked by this state or any other state: Provided, That the Lottery Commission shall apply §29-22C-15(d) and §29-22C-15(e) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the licensed profession.

(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, unless the sale has been approved in advance by the commission.

(d) The Lottery Commission may not disqualify an applicant from initial licensure because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the activity requiring licensure. In determining whether a criminal conviction bears a rational nexus to a profession or occupation, the Lottery Commission shall consider at a minimum:

(1) The nature and seriousness of the crime for which the individual was convicted;

(2) The passage of time since the commission of the crime;

(3) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and

(4) Any evidence of rehabilitation or treatment undertaken by the individual.

(e) Notwithstanding any other provision of this code to the contrary, if an applicant is disqualified from licensure because of a prior criminal conviction, the Lottery Commission shall permit the applicant to apply for initial licensure if:

(1) A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;

(2) The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and

(3) The conviction was not for an offense of a violent or sexual nature: *Provided, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure, to be determined by the Lottery Commission.*

(f) An individual with a criminal record who has not previously applied for licensure may petition the Lottery Commission at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license. This petition shall include sufficient details about the individual's criminal record to enable the Lottery Commission to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction. The Lottery Commission shall provide the determination within 60 days of receiving the petition from the applicant. The Lottery Commission may charge a fee to recoup its costs for each petition.

#### **§29-22C-16. License or registration denial, revocation, suspension, and reprimand.**

(a) Notwithstanding any provision of §29-22C-13(b) of this code to the contrary, the commission may deny a license or registration to any applicant, reprimand any licensee or registrant, or suspend or revoke a license or registration if the applicant, ~~or~~ licensee, registrant, or any person having control of the applicant, ~~or~~ licensee, or registrant:

(1) Fraudulently or deceptively obtains or attempts to obtain a license or registration for the applicant, ~~or~~ licensee, registrant, or another person;

(2) Fraudulently or deceptively uses a license or registration;

(3) Is or has been convicted of a felony under the laws of this state, another state, the United States, or a territory of the United States: Provided, That in the event an applicant is seeking initial licensure, the Lottery Commission shall apply §29-22C-15(d) and §29-22C-15(e) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the licensed profession; or

4) Is or has been convicted of a misdemeanor under the laws of this state, another state, the United States or a territory of the United States for gambling or a gambling related activity: Provided, That in the event an applicant is seeking initial licensure, the Lottery Commission shall apply §29-22C-15(d) and §29-22C-15(e) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the licensed profession.

(b) Instead of or in addition to reprimanding a licensee or registrant or suspending or revoking a license or registration, the commission may impose a civil penalty under §29-22C-31 of this code.

### **ARTICLE 22D. WEST VIRGINIA LOTTERY SPORTS WAGERING ACT.**

#### **§29-22D-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 ~~crime of moral turpitude~~ 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: Provided, That the Lottery Commission shall apply §29-22D-10(c) and §29-22D-10(d) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the license being sought; 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) The Lottery Commission may not disqualify an applicant from initial licensure because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the activity requiring licensure. In determining whether a criminal conviction bears a rational nexus to a profession or occupation, the Lottery Commission shall consider at a minimum:

(1) The nature and seriousness of the crime for which the individual was convicted;

(2) The passage of time since the commission of the crime;

(3) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and

(4) Any evidence of rehabilitation or treatment undertaken by the individual.

(d) Notwithstanding any other provision of this code to the contrary, if an applicant is disqualified from licensure because of a prior criminal conviction, the Lottery Commission shall permit the applicant to apply for initial licensure if:

(1) A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;

(2) The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and

(3) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure, to be determined by the Lottery Commission.

(e) An individual with a criminal record who has not previously applied for licensure may petition the Lottery Commission at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license. This petition shall include sufficient details about the individual's criminal record to enable the Lottery Commission to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction. The Lottery Commission shall provide the determination within 60 days of receiving the petition from the applicant. The Lottery Commission may charge a fee to recoup its costs for each petition.

~~(e)~~(f) In the case of an applicant for a sports 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.

## **ARTICLE 25. AUTHORIZED GAMING FACILITY.**

### **§29-25-13. False statements on applications; other license or registration requirements and prohibitions.**

(a) Any person who knowingly makes a false statement on an application is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 and confined in jail for not more than six months except that in the case of a person other than a natural person, the amount of the fine imposed may not be more than \$25,000.

(b) The commission may not grant a license or registration pursuant to the provisions of this article if there is substantial evidence 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 gambling operation in another jurisdiction by a board or other governmental authority of that jurisdiction having responsibility for the regulation of gambling or gaming activities;

(3) Has been convicted of a felony, ~~an offense of moral turpitude~~ a gambling 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: *Provided*, That the Lottery Commission shall apply §29-25-13(d) and §29-25-13(e) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the license being sought;

(4) Has failed to meet any monetary obligation in connection with a gaming facility or any other form of gaming; or

(5) In the case of an applicant for a license to operate a gaming facility or to supply a gaming facility:

(A) Has not demonstrated financial responsibility sufficient to meet adequately the requirements of the enterprise proposed;

(B) Is not the true owner of the enterprise or is not the sole owner and has not disclosed the existence or identity of other persons who have an ownership interest in such enterprise; or

(C) Is a corporation and five percent or more of the stock of the corporation is subject to a contract or option to purchase at any time during the period for which the license is issued unless the contract or option was disclosed to and approved by the commission.

(c) In addition to any other grounds specified in this article, and subject to the hearing provisions of §29-25-17 of this code, in the case of a license to operate a gaming facility the commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee or any controlling person of the applicant or licensee knowingly employs an individual in a senior management position who has been convicted of a felony, bearing a rational nexus to the license, under the laws of this state, another state, a territory of the United States, or the United States or employs any individual in a senior management position who has had a license relating to the operation of a gaming facility revoked by this state or any other state: Provided, That the Lottery Commission shall apply §29-25-13(d) and §29-25-13(e) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the license being sought.

(d) The Lottery Commission may not disqualify an applicant from initial licensure because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the activity requiring licensure. In determining whether a criminal conviction bears a rational nexus to a profession or occupation, the Lottery Commission shall consider at a minimum:

(1) The nature and seriousness of the crime for which the individual was convicted;

(2) The passage of time since the commission of the crime;

(3) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and

(4) Any evidence of rehabilitation or treatment undertaken by the individual.

(e) Notwithstanding any other provision of this code to the contrary, if an applicant is disqualified from licensure because of a prior criminal conviction, the Lottery Commission shall permit the applicant to apply for initial licensure if:

(1) A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;

(2) The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and

(3) The conviction was not for an offense of a violent or sexual nature: *Provided, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure, to be determined by the Lottery Commission.*

(f) An individual with a criminal record who has not previously applied for licensure may petition the Lottery Commission at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license. This petition shall include sufficient

details about the individual's criminal record to enable the Lottery Commission to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction. The Lottery Commission shall provide the determination within 60 days of receiving the petition from the applicant. The Lottery Commission may charge a fee to recoup its costs for each petition.

(d)(g) Character references may be required of persons licensed, but the character reference may not be obtained from persons in the same or similar occupations or professions in other states.

## CHAPTER 31. CORPORATIONS.

### ARTICLE 17A. WEST VIRGINIA SAFE MORTGAGE LICENSING ACT.

#### §31-17A-5. Issuance of license.

(a) The commissioner may not issue a mortgage loan originator license unless the commissioner makes at a minimum the following findings:

(a)(1) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of the revocation may not be considered a revocation.

(b)(2) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign or military court: *Provided*, That any pardon of a conviction may not be a conviction for purposes of this subsection: *Provided, however, That the commissioner shall apply §31-17A-5(b) and §31-17A-5(c) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the license being sought;*

(1)(A) During the ~~seven-year~~ five-year period preceding the date of the application for licensing and registration; or

(2)(B) At any time preceding the date of application if the ~~felony involved an act of fraud, dishonesty or a breach of trust, or money laundering~~ crime bears a rational nexus to the license being sought.

(c)(3) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this article.

For purposes of this subsection a person has shown that he or she is not financially responsible when he or she has shown a disregard in the management of his or her own financial condition. The commissioner shall not use a credit score as the sole basis for license denial. A determination that an individual has not shown financial responsibility may include, but not be limited to:

(1)(A) Current outstanding judgments, except judgments solely as a result of medical expenses;

(2)(B) Current outstanding tax liens or other government liens and filings;

~~(3)(C)~~ Foreclosures within the past three years; and

~~(4)(D)~~ A pattern of seriously delinquent accounts within the past three years.

~~(e)(4)~~ The applicant has completed the pre-licensing education requirement described in §31-17A-6 of this code.

~~(e)(5)~~ The applicant has passed a written test that meets the test requirement described in §31-17A-7 of this code.

~~(f)(6)~~ The applicant has met the surety bond requirement as required pursuant to 31-17A-13 of this code.

(b) The commissioner may not disqualify an applicant from initial licensure because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the activity requiring licensure. In determining whether a criminal conviction bears a rational nexus to a profession or occupation, the commissioner shall consider at a minimum:

(1) The nature and seriousness of the crime for which the individual was convicted;

(2) The passage of time since the commission of the crime;

(3) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and

(4) Any evidence of rehabilitation or treatment undertaken by the individual.

(c) Notwithstanding any other provision of this code to the contrary, if an applicant is disqualified from licensure because of a prior criminal conviction, the commissioner shall permit the applicant to apply for initial licensure if:

(1) A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;

(2) The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and

(3) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure, to be determined by the commissioner.

(d) An individual with a criminal record who has not previously applied for licensure 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. 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 provide the determination within 60 days of receiving the petition from the applicant. The commissioner may charge a fee to recoup its costs for each petition.



**CHAPTER 32A. LAND SALES; FALSE ADVERTISING; ISSUANCE AND SALE OF CHECKS, DRAFTS, MONEY ORDERS, ETC.**

**ARTICLE 2. CHECKS AND MONEY ORDER SALES, MONEY TRANSMISSION SERVICES, TRANSPORTATION, AND CURRENCY EXCHANGE.**

**§32A-2-8. Qualifications for license or renewal of license.**

(a) The commissioner may issue a license to an applicant only upon first determining that the financial condition, business experience, and character and general fitness of an applicant are such that the issuance of the license is in the public interest: Provided, That the commissioner shall apply §32A-2-8(f) and §32A-2-8(g) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the license being sought.

(b) An applicant for a license shall agree in writing to comply with the currency reporting and record-keeping requirements of 31 U.S.C. §5313, as well as those set forth in 31 C.F.R. Chapter X and any other relevant federal law.

(c) A person is not eligible for a license or shall surrender an existing license if, during the previous ~~ten~~ five years:

(1) The person or a principal of the person, if of a business:

(A) Has been convicted of a felony or a crime involving fraud, or ~~deceit, or moral turpitude~~ under the laws of this state, any other state, or the United States;

(B) Has been convicted of a crime under the laws of another country that involves fraud or ~~deceit or moral turpitude~~ or would be a felony if committed in the United States; or

(C) Has been convicted under a state or federal law relating to currency exchange or transmission or any state or federal monetary instrument reporting requirement; or

(2) The person, a principal of the person, or the spouse of the person or a principal of the person has been convicted of an offense under a state or federal law relating to drug trafficking, money laundering, or a reporting requirement of the Bank Secrecy Act, 12 U.S.C. §1951 *et seq.*, as amended.

(d) The commissioner will review the application to determine whether the applicant:

(1) Has recklessly failed to file or evaded the obligation to file a currency transaction report as required by 31 U.S.C. §5313 during the previous three years;

(2) Has recklessly accepted currency for exchange, transport, or transmission during the previous three years in which a portion of the currency was derived from an illegal transaction or activity;

(3) Will conduct its authorized business within the bounds of state and federal law, including, but not limited to, §31D-15-1501 of this code;

(4) Warrants the trust of the community;

(5) Has and will maintain a minimum tangible net worth of \$50,000 computed according to generally accepted accounting principles as shown by the most recent audited financial statement filed with and satisfactory to the commissioner, and in addition has and will maintain a minimum tangible net worth of \$25,000, computed according to generally accepted accounting principles for each office or delegate location other than its principal office at which its licensed business is transacted, except that an applicant for a license or renewal of a license may not be required by this article to maintain a tangible net worth of more than \$1 million, computed according to generally accepted accounting principles; and

(6) Does not owe delinquent taxes, fines, or fees to any local or state taxing authority or governmental agency, department, or other political subdivision of this state.

(e) A person is not eligible for a license, and a person who holds a license shall surrender the license to the commissioner, if the person or a principal of the person has at any time been convicted of:

(1) A felony involving the laundering of money that is the product of or proceeds from criminal activity under chapter 61 of this code, or a similar provision of the laws of another state or the United States; or

(2) A felony violation of 31 U.S.C. §5313 or 5324, or a rule adopted under those sections.

(f) The commissioner may not disqualify an applicant from initial licensure because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the activity requiring licensure. In determining whether a criminal conviction bears a rational nexus to a profession or occupation, the commissioner shall consider at a minimum:

(1) The nature and seriousness of the crime for which the individual was convicted;

(2) The passage of time since the commission of the crime;

(3) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and

(4) Any evidence of rehabilitation or treatment undertaken by the individual.

(g) Notwithstanding any other provision of this code to the contrary, if an applicant is disqualified from licensure because of a prior criminal conviction, the commissioner shall permit the applicant to apply for initial licensure if:

(1) A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;

(2) The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and

(3) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure, to be determined by the commissioner.

(h) An individual with a criminal record who has not previously applied for licensure 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. 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 provide the determination within 60 days of receiving the petition from the applicant. The commissioner may charge a fee to recoup its costs for each petition.

~~(f)~~(i) Before approving an application for a license of an applicant who has less than one year's experience in the proposed business governed by this article as a regulated entity in another state, or whose license has been suspended or revoked by another state, the commissioner may, in his or her discretion, conduct an on-site investigation of an applicant at the sole expense of the applicant and may require the applicant to pay a nonrefundable payment of the anticipated expenses for conducting the investigation. Failure to make the payment or cooperate with the investigation is grounds for denying the application.

### CHAPTER 33. INSURANCE.

#### ARTICLE 13C. VIATICAL SETTLEMENTS ACT.

##### §33-13C-3. License and bond requirements.

(a)(1) A person may not operate as a viatical settlement provider or viatical settlement broker without first obtaining a license from the commissioner.

(2)(A) An insurance producer who is authorized to sell life insurance in this state pursuant to a resident or nonresident license issued in accordance with the provisions of §33-12-1 *et seq.* of this code may operate as a viatical settlement broker without obtaining a license pursuant to this section if the viatical settlement activities of the producer are incidental to the producer's insurance business activities.

(B) The insurer that issued the policy being viaticated is not responsible for any act or omission of a viatical settlement broker or viatical settlement provider arising out of or in connection with the viatical settlement transaction, unless the insurer receives compensation for the placement of a viatical settlement contract from the viatical settlement provider or viatical settlement broker in connection with the viatical settlement contract.

(3) A person licensed as an attorney, certified public accountant, or financial planner accredited by a nationally recognized accreditation agency who is retained to represent the viator, whose compensation is not paid directly or indirectly by the viatical settlement provider, may negotiate viatical settlement contracts on behalf of the viator without having to obtain a license as a viatical settlement broker.

(b) Application for a viatical settlement provider or viatical settlement broker license and for renewals of the licenses shall be made in the manner prescribed by the commissioner and shall be accompanied by fees established in legislative rules, including emergency rules, promulgated by the commissioner.

(1) The commissioner may not disqualify an applicant from initial licensure because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the activity requiring licensure. In determining whether a criminal conviction

bears a rational nexus to a profession or occupation, the commissioner shall consider at a minimum:

(A) The nature and seriousness of the crime for which the individual was convicted;

(B) The passage of time since the commission of the crime;

(C) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and

(D) Any evidence of rehabilitation or treatment undertaken by the individual.

(2) Notwithstanding any other provision of this code to the contrary, if an applicant is disqualified from licensure because of a prior criminal conviction, unless that conviction is a felony pursuant to §33-13C-14 of this code, the commissioner shall permit the applicant to apply for initial licensure if:

(A) A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;

(B) The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and

(C) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure, to be determined by the commissioner.

(3) An individual with a criminal record who has not previously applied for licensure 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. 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 provide the determination within 60 days of receiving the petition from the applicant. The commissioner may charge a fee to recoup its costs for each petition.

(c) The commissioner has the authority, at any time, to require the applicant to fully disclose the identity of all stockholders, partners, officers, members, and employees and the commissioner may, in the exercise of the commissioner's discretion, refuse to issue a license in the name of a legal entity if not satisfied that any officer, employee, stockholder, partner, or member of the entity who may materially influence the applicant's conduct meets the standards of this article.

(d) The commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant:

(1) If a viatical settlement provider, has provided a detailed plan of operation;

(2) Is competent and trustworthy and acts in good faith in the capacity of a licensee;

(3) Has a good business reputation and is qualified by experience, training, or education as a viatical settlement provider or broker;

(4) Has demonstrated evidence of financial responsibility, in a format prescribed by the commissioner, by possessing a minimum equity of not less than \$250,000 in cash or cash equivalents reflected in the applicant's audited financial statements or through a surety bond executed and issued by an insurer authorized to issue surety bonds in this state in the amount of \$250,000: *Provided*, That the commissioner may permit an applicant for a broker's license to demonstrate evidence of financial responsibility through a policy of insurance covering legal liability resulting from erroneous acts or failure to act in their capacity as a viatical settlement broker and inuring to the benefit of any aggrieved party as the result of any single occurrence in the sum of not less than \$100,000 and \$300,000 in the aggregate for all occurrences within one year. Any surety bond issued pursuant to this subdivision shall be in the favor of this state and shall specifically authorize recovery by the commissioner on behalf of any person in this state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices by the viatical settlement provider or viatical settlement broker. The commissioner shall accept, as evidence of financial responsibility, proof that financial instruments in accordance with the requirements in this paragraph have been filed with a state in which the applicant is licensed as a viatical settlement provider or viatical settlement broker. The commissioner may ask for evidence of financial responsibility at any time he or she considers it necessary.

(5) If a legal entity has provided a certificate of good standing from the state of its domicile; and

(6) Has provided an antifraud plan that meets the requirements of §33-13C-14(g) of this code.

(e) The commissioner may not issue a license to a nonresident applicant unless the applicant files with the commissioner either a written designation of an agent for service of process or the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the commissioner.

(f) A viatical settlement provider or viatical settlement broker shall provide to the commissioner new or revised information about officers, 10 percent or more stockholders, partners, directors, members, or designated employees within 30 days of the change.

(g) An individual licensed as a viatical settlement broker shall complete on a biennial basis 15 hours of training related to viatical settlements and viatical settlement transactions as required by the commissioner. A life insurance producer operating as a viatical settlement broker pursuant to subdivision (2), subsection (a) of this section is not subject to the requirements of this subsection. Any person failing to meet the requirements of this subsection is subject to the penalties imposed by the commissioner.

#### **§33-13C-4. License revocation and denial.**

(a) The commissioner may refuse to issue, suspend, revoke, place on probation, or refuse to renew the license of a viatical settlement provider or viatical settlement broker if the commissioner finds that:

(1) There was any material misrepresentation in the application for the license;

(2) The licensee or any officer, partner, member, or key management personnel has been convicted of fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise shown to be untrustworthy or incompetent;

(3) The viatical settlement provider demonstrates a pattern of unreasonable payments to viators;

(4) The licensee or any officer, partner, member, or key management personnel has been found guilty of, or has pleaded guilty or nolo contendere to, any felony, or to a misdemeanor involving fraud ~~or moral turpitude~~, regardless of whether a judgment of conviction has been entered by the court: Provided, That the commissioner shall apply §33-13C-3(b) of this code and any relevant legislative rules in determining whether an applicant's prior criminal convictions bear a rational nexus to the license being sought;

(5) The viatical settlement provider has entered into any viatical settlement contract that has not been approved pursuant to this article;

(6) The viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract;

(7) The licensee no longer meets the requirements for initial licensure;

(8) The viatical settlement provider has assigned, transferred or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this state, viatical settlement purchaser, an accredited investor, or qualified institutional buyer as defined respectively in Rule 501(a) or Rule 144A promulgated under the Federal Securities Act of 1933, as amended, financing entity, special purpose entity, or related provider trust; or

(9) The licensee or any officer, partner, member, or key management personnel has violated any provision of this article.

(b) The commissioner may suspend, revoke, or refuse to renew the license of a viatical settlement broker or a life insurance producer operating as a viatical settlement broker pursuant to this article if the commissioner finds that the viatical settlement broker or life insurance producer has violated the provisions of this article or has otherwise engaged in bad faith conduct with one or more viators.

(c) If the commissioner denies a license application or suspends, revokes, or refuses to renew the license of a viatical settlement provider, viatical settlement broker, or life insurance producer operating as a viatical settlement broker, the commissioner shall conduct a hearing in accordance with §33-2-13 of this code.

The bill (Eng. H. B. 4353), as amended, was then ordered to third reading.

**Eng. House Bill 4601**, Relating to distribution of premium tax proceeds to municipal policemen's and firemen's pension and relief funds.

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

The Senate proceeded to the tenth order of business.

At the request of Senator Takubo, unanimous consent being granted, the following bills on first reading were considered read a first time and ordered to second reading:

**Com. Sub. for Senate Bill 6**, Allowing DOH issue permits for certain tractors with certain trailers not exceeding specified maximum axle weights.

**Com. Sub. for Senate Bill 204**, Providing for nonpartisan elections of county prosecuting attorneys.

**Com. Sub. for Com. Sub. for Senate Bill 291**, Requiring PEIA and health insurance providers provide mental health parity.

**Senate Bill 652**, Authorizing School Building Authority promulgate legislative rules.

**Senate Bill 655**, Relating to valuation of natural resources land property.

**Com. Sub. for Senate Bill 686**, Exempting contract and common carrier laws for certain vehicles.

**Com. Sub. for Senate Bill 719**, Imposing health care-related provider tax on certain health care organizations.

**Senate Bill 740**, Clarifying authorized users of Ron Yost Personal Assistance Services Fund.

**Senate Bill 747**, Requiring Bureau for Public Health develop Diabetes Action Plan.

**Senate Bill 748**, Increasing awareness of palliative care services.

**Senate Bill 767**, Relating to licensure of hospitals.

**Eng. Com. Sub. for House Bill 4026**, Exempting businesses transporting scrap tires, waste tires, or other used tires, from certain statutory provisions.

And,

**Eng. House Bill 4501**, Relating to the ability to refuse offenders for commitment to a jail.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senators Beach and Ihlenfeld.

Thereafter, at the request of Senator Blair, and by unanimous consent, the remarks by Senators Beach and Ihlenfeld were ordered printed in the Appendix to the Journal.

The Senate proceeded to the thirteenth order of business.

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

**Com. Sub. for Senate Bill 285** (*Eliminating WV Greyhound Breeding Development Fund*): Senator Plymale.

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were added as co-sponsors to the following bills:

**Com. Sub. for Senate Bill 29** (*Relating to involuntary hospitalization order by physician in certain cases*): Senator Roberts;

**Com. Sub. for Senate Bill 648** (*Providing dental coverage for adult Medicaid recipients*): Senator Rucker;

**Senate Bill 767** (*Relating to licensure of hospitals*): Senator Roberts;

**Senate Bill 774** (*Disposing of unused, unwanted, or expired medications*): Senator Plymale;

**Senate Bill 781** (*Relating to reports regarding collaborative agreements between community and technical colleges and federally registered apprenticeship programs*): Senators Cline and Stollings;

**Senate Bill 785** (*Establishing uniform electioneering prohibition area*): Senator Cline;

**Senate Bill 786** (*Recognizing anesthesiologist assistants*): Senator Cline;

**Senate Bill 788** (*Permitting wagering on certain professional or collegiate sporting events*): Senator Lindsay;

**Senate Bill 790** (*Simplifying process for listing and decertifying road on Coal Resource Transportation System*): Senator Hardesty;

**Senate Bill 791** (*Allowing state and federal criminal history record check of each adult living in residence when minor child is placed there due to emergency*): Senator Cline;

**Senate Bill 792** (*Relating to employment of nurses in public schools*): Senators Hardesty, Plymale, Sypolt, Jeffries, and Romano;

**Senate Bill 793** (*Relating to B&O taxes imposed on certain coal-fired electric generating units*): Senators Cline and Sypolt;

**Senate Bill 794** (*Relating to responsibility for foster care homes by DHHR*): Senators Rucker and Cline;

**Senate Bill 795** (*Limiting initial increase in valuation of residential real property*): Senator Cline;

And,

**Senate Bill 796** (*Permitting prisoners or persons charged with crime be held in jails of counties of residence*): Senator Cline.

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were added as co-sponsors to the following resolutions:

**Senate Concurrent Resolution 33** (*US Air Force MSGT Dvon Duncan Memorial Bridge*): Senators Lindsay and Jeffries;

**Senate Concurrent Resolution 34** (*US Army CPL Dane Hampton Hamric Memorial Bridge*): Senators Lindsay, Stollings, Unger, and Jeffries;



**Senate Concurrent Resolution 35** (*Veterans Memorial Drive*): Senators Lindsay, Roberts, Stollings, and Romano;

**Senate Concurrent Resolution 36** (*Shafer Brothers US Military Veterans Memorial Bridge*): Senators Plymale, Lindsay, Stollings, and Jeffries;

**Senate Resolution 41** (*Designating February 17, 2020, as Pancreatic Cancer Day*): Senators Rucker, Plymale, Lindsay, Stollings, Baldwin, and Romano;

**Senate Resolution 42** (*Commemorating centennial of ratification of 19th Amendment to the US Constitution*): Senators Plymale, Lindsay, Sypolt, Stollings, Unger, Baldwin, and Romano;

**Senate Resolution 43** (*Recognizing President George Washington and President Abraham Lincoln on President's Day*): Senators Rucker, Plymale, Sypolt, Cline, Roberts, Stollings, Unger, and Romano;

And,

**Senate Resolution 44** (*Urging Major League Baseball rescind ill-advised proposal that threatens future of professional baseball in WV*): Senators Ihlenfeld, Plymale, Palumbo, Baldwin, Jeffries, and Romano.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Takubo, at 1:18 p.m., the Senate adjourned until tomorrow, Tuesday, February 18, 2020, at 11 a.m.

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## **SENATE CALENDAR**

**Tuesday, February 18, 2020  
11:00 AM**

### **UNFINISHED BUSINESS**

S. C. R. 39 - US Navy PO1 Jeffrey S. Taylor Memorial Bridge

S. R. 45 - Congratulating St. Mary's High School golf team for winning 2019 Class A state golf championship **[ADOPT]**

### **THIRD READING**

Eng. S. B. 572 - Expiring funds from General Revenue and Lottery Net Profits to various accounts (original similar to HB4488)

Eng. Com. Sub. for S. B. 717 - Relating generally to adult protective services

Eng. S. B. 725 - Supplemental appropriation to various Department of Education accounts

Eng. S. B. 778 - Supplemental appropriation expiring funds from State Excess Lottery Revenue Fund to DHHR

Eng. S. B. 779 - Supplemental appropriation expiring funds in State Excess Lottery Revenue to Department of Veterans' Assistance

Eng. S. B. 780 - Supplemental appropriation by decreasing and adding new appropriation out of Treasury to DMAPS

Eng. H. B. 4353 - Creating a rational nexus requirement between prior criminal conduct and initial licensure decision making (original similar to SB499)

Eng. H. B. 4601 - Relating to distribution of premium tax proceeds to municipal policemen's and firemen's pension and relief funds

### **SECOND READING**

Com. Sub. for S. B. 6 - Allowing DOH issue permits for certain tractors with certain trailers not exceeding specified maximum axle weights

Com. Sub. for S. B. 204 - Providing for nonpartisan elections of county prosecuting attorneys

Com. Sub. for S. B. 285 - Eliminating WV Greyhound Breeding Development Fund

Com. Sub. for Com. Sub. for S. B. 291 - Requiring PEIA and health insurance providers provide mental health parity

S. B. 652 - Authorizing School Building Authority promulgate legislative rules

S. B. 655 - Relating to valuation of natural resources land property

Com. Sub. for S. B. 686 - Exempting contract and common carrier laws for certain vehicles

Com. Sub. for S. B. 719 - Imposing health care-related provider tax on certain health care organizations

S. B. 740 - Clarifying authorized users of Ron Yost Personal Assistance Services Fund

S. B. 747 - Requiring Bureau for Public Health develop Diabetes Action Plan

S. B. 748 - Increasing awareness of palliative care services

S. B. 767 - Relating to licensure of hospitals

Eng. Com. Sub. for H. B. 4026 - Exempting businesses transporting scrap tires, waste tires, or other used tires, from certain statutory provisions - (Com. amend. pending)

Eng. H. B. 4501 - Relating to the ability to refuse offenders for commitment to a jail - (Com. amend. and title amend. pending) (original similar to SB617)

### **FIRST READING**

Com. Sub. for S. B. 502 - Relating to methamphetamine criminal penalty

S. B. 562 - Expunging certain criminal convictions

S. B. 610 - Removing resident manager requirement for Alcohol Beverage Control Administration

Com. Sub. for S. B. 692 - Clarifying persons indicted or charged jointly for felony offense can move to have separate trial

**ANNOUNCED SENATE COMMITTEE MEETINGS**

**Regular Session 2020**

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**Tuesday, February 18, 2020**

9:30 a.m.

Transportation & Infrastructure

(Room 451M)