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April 10, 2021
SIXTIETH DAY

Saturday, April 10, 2021

SIXTIETH DAY

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

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

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

The Clerk proceeded to read the Journal of Friday, April 9, 2021, being the first order of business, when the further reading thereof was dispensed with and the same approved.

Messages from the Executive

Delegate Hanshaw (Mr. Speaker) presented communications from His Excellency, the Governor, advising that on April 9, 2021, he approved **Com. Sub. for H. B. 2024, Com. Sub. for H. B. 2793 and H. B. 3292.**

Messages from the Senate

A message from the Senate, by

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

H. B. 2029, Relating to teacher preparation clinical experience programs.

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

On page thirteen, section two-a, line ninety-seven, by striking out the words “subsection (e), section one of this article” and inserting in lieu thereof the words “§18A-3-1(e) of this code”.

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 586**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Hamrick.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2029) passed.

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

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

Com. Sub. for H. B. 2145, Relating to student aide class titles.

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

On page four, section eight, lines ninety-two through ninety-three, by striking out the words “These classes are designed to improve skills and competency’s related to the provision of services to special needs students.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 587**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Hamrick.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2145) passed.

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

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

Com. Sub. for H. B. 2221, Relating to the establishment of an insurance innovation process.

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

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

“ARTICLE 60. INSURANCE INNOVATION.

§33-60-1. Definitions.

For the purposes of this article, unless the context otherwise indicates:

‘Applicant’ means a person or entity that has filed an application under §33-60-2 of this code.

‘Beta test’ means the phase of testing of an insurance innovation in the regulatory sandbox through the use, sale, license, or availability of the insurance innovation by or to clients or consumers under the supervision of the commissioner.

'Client' means a person, other than a consumer, utilizing a participant's insurance innovation during a beta test to carry on some activity regulated by the commissioner.

'Commissioner' means the West Virginia Insurance Commissioner or the West Virginia Offices of the Insurance Commissioner, as appropriate.

'Extended no-action letter' means a public notice setting forth the conditions for an extended safe harbor beyond the beta test under which the commissioner will not take any administrative or regulatory action against any person using the insurance innovation described in the extended no-action letter.

'Innovation' means any product, process, method, or procedure relating to the sale, solicitation, negotiation, fulfillment, administration, or use of any product or service regulated by the commissioner:

(A) That has not been used, sold, licensed, or otherwise made available in this state before the filing date of the application, whether or not the product or service is marketed or sold directly to consumers; and

(B) That has regulatory and statutory barriers that prevent its use, sale, license, or availability within this state.

'Innovation's utility' means an evaluation by the commissioner of the insurance innovation's ability to adequately satisfy factors set forth in §33-60-2(a)(2)(A) of this code.

'Limited no-action letter' or 'limited letter' means a letter setting forth the conditions of a beta test and establishing a safe harbor under which the commissioner will not take any administrative or regulatory action against a participant or client of the participant concerning the compliance of the insurance innovation with West Virginia law so long as the participant or client abides by the terms and conditions established in the limited no-action letter.

'Participant' means an applicant that has been issued a limited no-action letter under §33-60-4 of this code.

'Person' means a person or entity.

'Qualified United States financial institution' means an institution that:

(A) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

(B) Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies; and

(C) Has been determined by either the commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

'Regulatory sandbox' means the process established under this article by which an applicant may apply to beta test and obtain a limited no-action letter for an innovation, potentially resulting in the issuance of an extended no-action letter.

§33-60-2. Application for admission to regulatory sandbox.

(a) Except as provided in subsection (b) of this section, on or before December 31, 2025, an applicant may apply to the commissioner for admission to the regulatory sandbox by submitting an application in the form prescribed by the commissioner, accompanied by the following:

(1) A filing fee of \$750;

(2) A detailed description of the innovation, which shall include:

(A) An explanation of how the innovation will:

(i) Add value to customers and serve the public interest;

(ii) Be economically viable for the applicant;

(iii) Provide suitable consumer protection; and

(iv) Pose no unreasonable risk of consumer harm.

(B) A detailed description of the statutory and regulatory issues that prevents the innovation from being utilized, issued, sold, solicited, distributed, or advertised in the market currently;

(C) A description of how the innovation functions, as well as the manner in which it will be offered or provided;

(D) If the innovation involves the use of software, hardware, or other technology developed for the purpose of implementing or operating it, a technical white paper setting forth a description of the operation and general content of technology to be utilized, including:

(i) The problem addressed by that technology; and

(ii) The interaction between that technology and its users;

(E) If the innovation involves the issuance of a policy of insurance, a statement that:

(i) If the applicant will be the insurer on the policy, the applicant holds a valid license or certificate of authority and is authorized to issue the insurance coverage in question; or

(ii) If some other person will be the insurer on the policy, the other person holds a valid license or certificate of authority and is authorized to issue the insurance coverage in question; and

(F) A statement by an officer of the applicant certifying that no product, process, method, or procedure substantially similar to the innovation has been used, sold, licensed, or otherwise made available in this state before the filing date of the application;

(3) The name, contact information, and bar number of the applicant's insurance regulatory counsel, which shall be a person with experience providing insurance regulatory compliance advice;

(4) A detailed description of the specific conduct that the applicant proposes should be permitted by the limited no-action letter;

(5) Proposed terms and conditions to govern the applicant's beta test, which shall include:

(A) Citation to the provisions of West Virginia law that should be excepted in the notice of acceptance issued under §33-60-3(d)(2) of this code; and

(B) Any request for an extension of the time period for a beta test under §33-60-5(a) of this code and the grounds for the request;

(6) Proposed metrics by which the commissioner may reasonably test the innovation's utility during the beta test;

(7) Disclosure of all:

(A) Persons who are directors and executive officers of the applicant;

(B) General partners of the applicant if the applicant is a limited partnership;

(C) Members of the applicant if the applicant is a limited liability applicant;

(D) Persons who are beneficial owners owning 10 percent or more of the voting securities of the applicant;

(E) Other persons with direct or indirect authority to direct the management and policies of the applicant by contract, other than a commercial contract for goods or nonmanagement services; and

(F) Conflicts of interest with respect to any person listed in this subdivision and the commissioner;

(8) A statement that the applicant has funds of at least \$25,000 available to guarantee its financial stability through one or a combination of any of the following:

(A) A contractual liability insurance policy;

(B) A surety bond issued by an authorized surety;

(C) Securities of the type eligible for deposit by authorized insurers in this state;

(D) Evidence that the applicant has established an account payable to the commissioner in a federally insured financial institution in this state and has deposited money of the United States in an amount equal to the amount required by this subdivision that is not available for withdrawal except by direct order of the commissioner;

(E) A letter of credit issued by a qualified United States financial institution; or

(F) Another form of security authorized by the commissioner; and

(9) A statement confirming that the applicant is not seeking authorization for, nor shall it engage in, any conduct that would render the applicant unauthorized to make an application under subsection (b) of this section.

(b)(1)The following persons shall not be authorized to make an application to the commissioner for admission to the regulatory sandbox:

(A) Any person seeking to sell or license an insurance innovation directly to any federal, state, or local government entity, agency, or instrumentality as the insured person or end user of the innovation;

(B) Any person seeking to sell, license, or use an insurance innovation that is not in compliance with §33-60-2(a)(2)(E) of this code;

(C) Any person seeking to make an application that would result in the person having more than five active beta tests ongoing within the state at any one time; or

(D) Any person seeking a limited or extended no-action letter or exemption from any administrative regulation or statute concerning:

(i) Assets, deposits, investments, capital, surplus, or other solvency requirements applicable to insurers;

(ii) Required participation in any assigned risk plan, residual market, or guaranty fund;

(iii) Any licensing or certificate of authority requirements; or

(iv) The application of any taxes or fees.

(2) For the purposes of this subsection, ‘federal, state, or local government entity, agency, or instrumentality’ includes but is not limited to any county, city, municipal corporation, local government, special district, public school district, or public institution of education.

§33-60-3. Acceptance or rejection of application.

(a)(1) Unless extended as provided in §33-60-3(a)(2) of this code, the commissioner shall issue a notice of acceptance or rejection in accordance with this section within 60 days from the date an application is received.

(2) The commissioner may extend by not more than 30 days the period provided in subdivision (1) of this subsection if he or she notifies the applicant before expiration of the initial 60-day period.

(3) An application that has not been accepted or rejected by a notice of acceptance or rejection issued by the commissioner prior to expiration of the initial 60-day period, or if applicable, the period provided in §33-60-3(a)(2) of this code, shall be deemed accepted.

(b) The commissioner may request from the applicant any additional material or information necessary to evaluate the application, including but not limited to:

(1) Proof of financial stability;

(2) A proposed business plan;

(3) Pro-forma financial statement; and

(4) Executive profiles on the applicant and its leadership demonstrating insurance or insurance-related industry experience and applicable experience in the use of the technology.

(c) The commissioner shall review the application to:

(1) Identify and assess:

(A) The potential risks to consumers, if any, posed by the innovation; and

(B) The manner in which the innovation would be offered or provided; and

(2) Determine whether it satisfies the following requirements:

(A) The application satisfies the requirements of §33-60-2 of this code;

(B) The application proposes a product, process, method, or procedure that meets the definition of innovation under §33-60-1 of this code;

(C) Approval of the application does not pose an unreasonable risk of consumer harm;

(D) The application identifies statutory or regulatory requirements that actually prevent the innovation from being utilized, issued, sold, solicited, distributed, or advertised in this state; and

(E) The application proposes an innovation that is not substantially similar to another innovation:

(i) That has been previously beta tested; or

(ii) Proposed in an application that is currently pending with the commissioner.

(d) Upon review of the application, the commissioner shall, in his or her discretion, issue one of the following:

(1) If the commissioner determines that the application fails to satisfy any of the requirements under §33-60-3(c)(2) of this code, he or she shall:

(A) Issue a notice of rejection to the applicant; and

(B) Describe in the notice of rejection the specific defects in the application; or

(2) If the commissioner determines that the application satisfies the requirements of §33-60-3(c)(2) of this code, he or she shall issue a notice of acceptance to the applicant. The notice of acceptance shall:

(A) Set forth the terms and conditions that will govern the applicant's beta test, which shall include, at a minimum:

(i) A requirement that the applicant:

(I) Abide by all West Virginia law, except where explicitly excepted;

(II) Utilize the insurance innovation within this state; and

(III) Report any change in the disclosures made pursuant to §33-60-2(a)(7) of this code;

(ii) A notice of the licenses required to be obtained prior to the commencement of the beta test;

(iii) Monthly reporting obligations structured to determine the progress of the beta test;

(iv) Consumer protection measures deemed necessary by the commissioner to be employed by the applicant;

(v) The level of financial stability required to be in place for the beta test. The commissioner may increase, decrease, or waive the requirements for financial stability required under §33-60-2(a)(8) of this code, commensurate with the risk of consumer harm posed by the insurance innovation;

(vi) The duration of the beta test, including any extension authorized under §33-60-5 of this code;

(vii) Permitted conduct under the limited letter;

(viii) Any limits established by the commissioner on the:

(I) Financial exposure that may be assumed by an applicant during the beta test;

(II) Number of customers an applicant may accept; and

(III) Volume of transactions that an applicant or its clients may complete during the beta test;
and

(ix) The metrics the commissioner intends to use to determine the innovation's utility; and

(B) Provide that the notice of acceptance shall expire unless:

(i) It is accepted by the applicant in writing; and

(ii) The acceptance is filed with the commissioner within 60 days of the issuance of the notice.

(e) An applicant may request a hearing pursuant to §33-2-13 of this code on:

(1) A notice of rejection; and

(2) A notice of acceptance, if the request is made prior to its expiration.

§33-60-4. Limited no-action letter.

(a) Within 10 days following the timely receipt of an acceptance pursuant to §33-60-3(d)(2)(B) of this code, the commissioner shall issue a limited no-action letter that:

(1) Sets forth terms and conditions for the participant that are the same as those set forth in the notice of acceptance issued under §33-60-3(d)(2) of this code; and

(2) Provides that so long as the participant and any clients of the participant abide by the terms and conditions set forth in the letter, no administrative or regulatory action concerning the compliance of the insurance innovation with West Virginia law will be taken by the commissioner against the participant or any clients during the term of the beta test.

(b) If the application is deemed accepted under §33-60-3(a)(3) of this code, the proposed limited no-action letter included with the application shall be deemed to have the effect of a limited letter issued by the commissioner.

(c) The safe harbor of the limited letter shall persist until the earlier of:

(1) The early termination of the beta test under §33-60-5 of this code;

(2) The issuance of an extended no-action letter; or

(3) The issuance of a notice declining to issue an extended no-action letter.

(d) The commissioner shall publish all limited letters issued pursuant to this section on the commissioner's publicly accessible internet website.

§33-60-5. Time period of beta test; extension of time period; penalties for violation of limited no-action letter.

(a) The time period for a beta test shall be three years. The time period may be extended by the commissioner in the notice of acceptance for a period that is not longer than one year if a request is made in accordance with §33-60-2(a)(5)(B) of this code.

(b) During the beta test, the participant and any clients of the participant shall:

(1) Comply with all terms and conditions set forth in the limited no-action letter; and

(2) Provide the commissioner with all documents, data, and information requested by the commissioner.

(c) For any violation of the terms or conditions set forth in the limited letter, the commissioner may:

(1) Issue an order terminating the beta test and the safe harbor of the limited letter before the time period set forth in the limited letter has expired; and

(2) Impose a fine of not more than \$2,000 per violation.

(d) The commissioner may issue an order under §33-60-5(c) of this code if, following receipt of information or complaints, the commissioner determines the beta test is causing consumer harm.

(e) The commissioner may issue an order requiring a client to cease and desist any activity violating the terms or conditions set forth in the limited letter. The issuance of a cease and desist order to one client shall not otherwise impact the ability of the participant or any other clients to

continue activities relating to the innovation in a manner compliant with the requirements of the limited letter.

(f) A participant or client may request a hearing on any order issued under this section pursuant to §33-2-13 of this code.

§33-60-6. Extended no-action letter; review of beta test.

(a) Within 60 days of completion of the beta test, unless the time period is extended up to 30 days upon notice from the commissioner, the commissioner shall issue an extended no-action letter or a notice declining to issue an extended no-action letter. The participant may continue to employ the insurance innovation pursuant to the terms and conditions of the limited letter during the period between the completion of the beta test and the issuance of either an extended no-action letter or a notice declining to issue an extended no-action letter.

(b) The commissioner shall review the results of the beta test to determine whether the innovation satisfies the following requirements:

(1) The data presented demonstrates that the innovation's utility was meritorious of an extension;

(2) Regulatory and statutory barriers prevent continued use of the innovation within this state;

(3) The innovation provided a benefit to West Virginia consumers; and

(4) The issuance of an extended no-action letter:

(A) Presents no risk of unreasonable harm to consumers or the marketplace; and

(B) Serves the public interest.

(c) Upon review of the results of the beta test the commissioner shall, in his or her discretion, issue one of the following:

(1) If the commissioner determines that the innovation fails to satisfy any of the requirements under §33-60-6(b) of this code, he or she shall:

(A) Issue a notice declining to issue an extended no-action letter;

(B) Describe in the notice the reasons for the declination;

(C) Notify the participant for the innovation of the notice; and

(D) Publish the notice on the commissioner's publicly accessible Internet website; or

(2) If the commissioner determines that the innovation satisfies the requirements under §33-60-6(b) of this code, he or she shall issue an extended no-action letter. An extended no-action letter issued by the commissioner shall include:

(A) A description of the insurance innovation and the specific conduct permitted by the extended no-action letter in sufficient detail to enable any person to use the innovation or a

product, process, method, or procedure not substantially different from the innovation within the safe harbor of the extended no-action letter;

(B) Notice of any certificate of authority, license, or permit the commissioner determines is necessary to use, sell, or license the innovation, or make the innovation available, in this state;

(C) An expiration date not greater than three years following the date of issuance;

(D) Notice that the extended no-action letter may:

(i) Be modified only by:

(I) Legislative rule proposed by the commissioner, if the safe harbor addresses a requirement established by rule; or

(II) An act of the Legislature; and

(ii) Be rescinded prior to its expiration if the commissioner receives complaints and determines continued activity poses a risk of harm to consumers;

(E) Clarification of required procedures related to the issuance and cancellation of any policies of insurance, if applicable, due to the expiration period; and

(F) Notice that, upon expiration, all persons relying on the extended no-action letter shall cease and desist operations related to the innovation unless changes have been made to West Virginia law to permit the innovation by:

(i) The promulgation of a legislative rule by the commissioner, if the safe harbor addresses a requirement established by rule; or

(ii) An act of the Legislature.

(d) A hearing on a notice of declination may be requested in accordance with §33-2-13 of this code.

(e) An extended no-action letter issued by the commissioner pursuant to this section shall be published on the commissioner's publicly accessible internet website.

§33-60-7. Confidentiality of information.

(a) All documents, materials, or other information in the possession or control of the commissioner that are created, produced, obtained, or disclosed in relation to this article and that relate to the financial condition of any person shall be confidential by law and privileged, are not subject to the provisions of chapter 29B of this code, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action.

(b) Notwithstanding any law to the contrary, the commissioner may disclose in an extended no-action letter any information relating to the insurance innovation necessary to clearly establish the safe harbor of the extended no-action letter.

§33-60-8. Reports to the Legislature.

(a) On or before September 1 each year during which there was activity pursuant to this article during the prior fiscal year, the commissioner shall submit a written report to the Joint Committee on Government and Finance that meets the requirements of §33-60-8(b) of this code.

(b) The report shall include the following:

(1) The number of:

(A) Applications filed and accepted;

(B) Beta tests conducted; and

(C) Extended no-action letters issued;

(2) A description of the innovations tested;

(3) The length of each beta test;

(4) The results of each beta test;

(5) A description of each safe harbor created under §33-60-6 of this code;

(6) The number and types of orders or other actions taken by the commissioner or any other interested party under this article;

(7) Identification of any statutory barriers for consideration by the Legislature following successful beta tests and the issuance of extended no-action letters; and

(8) Any other information or recommendations deemed relevant by the commissioner.

(c) The commissioner shall also, upon request of any committee of the Legislature, testify and explain any report submitted under this section and any activity pursuant to this article.

§33-60-9. Reciprocity agreements.

The commissioner may enter into agreements with state, federal, or foreign regulatory agencies to allow persons who make an insurance innovation available in West Virginia through the regulatory sandbox to make their insurance innovation available in other jurisdictions and to allow persons operating in similar regulatory sandboxes in other jurisdictions to make insurance innovations available in West Virginia under the standards of this article.

§33-60-10. Rulemaking.

(a) The Insurance Commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code for the purposes of administering this article.

(b) The Insurance Commissioner shall develop all forms, contracts, or other documents to be used for the purposes outlined in this article."

And,

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

Com. Sub. for H. B. 2221 – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-60-1, §33-60-2, §33-60-3, §33-60-4, §33-60-5, §33-60-6, §33-60-7, §33-60-8, §33-60-9, and §33-60-10, all relating to the establishment of an insurance innovation process; defining terms; setting forth application requirements; prohibiting certain persons from applying; providing for the acceptance or rejection of the application by the Insurance Commissioner; requiring that the Insurance Commissioner set forth certain terms and conditions that will govern a proposed insurance innovation; providing that the Insurance Commissioner issue a limited no-action letter that establishes a safe harbor under which the commissioner will not take administrative or regulatory action against a participant or client of the participant; establishing the time period of the safe harbor and for the extension thereof; setting forth the requirements that a participant must adhere to during the safe harbor period; providing for penalties regarding violations of the terms contained in a limited no-action letter; providing the right to an administrative hearing; setting forth the criteria for the Insurance Commissioner to issue an extended no-action letter; providing for what the extended no-action letter must contain; requiring that documents and other information submitted to the Insurance Commissioner in relation to the insurance innovation be confidential and privileged; allowing the Insurance Commissioner to disclose in the extended no-action letter any information necessary to clearly establish the safe harbor; requiring the Insurance Commissioner to provide reports and, upon request, briefings to the Legislature; allowing the Insurance Commissioner to enter into reciprocity agreements with state, federal, or foreign regulatory agencies; and requiring rulemaking.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 588**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2221) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2266, Relating to expanding certain insurance coverages for pregnant women.

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

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

“§9-5-12. Medicaid program; maternity and infant care.

~~(a) The Legislature finds that high rates of infant mortality and morbidity are costly to the state in terms of human suffering and of expenditures for long-term institutionalization, special~~

~~education, and medical care. It is well documented that appropriate care during pregnancy and delivery can prevent many of the expensive, disabling problems our children experience. There exists a crisis in this state relating to the availability of obstetrical services, particularly to patients in rural areas, and to the cost patients must pay for obstetrical services. The availability of obstetrical service for Medicaid patients enables these patients to receive quality medical care and to give birth to healthier babies and, consequently, improve the health status of the next generation.~~

~~The Legislature further recognizes that public and private insurance mechanisms remain inadequate, and poor and middle income women and children are among the most likely to be without insurance. Generally, low income, uninsured children receive half as much health care as their insured counterparts. The state is now investing millions to care for sick infants whose deaths and disabilities could have been avoided.~~

~~It is the intent of the Legislature that the Department of Health and Human Resources participate in the Medicaid program for indigent children and pregnant women established by Congress under the Consolidated Omnibus Budget Reconciliation Act (COBRA), Public Law 99-272, the Sixth Omnibus Budget Reconciliation Act (SOBRA), Public Law 99-504, and the Omnibus Budget Reconciliation Act (OBRA), Public Law 100-203.~~

~~(b)~~ (a) The department shall:

(1) Extend Medicaid coverage to pregnant women and their newborn infants to 185 percent of the federal poverty level and to provide coverage up to ~~60 days~~ 1-year postpartum care, effective July 1, ~~2019,~~ 2021 or as soon as federal approval has occurred.

(2) As provided under ~~COBRA, SOBRA, and OBRA~~ the Consolidated Omnibus Budget Reconciliation Act (COBRA), Public Law 99-272, the Sixth Omnibus Budget Reconciliation Act (SOBRA), Public Law 99-509, and the Omnibus Budget Reconciliation Act (OBRA), Public Law 100-203, effective July 1, 1988, infants shall be included under Medicaid coverage with all children eligible for Medicaid coverage born after October 1, 1983, whose family incomes are at or below 100 percent of the federal poverty level and continuing until such children reach the age of eight years.

(3) Elect the federal options provided under COBRA, SOBRA, and OBRA impacting pregnant women and children below the poverty level: *Provided*, That no provision in this article shall restrict the department in exercising new options provided by or to be in compliance with new federal legislation that further expands eligibility for children and pregnant women.

(4) The department is responsible for the implementation and program design for a maternal and infant health care system to reduce infant mortality in West Virginia. The health system design shall include quality assurance measures, case management, and patient outreach activities. The department shall assume responsibility for claims processing in accordance with established fee schedules and financial aspects of the program necessary to receive available federal dollars and to meet federal rules and regulations.

(5) ~~Beginning July 1, 1988,~~ The department shall increase to no less than \$600 the reimbursement rates under the Medicaid program for prenatal care, delivery, and post-partum care.

~~(c)~~ (b) In order to be in compliance with the provisions of OBRA through rules and regulations, the department shall ensure that pregnant women and children whose incomes are above the Aid to Families and Dependent Children (AFDC) payment level are not required to apply for entitlements under the AFDC program as a condition of eligibility for Medicaid coverage. Further, the department shall develop a short, simplified pregnancy/pediatric application of no more than three pages, paralleling the simplified OBRA standards.

~~(d)~~ (c) Any woman who establishes eligibility under this section shall continue to be treated as an eligible individual without regard to any change in income of the family of which she is a member until the end of the ~~60-day~~ 1 year period beginning on the last day of her pregnancy.

~~(e)~~ (d) The department shall make payment for tubal ligation without requiring at least 30 days between the date of informed consent and the date of the tubal ligation procedure.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 589**), and there were—yeas 98, nays 2, absent and not voting none, with the nays being as follows:

Nays: J. Jeffries and McGeehan.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2266) passed.

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

On this question, the yeas and nays were taken (**Roll No. 590**), and there were—yeas 98, nays 2, absent and not voting none, with the nays being as follows:

Nays: J. Jeffries and McGeehan.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2266) takes effect from its passage.

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

A message from the Senate, by

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

H. B. 2379, Make criminal invasion of privacy a felony.

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

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

“(b) It is unlawful for a person to knowingly visually portray another person without that other person’s knowledge, while that other person is fully or partially nude and is in a place where a reasonable person would have an expectation of privacy. A person who violates the provisions of

this subsection is guilty of a misdemeanor and, upon conviction, shall be confined in a county or regional jail for not more than one year or fined not more than \$5,000, or both.”

And,

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

“(d) Notwithstanding the provisions of subsections (b) or (c) of this section, any person who is convicted of a second or subsequent violation of subsection (b) or (c) of this section, or who violates subsection (b) or (c) of this section with the intent to cause psychological or emotional injury to another is guilty of a felony, and, upon conviction thereof, shall be fined not more than \$10,000 or imprisoned in a state correctional facility for not less than one nor more than three years, or both fined and imprisoned.”

And,

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

H. B. 2379 – “A Bill to amend and reenact §61-8-28 of the Code of West Virginia, 1931, as amended, relating to the offense of criminal invasion of privacy, generally; creating the felony offenses of displaying or distributing a visual display of another in violation of the section with the intent to cause psychological or emotional injury to another; and establishing penalties.”

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

A message from the Senate, by

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

Com. Sub. for H. B. 2573, Relating generally to the transparency and accountability of state grants to reduce waste, fraud, and abuse.

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

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

“ARTICLE 10. WEST VIRGINIA DEVELOPMENT ACHIEVEMENTS TRANSPARENCY ACT.

§5B-10-1. Short title.

This article shall be known and cited as the ‘West Virginia Development Achievements Transparency Act’ or the ‘West Virginia DATA Act’.

§5B-10-2. Purpose and findings.

(a) The Legislature finds that public tax dollars are expended annually, whether directly in the form of grants or indirectly in the form of tax credits and incentives, for the purpose of developing and improving economic industries within the State of West Virginia.

(b) The Legislature further finds that the State of West Virginia should inform state taxpayers about these direct or indirect expenditures, the objectives of the expenditures, and whether the state met the intended objectives of the expenditures.

(c) The Legislature further finds that any funds deposited into the Grant Recovery Fund pursuant to §12-4-14(e)(10) of this code should be appropriated by the Legislature to the granting body that originally granted the funds to a grantee or subgrantee.

§5B-10-3. Definitions.

For the purpose of this article:

'Auditor' means the State Auditor of West Virginia, by himself or herself, or by any person appointed, designated, or approved by the State Auditor to perform the service.

'Business type' means the legal form of organization of a corporate parent or recipient corporation, including, but not limited to, a corporation, partnership, sole proprietorship, or limited liability company.

'Corporate parent' means any person, association, corporation, joint venture, partnership, or other entity that owns or controls 50 percent or more of a recipient corporation.

'Confidential information' means any internal, deliberative, preliminary, proprietary, personal, or protected economic development or taxpayer information as defined in §5B-10-6 of this code, §11-10-5d of this code, or Chapter 29B of this code, that is exempt from public disclosure.

'Date of subsidy' means the date that a granting body provides the initial monetary value of a development subsidy to a recipient corporation: *Provided*, That where the subsidy is for the installation of new equipment, such date shall be the date the recipient corporation puts the equipment into service: *Provided, however*, That where the subsidy is for improvements to property, such date shall be the date the improvements are finished, or the date the recipient corporation occupies the property, whichever is earlier.

'Development subsidy' means any financial transaction of public funds with an aggregate value of at least \$10,000 for the purpose of stimulating economic development within the state, including, but not limited to, bonds, grants, loans, loan guarantees, enterprise zones, empowerment zones, tax increment financing, sponsorships, fee waivers, land price subsidies, matching funds, tax abatements, tax exemptions, and tax credits.

'Duration of subsidy' means as many years as a subsidy benefits a recipient corporation, such as the time period of a grant, the number of years a tax credit may be claimed and/or carried forward, the number of years or term length of a loan, or the number of years a property tax reduction applies.

'Full-time job' means a job in which an individual is employed by a recipient corporation for at least 35 hours per week.

'Granting body' means any agency, board, office, public-private partnership, public benefit corporation or authority of the state or local government that provides a development subsidy to a recipient corporation.

'NAICS code' means the assigned code maintained by the North American Industry Classification System which describes a particular industry.

'New Employee' means a full-time employee who represents a net increase in the number of individuals employed by the recipient corporation in the state. 'New employee' does not include an employee who performs a job that was previously performed by another employee of the recipient corporation if that job existed for at least six months before hiring the employee.

'Official report' means a formal, written report prepared by a granting body delivered to a third party, including, but not limited to, the Joint Committee on Government and Finance, Governor's Office, or the public.

'Part-time job' means a job in which an individual is employed by a recipient corporation for less than 35 hours per week.

'Project site' means the site of a project for which any development subsidy is provided, as specified by street address, city name, and zip code.

'Recipient corporation' means any person, association, corporation, joint venture, partnership or other entity that receives a development subsidy.

'Subsidy type' means the classification of a development subsidy transaction, including, but not limited to, bonds, grants, loans, loan guarantees, enterprise zones, empowerment zones, tax increment financing, grants, fee waivers, land price subsidies, matching funds, tax abatements, tax exemptions, and tax credits.

'Subsidy value' means the face value of any and all development subsidies provided to a recipient corporation. The face value of a loan means the amount of the loan.

'Temporary job' means a job in which an individual is hired for a season or for a limited period of time.

§5B-10-4. Reporting requirements.

(a) Within 30 days of the end of the fiscal year, each granting body shall provide the Auditor with the information required in §5B-10-6 of this code for each development subsidy provided to a recipient corporation by a granting body: *Provided*, That no development subsidy approved and legally obligated by the State of West Virginia shall be exempt from disclosure under this article.

(b) The Auditor shall provide guidance to each granting body regarding the standard and manner of reporting specified in this section.

(c) The Auditor may accept one or multiple official reports of a granting body to satisfy the requirements of this section provided the information provided in the official reports discloses the information required by §5B-10-6 of this code.

(d) The West Virginia Department of Economic Development may fulfill the requirements of this section on behalf of any granting bodies.

(e) The West Virginia Department of Economic Development may fulfill the requirements of this section by providing any agreements entered into or signed by the West Virginia Department

of Economic Development which obligates public funds as of the date the agreement is entered into, signed or otherwise made public.

§5B-10-5. Auditor's searchable economic development website created.

No later than January 1, 2022, the Auditor shall develop and make publicly available a searchable financial transparency website containing the information specified in §5B-10-6 of this code.

§5B-10-6. Contents of the searchable website.

(a) The Auditor shall include as part of the searchable economic development transparency website the following content for each fiscal year and the previous three fiscal years:

(1) The name of the recipient corporation of a development subsidy: *Provided*, That if a name of a recipient corporation of a development subsidy be considered confidential information, the granting body shall provide the business type of the recipient corporation instead of the name;

(2) The name of the corporate parent of the recipient corporation, if applicable: *Provided*, That should a name of a corporate parent of a recipient corporation of a development subsidy be considered confidential information, the granting body shall provide the business type of the corporate parent instead of the name;

(3) The project site: *Provided*, That should the project site be considered confidential information, the granting body shall provide the city, state, and zip code, but not the street address;

(4) The NAICS code or codes of the recipient corporation;

(5) The date of subsidy;

(6) The subsidy value;

(7) The duration of subsidy;

(8) The subsidy type;

(9) The number of new employees the development subsidy is expected to create within the duration of subsidy, classified by full-time jobs, part-time jobs, and temporary jobs;

(10) The number of new employees the development subsidy has actually created within the duration of subsidy, classified by full-time jobs, part-time jobs, and temporary jobs: *Provided*, That this number may be estimated if an accurate count is not available, but the granting body shall clearly disclose that the reported number is an estimate;

(11) Any other direct or indirect benefits to the state the granting body intends the development subsidy to achieve, including, but not limited to, creation of public infrastructure, vocational training, apprenticeships, workforce development, or state tourism visitor or permanent resident population increases;

(12) Any other direct or indirect benefit to the state actually achieved by the development subsidy, including, but not limited to, creation of public infrastructure, vocational training,

apprenticeships, workforce development, or state tourism visitor or permanent resident population increases; and

(13) The name or names of the granting body or bodies providing the development subsidy.

§5B-10-7. Confidentiality.

(a) Nothing in this article may be construed as requiring the West Virginia Department of Economic Development or the West Virginia Tax Department to release confidential information as defined in this article.

(b) If information regarding a development subsidy is confidential information, a granting body shall redact only those confidential items but shall disclose any other information pertaining to a development subsidy that is not confidential information.

(c) The Auditor may consult with the granting body to determine the confidentiality of development subsidy data required in §5B-10-6 of this code and determine the appropriate disclosures on the searchable economic development website created in §5B-10-5 of this code to preserve confidentiality.

(d) The Auditor shall identify any redacted items not appearing on the searchable economic development transparency website and the justification as to why the items were redacted.

§5B-10-8. Source and accuracy of information; failure to report.

(a) To fulfill the requirements of this article, a granting body may independently compile the information required in §5B-10-6 of this code or request the information from a recipient corporation.

(b) A granting body shall review information received from a recipient corporation to ensure it is reasonably accurate but is not required to audit or certify the accuracy of the information.

(c) The Auditor shall publish a list on the searchable economic development transparency website detailing any granting body or recipient corporation who fails to comply with the requirements of this article.

(d) The Auditor shall publish a list on the searchable economic development transparency website detailing any granting body or recipient corporation who intentionally submits false, misleading, or fraudulent information: *Provided*, That the Auditor shall notify the Joint Committee on Government and Finance of any granting body or recipient corporation who intentionally submits false, misleading, or fraudulent information to the Auditor.

§5B-10-9. Public hearings.

The Auditor may conduct public hearings or training sessions to assist any recipient corporation or granting body in complying with the requirements of this article.

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-14. West Virginia Grant Transparency and Accountability Act; Accountability of grantees receiving state funds or grants; procedures, reporting, auditing,

investigations, and recovery; sworn statements by volunteer fire departments; rule making, criminal penalties.

(a) This section may be cited as The West Virginia Grant Transparency and Accountability Act. The West Virginia Grant Transparency and Accountability Act is intended to develop a coordinated, nonredundant process for the effective oversight and monitoring of grant recipients, thereby ensuring quality programs and limiting fraud, waste, and abuse.

~~(a)~~ (b) For the purposes of this section:

(1) 'Grantor' means a state spending unit awarding a state grant.

(2) 'Grantee' means any entity receiving a state grant, including a state spending unit, local government, corporation, partnership, association, individual, or other legal entity.

(3) 'Subgrantee' means an entity, including a state spending unit, local government, corporation, partnership, association, individual, or other legal entity, who receives grant money from a grantee who was awarded a state grant.

~~(3)~~ (4) 'Report' means an engagement, such as an agreed-upon procedures engagement or other attestation engagement, performed and prepared by a certified public accountant to test whether state grants were spent as intended. The term 'report' does not mean a full-scope audit or review of the person receiving state funds.

~~(4)~~ (5) 'State grant' means funding provided by a state spending unit, regardless of the original source of the funds, to a grantee upon application for a specific purpose. The term 'state grant' does not include: (A) Payments for goods and services purchased by a state spending unit; (B) compensation to state employees and public officials; (C) reimbursements to state employees and public officials for travel or incidental expenses; (D) grants of student aid; (E) government transfer payments; (F) direct benefits provided under state insurance and welfare programs; (G) funds reimbursed to a person for expenditures made for qualified purposes when receipts for the expenditures are required prior to receiving the funds; (H) retirement benefits; and (I) federal pass-through funds that are subject to the federal Single Audit Act Amendments of 1996, 31 U.S.C. § 7501 *et seq.* The term 'state grant' does not include formula distributions to volunteer and part-volunteer fire departments and fire companies made pursuant to §33-3-14d, §33-3-33, §33-12C-7 of this code and does not include money received from the Fire Service Equipment and Training Fund as provided in §29-3-5f of this code.

(6) 'West Virginia debarred list' means the list maintained by the State Auditor that contains the names of individuals and entities that are ineligible, either temporarily or permanently, from receiving an award of grant funds from the state.

(7) 'State Auditor' means the State Auditor of West Virginia, by himself or herself, or by any person appointed, designated, or approved by the State Auditor to perform the service.

(8) 'Stop payment order' means a communication from the state grant-making agency to the State Auditor and the State Treasurer, following procedures by the State Auditor, causing the cessation of payments to a grantee or subgrantee as a result of the grantee or subgrantee's failure to comply with one or more terms of the grant or subgrant, violations of law, or the initiation of an audit or investigation.

(9) 'Stop payment procedure' means the procedure created by the State Auditor which effects a stop payment order or the lifting of a stop payment order.

~~(b)~~ (c) (1) Any grantee who receives one or more state grants in the amount of \$50,000 or more in the aggregate in a state's fiscal year shall file with the grantor and the State Auditor a report of the disbursement of the state grant funds. When the grantor causes an audit, by an independent certified public accountant, to be conducted of the grant funds, the audit is performed using generally accepted government auditing standards, and a copy of the audit is available for public inspection, no report is required to be filed under this section. An audit performed that complies with Office of Management and Budget circular A-133, and submitted within the period provided in this section may be substituted for the report.

(2) Any grantee who receives a state grant in an amount less than \$50,000 or who is not required to file a report because an audit has been conducted or substituted as provided by subdivision (1) of this subsection shall file with the grantor and State Auditor a sworn statement of expenditures made under the grant.

(3) Subgrant of grant funds – If any grantee obtains grant funds and grants any part or all of those funds to a subgrantee for a specific purpose or purposes, the granted funds shall be treated as a state grant.

~~(3)~~ (4) Reports and sworn statements of expenditures required by this ~~subsection~~ section shall be filed within two years of the end of the grantee's fiscal year in which the disbursement of state grant funds by the grantor was made. The report shall be made by an independent certified public accountant at the cost of the grantee. State grant funds may be used to pay for the report if the applicable grant provisions allow. The scope of the report is limited to showing that the state grant funds were spent for the purposes intended when the grant was made.

(5) In the event the State Auditor determines that applicable reporting or record keeping provisions for state grants are delinquent or not in compliance with this code, the State Auditor shall notify the State Treasurer and no further grant funds appropriated to the grantor agency under the specific grant shall be encumbered or expended until such time as the State Auditor determines that all applicable reporting or record keeping provisions are brought into compliance: *Provided*, That such suspension of funding does not violate federal law or regulations or unreasonably prevent or detrimentally impact the ability of the agency to receive federal support or funding.

(6) Each State grant-making agency shall designate a Chief Accountability Officer, to the extent possible from within its existing staff, who shall serve as a liaison to the State Auditor and shall be responsible for the state agency's implementation of and compliance with the law, rules, and terms of grants. Such position may be held concurrently with any other designated position.

~~(e)~~(d)(1) Grantor agencies or the State Auditor shall issue stop payment orders for failure to file required reports. Any grantee failing to file a required report or sworn statement of expenditures within the two-year period ~~provided in subdivision (3), subsection (b)~~ as provided in of this section for state grant funds is barred from subsequently receiving state grants until the grantee has filed the report or sworn statement of expenditures and is otherwise in compliance with the provisions of this section.

(2) Any grantor of a state grant shall report any grantee failing to file a required report or sworn statement of expenditures within the required period provided in this section to the ~~Legislative~~ State Auditor for purposes of debarment from receiving state grants.

(3) The State Auditor shall maintain a searchable and publicly accessible database listing all awarded state grants. All grantors shall provide a list of grantees and subgrantees to the State Auditor and all other information regarding grant funds and grantees as required by law or rule.

~~(d)~~(e)(1) The state agency administering the state grant shall notify the grantee of the reporting requirements set forth in this section.

(2) All grantors awarding state grants shall, prior to awarding a state grant, ~~take reasonable actions to~~ verify that the grantee is not barred from receiving state grants pursuant to this section. The verification process shall, at a minimum, include:

(A) A requirement that the grantee seeking the state grant provide a sworn statement from an authorized representative that the grantee has filed all reports and sworn statements of expenditures for state grants received as required under this section; and

(B) Confirmation from the ~~Legislative Auditor~~ State Auditor by the grantor that the grantee has not been identified as one who has failed to file a report or sworn statement of expenditures under this section. Confirmation may be accomplished by accessing the computerized database provided for in ~~subsection (e)~~ of this section.

(3) If any report or sworn statement of expenditures submitted pursuant to the requirements of this section provides evidence of a reportable condition or violation, the grantor shall provide a copy of the report or sworn statement of expenditures to the ~~Legislative Auditor~~ State Auditor within 30 days of receipt by the grantor.

(4) The grantor and State Auditor shall maintain copies of reports and sworn statements of expenditures required by this section and make the reports or sworn statements of expenditures available for public inspection, as well as for use in audits and performance reviews of the grantor.

(5) Stop payment procedures – The State Auditor, in cooperation with state grant-making agencies, shall promulgate legislative, procedural, and interpretive rules in accordance with the provisions of §29A-3-1 et seq. of this code in implementing the provisions of this section which shall include, but not be limited to:

(A) Procedures concerning issuing and lifting stop payments and other corrective actions;

(B) Factors to be considered in determining whether to issue a stop payment order including whether or not a stop payment order is in the best interest of the state;

(C) Factors to be considered in determining whether a stop payment order should be lifted;
and

(D) Procedures for notification to the grantee or subgrantee of the issuance of a stop payment order, the lifting of a stop payment order, and any other related information.

(6) Informal Conference – Whenever a grantor agency reasonably believes that grant funds are subject to recovery, the grantor agency shall provide the grantee the opportunity for at least

one informal conference to determine the facts and issues and to resolve any conflicts before taking any formal recovery actions.

(7) Formal Procedures for Recovery –

(A) If a grantor agency determines that certain grant funds are to be recovered, then, prior to taking any action to recover the grant funds, the grantor agency shall provide the grantee of the funds a written notice of the intended recovery. This notice shall identify the funds and the amount to be recovered and the specific facts which permit recovery.

(B) A grantee shall have 35 days from the receipt of the notice required in paragraph (A) of this subdivision to return the grant funds or request a hearing in writing to show why recovery is not justified or proper.

(C) If a grantee requests a hearing pursuant to paragraph (B) of this subdivision, then:

(i) The hearing shall be conducted under §29A-5-1 *et seq.* of this code, and be presided over by the grantor agency head or their designee;

(ii) The grantor agency shall hold the hearing at which the grantee or designated representative may present evidence and witnesses to show why recovery should not be permitted; and

(iii) After the conclusion of the hearing, the grantor agency shall make a final decision and issue a written final recovery order in compliance with §29A-5-3 of this code and send a copy of the order to the grantee and the State Auditor.

(D)(i) If a grantee requests a hearing pursuant to paragraph (B) of this subdivision then the grantor agency may not take any action of recovery until at least 35 days after the grantor agency has issued a final recovery order pursuant to the requirements of paragraph (C) of this subdivision.

(ii) If a grantee does not return the grant funds or request a hearing as permitted in paragraph (B) of this subdivision, then the grantor agency may proceed with recovery of the grant funds identified in the notice issued pursuant to the requirements of paragraph (A) of this subdivision, at any time after the expiration of the 35 day request period established in paragraph (B) of this subdivision.

(8) Recovery of Grant Funds by Grantor Agency – Any grant funds which have been misspent or are being improperly held are subject to recovery by the grantor agency which made the grant. The grantor agency making the grant shall take affirmative and timely action to recover all misspent or improperly held grant funds. In order to effectuate the recovery of such grant funds, the grantor agency making the grant may use any one or a combination of the following:

(A) Offset the amounts against existing grants or future grants to be made by the grantor agency making the recovery;

(B) Request offsets of the amounts from existing grants or future grants to be made by other grantor agencies;

(C) Initiate any debt collection method authorized by law against any private person, business, or entity;

(D) Remove the grantee from the grantor agency's programs and debar the grantee's participation in future grant programs for a period not to exceed three years or until removed from the debarred list; or

(E) Request further action under subdivision (9) of this subsection to recover grant funds and otherwise enforce all applicable laws.

(9) Recovery of State Grant Funds – The Attorney General, independently or on behalf of the State Auditor, may take any action within his or her authority to recover any grant funds which have been misapplied or are being improperly held and have all the powers of collection established in this act in addition to any other powers authorized by law, including, without limitation, to file lawsuits to recover grant funds.

(10) All grant funds, whose use is not restricted by law or otherwise appropriated, which are recovered by the grantor, or State Auditor, and expired or unexpended grant funds remaining at grant completion or termination, shall be deposited in a special revenue fund, which is hereby created and established in the State Treasury to be known as the Grant Recovery Fund. The moneys in the fund, with all interest or other earnings thereon, shall be expended only upon appropriation by the Legislature.

~~(5)~~ (11) The Secretary of the Department of Administration State Auditor has authority to promulgate procedural and interpretive rules and propose legislative rules for promulgation in accordance with the provisions of §29A-3-1 et seq. of this code to assist in implementing the provisions of this section. The rules shall set forth uniform administrative requirements and reporting procedures for state grants and subgrants to ensure compliance. State granting agencies shall not impose additional or inconsistent requirements unless specifically required by state or federal law.

(12) Conflicts of interest – The State Auditor shall adopt rules regarding conflict of interest policies for state grants. Grantors, grantees, and subgrantees must disclose in writing any potential conflicts of interest to the grant applicant prior to awarding the grant.

~~(e)~~(f)(1) Any state agency administering a state grant shall, in the manner designated by the Legislative Auditor State Auditor, notify the Legislative Auditor State Auditor of the maximum amount of funds to be disbursed, the identity of the grantee authorized to receive the funds, the grantee's fiscal year and federal employer identification number, and the purpose and nature of the state grant within 30 days of making the state grant or authorizing the disbursement of the funds, whichever is later.

(2) The State Treasurer shall provide the Legislative Auditor the information concerning formula distributions to volunteer and part-volunteer fire departments, made pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code, the Legislative Auditor requests, and in the manner designated by the Legislative Auditor.

(3) The ~~Legislative Auditor~~ State Auditor shall maintain a debarred list identifying grantees who have failed to file reports and sworn statements required by this section. The list ~~may~~ shall be in the form of a computerized database that ~~may~~ shall be ~~accessed~~ accessible by state agencies and the public over the Internet, unless public disclosure would violate federal law or regulations.

~~(f)~~ (g) An audit of state grant funds may be authorized at any time by the Joint Committee on Government and Finance to be conducted by the State Auditor in cooperation with the Legislative Auditor at no cost to the grantee.

~~(g)~~ (h) Any report submitted pursuant to the provisions of this section may be filed electronically in accordance with the provisions of §39A-1-1 *et seq.* of this code.

~~(h)~~ (i) Any grantee who files a fraudulent sworn statement of expenditures under subsection (b) of the section, a fraudulent sworn statement under subsection (d) of this section, or a fraudulent report under this section is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

(j) Prohibition on use of grant funds for prohibited political activity –

(1) For the purpose of this section, "prohibited political activity" means activity directed toward the success or failure of a political party, candidate for political office, or ballot issue, and includes, without limitation, express advocacy for the election or defeat of a political party, candidate, or ballot issue.

(2) Grantors, grantees, subgrantees, and personnel thereof shall not knowingly use grant funds, or goods or services purchased with grant funds, to engage, either directly or indirectly, in a prohibited political activity.

(3) Grantors, grantees, subgrantees and personnel thereof shall not be knowingly compensated from grant funds for time spent engaging in a prohibited political activity.

(4) Nothing in this section shall prohibit any organization described in 26 U.S.C. §501(c)(3) or 26 U.S.C. §501(c)(4) receiving a grant from the state from engaging in any federally permissible activity regarding advocacy, indirect and direct lobbying, and political activity, provided that the specific funds acquired by a grant from the state or grantor shall not be used for those activities that are permitted by federal law but prohibited by this section.

(5) A grantor, grantee, subgrantee, or personnel thereof who knowingly uses grant funds for prohibited political activity in violation of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

(k) Reporting – Effective on or before December 31, 2022 and every three years thereafter, the State Auditor shall submit to the Joint Legislative Committee on Government and Finance a report that demonstrates the efficiencies, cost savings, and reductions in fraud, waste and abuse. The report shall include, but not be limited to, facts describing:

(1) The number and names of entities placed on the West Virginia Debarred List;

(2) The number of stop payment orders issued to grantees;

(3) Any savings realized as a result of the implementation of this act;

(4) A statement of funds recovered and funds in the recovery process;

(5) Any reductions in the number of duplicative audit report reviews; and

(6) The overall number of state grants awarded that given year and the total amount of dollars awarded by each state agency.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 591**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2573) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect January 1, 2022, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2720, Creating a Merit-Based Personnel System within DOT.

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

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

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

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-8. Special merit-based personnel system for Department of Transportation employees.

(a) In order to attract and retain employees in the Department of Transportation, the Secretary of Transportation shall establish a system of personnel administration based on merit principles and scientific methods governing the appointment, promotion, transfer, layoff, removal, discipline, classification, compensation, and welfare of its employees, and other incidents of state employment. All appointments and promotions to positions shall be made solely on the basis of merit and fitness for the position.

(b) The Department of Transportation personnel system shall be founded on effective performance management principles that set clear goals, provide efficient and effective services for our citizens, and appraise and reward employees for being responsible and performing as required.

(c) Beginning on January 1, 2022, notwithstanding any provision of this code or any rule to the contrary, employees and positions within the various agencies, boards, commissions, and divisions within the Department of Transportation currently governed by the provisions of §29-6-

1 et seq. of this code shall be subject to the personnel system created pursuant to this section: Provided, That such employees and positions shall be deemed to retain their classified or classified-exempt status and all rights and privileges thereof. The employees of the Department of Transportation shall be afforded due process protections through §6C-2-1 et seq. of this code or other procedures established by the department that assure all of the protections required by law.

(d) The Department of Transportation personnel system is not exempt from the provisions of this code prohibiting nepotism, favoritism, discrimination, or unethical practices related to the employment process.

(e) The Department of Transportation personnel system may not be applied in any manner that would disqualify the department or its agencies, boards, commissions, or divisions for eligibility for any federal funding or assistance.

(f) The Division of Personnel shall, upon request of the Secretary of Transportation, take any action necessary to assist the Department of Transportation in completing the transition to the department's personnel system in an orderly and efficient manner.

(g) The Secretary of Transportation may propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code and may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code to implement the provisions of this section.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-24. Special employment procedures for Division of Highways personnel.

[Repealed.]”

And,

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

Com. Sub. for H. B. 2720 - “A Bill to repeal §17-2A-24 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto a new section, designated §5F-2-8, all relating to establishing a merit-based personnel administration system for the agencies, authorities, boards, and commissions within the Department of Transportation; authorizing the Secretary of Transportation to establish a merit-based personnel system; providing requirements and effective date for the personnel system; preserving classified or classified-exempt status, rights and privileges thereof, and due process protections; requiring compliance with state law regarding nepotism, favoritism, discrimination, and ethics in the employment process; prohibiting actions with a negative effect on federal funding; requiring inter-agency cooperation by the Division of Personnel; authorizing rule-making; and removing duplicative special employment procedures for Division of Highways personnel.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 592**), and there were—yeas 82, nays 18, absent and not voting none, with the nays being as follows:

Nays: Barach, Brown, Diserio, Doyle, Fleischauer, Fluharty, Garcia, Hansen, Hornbuckle, Kimes, Lovejoy, Pushkin, Skaff, Thompson, Walker, Williams, Young and Zukoff.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2720) passed.

Delegate Summers moved that the bill take effect January 1, 2022.

On this question, the yeas and nays were taken (**Roll No. 593**), and there were—yeas 96, nays 4, absent and not voting none, with the nays being as follows:

Nays: Kimes, Pushkin, Thompson and Walker.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2720) takes effect January 1, 2022.

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

A message from the Senate, by

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

Com. Sub. for H. B. 2927, Adding Caregiving expenses to campaign finance expense.

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

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

“ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-1a. Definitions.

As used in this article, the following terms have the following definitions:

(1) ‘Ballot issue’ means a constitutional amendment, special levy, bond issue, local option referendum, municipal charter or revision, an increase or decrease of corporate limits, or any other question that is placed before the voters for a binding decision.

(2) ‘Billboard advertisement’ means a commercially available outdoor advertisement, sign, or similar display regularly available for lease or rental to advertise a person, place, or product.

(3) ‘Broadcast, cable, or satellite communication’ means a communication that is publicly distributed by a television station, radio station, cable television system, or satellite system.

(4) ‘Candidate’ means an individual who:

(A) Has filed a certificate of announcement under §3-5-7 of this code or a municipal charter;

(B) Has filed a declaration of candidacy under §3-5-23 of this code;

(C) Has been named to fill a vacancy on a ballot; or

(D) Has declared a write-in candidacy or otherwise publicly declared his or her intention to seek nomination or election for any state, district, county, municipal, or party office to be filled at any primary, general, or special election.

(5) 'Candidate's committee' means a political committee established with the approval of or in cooperation with a candidate or a prospective candidate to explore the possibilities of seeking a particular office or to support or aid his or her nomination or election to an office in an election cycle. If a candidate directs or influences the activities of more than one active committee in a current campaign, those committees shall be considered one committee for the purpose of contribution limits.

(6) 'Caregiving services' means direct care, protection, and supervision of a child, or other person with a disability or a medical condition, for which a candidate has direct caregiving responsibility. For the purposes of this article, the caregiving service expense incurred shall be in direct connection with the candidate's campaign activities during the current election cycle.

~~(6)~~ (7) 'Caucus campaign committee' means a West Virginia House of Delegates or Senate political party caucus campaign committee that receives contributions and makes expenditures to support or oppose one or more specific candidates or slates of candidates for nomination, election, or committee membership.

~~(7)~~ (8) 'Clearly identified' means that the name, nickname, photograph, drawing, or other depiction of the candidate appears, or the identity of the candidate is otherwise apparent through an unambiguous reference, such as 'the Governor', 'your Senator', or 'the incumbent', or through an unambiguous reference to his or her status as a candidate, such as 'the Democratic candidate for Governor' or 'the Republican candidate for Supreme Court of Appeals'.

~~(8)~~ (9) 'Contribution' means a gift, subscription, loan, assessment, payment for services, dues, advance, donation, pledge, contract, agreement, forbearance, promise of money, or other tangible thing of value, whether conditional or legally enforceable, or a transfer of money or other tangible thing of value to a person, made for the purpose of influencing the nomination, election, or defeat of a candidate.

(A) A coordinated expenditure is a contribution for the purposes of this article.

(B) An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned. A contribution does not include volunteer personal services provided without compensation: *Provided*, That a nonmonetary contribution is to be considered at fair market value for reporting requirements and contribution limitations.

~~(9)~~ (10) 'Coordinated expenditure' is an expenditure made in concert with, in cooperation with, or at the request or suggestion of a candidate or candidate's committee and meeting the criteria provided in §3-8-9a of this code.

~~(10)~~ (11) 'Corporate political action committee' means a political action committee that is a separate segregated fund of a corporation that may only accept contributions from its restricted group as outlined by the rules of the State Election Commission.

~~(11)~~ (12) 'Direct costs of purchasing, producing, or disseminating electioneering communications' means:

(A) Costs charged by a vendor, including, but not limited to, studio rental time, compensation of staff and employees, costs of video or audio recording media and talent, material and printing costs, and postage; or

(B) The cost of air time on broadcast, cable, or satellite radio and television stations, the costs of disseminating printed materials, studio time, use of facilities, and the charges for a broker to purchase air time.

~~(12)~~ (13) 'Disclosure date' means either of the following:

(A) The first date during any calendar year on which any electioneering communication is disseminated after the person paying for the communication has spent a total of \$5,000 or more for the direct costs of purchasing, producing, or disseminating electioneering communications; or

(B) Any other date during that calendar year after any previous disclosure date on which the person has made additional expenditures totaling \$5,000 or more for the direct costs of purchasing, producing, or disseminating electioneering communications.

~~(13)~~ (14) 'Election' means any primary, general, or special election conducted under the provisions of this code or under the charter of any municipality at which the voters nominate or elect candidates for public office. For purposes of this article, each primary, general, special, or local election constitutes a separate election. This definition is not intended to modify or abrogate the definition of the term "nomination" as used in this article.

~~(14)~~ (15) (A) 'Electioneering communication' means any paid communication made by broadcast, cable or satellite signal, mass mailing, telephone bank, billboard advertisement, or publication in any newspaper, magazine, or other periodical that:

(i) Refers to a clearly identified candidate for Governor, Secretary of State, Attorney General, Treasurer, Auditor, Commissioner of Agriculture, Supreme Court of Appeals, or the Legislature;

(ii) Is publicly disseminated within:

(I) Thirty days before a primary election in which the nomination for office sought by the candidate is to be determined; or

(II) Sixty days before a general or special election in which the office sought by the candidate is to be filled; and

(iii) Is targeted to the relevant electorate.

(B) 'Electioneering communication' does not include:

(i) A news story, commentary, or editorial disseminated through the facilities of any broadcast, cable or satellite television, radio station, newspaper, magazine, or other periodical publication not owned or controlled by a political party, political committee, or candidate: *Provided*, That a news story disseminated through a medium owned or controlled by a political party, political committee, or candidate is nevertheless exempt if the news is:

(I) A bona fide news account communicated in a publication of general circulation or through a licensed broadcasting facility; and

(II) Is part of a general pattern of campaign-related news that gives reasonably equal coverage to all opposing candidates in the circulation, viewing, or listening area;

(ii) Activity by a candidate committee, party executive committee, a caucus campaign committee, or a political action committee that is required to be reported to the State Election Commission or the Secretary of State as an expenditure pursuant to §3-8-5 of this code or the rules of the State Election Commission or the Secretary of State promulgated pursuant to such provision: *Provided*, That independent expenditures by a party executive committee, caucus committee, or a political action committee required to be reported pursuant to §3-8-2 of this code are not exempt from the reporting requirements of this section;

(iii) A candidate debate or forum conducted pursuant to rules adopted by the State Election Commission or the Secretary of State or a communication promoting that debate or forum made by or on behalf of its sponsor;

(iv) A communication paid for by any organization operating under Section 501(c)(3) of the Internal Revenue Code of 1986;

(v) A communication made while the Legislature is in session which, incidental to promoting or opposing a specific piece of legislation pending before the Legislature, urges the audience to communicate with a member or members of the Legislature concerning that piece of legislation;

(vi) A statement or depiction by a membership organization in existence prior to the date on which the individual named or depicted became a candidate, made in a newsletter or other communication distributed only to bona fide members of that organization;

(vii) A communication made solely for the purpose of attracting public attention to a product or service offered for sale by a candidate or by a business owned or operated by a candidate which does not mention an election, the office sought by the candidate, or his or her status as a candidate; or

(viii) A communication, such as a voter's guide, which refers to all of the candidates for one or more offices, which contains no appearance of endorsement for or opposition to the nomination or election of any candidate and which is intended as nonpartisan public education focused on issues and voting history.

~~(15)~~ (16) 'Expressly advocating' means any communication that:

(A) Uses phrases such as 'vote for the Governor', 're-elect your Senator', 'support the incumbent nominee for Supreme Court', 'cast your ballot for the Republican challenger for House of Delegates', 'Smith for House', 'Bob Smith in '04', 'vote Pro-Life', or 'vote Pro-Choice' accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, 'vote against Old Hickory', 'defeat' accompanied by a picture of one or more candidates, 'reject the incumbent';

(B) Communicates campaign slogans or individual words that can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates, such as

posters, bumper stickers, advertisements, etc., which say 'Smith's the One', 'Jones '06', 'Baker', etc.; or

(C) Is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

~~(16)~~ (17) 'Financial agent' means any individual acting for and by himself or herself, or any two or more individuals acting together or cooperating in a financial way to aid or take part in the nomination or election of any candidate for public office, or to aid or promote the success or defeat of any political party at any election.

~~(17)~~ (18) 'Financial transactions' means all contributions or loans received and all repayments of loans or expenditures made to promote the candidacy of any person by any candidate or any organization advocating or opposing the nomination, election, or defeat of any candidate to be voted on.

~~(18)~~ (19) 'Firewall' means a policy designed and implemented to prohibit the flow of information between employees or consultants providing services for the person paying for a communication and those employees or consultants currently or previously providing services to a candidate, or to a committee supporting or opposing a candidate, clearly identified in the communication.

~~(19)~~ (20) 'Foreign national' means the following:

(A) A foreign principal, as such term is defined in 22 U.S.C. §611(b), which includes:

(i) A government of a foreign country;

(ii) A foreign political party;

(iii) A person outside of the United States, unless it is established that such person:

(I) Is an individual and a citizen of the United States; or

(II) That such person is not an individual and is organized under or created by the laws of the United States or of any state or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and

(iv) A partnership, association, corporation, organization, or other combination of persons organized under the laws of, or having its principal place of business in, a foreign country.

(B) An individual who is not a citizen of the United States or a national of the United States, as defined in 8 U.S.C. §1101(a)(22), and who is not lawfully admitted for permanent residence, as defined by 8 U.S.C. §1101(a)(20).

~~(20)~~ (21) 'Fund-raising event' or 'fundraiser' means an event such as a dinner, reception, testimonial, cocktail party, auction, or similar affair through which contributions are solicited or received.

~~(21)~~ (22) 'In concert or cooperation with or at the request or suggestion of' means that a candidate or his or her agent consulted with:

(A) The sender regarding the content, timing, place, nature, or volume of a particular communication or communication to be made; or

(B) A person making an expenditure that would otherwise offset the necessity for an expenditure of the candidate or candidate's committee.

~~(22)~~ (23) 'Independent expenditure' means an expenditure by a person:

(A) Expressly advocating the election or defeat of a clearly identified candidate, including supporting or opposing the candidates of a political party; and

(B) That is not made in concert or cooperation with or at the request or suggestion of such candidate, his or her agents, the candidate's authorized political committee, or a political party committee or its agents.

An expenditure which does not meet the criteria for an independent expenditure is considered a contribution.

~~(23)~~ (24) 'Local' refers to the election of candidates to a city, county, or municipal office and any issue to be voted on by only the residents of a particular political subdivision.

~~(24)~~ (25) 'Mass mailing' means a mailing by United States mail, facsimile, or electronic mail of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period. For purposes of this subdivision, 'substantially similar' includes communications that contain substantially the same template or language, but vary in nonmaterial respects such as communications customized by the recipient's name, occupation, or geographic location.

~~(25)~~ (26) 'Membership organization' means a group that grants bona fide rights and privileges, such as the right to vote, to elect officers or directors, and the ability to hold office to its members and which uses a majority of its membership dues for purposes other than political purposes. 'Membership organization' does not include organizations that grant membership upon receiving a contribution.

~~(26)~~ (27) 'Name' means the full first name, middle name, or initial, if any, and full legal last name of an individual and the full name of any association, corporation, committee, or other organization of individuals, making the identity of any person who makes a contribution apparent by unambiguous reference.

~~(27)~~ (28) 'Person' means an individual, corporation, partnership, committee, association, and any other organization or group of individuals.

~~(28)~~ (29) 'Political action committee' means a committee organized by one or more persons, the primary purpose of which is to support or oppose the nomination or election of one or more candidates. The following are types of political action committees:

(A) A corporate political action committee, as that term is defined in this section;

(B) A membership organization, as that term is defined in this section; and

(C) An unaffiliated political action committee, as that term is defined in this section.

~~(29)~~ (30) 'Political committee' means any candidate committee, political action committee, or political party committee.

~~(30)~~ (31) 'Political party' means a political party as that term is defined by §3-1-8 of this code or any committee established, financed, maintained, or controlled by the party, including any subsidiary, branch, or local unit thereof and including national or regional affiliates of the party.

~~(34)~~ (32) 'Political party committee' means a committee established by a political party or political party caucus for the purposes of engaging in the influencing of the election, nomination, or defeat of a candidate in any election.

~~(32)~~ (33) 'Political purposes' means supporting or opposing the nomination, election, or defeat of one or more candidates or the passage or defeat of a ballot issue, supporting the retirement of the debt of a candidate or political committee or the administration or activities of an established political party or an organization which has declared itself a political party, and determining the advisability of becoming a candidate under the pre-candidacy financing provisions of this chapter.

~~(33)~~ (34) 'Targeted to the relevant electorate' means a communication which refers to a clearly identified candidate for statewide office or the Legislature and which can be received by 140,000 or more individuals in the state in the case of a candidacy for statewide office, 8,220 or more individuals in the district in the case of a candidacy for the State Senate, and 2,410 or more individuals in the district in the case of a candidacy for the House of Delegates.

~~(34)~~ (35) 'Telephone bank' means telephone calls that are targeted to the relevant electorate, other than telephone calls made by volunteer workers, regardless of whether paid professionals designed the telephone bank system, developed calling instructions, or trained volunteers.

~~(35)~~ (36) 'Unaffiliated political action committee' means a political action committee that is not affiliated with a corporation or a membership organization.

§3-8-9. Lawful and unlawful election expenses; public opinion polls and limiting their purposes; limitation upon expenses; use of advertising agencies and reporting requirements; delegation of expenditures.

(a) No financial agent or treasurer of a political committee ~~shall~~ may pay, give, or lend, either directly or indirectly, any money or other thing of value for any election expenses, except for the following purposes:

(1) For rent, maintenance, office equipment, and other furnishing of offices to be used as political headquarters and for the payment of necessary employees;

(2) In the case of a candidate who does not maintain a headquarters, for reasonable office expenses, including, but not limited to, filing cabinets and other office equipment, and furnishings, computers, computer hardware and software, scanners, typewriters, calculators, audio visual equipment, the rental of the use of the same, or for the payment for the shared use of same with the candidate's business and for the payment of necessary employees;

(3) For printing and distributing books, pamphlets, circulars, and other printed matter, radio and television broadcasting, and painting, printing, and posting signs, banners, and other advertisements, including contributions to charitable, educational, or cultural events, for the promotion of the candidate or the candidate's name, or an issue on the ballot;

(4) For renting and decorating halls for public meetings and political conventions, for advertising public meetings, and for the payment of traveling expenses of speakers and musicians at such meetings;

(5) For the necessary traveling and hotel expenses of candidates, political agents, and committees and for stationery, postage, telegrams, telephone, express, freight, and public messenger service;

(6) For preparing, circulating, and filing petitions for nomination of candidates;

(7) For examining the lists of registered voters, securing copies thereof, investigating the right to vote of the persons listed therein, and conducting proceedings to prevent unlawful registration or voting;

(8) For conveying voters to and from the polls;

(9) For securing publication in newspapers and by radio and television broadcasting of documents, articles, speeches, arguments, and any information relating to any political issue, candidate, or question or proposition submitted to a vote;

(10) For conducting public opinion poll or polls. For the purpose of this section, the phrase 'conducting of public opinion poll or polls' shall mean and be limited to the gathering, collection, collation, and evaluation of information reflecting public opinion, needs, and preferences as to any candidate, group of candidates, party, issue, or issues. No such poll may be deceptively designed or intentionally conducted in a manner calculated to advocate the election or defeat of any candidate or group of candidates or calculated to influence any person or persons so polled to vote for or against any candidate, group of candidates, proposition, or other matter to be voted on by the public at any election: *Provided*, That nothing herein may prevent the use of the results of any such poll or polls to further, promote or enhance the election of any candidate or group of candidates or the approval or defeat of any proposition or other matter to be voted on by the public at any election;

(11) For legitimate advertising agency services, including commissions, in connection with any campaign activity for which payment is authorized by subdivisions (3), (4), (5), (6), (7), (9), and (10) of this subsection;

(12) For the purchase of memorials, flowers, or citations by political party executive committees or political action committees representing a political party;

(13) For the purchase of nominal noncash expressions of appreciation following the close of the polls of an election or within 30 days thereafter;

(14) For the payment of dues or subscriptions to any national, state, or local committee of any political party;

(15) For contributions to a county party executive committee, state party executive committee, or a caucus campaign committee;

(16) For transfers to any national, state, or local committee of any political party when that committee is acting in the role of a vendor: *Provided*, That no such transfer may involve any

coordination between the candidate and the political party committee without being considered as a contribution;

(17) For payment for legal and accounting services rendered to a candidate or candidate committee if the services are solely related to the candidacy or campaign;

(18) For payment for food and drink for campaign-related purposes;

(19) For the payment of any required filing fees associated with the campaign, except that a candidate may not pay any fines assessed against the candidate or the candidate's committee pursuant to this article; ~~and~~

(20) For contributions to a candidate committee: *Provided*, That a candidate committee may not contribute to another candidate committee except as otherwise provided by §3-8-10 of this code; and

(21) For expenses related to caregiving services.

(b) A political action committee may not contribute to another political action committee or receive contributions from another political action committee: *Provided*, That a political action committee may receive contributions from its national affiliate, if any.

(c) Every liability incurred, and payment made shall be for the fair market value of the services rendered.

(d) Every advertising agency subject to the provisions of this article shall file, in the manner and form required by §3-8-5a of this code, the financial statements required by §3-8-5 of this code at the times required therein and include therein, in itemized detail, all receipts from and expenditures made on behalf of a candidate, financial agent, or treasurer of a political party committee.

(e) Any candidate may designate a financial agent by a writing duly subscribed by the candidate which shall be in such form and filed in accordance with §3-8-4 of this code."

And,

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

Com. Sub. for H. B. 2927 – "A Bill to amend and reenact §3-8-1a and §3-8-9 of the Code of West Virginia, 1931, as amended, relating to campaign finance expenses; adding caregiving services as a defined term; and adding caregiving services as a lawful campaign expense."

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 594**), and there were—yeas 80, nays 20, absent and not voting none, with the nays being as follows:

Nays: Barnhart, Barrett, Bridges, Burkhammer, Fast, Foster, Gearheart, Hardy, Horst, D. Jeffries, Jennings, J. Kelly, Kimes, Longanacre, Mazzocchi, J. Pack, Paynter, Reynolds, Smith and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2927) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 2953, To clarify that counties can hire fire fighters as paid staff and to modify the existing procedures to include a procedure of public hearing to commission a vote.

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

On page three, section twelve, line thirty-nine, after the word “amended”, by changing the period to a colon and adding the following proviso: “*Provided*, That prior to issuing the order, the county commission shall publish the ordinance which must contain the anticipated allocation of any fees or charges and which would be enacted should the referendum succeed as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the county in which the county fire board is located.”

And,

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

Com. Sub. for H. B. 2953 – “A Bill to amend and reenact §7-17-3 and §7-17-12 of the Code of West Virginia, 1931, as amended, all relating to county fire protection services; clarifying that county commission may contract with fire department of any political subdivision for fire protection services; and modifying existing method for imposing fire service fees to add procedure for a ballot referendum to be used, if desired, instead of utilizing current procedure requiring 10 percent of voters to petition for imposition of such fees.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 595**), and there were—yeas 99, nays 1, absent and not voting none, with the nays being as follows:

Nays: Miller.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2953) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 2962, Relating generally to dental practice.

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

On page three, section eight, after line thirty-seven, by inserting a new subsection, designated subsection (d), to read as follows:

“(d) An expedited license to practice dentistry for foreign dental graduates who have completed a one-year dental residency program in this state: *Provided*, That the board shall promulgate emergency and legislative rules, not later than July 1, 2021, related to this expedited licensure.”

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

A message from the Senate, by

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

Com. Sub. for H. B. 3002, Update road abandonment process.

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

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

“ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-8. Powers, duties, and responsibilities of commissioner.

In addition to all other duties, powers, and responsibilities given and assigned to the commissioner in this chapter, the commissioner may:

(1) Exercise general supervision over the state road program and the construction, reconstruction, repair, and maintenance of state roads and highways: *Provided*, That the commissioner shall implement reasonable design techniques intended to minimize damage that may result from recurring floods within the purpose and need of the state road system;

(2) Determine the various methods of road construction best adapted to the various sections and areas of the state and establish standards for the construction and maintenance of roads and highways in the various sections and areas of the state;

(3) Conduct investigations and experiments, hold hearings and public meetings, and attend and participate in meetings and conferences within and without the state for purposes of acquiring information, making findings, and determining courses of action and procedure relative to advancement and improvement of the state road and highway system;

(4) Enter private lands to make inspections and surveys for road and highway purposes;

(5) Acquire, in ~~the~~ name of the ~~department~~ division, by lease, grant, right of eminent domain, or other lawful means all lands and interests and rights in lands necessary and required for roads, rights-of-way, cuts, fills, drains, storage for equipment and materials, and road construction and maintenance in general;

(6) Procure photostatic copies of any or all public records on file at the State Capitol of Virginia which may be considered necessary or proper in ascertaining the location and legal status of public road rights-of-way located or established in what is now the State of West Virginia, which when certified by the commissioner, may be admitted in evidence, in lieu of the original, in any of the courts of this state;

(7) Plan for and hold annually a school of good roads, of not less than three or more than six days' duration, for instruction of his or her employees, which is held in conjunction with West Virginia University and may be held at the university or at any other suitable place in the state;

(8) Negotiate and enter in reciprocal contracts and agreements with proper authorities of other states and of the United States relating to and regulating the use of roads and highways with reference to weights and types of vehicles, registration of vehicles and licensing of operators, military and emergency movements of personnel and supplies, and all other matters of interstate or national interest;

(9) Classify and reclassify, locate, and relocate, expressway, trunkline, feeder, and state local service roads, and designate by number the routes within the state road system;

(10) Create, extend, or establish, upon petition of any interested party or parties or on the commissioner's own initiative, any new road or highway found necessary and proper;

(11) Exercise jurisdiction, control, supervision, and authority over local roads, outside the state road system, to the extent determined by him or her to be expedient and practicable;

(12) Discontinue, vacate, and close any road or highway, or any part of any road or highway, the continuance and maintenance of which are found unnecessary and improper, upon petition and hearing or upon investigation initiated by the commissioner. Any petition, motion, notice, decision, and order related to the discontinuance, vacating, or closing of any road or highway or part thereof shall be posted by the commissioner on the division's website available for review by the public. The division shall make virtual participation available to any person interested in participating in or attending any hearing related to such discontinuance, vacating, or closing;

(13) Close any state road while under construction or repair and provide a temporary road during the time of the construction or repair;

(14) Adjust damages occasioned by construction, reconstruction, or repair of any state road or the establishment of any temporary road;

(15) Establish and maintain a uniform system of road signs and markers;

(16) Fix standard widths for road rights-of-way, bridges, and approaches to bridges and fix and determine grades and elevations therefor;

(17) Test and standardize materials used in road construction and maintenance, either by governmental testing and standardization activities or through contract by private agencies;

(18) Allocate the cost of retaining walls and drainage projects, for the protection of a state road or its right-of-way, to the cost of construction, reconstruction, improvement, or maintenance;

(19) Acquire, establish, construct, maintain, and operate, in the name of the ~~department~~ division, roadside recreational areas along and adjacent to state roads and highways;

(20) Exercise general supervision over the construction and maintenance of airports and landing fields under the jurisdiction of the West Virginia State Aeronautics Commission, of which the commissioner is a member, and make a study and general plan of a statewide system of airports and landing fields;

(21) Provide traffic engineering services to municipalities of the state upon request of the governing body of any municipality and upon terms that are agreeably arranged;

(22) Institute complaints before the Public Service Commission or any other appropriate governmental agency relating to freight rates, car service, and movement of road materials and equipment;

(23) Invoke any appropriate legal or equitable remedies, subject to §17-2A-7 of this code, to enforce his or her orders, to compel compliance with requirements of law, and to protect and preserve the state road and highway system or any part of the system;

(24) Make and promulgate rules for the government and conduct of personnel, for the orderly and efficient administration and supervision of the state road program, and for the effective and expeditious performance and discharge of the duties and responsibilities placed upon him or her by law;

(25) Delegate powers and duties to his or her appointees and employees who shall act by and under his or her direction and be responsible to him or her for their acts;

(26) Designate and define any construction and maintenance districts within the state road system that is found expedient and practicable;

(27) Contract for the construction, improvement, and maintenance of the roads;

(28) Comply with provisions of present and future federal aid statutes and regulations, including execution of contracts or agreements with and cooperation in programs of the United States government and any proper department, bureau, or agency of the United States government relating to plans, surveys, construction, reconstruction, improvement, and maintenance of state roads and highways;

(29) Prepare budget estimates and requests;

(30) Establish a system of accounting covering and including all fiscal and financial matters of the ~~department~~ division;

(31) Establish and advance a right-of-way Acquisition Revolving Fund, a Materials Revolving Fund, and an Equipment Revolving Fund;

(32) Enter into contracts and agreements with and cooperate in programs of counties, municipalities, and other governmental agencies and subdivisions of the state relating to plans,

surveys, construction, reconstruction, improvement, maintenance, and supervision of highways, roads, streets, and other travel ways when and to the extent determined by the department division to be expedient and practical;

(33) Report, as provided by law, to the Governor and the Legislature;

(34) Purchase materials, supplies, and equipment required for the state road program and system;

(35) Dispose of all obsolete and unusable and surplus supplies and materials which cannot be used advantageously and beneficially by the department division in the state road program by transfer of the supplies and materials to other governmental agencies and institutions by exchange, trade, or sale of the supplies and materials;

(36) Investigate road conditions, official conduct of department division personnel, and fiscal and financial affairs of the department division and hold hearings and make findings thereon or on any other matters within the jurisdiction of the department division;

(37) Establish road policies and administrative practices;

(38) Fix and revise from time to time tolls for transit over highway projects constructed by the Division of Highways after May 1, 1999, that have been authorized by the provisions of §17-17A-5b of this ~~chapter~~ code;

(39) Take actions necessary to alleviate any conditions as the Governor may declare to constitute an emergency, whether or not the emergency condition affects areas normally under the jurisdiction of the Division of Highways; and

(40) Provide family restrooms at all rest areas along interstate highways in this state, all to be constructed in accordance with federal law.”

And,

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

Com. Sub. for H. B. 3002 - “A Bill to amend and reenact §17-2A-8 of the Code of West Virginia, 1931, as amended, relating to requiring the Commissioner of the Division of Highways to post online certain records related to the discontinuance, vacating, or closing of any road or highway or part thereof; and requiring the Division of Highways to make virtual participation available to any person interested in participating in or attending any hearing related to such discontinuance, vacating, or closing.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 596**), and there were—yeas 77, nays 23, absent and not voting none, with the nays being as follows:

Nays: Barach, Bates, Boggs, Brown, Diserio, Doyle, Evans, Fleischauer, Fluharty, Garcia, Griffith, Hansen, Hornbuckle, Lovejoy, Pushkin, Rowe, Skaff, Steele, Thompson, Walker, Williams, Young and Zukoff.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3002) passed.

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

A message from the Senate, by

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

H. B. 3078, Relating to powers and duties of the parole board.

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

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

“ARTICLE 12. PROBATION AND PAROLE.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.

(a) The Parole Board, whenever it is of the opinion that the best interests of the state and of the inmate will be served, and subject to the limitations provided in this section, shall release any inmate on parole for terms and upon conditions provided by this article.

(b) Any inmate of a state correctional institution is eligible for parole if he or she:

(1) (A) Has served the minimum term of his or her indeterminate sentence or has served one fourth of his or her definite term sentence, as the case may be; or

(B) He or she has applied for and been accepted by the Commissioner of Corrections and Rehabilitation into an accelerated parole program. To be eligible to participate in an accelerated parole program, the commissioner must determine that the inmate:

(i) Does not have a prior criminal conviction for a felony crime of violence against the person, a felony offense involving the use of a firearm, or a felony offense where the victim was a minor child;

(ii) Is not serving a sentence for a crime of violence against the person, or more than one felony for a controlled substance offense for which the inmate is serving a consecutive sentence, a felony offense involving the use of a firearm, or a felony offense where the victim was a minor child; and

(iii) Has successfully completed a rehabilitation treatment program created with the assistance of a standardized risk and needs assessment.

(C) Notwithstanding any provision of this code to the contrary, any inmate who committed, or attempted to commit, a felony with the use, presentment, or brandishing of a firearm is not eligible for parole prior to serving a minimum of three years of his or her sentence or the maximum sentence imposed by the court, whichever is less: *Provided*, That any inmate who committed, or

attempted to commit, any violation of §61-2-12 of this code, with the use, presentment, or brandishing of a firearm, is not eligible for parole prior to serving a minimum of five years of his or her sentence or one third of his or her definite term sentence, whichever is greater. Nothing in this paragraph applies to an accessory before the fact or a principal in the second degree who has been convicted as if he or she were a principal in the first degree if, in the commission of or in the attempted commission of the felony, only the principal in the first degree used, presented, or brandished a firearm. An inmate is not ineligible for parole under the provisions of this paragraph because of the commission or attempted commission of a felony with the use, presentment, or brandishing of a firearm unless that fact is clearly stated and included in the indictment or presentment by which the person was charged and was either: (i) Found guilty by the court at the time of trial upon a plea of guilty or nolo contendere; (ii) found guilty by the jury upon submitting to the jury a special interrogatory for such purpose if the matter was tried before a jury; or (iii) found guilty by the court if the matter was tried by the court without a jury.

(D) The amendments to this subsection adopted in the year 1981:

(i) Apply to all applicable offenses occurring on or after August 1 of that year;

(ii) Apply with respect to the contents of any indictment or presentment returned on or after August 1 of that year irrespective of when the offense occurred;

(iii) Apply with respect to the submission of a special interrogatory to the jury and the finding to be made thereon in any case submitted to the jury on or after August 1 of that year or to the requisite findings of the court upon a plea of guilty or in any case tried without a jury: *Provided*, That the state gives notice in writing of its intent to seek such finding by the jury or court, as the case may be. The notice shall state with particularity the grounds upon which the finding will be sought as fully as the grounds are otherwise required to be stated in an indictment, unless the grounds upon which the finding will be sought are alleged in the indictment or presentment upon which the matter is being tried;

(iv) Does not apply with respect to cases not affected by the amendments and in those cases the prior provisions of this section apply and are construed without reference to the amendments; and

(v) Insofar as the amendments relate to mandatory sentences restricting the eligibility for parole, all matters requiring a mandatory sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or the court.

(E) As used in this section, 'felony crime of violence against the person' means felony offenses set forth in §61-2-1 *et seq.*, §61-3E-1 *et seq.*, §61-8B-1 *et seq.*, or §61-8D-1 *et seq.* of this code.

(F) As used in this section, 'felony offense where the victim was a minor child' means any felony crime of violence against the person and any felony violation set forth in §61-8-1 *et seq.*, §61-8A-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-1 *et seq.* of this code.

(G) For the purpose of this section, the term 'firearm' means any instrument which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive, gunpowder, or any other similar means;

(2) Is not in punitive segregation or administrative segregation as a result of disciplinary action;

(3) Has prepared and submitted to the Parole Board a written parole release plan setting forth proposed plans for his or her place of residence, employment and, if appropriate, his or her plans regarding education and post-release counseling and treatment which has been approved by the Division of Corrections and Rehabilitation: *Provided*, That an inmate's application for parole may be considered by the board without the prior submission of a home plan, but the inmate shall have a home plan approved by the division prior to his or her release on parole. The Commissioner of the Division of Corrections and Rehabilitation, or his or her designee, shall review and investigate the plan and provide findings to the board as to the suitability of the plan: *Provided, however*, That in cases in which there is a mandatory 30-day notification period required prior to the release of the inmate, pursuant to §62-12-23 of this code, the board may conduct an initial interview and deny parole without requiring the development of a plan. In the event the board believes parole should be granted, it may defer a final decision pending completion of an investigation and receipt of the commissioner's findings. Upon receipt of the plan, together with the investigation and findings, the board, through a panel, shall make a final decision regarding the granting or denial of parole; ~~and~~

(4) Has satisfied the board that if released on parole he or she will not constitute a danger to the community.; and

(5) Has successfully completed any individually required rehabilitative and educational programs, as determined by the division, while incarcerated: *Provided*, That, effective September 1, 2021, any inmate who satisfies all other parole eligibility requirements but is unable, through no fault of the inmate, to complete his or her required rehabilitative and educational programs while incarcerated, which are eligible to be taken while on parole, may be granted parole with the completion of such specified programs outside of the correctional institutions being a special condition of that person's parole term: *Provided, however*, That the Parole Board may consider whether completion of the inmate's outstanding amount of such programming would interfere with his or her successful reintegration into society.

(c) Except in the case of an inmate serving a life sentence, a person who has been previously twice convicted of a felony may not be released on parole until he or she has served the minimum term provided by law for the crime for which he or she was convicted. An inmate sentenced for life may not be paroled until he or she has served 10 years, and an inmate sentenced for life who has been previously twice convicted of a felony may not be paroled until he or she has served 15 years: *Provided*, That an inmate convicted of first degree murder for an offense committed on or after June 10, 1994, is not eligible for parole until he or she has served 15 years.

(d) In the case of an inmate sentenced to a state correctional facility regardless of the inmate's place of detention or incarceration, the Parole Board, as soon as that inmate becomes eligible, shall consider the advisability of his or her release on parole.

(e) If, upon consideration, parole is denied, the board shall promptly notify the inmate of the denial. The board shall, at the time of denial, notify the inmate of the month and year he or she may apply for reconsideration and review. The board shall at least once a year reconsider and review the case of every inmate who was denied parole and who is still eligible: *Provided*, That the board may reconsider and review parole eligibility any time within three years following the denial of parole of an inmate serving a life sentence with the possibility of parole.

(f) Any inmate in the custody of the commissioner for service of a sentence who reaches parole eligibility is entitled to a timely parole hearing without regard to the location in which he or she is housed.

(g) The board shall, with the approval of the Governor, adopt rules governing the procedure in the granting of parole. No provision of this article and none of the rules adopted under this article are intended or may be construed to contravene, limit, or otherwise interfere with or affect the authority of the Governor to grant pardons and reprieves, commute sentences, remit fines, or otherwise exercise his or her constitutional powers of executive clemency.

(h) (1) The Division of Corrections and Rehabilitation shall promulgate policies and procedures for developing a rehabilitation treatment plan created with the assistance of a standardized risk and needs assessment. The policies and procedures shall provide for, at a minimum, screening and selecting inmates for rehabilitation treatment and development, using standardized risk and needs assessment and substance abuse assessment tools, and prioritizing the use of residential substance abuse treatment resources based on the results of the standardized risk and needs assessment and a substance abuse assessment. The results of all standardized risk and needs assessments and substance abuse assessments are confidential.

(2) An inmate shall not be paroled under paragraph (B), subdivision (1), subsection (b) of this section solely due to having successfully completed a rehabilitation treatment plan, but completion of all the requirements of a rehabilitation treatment plan along with compliance with the requirements of subsection (b) of this section creates a rebuttable presumption that parole is appropriate. The presumption created by this subdivision may be rebutted by a Parole Board finding that, according to the standardized risk and needs assessment, at the time parole release is sought the inmate still constitutes a reasonable risk to the safety or property of other persons if released. Nothing in subsection (b) of this section or in this subsection may be construed to create a right to parole.

(i) Notwithstanding the provisions of subsection (b) of this section, the Parole Board may grant or deny parole to an inmate against whom a detainer is lodged by a jurisdiction other than West Virginia for service of a sentence of incarceration, upon a written request for parole from the inmate. A denial of parole under this subsection precludes consideration for parole for a period of one year or until the provisions of subsection (b) of this section are applicable.

(j) If an inmate is otherwise eligible for parole pursuant to subsection (b) of this section, and has completed the rehabilitation treatment program required under subdivision (1), subsection (h) of this section, the Parole Board may not require the inmate to participate in an additional program, but may determine that the inmate must complete an assigned task or tasks prior to actual release on parole. The board may grant parole contingently, effective upon successful completion of the assigned task or tasks, without the need for a further hearing.

(k) (1) The Division of Corrections and Rehabilitation shall supervise all probationers and parolees whose supervision may have been undertaken by this state by reason of any interstate compact entered into pursuant to the Uniform Act for Out-of-State Parolee Supervision.

(2) The Division of Corrections and Rehabilitation shall provide supervision, treatment/recovery, and support services for all persons released to mandatory supervision under §15A-4-17 of this code.

(l) (1) When considering an inmate of a state correctional facility for release on parole, the Parole Board panel considering the parole shall have before it an authentic copy of, or report on, the inmate's current criminal record as provided through the West Virginia State Police, the United States Department of Justice, or any other reliable criminal information sources and written reports of the superintendent of the state correctional institution to which the inmate is sentenced:

(A) On the inmate's conduct record while in custody, including a detailed statement showing any and all infractions of disciplinary rules by the inmate and the nature and extent of discipline administered for the infractions;

(B) On the inmate's industrial record while in custody which shall include: The nature of his or her work, occupation or education, the average number of hours per day he or she has been employed or in class while in custody and a recommendation as to the nature and kinds of employment which he or she is best fitted to perform and in which the inmate is most likely to succeed when he or she leaves the state correctional institution; and

(C) On any physical, mental, psychological, or psychiatric examinations of the inmate.

(2) The Parole Board panel considering the parole may waive the requirement of any report when not available or not applicable as to any inmate considered for parole but, in every case, shall enter in its record its reason for the waiver: *Provided*, That in the case of an inmate who is incarcerated because the inmate has been found guilty of, or has pleaded guilty to, a felony under the provisions of §61-8-12 of this code or under the provisions of §61-8B-1 *et seq.* or §61-8C-1 *et seq.* of this code, the Parole Board panel may not waive the report required by this subsection. The report shall include a study and diagnosis of the inmate, including an on-going treatment plan requiring active participation in sexual abuse counseling at an approved mental health facility or through some other approved program: *Provided, however*, That nothing disclosed by the inmate during the study or diagnosis may be made available to any law-enforcement agency, or other party without that inmate's consent, or admissible in any court of this state, unless the information disclosed indicates the intention or plans of the parolee to do harm to any person, animal, institution, or to property. Progress reports of outpatient treatment are to be made at least every six months to the parole officer supervising the parolee. In addition, in such cases, the Parole Board shall inform the prosecuting attorney of the county in which the person was convicted of the parole hearing and shall request that the prosecuting attorney inform the Parole Board of the circumstances surrounding a conviction or plea of guilty, plea bargaining, and other background information that might be useful in its deliberations.

(m) Before releasing any inmate on parole, the Parole Board shall arrange for the inmate to appear in person before a Parole Board panel and the panel may examine and interrogate him or her on any matters pertaining to his or her parole, including reports before the Parole Board made pursuant to the provisions of this section: *Provided*, That an inmate may appear by video teleconference if the members of the Parole Board panel conducting the examination are able to contemporaneously see the inmate and hear all of his or her remarks and if the inmate is able to contemporaneously see each of the members of the panel conducting the examination and hear all of the members' remarks: *Provided, however*, That the requirement that an inmate personally appear may be waived where a physician authorized to do so by the Commissioner of the Division of Corrections and Rehabilitation certifies that the inmate, due to a medical condition or disease, is too debilitated, either physically or cognitively, to appear. The panel shall reach its own written conclusions as to the desirability of releasing the inmate on parole and the majority of the panel considering the release must concur in the decision. The superintendent shall furnish all necessary assistance and cooperate to the fullest extent with the Parole Board. All information, records, and reports received by the Parole Board shall be kept on permanent file.

(n) The Parole Board and its designated agents are at all times to have access to inmates imprisoned in any state correctional facility or in any jail in this state and may obtain any information or aid necessary to the performance of its duties from other departments and agencies of the state or from any political subdivision of the state.

(o) The Parole Board shall, if requested by the Governor, investigate and consider all applications for pardon, reprieve, or commutation and shall make recommendation on the applications to the Governor.

(p) Prior to making a recommendation for pardon, reprieve or commutation, the board shall notify the sentencing judge and prosecuting attorney at least 10 days before the recommendation.

(q) A parolee shall participate as a condition of parole in the litter control program of the county to which he or she is released to the extent directed by the Parole Board, unless the board specifically finds that this alternative service would be inappropriate.

(r) The commissioner shall develop, maintain, and make publicly available a general list of rehabilitative and educational programs available outside of the correctional institutions which an inmate may be required to complete as a special condition of parole pursuant to subdivision (5) of subsection (b) of this section, and the manner and method in which such programs shall be completed by the parolee."

And,

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

H. B. 3078 – “A Bill to amend and reenact §62-12-13 of the Code of West Virginia, 1931, as amended, relating to the powers and duties of the parole board; providing as a new parole eligibility requirement the successful completion of certain rehabilitative and educational programs during incarceration; providing that an inmate who is unable, through no fault of the inmate, to complete the required rehabilitative and educational programs, but who has completed all other parole eligibility requirements, may be granted parole under certain conditions; authorizing completion of specified rehabilitative and educational programs outside of a correctional institution as a special condition of a person’s parole term; authorizing the Parole Board to consider whether completion of the outstanding amount of rehabilitative and educational programming would interfere with an inmate’s successful reintegration into society; and requiring the Commissioner of Corrections and Rehabilitation to develop, maintain, and make publicly available a list of certain rehabilitative and educational programs outside of the correctional institution which an inmate may be required to complete as a special condition of parole, and the manner and method for an inmate to complete such programs.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 597**), and there were—yeas 90, nays 10, absent and not voting none, with the nays being as follows:

Nays: Burkhammer, Jennings, Kimes, Lovejoy, Martin, McGeehan, J. Pack, Pinson, Steele and Zukoff.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3078) passed.

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

A message from the Senate, by

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

H. B. 3129, Relating to the Consumer Price Index rate increase.

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

H. B. 3129 – “A Bill to amend §24A-5-2a of the Code of West Virginia, 1931, as amended; relating to how the federal index rate increase percentage is calculated regarding solid waste motor carrier rate increases; requiring revised tariff showing rate increase be filed; requiring appropriate notice be provided; allowing covered carriers to correct excessive requested rates in lieu of administrative hearing; and providing when such increases become effective in each instance.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 598**), and there were—yeas 99, nays 1, absent and not voting none, with the nays being as follows:

Nays: J. Kelly.

So, a majority of the members elected having voted in the affirmative, the Speaker declared the bill (H. B. 3129) passed.

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

A message from the Senate, by

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

H. B. 3130, Relating to elimination of sunset provisions concerning towing rates.

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

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

“ARTICLE 2. COMMON CARRIERS BY MOTOR VEHICLES.

§24A-2-2b. Rule-making authority; establishing rates for recovering, towing, hauling, carrying, or storing wrecked or disabled vehicles; complaint process; and required Legislative Audit.

(a) On or before July 1, 2016, the Commission shall promulgate rules to effectuate the provisions of this article.

(b) The rules promulgated pursuant to the provisions of this section shall describe:

(1) Factors determining the fair, effective, and reasonable rates levied by a carrier for recovering, towing, hauling, carrying, or storing a wrecked or disabled vehicle. The commission shall consider, but shall not be limited to:

(A) Tow ~~vehicle(s)~~ vehicle or vehicles and the special equipment required to complete ~~recovery/tow~~ recovery or tow;

(B) Total time to complete the recovery or tow;

(C) Number of regular and extra employees required to complete the recovery or tow;

(D) Location of vehicle recovered or towed;

(E) Materials or cargo involved in recovery or tow;

(F) Comparison with reasonable prices in the region;

(G) Weather conditions; and

(H) Any other relevant information having a direct effect on the pricing of the recovery, towing, and storage of a recovered or towed vehicle;

(2) The process for filing a complaint, and the review and investigation process to ensure it is fair, effective, and timely: *Provided*, That in any formal complaint against a carrier relating to a third-party tow, the burden of proof to show that the carrier's charges are just, fair, and reasonable ~~shall be upon~~ is on the carrier;

(3) The process for aggrieved parties to recover the cost, from the carrier, for the charge or charges levied by a carrier for recovering, towing, hauling, carrying, or storing a wrecked or disabled vehicle where the commission determines that such charge or charges are not otherwise just, fair, or reasonable; and

(4) The process to review existing maximum statewide wrecker rates and special rates for the use of special equipment in towing and recovery work to ensure that rates are just, fair, and reasonable: *Provided*, That the commission shall generally disapprove hourly and flat rates for ancillary equipment.

(c) All carriers regulated under this article shall list their approved rates, fares, and charges on every invoice provided to an owner, operator, or insurer of a wrecker or disabled motor vehicle.

(d) The rules promulgated pursuant to this ~~article~~ section shall sunset on July 1, ~~2024~~ 2023, unless reauthorized.

(e) On or before December 31, ~~2020~~ 2022, the Legislative Auditor shall review the rules promulgated by the Public Service Commission under this section. The audit shall evaluate the rate-making policy for reasonableness, the complaint process for timeliness, the penalties for effectiveness, and any other metrics the Legislative Auditor deems appropriate. The Legislative Auditor may recommend that the rule be reauthorized, reauthorized with amendment, or repealed."

And,

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

H. B. 3130 – "A Bill to amend §24A-2-2b of the Code of West Virginia, 1931, as amended, relating to rulemaking by the Public Service Commission with respect to common carriers by

motor vehicle engaged in recovering, towing, hauling, carrying, or storing wrecked or disabled vehicles; extending sunset date for such rules to July 1, 2023; and extending deadline for audit of such rules by Legislative Auditor to December 31, 2022.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 599**), and there were—yeas 69, nays 31, absent and not voting none, with the nays being as follows:

Nays: Barach, Boggs, Brown, Diserio, Doyle, Evans, Fast, Fleischauer, Fluharty, Garcia, Gearheart, Griffith, Hanna, Hansen, Holstein, Hornbuckle, Kimes, Lovejoy, Martin, Miller, Phillips, Pushkin, Reynolds, Rowe, Skaff, Thompson, Walker, G. Ward, Williams, Young and Zukoff.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3130) passed.

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

A message from the Senate, by

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

H. B. 3133, Relating to motor carrier rates.

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

H. B. 3133 – “A Bill to amend and reenact §24A-2-5 of the Code of West Virginia, 1931, as amended, and to amend and reenact §24A-5-2 of said Code; all relating to correcting error in commercial motor carrier provisions of said code; restoring language to code setting forth the process to change rates for motor carriers that was inadvertently deleted and replaced; and to correct an erroneous exclusion to include the appropriate language relating to transfer of certificate of convenience and necessity.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 600**), and there were—yeas 99, nays 1, absent and not voting none, with the nays being as follows:

Nays: Paynter.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3133) passed.

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

A message from the Senate, by

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

H. B. 3177, Removing expired, outdated, inoperative and antiquated provisions and report requirements in education.

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

On page sixteen, by striking out all of section seventeen and inserting in lieu thereof a new section seventeen, to read as follows:

“§18-9B-17. Duties of county board and county superintendent.

A county board of education and a county superintendent shall comply with the instructions of the ~~state board of finance~~ State Board of Education and state superintendent and shall perform the duties required of them in accordance with the provisions of this article.;

On page sixteen, by striking out all of section eighteen and inserting in lieu thereof a new section eighteen, to read as follows:

§18-9B-18. Issuance and enforcement of orders.

The ~~board of finance~~ state superintendent shall enforce the requirements of and ~~its~~ his or her regulations issued under this article. The ~~board~~ state superintendent may issue orders to county boards of education requiring specific compliance with ~~its~~ his or her instructions. If a county board fails or refuses to comply, the ~~board~~ state superintendent may proceed to enforce ~~its~~ his or her order by any appropriate remedy, including, but not limited to, initiating legal action in any court of competent jurisdiction.”

And,

On page seventeen, by striking out all of section nineteen and inserting in lieu thereof a new section nineteen, to read as follows:

“§18-9B-19. Withholding of state aid for noncompliance by county board.

(a) The ~~board of finance~~ state superintendent may withhold payment of state aid from a county board that fails or refuses to comply with the provisions of this ~~article~~ code or the requirements of the state ~~board~~ superintendent. ~~made in accordance therewith~~

(b) If the state superintendent finds that the action of a county board or county superintendent does not comply with state law or state board policy, and that the noncompliance could adversely impact the delivery of a thorough and equitable education to all students in the county, the state superintendent may require the following action during the periods of noncompliance:

(1) Approval of meeting agendas by the state superintendent;

(2) Attendance by the state superintendent or designee at county board meetings; and

(3) Approval by the state superintendent of county-level expenditures.

(c) The state superintendent shall report any action of enforcement against a county board pursuant to this section or any other provision of law to the state board at its next meeting.”

And,

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

H. B. 3177 – “A Bill to repeal §18-2-5d, §18-2-13b, §18-2-24, §18-2-29, and §18-2-35 of the Code of West Virginia, 1931, as amended; to repeal §18-2E-4a of said code; to repeal §18-3-9b of said code; to repeal §18-4-12 of said code; to repeal §18-5-18e, and §18-5-43 of said code; to repeal §18-7A-36 of said code; to repeal §18-9A-8a of said code; to repeal §18-9B-11a of said code; to repeal §18-10H-4 of said code; to amend and reenact §18-9A-6a, §18-9A-7, and §18-9A-16 of said code; and to amend and reenact §18-9B-1, §18-9B-2, §18-9B-3, §18-9B-4, §18-9B-5, §18-9B-6, §18-9B-6a, §18-9B-7, §18-9B-8, §18-9B-9, §18-9B-10, §18-9B-12, §18-9B-13, §18-9B-14, §18-9B-15, §18-9B-17, §18-9B-18, §18-9B-19, §18-9B-20 and §18-9B-21 of said code, all relating to removing expired, outdated, inoperative and antiquated provisions and report requirements in education code; updating references; repealing expired report requirement related to productive and safe schools; repealing authorization of state board respecting use of revenues from dormitories, home or refectories; repealing outdated structure for collaboration on professional development delivery among state universities, regional education service agencies and center for professional development; repealing unused competitive grant program for selected schools and school districts; repealing unused requirement for state board rule on school uniforms for students; repealing outdated exception to mailing school report cards; repealing outdated mandated reduction in budgeted amount for personal services in certain fiscal year; repealing outdated exception for county board meeting related to fixing salaries of county superintendent; repealing expired study and report on pupils per teacher; repealing expired report requirement relating to county-wide council on productive and safe schools; repealing expired report requirement relating to joint study of retirement systems; removing reference to repealed allocation to teachers retirement fund; removing expired provisions related to additional funding bus system using bio-diesel alternative fuel; repealing expired allowance for regional education service agencies; replacing reference to state board of school finance with state superintendent; removing expired provision prohibiting salary reduction of certain persons due to passage of school finance article; correcting references to tax commissioner for functions previously transferred to state auditor; deleting outdated references to employment term and instructional term; and removing outdated provisions creating state board of school finance and requiring state superintendent to exercise powers and perform duties; repealing outdated authorization for adjustments to average daily attendance; requiring county boards of education and county superintendents to comply with the instructions of the State Board of Education and state superintendent; expanding remedies that may be used to enforce certain orders of the state superintendent when a county board of education fails or refuses to comply; expanding circumstances under which the state superintendent can withhold payment of state aid from a county board; allowing, under certain circumstances of noncompliance with state law or State Board of Education policy, the state superintendent to require certain actions during the periods of noncompliance; requiring the state superintendent to report certain actions of enforcement against county board to the State Board of Education at its next meeting; and repealing mandate for establishment of certain interdisciplinary doctoral program.”

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

A message from the Senate, by

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

H. B. 3299, Authorizing Higher Education Rules.

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

On page seven, section two, lines one hundred seventy through one hundred seventy-four, by striking out all of subsection (II) and inserting in lieu thereof a new subsection (II), to read as follows:

(II) The legislative rule filed in the State Register on July 29, 2020, relating to the Higher Education Policy Commission (Mental Health Loan Repayment Program) is authorized, with the following amendments:

On page one, subdivision, 3.1.b., after the words "family therapist," by inserting the words "psychiatric mental health nurse practitioner,";

On page two, subsection 6.1, by striking out the words "at least" and inserting in lieu thereof the words "up to"; and

On page three, subsection 9.1, after the words "family therapists," by inserting the words "psychiatric mental health nurse practitioners,".

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 601**), and there were—yeas 96, nays 4, absent and not voting none, with the nays being as follows:

Nays: Hanna, Miller, Paynter and Pinson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3299) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules as follows:

S. C. R. 41 - "Requesting the Joint committee on Government and Finance study the legal process for the collection and enforcement of delinquent taxes and lands."

Whereas, The existing process for collecting and enforcing delinquent taxes set forth in chapter 11A of the Code of West Virginia, 1931, as amended, is complicated and results in a lengthy system of placing delinquent lands on the books for counties and the state; and

Whereas, Many properties sit idle, creating public health and safety hazards, which burden then falls to the counties and cities to remedy pursuant to the State Building Code and/or unsafe building commissions for the local governments; and

Whereas, The usability and development of these properties are further encumbered by the mounting fees, penalties, and interest incurred by the existing taxation collection process which makes them financially undesirable; and

Whereas, There is a desire of the Legislature to expedite and streamline the process of collection to benefit the revenues of the local governments, while simultaneously addressing the public health hazards of dilapidated properties and increasing the marketability of these delinquent lands; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance study the legal process for the collection and enforcement of delinquent taxes and lands; and, be it

Further Resolved, That the Joint Committee on Government and Finance study the existing statutory process concerning: (1) The efficacy of collection and enforcement of delinquent taxes and lands; (2) the interplay of the collection and enforcement systems on the land use and potential economic development capabilities; (3) the burdens placed on local governments by the existing processes for addressing unsafe and dilapidated properties; and (4) the feasibility of streamlining these processes to address the concerns of the Legislature and the local governments of this state; and, be it

Further Resolved, That the Joint Committee and Government and Finance shall seek the input and advice to conduct the study from the: (1) State Auditor; (2) Secretary of Commerce; (3) Secretary of Economic Development; (4) State Fire Marshal; (5) West Virginia Association of Counties; (6) West Virginia Municipal League; and (7) West Virginia University College of Law - Land Use and Sustainable Development Law Clinic; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2022, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules as follows:

S. C. R. 49 - "Requesting the Joint Committee on Government and Finance study the development and expansion of municipal recycling programs, including review of the current status of programs within West Virginia, an examination of best practices from surrounding states, and waste stream economics for municipalities and local communities."

Whereas, Waste recycling programs provide substantial benefits for local communities and for our nation as a whole, including reduction of the amount of waste sent to landfills and incinerators, support for American manufacturing and conservation of valuable resources, increased economic security by tapping domestic sources of materials, prevents pollution by reducing the need to collect new raw materials, increased energy savings, creation of jobs in the

recycling and manufacturing industries in the United States, and conservation of precious natural resources such as timber, water, and minerals; and

Whereas, There is a great disparity across this state in the availability of local recycling programs for household and small business wastes and the types of wastes that these programs can process; and

Whereas, Many local recycling programs have been forced to close or reduce services because of the costs of sorting materials and a depressed market for recyclable wastes; and

Whereas, Public participation in local recycling programs can help reduce costs and foster the benefits of recycling programs; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the development and expansion of municipal recycling programs, including review of the current status of programs within West Virginia, an examination of best practices from surrounding states, and waste stream economics for municipalities and local communities; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2022, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules as follows:

S. C. R. 57 - "Requesting the Joint Committee on Government and Finance study electronic database publication of legal notices in lieu of newspaper publication."

Whereas, Electronic publication of legal notices and advertisements is efficient, cost-effective, and will likely save significant money for the State of West Virginia, its agencies, and its political subdivisions; and

Whereas, A substantial number of West Virginians lack broadband Internet service; and

Whereas, The inability to access electronic legal notices and advertisements may result in adverse legal consequences to West Virginia citizens; and

Whereas, Discontinuing print publication of legal notices and advertisements will result in significant loss of revenues for newspapers across the state; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study electronic database publication of legal notices in lieu of newspaper publication; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2022, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules as follows:

S. C. R. 60 - "Requesting the Interim Committee on Veterans' Affairs and the Department of Veterans Assistance study the merit of establishing a comprehensive program for suicide prevention among veterans and active members of the armed forces, the National Guard, and reserve components and any other veterans issues it considers appropriate."

Whereas, Suicide is the 10th leading cause of death in the United States; and

Whereas, According to numerous studies, veterans face a disproportionate risk of suicide when compared to the general population; and

Whereas, According to the most recent data from the United States Department of Veterans Affairs and the United States Department of Defense, an average of nearly 20 veterans and active members of the armed forces die by suicide each day; and

Whereas, Many of the wounds sustained through armed service to the United States may be invisible, but those wounds are still treatable if those bearing them are connected to the proper resources; and

Whereas, The risk of suicide can be reduced through awareness, educational efforts, adequate resources, and treatment, as well as through the promotion of preventative factors that can offset the risks of suicide, such as positive coping skills, feeling connected to others, especially veterans, and access to mental health care; and

Whereas, The startlingly high rate of veteran suicide is a national health concern that affects us all, and it is our collective responsibility to address this issue; and

Whereas, It is imperative that our state and nation unite to recognize the issues of post-traumatic stress disorder, anxiety, depression, and difficulty readjusting to civilian life, in general, that, tragically, too often lead to a veteran contemplating or committing suicide; and

Whereas, It is the responsibility of a grateful nation to continue to care for those who have served in the armed forces by bringing awareness to this issue and removing the stigma surrounding it; therefore, be it

Resolved by the Legislature of West Virginia:

That the Interim Committee on Veterans' Affairs and the Department of Veterans Assistance is hereby requested to study the issue of establishing a comprehensive program for suicide prevention among veterans and active members of the armed forces, the National Guard, and reserve components and any other veterans issues it considers appropriate; and, be it

Further Resolved, That the study shall seek to determine the scope of this program, the resources which shall be necessary for its establishment and operation, and identify the national, state, local, and private entities which may be necessary in order to effectively address this issue; and, be it

Further Resolved, That the study shall also seek to determine what resources are available from the United States Department of Veterans Affairs, the United States Department of Defense, and any other federal department of program to assist with the policy goals of this program and how to best maximize those resources in coordination with the program to be established by the Department of Veterans Assistance; and, be it

Further Resolved, That the Department of Veterans Assistance report to the regular session of the Legislature, 2022, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules as follows:

S. C. R. 66 - "Requesting the Joint Committee on Government and Finance and the Legislative Oversight Commission on Department of Transportation Accountability study existing and potential income sources for the State Road Fund."

Whereas, The West Virginia State Road Fund is the primary mechanism for collecting and distributing highway and maintenance funds in West Virginia; and

Whereas, The West Virginia Blue Ribbon Commission on Highways noted in its Final Report in 2015 that State Road Fund revenues have not kept pace with inflation, and traditional highway funding mechanisms are insufficient to maintain current state infrastructure; and

Whereas, The motor fuel excise tax has provided the bulk of transportation revenues for the West Virginia Division of Highways; and

Whereas, Based on recent announcements, including the U.S. President's January 27, 2021 Executive Order on Tackling the Climate Crisis at Home and Abroad, which announced the development of a plan to achieve or facilitate clean and zero-emission vehicles for federal, state, local, and Tribal government fleets, the number of alternative fuel vehicles on West Virginia roads will increase, thereby reducing the use of motor fuel and motor fuel excise taxes; and

Whereas, The Federal Highway Administration in July 2017 reported that highway construction costs nationwide grew by an estimated 68 percent over the last 13 years, and that key highway components, as measured by the Bureau of Labor Statistics, like asphalt, concrete,

and metal, grew at 107 percent, 61 percent, and 45 percent, respectively between 2003 and 2016; and

Whereas, The National Highway Construction Cost Index has shown further cost increases since 2016, amplifying the need for additional funding for the State Road Fund; and

Whereas, It is imperative that West Virginia's transportation infrastructure be improved and maintained; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance and the Legislative Oversight Commission on Department of Transportation Accountability are hereby requested to study existing and potential income sources for the State Road Fund; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the Legislature, on the first day of the regular session of the Legislature, 2022, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules as follows:

S. C. R. 67 - "Requesting the Joint Committee on Government and Finance and the Legislative Oversight Commission on Department of Transportation Accountability study criteria for honorary infrastructure naming resolutions."

Whereas, The West Virginia Division of Highways reports that the West Virginia Legislature has adopted between 40 and 95 honorary naming resolutions each regular legislative session during the last ten years, totaling approximately 700 resolutions; and

Whereas, The Division of Highways further reports that each naming resolution costs \$700 on average for sign fabrication and installation, a cost that neither includes the time spent by division employees when assisting with the process of gathering data for such resolutions, nor the time spent by legislative staff tasked with drafting, reviewing, researching, proofing, and processing such naming resolutions; and

Whereas, The West Virginia Legislature, especially the Senate Committee on Transportation and Infrastructure and its staff, spends numerous hours per legislative session working on these resolutions, sometimes at the expense of bills; and

Whereas, The Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) places restrictions on the placement and design of signs and sign content, and violation of the MUTCD could result in the loss of federal funding to the State of West Virginia; and

Whereas, Naming resolutions frequently put the West Virginia Division of Highways in the unenviable position of violating legal directives, such as the Governor's Executive Order No. 2-12, when fulfilling the resolution's request for a particular name honoring a military veteran; and

Whereas, The Legislature commonly adopts road naming resolutions that direct naming signs be placed on roads already named by counties, roads for which West Virginia Code §7-1-3 provides county commissions, in cooperation with local postal authorities, the Division of Highways, and the directors of county emergency communications centers, jurisdiction to name or rename; and

Whereas, Placing contradictory naming signs on the same road may create confusion and delay emergency response times; and

Whereas, West Virginia, like other nearby states with similar infrastructure naming programs, should develop a process, requirements, and criteria that must be met before honorees are considered for an infrastructure naming; and

Whereas, It is in the state's best interest that the time, money, and resources of the Division of Highways and the Legislature be used responsibly in a way that best benefits the state; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance and the Legislative Oversight Commission on Department of Transportation Accountability are hereby requested to study criteria for honorary infrastructure naming resolutions; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the Legislature, on the first day of the regular session of the Legislature, 2022, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules as follows:

S. C. R. 68 - "Requesting the Joint Committee on Government and Finance study paid family leave for state employees and employees of county boards of education."

Whereas, The Parental Leave Act currently provides unpaid family leave of up to 12 weeks for employees of the state and county boards of education in certain circumstances; and

Whereas, There is bipartisan support to provide paid family leave of up to 12 weeks pursuant to the Parental Leave Act under certain circumstances; and

Whereas, Providing paid family leave will likely improve state and county boards of education employee hiring and retention; and

Whereas, The State of West Virginia and county boards of education will incur significant costs to provide paid family leave; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study paid family leave for state employees and employees of county boards of education; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2022, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules as follows:

S. C. R. 69 - "Requesting the Department of Economic Development, in collaboration and consultation with the State Department of Commerce, the State Department of Tourism, and the State Department of Transportation, study, develop, and present a plan to promote adventure travel throughout the state."

Whereas, Adventure travel is enjoying an ever-increasing popularity in West Virginia; and

Whereas, Adventure travel includes both motorized recreation and motorized off-highway access to nonmotorized recreation activities; and

Whereas, The indiscriminate and uncontrolled use of those vehicles may have a deleterious impact on the environment, wildlife habitats, sensitive areas, native wildlife, and native flora; and

Whereas, The Legislature hereby declares that effectively managed areas and adequate facilities for the use of off-highway vehicles, conservation, and enforcement are essential for ecologically balanced recreation; and

Whereas, Existing adventure travel recreational areas, facilities, and opportunities should be expanded and managed in a manner consistent with this article, with particular focus on maintaining sustained, long-term use; and

Whereas, New adventure travel recreational areas, facilities, and opportunities should be provided and managed pursuant to this article in a manner that will conscientiously sustain long-term use; and

Whereas, The Department of Commerce should support both motorized adventure travel recreation and motorized off-highway access to nonmotorized recreation; and

Whereas, When an area or trail or portion thereof cannot be maintained to appropriate established standards for sustained long-term use, it should be closed to use and brought back into compliance with those standards. Those areas should remain closed until they can be managed within soil conservation and wildlife protection standards and, if these standards cannot be met, those areas should, at a minimum, be restored to the condition prior to the use of the area, trail, or portion designated for vehicular recreation; and

Whereas, Adventure travel motor vehicle recreation should be managed through financial assistance to local governments and joint undertakings with agencies of the United States; therefore, be it

Resolved by the Legislature of West Virginia:

That the Department of Economic Development, in collaboration and consultation with the State Department of Commerce, the State Department of Tourism, and the State Department of Transportation, is hereby requested to develop and present a plan to promote adventure travel throughout the state; and, be it

Further Resolved, That this plan shall include, but not be limited to, programs to encourage federal funding of adventure travel initiatives; and, be it

Further Resolved, That the plan shall consider the following areas:

- (1) Limiting liability of railroad companies which allow unused rail lines to be used for tourism or the public good;
- (2) Creation of the Office of Adventure Travel Recreation;
- (3) Earmarking a portion of the State Road Fund to benefit adventure travel recreation;
- (4) Updating the Division of Highways road abandonment and discontinuance rules and procedures;
- (5) Mapping all roads in state forests, state parks, national forests, and national parks which are state roads;
- (6) Updating the Division of Highways reporting mechanism for illegal gates and other public road blockages;
- (7) Authorization of the Division of Natural Resources to make rules consistent with federal outfitter and guide operating guidelines, and to require training and permitting for outfitters offering jeep tour services;
- (8) Creation of wildlife viewing stamps which allow public access to normally inaccessible state roads during certain times of year;
- (9) Creation of dispersed camping stamps which allow public access to normally inaccessible state property during certain times of year; and
- (10) Creation of an Adopt-A-Trail program which would allow volunteer organizations to participate in trail beautification in the state; and, be it

Further Resolved, That the Department Economic Development report to the regular session of the Legislature, 2022, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules as follows:

S. C. R. 70 - "Requesting the Joint Committee on Government and Finance to study and examine the population of children experiencing homelessness, as defined by McKinney-Vento Homeless Assistance Act, and the services provided to those children."

Whereas, "Children experiencing homelessness" is defined as a child who lacks a fixed, regular, and adequate nighttime residence. In accordance with McKinney-Vento Homeless Assistance Act, as amended by the Every Student Success Act, a child experiencing homelessness includes children: (i) Who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or awaiting foster care placement; (ii) children who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings; (iii) children who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; (iv) migratory children; and (v) children not in the physical custody of a parent or guardian; and

Whereas, Children experiencing homelessness are at greater risk of entering the child welfare system or juvenile justice system; being victims of sex trafficking; suffering from mental health and behavioral health issues; and experiencing significant disruptions in their education; and

Whereas, Both the West Virginia Department of Education and West Virginia Department of Health and Human Resources provide services to this vulnerable population, which are funded by both state and federal funds; and

Whereas, Coordinating the services provided by the West Virginia Department of Education and West Virginia Department of Health and Human Resources will ensure that all children experiencing homelessness will be served and will expose any gaps or barriers in providing such services, if any; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study and examine the population of children experiencing homelessness, as defined by McKinney-Vento Homeless Assistance Act, and the services provided to those children; and, be it

Further Resolved, That the examination at least include requesting a joint report from the West Virginia Department of Health and Human Resources and the West Virginia Department of Education on potential methods of ensuring that all county boards of education are using the

correct definition of children experiencing homelessness when identifying these children; the services provided to homeless children by the West Virginia Department of Health and Human Resources and West Virginia Department of Education; any identified service gaps or barriers; and any recommendations for statutory changes needed to overcome the service gaps or barriers, if necessary; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2022, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules as follows:

S. C. R. 72 - "Requesting the Joint Committee on Government and Finance study the possible programs and procedures which can be implemented by county boards of education to facilitate summer and non-school-day feeding programs to prevent child food insecurity."

Whereas, More than 5,300,000 children nationally and one in five children in West Virginia live in a household that is food insecure; and

Whereas, Over 65 percent of school-aged children in West Virginia qualify for free or reduced-price meals; and

Whereas, Inadequate access to food places children at risk for health problems, obesity, nutrient deficiencies, and difficulties with learning and discipline; and

Whereas, Food insecurity for children continues when they are not in school, such as after school, snow days, during summer vacation, or extended breaks; and

Whereas, Innovative ideas and partnerships between county boards of education and other organizations are vital to ensure that children have access to nutritious, healthy, and sufficient food in and out of school; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the possible programs and procedures which can be implemented by county boards of education to facilitate summer and non-school-day feeding programs to prevent child food insecurity; and, be it

Further Resolved, That the Joint Committee on Government and Finance create a matrix containing the programs and resources available to each county board of education which can be used to address and prevent child food insecurity; and, be it

Further Resolved, That the study examine potential partnerships with social and civic groups, food pantries and food banks, faith-based initiatives, and corporate partnerships to aid county boards of education in providing food to students outside of the school day; and, be it

Further Resolved, That the study include recommendations for increasing efficiency in the delivery of the feeding programs to prevent child food insecurity as well as for streamlining coordination between all parties involved in the delivery of the feeding programs; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2022, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules as follows:

S. C. R. 74 - "Requesting the Joint Committee on Government and Finance study the feasibility of legislation to reduce criminal activity and increase online marketplace transparency."

Whereas, Brick-and-mortar retailers in West Virginia are concerned about criminals stealing merchandise from brick-and-mortar stores and then illegally selling those goods on online marketplaces; and

Whereas, Some online third-party marketplaces support anonymous selling accounts on their platforms; and

Whereas, Criminal activity may be reduced and consumers may benefit from increased online marketplace transparency; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the feasibility of legislation to reduce criminal activity and increase online marketplace transparency; and, be it

Further Resolved, That the study include the significance of criminals stealing merchandise from brick-and-mortar stores and then illegally selling those goods on online marketplaces; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2022, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules as follows:

S. C. R. 75 - "Requesting the Joint Committee on the Judiciary study the feasibility of conforming the timing of elections and ballot initiatives of political subdivisions of this state to coincide with scheduled statewide and federal primary and general elections."

Whereas, Some municipalities, counties, and other political subdivisions of this state currently hold elections and ballot initiatives outside of scheduled statewide and federal primary and general election dates; and

Whereas, Holding such local elections and ballot initiatives outside of the scheduled statewide and federal primary and general election cycle may cause political subdivisions to incur significant administrative costs; and

Whereas, Such costs incurred by political subdivisions could be reduced if such local elections and ballot initiatives coincide with scheduled statewide and federal primary and general elections; and

Whereas, Holding such local elections and ballot initiatives outside of the scheduled statewide and federal primary and general election cycle may result in low voter turnout on such local elections and ballot initiatives; and

Whereas, It is believed that voter turnout for local elections and ballot initiatives could increase if such local elections and ballot initiatives coincide with scheduled statewide and federal primary and general elections; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on the Judiciary is hereby requested to study the feasibility of conforming the timing of elections and ballot initiatives of political subdivisions of this state to coincide with scheduled statewide and federal primary and general elections; and, be it

Further Resolved, That the Joint Committee on the Judiciary report to the regular session of the Legislature, 2022, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

Introduction of Resolutions

Delegates Barnhart, Hanna, Keaton, Anderson, Ferrell, G. Ward, Haynes, J. Kelly and Zatezalo offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 107 - "Requesting the Joint Committee on Government and Finance study alternative methods of recourse for delinquent court fees."

Whereas, Magistrates in the State of West Virginia face difficulties in enforcing the collection of court costs and fees; and

Whereas, Magistrate courts rely on the collection of these fees for their operations; and

Whereas, During the 2020 this Legislature passed House Bill 4958 which eliminated the ability of magistrate judges to suspend defendants' West Virginia driver's licenses at their discretion for failure to pay court costs and fees; and

Whereas, Since the passage of that bill, magistrate judges have had a more burdensome time collecting these costs and fees, resulting in more delinquent accounts; and

Whereas, This inability to efficiently and effectively collect court costs and fees will have an adverse effect on the magistrate court system; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance study alternative methods of recourse that will effectuate efficient collection of delinquent court costs and fees; and, be it

Further Resolved, That the Joint Committee on Government and Finance shall report to the regular session of the Legislature, 2022, on its findings, conclusions, and recommendations, together with drafts of any legislation or resolutions necessary to effectuate its recommendations; and, be it

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

Delegates Nestor, Pritt, Ferrell, Worrell, Reed, Linville, Bruce, Mandt, Mallow, Anderson, Holstein, Hott and Longanacre offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 108 - "Requesting the Joint Committee on Government and Finance study potential development of additional bleachers at the new Elkins High School."

Whereas, Elkins High School does not currently have a properly equipped football field; and

Whereas, There are current proposals to equip the new school field with appropriate bleachers; and

Whereas, The prior venue operated as a sort of multipurpose location for a variety of activities until its condemnation; and

Whereas, The school and community would benefit from additional bleachers at the new location for large events such as large football games, pee wee events, community ceremonies, and etc.; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance study potential development of additional bleachers at the new Elkins High School, including costs, costs savings, revenue by venue hosting, and benefits to the school and community of bleacher extension; and, be it

Further Resolved, That the Joint Committee on Government and Finance shall report to the regular session of the Legislature, 2022, on its findings, conclusions, and recommendations, together with drafts of any legislation or resolutions necessary to effectuate its recommendations; and, be it

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

Delegates Nestor, Pritt, Ferrell, Anderson, J. Kelly, Longanacre, Reed, Linville, Reynolds, Wamsley, Bruce, Barnhart, Holstein, Hott, Mandt, Storch, G. Ward, Westfall and Worrell offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 109 - "Requesting the Joint Committee on Government and Finance to study the potential impact of the development of the railroad yard in Elkins, West Virginia to include an amphitheater/multi-use property that can host concerts and athletic events."

Whereas, Elkins is the gateway to many tourist destinations throughout Randolph County, including Canaan Valley State Park, Blackwater Falls State Park, Cass Scenic Railroad, Seneca Rocks Discovery Center, and National Radio Astronomy Observatory; and

Whereas, Elkins is a terminus for the Durbin Greenbrier Valley Railroad excursion trains and supports an active Railyard including the Elkins Depot Welcome Center and the Darden Mill; and

Whereas, The region offers many activities for residents and tourists alike, including the best ski resorts in the south, miles of mountain biking, hiking in the Monongahela National Forest, access to over 500 miles of trout streams, whitewater rivers for all skill levels, an unparalleled blaze of fall colors, hunting, and award winning golf courses. The region has been recognized as one of our Nation's top five tourism destinations; and

Whereas, In order to continue to develop Elkins as a tourist destination and provide additional activities for the residents of the region, Elkins has begun to develop the railyard property. This property this is prime real estate that if developed correctly could grow tourism in the area and State; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance study the potential impact of the development of the railroad yard in Elkins, West Virginia to include an amphitheater/multi-use property that can host concerts and athletic events; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the Regular Session of the Legislature, 2022, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

Delegates Skaff, Barach, Bates, Brown, Clark, Diserio, Doyle, Ellington, Evans, Fleischauer, Fluharty, Forsht, Garcia, Griffith, Hansen, Higginbotham, Hornbuckle, Horst, Kimble, Lovejoy, Martin, Pushkin, Rowe, Walker, Wamsley, G. Ward, Williams, Young and Zukoff offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 110 - "Requesting the Joint Committee on Government and Finance to study the fiscal impact on political subdivisions that elimination or reduction of property taxes on tangible machinery and equipment personal property directly used in business activity, tangible inventory personal property directly used in business activity, and personal property tax on motor vehicles from ad valorem property taxation and corresponding revenue replacement mechanisms to mitigate the budgetary effects on political subdivisions including county and municipal governments, county school boards and levying bodies."

Whereas, Property taxes provide substantial revenues necessary to finance the provision local government services, and substantive modifications to the current property taxation may significantly impact delivery of such; and

Whereas, Elimination or reduction of property taxes will have a disparate effect on political subdivisions across this state; and

Whereas, Revenue replacement mechanisms will also have a disparate effect in mitigating potential losses resulting from the elimination or reduction of property taxes; and

Whereas, Participation by all impacted political subdivisions and levying bodies is tantamount to ensuring sustainable delivery of public services to the citizenry; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the fiscal impact elimination or reduction of current tangible property tax, including commercial machinery and equipment, business inventory and tangible personal property, and corresponding revenue replacement mechanisms to mitigate the budgetary effects on political subdivisions including county and municipal governments, county school boards and levying bodies; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2022, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

Delegates Nestor, Pritt, Ferrell, Reed, Phillips, Linville, Bruce, Mandt, Mallow, Anderson, Holstein, Hott, Longanacre, Reynolds, Westfall and Worrell offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 111 - "Requesting the Joint Committee on Government and Finance to study developing and resurfacing the track at the old Elkins High School location for use by the school and community."

Whereas, The track at the old Elkins High School location has been a favorite spot for students and community members to gather for events and exercise; and

Whereas, With the construction of the new Elkins High School, resources have been focused on development of that location; and

Whereas, However, there is still great benefit to the school and community to restore and potentially further develop the track at the old location for continued use by the school and community as a place for events, gathering, and exercise; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance shall undertake a study of the costs, benefits, and potential revenue of resurfacing and potentially further development of the old Elkins High School track; and, be it

Further Resolved, That the Joint Committee on Government and Finance shall report to the regular session of the Legislature, 2022, on its findings, conclusions, and recommendations, together with drafts of any legislation or resolutions necessary to effectuate its recommendations; and, be it

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

Motions

Delegate Garcia was recognized and moved that House Rule 70 be suspended and that Com. Sub. for S. J. R. 11 be moved from the House Calendar to the Special Calendar.

Delegate Summers moved that the motion be tabled.

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

On this question, the yeas and nays were taken (**Roll No. 602**), and there were—yeas 75, nays 25, absent and not voting none, with the nays and absent and not voting being as follows:

Nays: Barach, Bates, Boggs, Brown, Conley, Diserio, Doyle, Evans, Fleischauer, Fluharty, Garcia, Griffith, Hansen, Hornbuckle, Lovejoy, McGeehan, Pethtel, Pushkin, Rowe, Skaff, Thompson, Walker, Williams, Young and Zukoff.

Absent and Not Voting: None.

So, a majority of the members present having voted in the affirmative, the motion was laid upon the table.

Pursuant to House Rule 58, Delegate Westfall, having voted on the prevailing side on Roll Call No. 562, moved to reconsider Com. Sub. for S. B. 569.

Pursuant to the Joint Rule 6, the bill had been returned to the Senate.

Delegate Espinosa moved the House recall the bill from the Senate.

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

The yeas and nays having been ordered they were taken (**Roll No. 603**), and there were— yeas 45, nays 55, absent and not voting none, with the yeas being as follows:

Yeas: Barnhart, Burkhammer, Capito, Clark, Conley, Criss, Ellington, Espinosa, Forsht, Foster, Gearheart, Graves, Hamrick, Hanna, Hardy, Haynes, Higginbotham, Hott, Householder, Howell, D. Jeffries, Keaton, Kessinger, Kimble, Kimes, Linville, Mallow, Mazzocchi, J. Pack, L. Pack, Pinson, Pritt, Queen, Reed, Reynolds, Riley, Statler, Storch, Summers, Sypolt, Wamsley, Westfall, Worrell, Zatezalo and Hanshaw (Mr. Speaker).

So, a majority of the members present not having voted in the affirmative, the motion to request the return of the bill was rejected.

At 12:14 p.m., on motion of Delegate Summers, the House of Delegates recessed until 1:45 p.m.

* * * * *

Afternoon Session

* * * * *

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

Messages from the Senate

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

Com. Sub. for H. B. 3215, Amending the requirements to become an elected prosecutor.

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

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

“ARTICLE 4. PROSECUTING ATTORNEY, REWARDS, AND LEGAL ADVICE.

§7-4-1a. Eligibility of prosecuting attorneys.

To be eligible to be a candidate for the office of prosecuting attorney, a person shall be a duly licensed attorney in the State of West Virginia at the time of his or her filing for office.”

And,

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

Com. Sub. for H. B. 3215 – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-4-1a, relating to eligibility of prosecuting attorneys; and requiring a person to be licensed as an attorney in the State of West Virginia at the time of filing for office as a candidate for the office of prosecuting attorney.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 604**), and there were—yeas 94, nays 4, absent and not voting 2, with the nays and the absent and not voting being as follows:

Nays: Dean, Hanna, Kimes and Paynter.

Absent and Not Voting: Fleischauer and Garcia.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3215) passed.

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

There being no objection, the House proceeded to consideration of items on Unfinished Business.

Special Calendar

Unfinished Business

S. C. R. 53, Encouraging certain facilities improve palliative care programs; coming up in regular order, as unfinished business, was reported by the Clerk and adopted.

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

H. R. 26, Requesting the Joint Committee on Government and Finance to study the extent to which the COVID-19 pandemic has revealed efficiencies and/or inefficiencies in the executive branch of government in West Virginia; coming up in regular order, as unfinished business, was reported by the Clerk and adopted.

H. C. R. 105, Requesting the Joint Committee on Government and Finance study the current process of involuntary hospitalization, competency, and criminal responsibility of persons charged or convicted of certain crimes; coming up in regular order, as unfinished business, was reported by the Clerk and adopted.

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

H. C. R. 106, Requesting the Joint Committee on Government and Finance study the effect of empowering the West Virginia Sentencing Commission to study the effect of a criminal code

rewrite; coming up in regular order, as unfinished business, was reported by the Clerk and adopted.

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

Third Reading

Com. Sub. for S. B. 344, Relating to credit for qualified rehabilitated buildings investment; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 605**), and there were—yeas 99, nays 1, absent and not voting none, with the nays being as follows:

Nays: Foster.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 344) passed.

An amendment to the title of the bill, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the title to read as follows:

Com. Sub. for S. B. 344 - "A Bill to amend and reenact §11-21-8a of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-24-23a of said code, all relating to eliminating the termination date of the tax credit for qualified rehabilitated buildings investment."

Delegate Summers moved that the bill take effect July 1, 2021.

On this question, the yeas and nays were taken (**Roll No. 606**), and there were—yeas 100, nays none, absent and not voting none.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 344) takes effect July 1, 2021.

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

Com. Sub. for S. B. 368, Authorizing DEP to develop Reclamation of Abandoned and Dilapidated Properties Program; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 607**), and there were—yeas 99, nays 1, absent and not voting none, with the nays being as follows:

Nays: Kimes.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 368) passed.

An amendment to the title of the bill, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the title to read as follows:

Com. Sub. for S. B. 368 - “A Bill to amend and reenact §22-15-11 of the Code of West Virginia, 1931, as amended; to amend and reenact §22-15A-1 and §22-15A-19 of said code; to amend said code by adding thereto a new section, designated §22-15A-30; to amend and reenact §22-16-4 and §22-16-12 of said code; to amend and reenact §22C-4-30 of said code; and to amend and reenact §24-2-1m of said code; all relating to regulation of certain waste disposal and processing activities generally; authorizing certain additional solid waste assessment fees; providing for the distribution of the additional solid waste assessment fees; changing the location of certain public roads upon which the moneys of the Gas Field Highway Repair and Horizontal Drilling Waste Study Fund is to be expended for their improvement, maintenance and repair from those public roads located in the watershed from which certain revenues are received to those public roads located in the county where the waste is generated; providing that those funds only be expended through the Division of Highways county office in that county; exempting certain mixed waste processing and resource recovery facilities from certain fees and assessments; providing legislative findings; authorizing the Department of Environmental Protection to develop the Reclamation of Abandoned and Dilapidated Properties Program to assist county commissions or municipalities in their efforts to remediate abandoned and dilapidated structures; creating a special revenue fund to be known as the Reclamation of Abandoned and Dilapidated Properties Program Fund; permitting the payment of excess money from the Solid Waste Facility Closure Cost Assistance Fund into the Reclamation of Abandoned and Dilapidated Properties Program Fund; authorizing increases in certain solid waste assessment fees; providing that the jurisdiction of the West Virginia Public Service Commission does not extend to these mixed waste processing and resource recovery facilities; and providing effective date.”

Delegate Summers moved that the bill take effect July 1, 2021.

On this question, the yeas and nays were taken (**Roll No. 608**), and there were—yeas 99, nays 1, absent and not voting none, with the nays being as follows:

Nays: Kimes.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 368) takes effect July 1, 2021.

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

Com. Sub. for S. B. 492, Establishing program for bonding to reclaim abandoned wind and solar generation facilities; on third reading, coming up in regular order, with amendments pending and the right to amend, was reported by the Clerk.

An amendment offered by Delegates Anderson and Zatezalo, was reported by the Clerk.

Whereupon,

Delegate Anderson obtained unanimous consent that the amendment be withdrawn.

An amendment, offered by Delegate Capito was reported by the Clerk.

Whereupon,

Delegate Capito obtained unanimous consent that the amendment be withdrawn.

In the absence of objection, the House proceeded to consider an amendment, offered by Delegates Anderson and Zatezalo, on page two, after the enacting clause, by striking out the remainder of the bill in its entirety and inserting in lieu thereof the following:

“ARTICLE 32. THE WEST VIRGINIA WIND AND SOLAR ENERGY FACILITY RECLAMATION ACT.

§22-32-1. Legislative findings and purpose.

(a) The Legislature finds that the State of West Virginia has an interest in assuring that wind generation facilities and solar generation facilities are properly decommissioned and reclaimed once the facility has been permanently closed.

(b) The Legislature further finds that the most efficient manner by which to protect the citizens of the State of West Virginia is to require that wind generation facilities and solar generation facilities secure bonding sufficient to pay for all decommissioning and reclamation costs of the property on which wind generation facilities and solar generation facilities are operated.

(c) Therefore, in view of the findings relating to the decommissioning and reclamation of wind generation facilities and solar generation facilities, the Legislature declares it to be the public policy of the State of West Virginia to eliminate the present danger resulting from abandoned wind generation facilities and solar generation facilities and that in order to provide for the public health, safety, and welfare, it is necessary to enact legislation to those ends by requiring companies that construct and operate wind generation facilities and solar generation facilities to post bonds and execute agreements sufficient to cover the costs of decommissioning and reclamation in the event they are abandoned after closure.

§22-32-2. Short title.

This article shall be known and cited as The West Virginia Wind and Solar Energy Facility Reclamation Act.

§22-32-3. Definitions.

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

(a) ‘Board’ means the Environmental Quality Board provided for in §22B-1-7 of this code.

(b) ‘Decommission’ or ‘decommissioning’ means:

(1) The removal and proper disposal of the solar generation facility and its foundation after the end of the facility’s useful life or abandonment; or

(2) The removal and proper disposal of an aboveground wind turbine tower and its foundation after the end of a wind generation facility’s useful life or abandonment; and

(3) Except as otherwise provided in §22-32-4 of this code, the removal and proper disposal of buildings, equipment, cabling, electrical components, roads, or any other facilities associated with a wind generation or solar generation facility; and

(4) Except as otherwise provided in §22-32-4 of this code, the reclamation of the surface lands upon which buildings, equipment, and equipment foundations using backfill and compacting of soil in order to return the surface to beneficial use and to prevent adverse hydrologic effects.

(c) 'Department', 'agency', and 'DEP' mean the West Virginia Department of Environmental Protection.

(d) 'Owner' means a person who owns a wind generation or solar generation facility operated in West Virginia for the generation of electricity.

(e) 'Person' means any individual, firm, partnership, company, association, corporation, limited liability company, city, town, or local governmental entity or any other state, federal, or private entity, whether organized for profit or not.

(f) 'Solar generation facility' means an installation or combination of solar panels or plates, including a canopy or array, and other associated property, including appurtenant land, improvements, and personal property, that are normally operated together to capture and convert solar radiation to produce electricity, including flat plate, focusing solar collectors, or photovoltaic solar cells, and that has a nameplate capacity, singularly or in the aggregate, greater than or equal to 1.0 megawatts.

(g) 'Wind generation facility' means any combination of a physically connected wind turbine or turbines, associated prime movers, and other associated property, including appurtenant land, improvements, and personal property, that are normally operated together to produce electric power from wind and that have a nameplate capacity, singularly or in the aggregate, greater than or equal to 1.0 megawatts.

(h) 'Bond' means a surety bond or any other arrangement, including but not limited to letters of credit and escrow accounts, that represent a financial guarantee from the owner of a wind generation facility or solar generation facility to meet decommissioning requirements as established in this Act.

§22-32-4. Bonding required.

(a) Within 12 months of a wind generation facility or solar generation facility commencing commercial operation, except as provided in subsections (b) and (c) of this section, the owner of a wind generation facility or solar generation facility operating in West Virginia shall:

(1) Notify the Department of Environmental Protection (DEP) in writing of the date that the facility began commercial operation;

(2)(A) Submit a plan, certified by a qualified independent licensed professional engineer, for decommissioning the facility to the DEP in compliance with DEP standards and technical specifications including a scope of work to be completed and cost estimates for completion and salvage estimates, taking into account local siting conditions, or (B) if exempt hereunder, submit a copy of a properly executed and legally binding decommissioning agreement with all attachments, schedules, and addendums thereto;

(3) Provide the DEP with any other necessary information in accordance with this article and rules adopted pursuant to this article in order for the department to determine bond requirements in accordance with this section; and

(4) Submit a fee for a new application of \$100 per megawatt of nameplate generation capacity or a fee for any modification of \$50 per megawatt of nameplate generation capacity to be deposited into the Wind and Solar Decommissioning Account and utilized for implementing this article and its rules.

(b) If a wind generation facility or solar generation facility commenced commercial operation before July 1, 2021, the owner of the facility shall submit to the department the information required in subsection (a) of this section on or before July 1, 2022.

(c) If a wind generation facility or solar generation facility commenced commercial operation before July 1, 2021, and the owner of the facility submitted information required by subsection (a) of this section on or before July 1, 2021, the owner is not required to resubmit the information.

(d) If a property owner and the owner of a wind generation facility or solar generation facility and to the extent necessary any local governing body reach an agreement concerning: (1) Alternative restoration of buildings, equipment, other associated property (including appurtenant land, improvements, and personal property), cabling, electrical components, roads, or any other associated facilities (instead of removal); or (2) alternative plans for reclamation of surface lands; or (3) both, the agreement must be provided to the DEP for review and approval by the Cabinet Secretary or his assigns. The DEP must approve or deny the alternative plan submission within 90 days of receipt. Decommissioning agreements which legally bind exempt parties are not subject to approval or modification by DEP but are subject to review and comment by DEP.

(e)(1) Upon application by the wind generation facility or solar generation facility, the DEP may modify a plan for decommissioning and adjust bond requirements in accordance with this article.

(2) The DEP shall notify the owner of the facility of any modification. The owner of the wind generation facility or solar generation facility may appeal a modification by the DEP of a plan for decommissioning to the Environmental Quality Board within 30 days of receiving notice of the modification to the plan.

(f) To determine the amount of a bond required in accordance with this act, the DEP shall take into account the report submitted with an application and assess a bond value based upon the total disturbed acreage of land upon which the wind generation or solar generation facility is operated, less salvage value: *Provided*, That the amount of the bond required shall not exceed the total projected future cost of decommissioning, less salvage value.

(g) Except as provided in subsection (i) of this section, the owner of a wind generation facility or solar generation facility shall submit to the DEP a bond payable to the State of West Virginia in a form acceptable by the DEP and in the sum determined by the DEP, conditioned on the faithful decommissioning of the wind generation facility or solar generation facility.

(h)(1) Except as provided in subsection (i) of this section, if a wind generation facility or solar generation facility commenced commercial operation on or before July 1, 2021, the operator shall submit the decommissioning bond to the DEP on or before July 1, 2022.

(2) Except as provided in subsection (i) of this section, if a wind generation facility or solar generation facility commenced commercial operation after July 1, 2021, the operator shall submit the decommissioning bond to the DEP within one year of the date on which the wind generation facility or solar generation facility first produces electricity for consumer or industrial use.

(i) An owner of a wind generation facility or solar generation facility is exempt from the requirements of this section if:

(1) the facility has less than 1.0 megawatts in nameplate capacity;

(2) the facility is operated by a regulated public utility who can successfully demonstrate to the Public Service Commission and the DEP an acceptable showing of financial integrity and long-term viability; or

(3) the facility is legally bound by a decommissioning agreement, based upon a qualified independent party and executed before the effective date of this article; or is or was granted a siting certificate or other authorization to construct by the Public Service Commission, conditioned upon the execution of such agreement before the effective date of this article: Such facilities are exempt, unless or until the facility, is (A) found to be in breach of such agreement or such agreement is found to be unenforceable, (B) sold or transferred to a party or parties not bound under such agreement, or (C) substantially expanded in total disturbed acreage.

(j)(1) If the owner of the wind generation facility or solar generation facility fails to submit a decommissioning bond acceptable to the DEP or the properly executed and legally binding decommissioning agreement within the time frame required by this section, the DEP shall provide notice to the facility owner. If, after 30 days, the owner of a wind generation facility or solar generation facility has not submitted a decommissioning bond or such agreement, the DEP may assess an administrative penalty of not more than \$10,000 for the first day of violation and may assess an additional administrative penalty of not more than \$500 for each day the failure to submit the decommissioning bond continues.

(2) The owner of the wind generation facility or solar generation facility may appeal a penalty assessment to the Environmental Quality Board within 30 days after receipt of written notice of the penalty. The provisions of §22B-1-1 *et seq.* of this code shall apply to such appeals.

(k) If the owner of a bonded wind generation facility or solar generation facility transfers ownership of the facility to a successor owner, the first owner's bond must be released after 90 days. The new owner of a bonded facility shall submit any necessary bond within 90 days after transfer of ownership or be subject to penalties in accordance with this section. The new owner of an unbonded facility shall submit any necessary bond within 90 days after transfer of ownership or be subject to penalties in accordance with this section.

(l) Once every five years, the owner of a wind generation facility or solar generation facility may submit an amended plan for the DEP's approval. As part of the submission, the owner of a wind generation facility or solar generation facility may also apply to the DEP for a reduction in the amount of the decommissioning bond applicable to the wind energy facility or solar generation facility. The owner's application to the DEP must include written evidence of a reduction in the total disturbed acreage upon which the facility is sited and a modification fee of \$50 per megawatt of nameplate generation capacity.

(m) Submitting a bond or a properly executed and legally binding decommissioning agreement in accordance with this section does not absolve the owner of a wind generation facility or solar generation facility from complying with all other applicable laws, rules, regulations, and requirements applicable to a wind generation facility or solar generation facility.

(n) The Public Service Commission of West Virginia shall condition all siting certificates issued on full compliance, as determined by the DEP, with the provisions of this article and the rules promulgated hereunder and shall not require further decommission bonding. Entities subject to and in compliance with this article shall not be subjected to any municipal, county, or local political subdivision's code, ordinances, rules, or regulations including additional decommission bonding.

(o) DEP shall issue a decision approving, approving with modifications, or denying an application, plan, amended plan, modification, or bond within 90 days of receipt.

(p) Any person adversely affected by a decision of DEP to approve or deny a decommissioning plan; establish the amount of a decommissioning bond; approve or deny an application to modify a decommissioning plan or bond; grant or release a decommissioning bond; or to forfeit a decommissioning bond may appeal that decision to the Environmental Quality Board and thereafter to the appropriate court in accordance with the provisions of §22B-1-1, et seq of this code.

§22-32-5. Wind and solar decommissioning account, bonds to be held.

(a) This article establishes a Wind and Solar Decommissioning Account within the State Treasury. There must be paid into the account:

(1) Fees and penalties collected in accordance with the article; and

(2) Interest income earned on the account.

(b)(1) Money in the account may only be used by the Department of Environmental Protection (DEP) in implementing this article and rules adopted pursuant to this article.

(2) The DEP shall administer this program using existing resources and money in the account.

(c) The DEP shall maintain and hold bonds or other surety received by the DEP as authorized by this article for use in accordance with this article.

§22-32-6. Bond release.

(a)(1) Subject to subdivision (2) of this subsection, the Department of Environmental Protection (DEP) shall release the bond if it is satisfied that an owner has properly decommissioned a wind generation facility or solar generation facility in accordance with the plan required by this article.

(2) At any time, an owner of a wind generation facility or solar generation facility may petition the DEP for release of the bond, and the DEP shall reply with a determination within 90 days.

(b) If the owner of a wind generation facility or solar generation facility fails to properly decommission a wind generation facility or solar generation facility and has not commenced action to rectify deficiencies within 90 days after notification by the DEP, the DEP shall cause the bond to be forfeited. The DEP, through its Office of Environmental Remediation or by contract with a private entity, may take any necessary actions to decommission the wind generation facility or solar generation facility. Upon completion, the DEP may file suit to enforce the permit conditions, plans, and agreements to recoup the cost of decommissioning and reclamation in the

circuit court of Kanawha County or in the circuit court of the county in which the wind generation facility or solar generation facility is located.

§22-32-7. Rulemaking

The Department of Environmental Protection (DEP) may promulgate such emergency, interpretive, legislative, and procedural rules as the secretary deems to be useful or necessary to carry out the purpose of this article and to implement the intent of the Legislature in accordance with the provisions of §29A-3-1 et seq. of this code, prescribing:

(a) Standards and procedures for reclamation, submission of applications and agreements, and reasonable bonds with good and sufficient surety by the owners of wind generation facilities and solar generation facilities;

(b) The collection of fees and penalties in accordance with this article;

(c) Criteria and the process for releasing a bond in accordance with this article;

(d) The DEP's use of a bond in the event that the owner of a wind generation facility or solar generation facility fails to decommission a wind generation facility or solar generation facility;

(e) Information required by the department to determine bond requirements in accordance with this article; and

(f) Any additional requirements to ensure compliance with this article.

§22-32-8. Decommissioning Agreements.

Decommissioning agreements entered by wind and solar facilities not exempted from this Act shall address, at a minimum:

(a) The term and scope of the agreement, including access and easement rights for decommissioning activities thereunder;

(b) The establishment of a bond or fund for decommissioning activities; provisions governing the same; initial balances; and whether an escrow agreement is required for the fund;

(c) The requirement to review, amend, and restate the decommissioning agreement every five years and adjust the required balance of the bond or fund for decommissioning activities;

(d) The Department of Environmental Protection's right to review, modify, and approve the independent third-party's plan: *Provided*, That the Department of Environmental Protection's approval of a qualified independent third-party evaluation shall not be unreasonably withheld;

(e) Industry standards or citations to the same to be met for decommissioning wind and solar facilities, including a statement of the restoration goal and the treatment of abandoned equipment on owned or leased property;

(f) The process for making claims and disbursements under the agreement's decommissioning fund;

(g) The termination of the decommissioning agreement following the completion of decommissioning activities;

(h) Required notices;

(i) The assignment of rights and obligations under the agreement; and

(j) Force majeure provisions excusing performance or delays in performance due to fire, earthquake, flood, tornado, disasters, or act of God, terrorism, pandemic, change of law, or any other cause beyond a party's control.

The secretary of the Department of Environmental Protection may propose rules for legislative approval in accordance with the provisions of chapter twenty-nine-a of this code establishing a model decommissioning agreement for wind and solar facilities governed under this Act.”

An amendment to the amendment, offered by Delegate Hott, was reported by the Clerk.

Whereupon,

Delegate Hott obtained unanimous consent that the amendment be withdrawn.

The question being on the adoption of the amendment offered by Delegates Anderson and Zatezalo, the same was put and adopted.

An amendment, offered by Delegate Griffith, was reported by the Clerk.

Whereupon,

Delegate Griffith obtained unanimous consent that the amendment be withdrawn.

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 609**), and there were—yeas 96, nays 4, absent and not voting none, with the nays being as follows:

Nays: Clark, Higginbotham, Thompson and Young.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 492) passed.

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

Com. Sub for S. B. 492 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §22-32-1, §22-32-2, §22-32-3, §22-32-4, §22-32-5, §22-32-6, §22-32-7, and §22-32-8, all relating generally to establishing and implementing a program to decommission and reclaim wind and solar electrical generation facilities upon closure; making legislative findings; stating legislative purpose; providing a short title; defining terms including bond; requiring the owners of wind generation facilities and solar generation facilities to notify and provide certain information to the Department of Environmental Protection (DEP), including dates when operations began and plans with certified cost and salvage estimates for decommissioning facilities; establishing fees for new and modified applications; requiring DEP to determine and

assess a reclamation bond based on applicant's filings and a facility's total disturbed acreage, less salvage value; establishing a maximum bond value limit; requiring the owners of said facilities to submit bonds payable to the state in a form and in a sum determined by the DEP, conditioned on the satisfactory decommissioning; providing that owners of said facilities may enter into alternative reclamation agreements after approval by the DEP; providing that the DEP may modify said plans after proper notification and appeals; providing exemptions from bond requirements for certain facilities including those with nameplate capacities of less than 1.0 megawatts, those facilities operated by regulated public utilities who can demonstrate financial integrity and stability, and those facilities with qualifying pre-existing agreements or siting certificates from the PSC within specified limitations; providing for administrative penalties for failure to submit decommissioning bonds and agreements; providing appellate rights to the Environmental Quality Board; providing transfer of ownership provisions; providing for amended plans for allowing reductions in bond amounts; providing that bond submission does not absolve owners from complying with other applicable regulations and requirements; providing that the PSC must condition siting certificates on compliance as determined by the DEP; providing a liability shield for entities in compliance to avoid double bonding; requiring the DEP to decide on submissions within 90 days; establishing a Wind and Solar Decommissioning Account within the State Treasury in to which fees, assessed penalties, and accrued interest must be paid and held; providing that the account may only be used by the DEP to implement this article and adopted rules; providing that DEP shall administer this act using existing resources and the account; requiring the DEP to maintain and hold bonds or other surety received; providing for the release of bonds after the DEP is satisfied property has been properly decommissioned in accordance with the plan; providing for bond forfeiture when a facility is not properly decommissioned, if the deficiencies are not rectified; providing that the Office of Environmental Remediation or a private entity by contract may decommission facilities; providing that DEP may file suit to enforce permit and plan conditions and to recoup costs of reclamation; authorizing rulemaking and standardized model agreements; and providing effective dates."

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

S. B. 718, Relating generally to Coal Severance Tax Rebate; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 610**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (S. B. 718) passed.

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

On this question, the yeas and nays were taken (**Roll No. 611**), and there were—yeas 100, nays none, absent and not voting none.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 718) takes effect from its passage.

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

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

H. B. 3301, Relating generally to property tax increment financing districts.

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

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

“§7-11B-3. Definitions.

(a) General. — When used in this article, words and phrases defined in this section have the meanings ascribed to them in this section unless a different meaning is clearly required either by the context in which the word or phrase is used or by specific definition in this article.

(b) Words and phrases defined. —

‘Agency’ includes a municipality, a county or municipal development agency established pursuant to authority granted in §7-12-1 of this code, a port authority, an airport authority or any other entity created by this state or an agency or instrumentality of this state that engages in economic development activity or the Division of Highways.

‘Base assessed value’ means the taxable assessed value of all real and tangible personal property, excluding personal motor vehicles, having a tax situs within a development or redevelopment district as shown upon the landbooks and personal property books of the assessor on July 1 of the calendar year preceding the effective date of the order or ordinance creating and establishing the development or redevelopment district: *Provided*, That for any development or redevelopment district approved after the effective date of the amendments to this section enacted during the regular session of the Legislature in 2014, personal trailers, personal boats, personal campers, personal motor homes, personal ATVs and personal motorcycles having a tax situs within a development or redevelopment district are excluded from the base assessed value.

‘Blighted area’ means an area within the boundaries of a development or redevelopment district located within the territorial limits of a municipality or county in which the structures, buildings or improvements, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for access, ventilation, light, air, sanitation, open spaces, high density of population and overcrowding or the existence of conditions which endanger life or property, are detrimental to the public health, safety, morals or welfare. ‘Blighted area’ includes any area which, by reason of the presence of a substantial number of substandard, slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, defective or unusual conditions of title or the existence of conditions which endanger life or property by fire and other causes, or

any combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use, or any area which is predominantly open and which because of lack of accessibility, obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community.

'Commissioner of Highways' means the Commissioner of the Division of Highways.

'Conservation area' means any improved area within the boundaries of a development or redevelopment district located within the territorial limits of a municipality or county in which fifty percent or more of the structures in the area have an age of thirty-five years or more. A conservation area is not yet a blighted area but is detrimental to the public health, safety, morals or welfare and may become a blighted area because of any one or more of the following factors: Dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of structures below minimum code standards; abandonment; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical maintenance; and lack of community planning. A conservation area shall meet at least three of the factors provided in this subdivision.

'County commission' means the governing body of a county of this state and, for purposes of this article only, includes the governing body of a Class I, Class II or Class III municipality in this state.

'Current assessed value' means the annual taxable assessed value of all real and tangible personal property, excluding personal motor vehicles, having a tax situs within a development or redevelopment district as shown upon the landbook and personal property records of the assessor: *Provided*, That for any development or redevelopment district approved after the effective date of the amendments to this section enacted during the regular session of the Legislature in 2014, personal trailers, personal boats, personal campers, personal motor homes, personal ATVs and personal motorcycles having a tax situs within a development or redevelopment district are excluded from the current assessed value.

'Development office' means the West Virginia Department of Economic Development Office created in §5B-2-1 of this code.

'Development project' or 'redevelopment project' means a project undertaken in a development or redevelopment district for eliminating or preventing the development or spread of slums or deteriorated, deteriorating or blighted areas, for discouraging the loss of commerce, industry or employment, for increasing employment or for any combination thereof in accordance with a tax increment financing plan. A development or redevelopment project may include one or more of the following:

(A) The acquisition of land and improvements, if any, within the development or redevelopment district and clearance of the land so acquired; or

(B) The development, redevelopment, revitalization or conservation of the project area whenever necessary to provide land for needed public facilities, public housing or industrial or commercial development or revitalization, to eliminate unhealthful, unsanitary or unsafe conditions, to lessen density, mitigate or eliminate traffic congestion, reduce traffic hazards,

eliminate obsolete or other uses detrimental to public welfare or otherwise remove or prevent the spread of blight or deterioration;

(C) The financial or other assistance in the relocation of persons and organizations displaced as a result of carrying out the development or redevelopment project and other improvements necessary for carrying out the project plan, together with those site improvements that are necessary for the preparation of any sites and making any land or improvements acquired in the project area available, by sale or lease, for public housing or for development, redevelopment or rehabilitation by private enterprise for commercial or industrial uses in accordance with the plan;

(D) The construction of capital improvements within a development or redevelopment district designed to increase or enhance the development of commerce, industry or housing within the development project area; or

(E) Any other projects the county commission or the agency deems appropriate to carry out the purposes of this article.

'Development or redevelopment district' means an area proposed by one or more agencies as a development or redevelopment district which may include one or more counties, one or more municipalities or any combination thereof, that has been approved by the county commission of each county in which the project area is located if the project is located outside the corporate limits of a municipality, or by the governing body of a municipality if the project area is located within a municipality, or by both the county commission and the governing body of the municipality when the development or redevelopment district is located both within and without a municipality.

'Division of Highways' means the state Department of Transportation, Division of Highways.

'Economic development area' means any area or portion of an area within the boundaries of a development or redevelopment district located within the territorial limits of a municipality or county that is neither a blighted area nor a conservation area and for which the county commission finds that development or redevelopment will not be solely used for development of commercial businesses that will unfairly compete in the local economy and that development or redevelopment is in the public interest because it will:

(A) Discourage commerce, industry or manufacturing from moving their operations to another state;

(B) Result in increased employment in the municipality or county, whichever is applicable; or

(C) Result in preservation or enhancement of the tax base of the county or municipality.

'Governing body of a municipality' means the city council of a Class I, Class II or Class III municipality in this state.

'Incremental value', for any development or redevelopment district, means the difference between the base assessed value and the current assessed value. The incremental value will be positive if the current value exceeds the base value and the incremental value will be negative if the current value is less than the base assessed value.

'Includes' and 'including', when used in a definition contained in this article, shall not exclude other things otherwise within the meaning of the term being defined.

'Intergovernmental agreement' means any written agreement that may be entered into by and between two or more county commissions, or between two or more municipalities, or between a county commission and a municipality, in the singular and the plural, or between two or more government entities and the Commissioner of Highways: *Provided*, That any intergovernmental agreement shall not be subject to provisions governing intergovernmental agreements set forth in other provisions of this code, including, but not limited to, §8-23-1 *et seq.* of this code, but shall be subject to the provisions of this article.

'Local levying body' means the county board of education and the county commission and includes the governing body of a municipality when the development or redevelopment district is located, in whole or in part, within the boundaries of the municipality.

'Obligations' or 'tax increment financing obligations' means bonds, loans, debentures, notes, special certificates or other evidences of indebtedness issued by a county commission or municipality pursuant to this article to carry out a development or redevelopment project or to refund outstanding obligations under this article.

'Order' means an order of the county commission adopted in conformity with the provisions of this article and as provided in this chapter.

'Ordinance' means a law adopted by the governing body of a municipality in conformity with the provisions of this article and as provided in §8-1-1 *et seq.* of this code.

~~'Payment in lieu of taxes' means those estimated revenues from real property and tangible personal property having a tax situs in the area selected for a development or redevelopment project which revenues, according to the development or redevelopment project or plan, are to be used for a private use, which levying bodies would have received had a county or municipality not adopted one or more tax increment financing plans and which would result from levies made after the date of adoption of a tax increment financing plan during the time the current assessed value of all taxable real and tangible personal property in the area selected for the development or redevelopment project exceeds the total base assessed value of all taxable real and tangible personal property in the development or redevelopment district until the designation is terminated as provided in this article~~ a payment with respect to real and personal property located in a development or redevelopment district and owned in title by this state, a political subdivision of this state or an agency or instrumentality thereof, that is made by the lessee of such property pursuant to a written payment in lieu of taxes agreement, whether in effect as of, or subsequent to, the date of creation of the development or redevelopment district.

'Person' means any natural person, and any corporation, association, partnership, limited partnership, limited liability company or other entity, regardless of its form, structure or nature, other than a government agency or instrumentality.

'Private project' means any project that is subject to ad valorem property taxation in this state or to a payment in lieu of tax agreement that is undertaken by a project developer in accordance with a tax increment financing plan in a development or redevelopment district.

'Project' means any capital improvement, facility or both, as specifically set forth and defined in the project plan, requiring an investment of capital including, but not limited to, extensions, additions or improvements to existing facilities, including water or wastewater facilities, and the remediation of contaminated property as provided for in §22-22-1 *et seq.* of this code, but does not include performance of any governmental service by a county or municipal government.

'Project area' means an area within the boundaries of a development or redevelopment district in which a development or redevelopment project is undertaken as specifically set forth and defined in the project plan.

'Project costs' means expenditures made in preparation of the development or redevelopment project plan and made, or estimated to be made, or monetary obligations incurred, or estimated to be incurred, by the county commission which are listed in the project plan as capital improvements within a development or redevelopment district, plus any costs incidental thereto. 'Project costs' include, but are not limited to:

(A) Capital costs, including, but not limited to, the actual costs of the construction of public works or improvements, capital improvements and facilities, new buildings, structures and fixtures, the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures, environmental remediation, parking and landscaping, the acquisition of equipment and site clearing, grading and preparation;

(B) Financing costs, including, but not limited to, an interest paid to holders of evidences of indebtedness issued to pay for project costs, all costs of issuance and any redemption premiums, credit enhancement or other related costs;

(C) Real property assembly costs, meaning any deficit incurred resulting from the sale or lease as lessor by the county commission of real or personal property having a tax situs within a development or redevelopment district for consideration that is less than its cost to the county commission;

(D) Professional service costs including, but not limited to, those costs incurred for architectural planning, engineering and legal advice and services;

(E) Imputed administrative costs including, but not limited to, reasonable charges for time spent by county employees or municipal employees in connection with the implementation of a project plan;

(F) Relocation costs including, but not limited to, those relocation payments made following condemnation and job training and retraining;

(G) Organizational costs including, but not limited to, the costs of conducting environmental impact and other studies and the costs of informing the public with respect to the creation of a development or redevelopment district and the implementation of project plans;

(H) Payments made, in the discretion of the county commission or the governing body of a municipality, which are found to be necessary or convenient to creation of development or redevelopment districts or the implementation of project plans; and

(I) That portion of costs related to the construction of environmental protection devices, storm or sanitary sewer lines, water lines, amenities or streets or the rebuilding or expansion of streets, or the construction, alteration, rebuilding or expansion of which is necessitated by the project plan for a development or redevelopment district, whether or not the construction, alteration, rebuilding or expansion is within the area or on land contiguous thereto.

'Project developer' means any person who engages in the development of projects in the state.

'Project plan' means the plan for a development or redevelopment project that is adopted by a county commission or governing body of a municipality in conformity with the requirements of this article and this chapter or §8-1-1 *et seq.* of this code.

'Real property' means all lands, including improvements and fixtures on them and property of any nature appurtenant to them or used in connection with them and every estate, interest and right, legal or equitable, in them, including terms of years and liens by way of judgment, mortgage or otherwise, and indebtedness secured by the liens.

'Redevelopment area' means an area designated by a county commission or the governing body of a municipality in respect to which the commission or governing body has made a finding that there exist conditions which cause the area to be classified as a blighted area, a conservation area, an economic development area or a combination thereof, which area includes only those parcels of real property directly and substantially benefitted by the proposed redevelopment project located within the development or redevelopment district or land contiguous thereto.

'Redevelopment plan' means the comprehensive program under this article of a county or municipality for redevelopment intended by the payment of redevelopment costs to reduce or eliminate those conditions, the existence of which qualified the redevelopment area as a blighted area, conservation area, economic development area or combination thereof, and to thereby enhance the tax bases of the levying bodies which extend into the redevelopment area. Each redevelopment plan shall conform to the requirements of this article.

'Tax increment' means the amount of regular levy property taxes attributable to the amount by which the current assessed value of real and tangible personal property having a tax situs in a development or redevelopment district exceeds the base assessed value of the property. Provided, That where the period of existence of a development or redevelopment district is extended beyond its originally scheduled termination date as permitted by §7-11B-10 of this code, only the regular and excess property tax levies of the county commission and any Class I, II, III or IV municipality, a portion of which is located within the boundaries of the development or redevelopment district, shall be included in the tax increment following the originally scheduled termination date of the development or redevelopment district.

'Tax increment financing fund' means a separate fund for a development or redevelopment district established by the county commission or governing body of the municipality into which all tax increment revenues and other pledged revenues are deposited and from which projected project costs, debt service and other expenditures authorized by this article are paid.

'This code' means the Code of West Virginia, 1931, as amended by the Legislature.

'Total ad valorem property tax regular levy rate' means the aggregate levy rate of all levying bodies on all taxable property having a tax situs within a development or redevelopment district in a tax year but does not include excess levies, levies for general obligation bonded indebtedness or any other levies that are not regular levies.

§7-11B-7. Creation of a development or redevelopment area or district.

(a) County commissions and the governing bodies of Class I, Class II or Class III municipalities, upon their own initiative or upon application of an agency or a developer, may propose creation of a development or redevelopment district and designate the boundaries of the district: *Provided*, That a district may not include noncontiguous land.

(b) The county commission or municipality proposing creation of a development or redevelopment district shall then hold a public hearing at which interested parties are afforded a reasonable opportunity to express their views on the proposed creation of a development or redevelopment district and its proposed boundaries.

(1) Notice of the hearing shall be published as a Class II legal advertisement in accordance with §59-3-2 of this code.

(2) The notice shall include the time, place and purpose of the public hearing, describe in sufficient detail the tax increment financing plan, the proposed boundaries of the development or redevelopment district and, when a development or redevelopment project plan is being proposed, the proposed tax increment financing obligations to be issued to finance the development or redevelopment project costs.

(3) Prior to the first day of publication, a copy of the notice shall be sent by first-class mail to the director of the Development Office and to the chief executive officer of all other local levying bodies having the power to levy taxes on real and tangible personal property located within the proposed development or redevelopment district.

(4) All parties who appear at the hearing shall be afforded an opportunity to express their views on the proposal to create the development or redevelopment district and, if applicable, the development or redevelopment project plan and proposed tax increment financing obligations.

(c) After the public hearing, the county commission, or the governing body of the municipality, shall finalize the boundaries of the development or redevelopment district, the development or redevelopment project plan, or both, and submit the same to the director of the Development Office for his or her review and approval. The director, within sixty days after receipt of the application, shall approve the application as submitted, reject the application or return the application to the county commission or governing body of the municipality for further development or review in accordance with instructions of the director of the Development Office. A development or redevelopment district or development or redevelopment project plan may not be adopted by the county commission or the governing body of a municipality until after it has been approved by the executive director of the Development Office.

(d) Upon approval of the application by the Development Office, the county commission may enter an order and the governing body of the municipality proposing the district or development or redevelopment project plan may adopt an ordinance, that:

(1) Describes the boundaries of a development or redevelopment district sufficiently to identify with ordinary and reasonable certainty the territory included in the district, which boundaries shall create a contiguous district;

(2) Creates the development or redevelopment district as of a date provided in the order or ordinance;

(3) Assigns a name to the development or redevelopment district for identification purposes.

(A) The name may include a geographic or other designation, shall identify the county or municipality authorizing the district and shall be assigned a number, beginning with the number one.

(B) Each subsequently created district in the county or municipality shall be assigned the next consecutive number;

(4) Contains findings that the real property within the development or redevelopment district will be benefitted by eliminating or preventing the development or spread of slums or blighted, deteriorated or deteriorating areas, discouraging the loss of commerce, industry or employment, increasing employment or any combination thereof;

(5) Approves the development or redevelopment project plan, if applicable;

(6) Establishes a tax increment financing fund as a separate fund into which all tax increment revenues and other revenues designated by the county commission, or governing body of the municipality, for the benefit of the development or redevelopment district shall be deposited, and from which all project costs shall be paid, which may be assigned to and held by a trustee for the benefit of bondholders if tax increment financing obligations are issued by the county commission or the governing body of the municipality; and

(7) Provides that ad valorem property taxes on real and tangible personal property having a tax situs in the development or redevelopment district shall be assessed, collected and allocated in the following manner, commencing upon the date of adoption of such order or ordinance and continuing for so long as any tax increment financing obligations are payable from the tax increment financing fund, hereinafter authorized, are outstanding and unpaid:

(A) For each tax year, the county assessor shall record in the land and personal property books both the base assessed value and the current assessed value of the real and tangible personal property having a tax situs in the development or redevelopment district;

(B) Ad valorem taxes collected from regular levies upon real and tangible personal property having a tax situs in the district that are attributable to the lower of the base assessed value or the current assessed value of real and tangible personal property located in the development project area shall be allocated to the levying bodies in the same manner as applicable to the tax year in which the development or redevelopment project plan is adopted by order of the county commission or by ordinance adopted by the governing body of the municipality;

(C) The tax increment with respect to real and tangible personal property in the development or redevelopment district shall be allocated and paid into the tax increment financing fund and shall be used to pay the principal of and interest on tax increment financing obligations issued to finance the costs of the development or redevelopment projects in the development or redevelopment district. Any levying body having a development or redevelopment district within its taxing jurisdiction shall not receive any portion of the annual tax increment except as otherwise provided in this article; and

(D) In no event shall the tax increment include any taxes collected from excess levies, levies for general obligation bonded indebtedness or any levies other than the regular levies provided for in §11-8-1 *et seq.* of this code.

(e) Proceeds from tax increment financing obligations issued under this article may only be used to pay for costs of development and redevelopment projects to foster economic development in the development or redevelopment district or land contiguous thereto.

(f) Notwithstanding subsection (d) of this section, a county commission may not enter an order approving a development or redevelopment project plan unless the county commission expressly finds and states in the order that the development or redevelopment project is not reasonably expected to occur without the use of tax increment financing.

(g) Notwithstanding subsection (d) of this section, the governing body of a municipality may not adopt an ordinance approving a development or redevelopment project plan unless the governing body expressly finds and states in the ordinance that the development or redevelopment project is not reasonably expected to occur without the use of tax increment financing.

(h) No county commission shall establish a development or redevelopment district any portion of which is within the boundaries of a Class I, II, III or IV municipality without the formal consent of the governing body of such municipality.

(i) A tax increment financing plan that has been approved by a county commission or the governing body of a municipality may be amended by following the procedures set forth in this article for adoption of a new development or redevelopment project plan.

(j) The county commission may modify the boundaries of the development or redevelopment district, from time to time, or the governing body of a county may extend the length of existence of the development or redevelopment district as set forth in §7-11B-10 of this code, subject to the limitations and requirements of this section. by entry of an order modifying the order creating the development or redevelopment district.

(k) The governing body of a municipality may modify the boundaries of the development or redevelopment district, from time to time, or extend the length of existence of the development or redevelopment district as set forth in §7-11B-10 of this code, by amending the ordinance establishing the boundaries of the district creating the development or redevelopment district.

(l) Before a county commission or the governing body of a municipality may amend such an order or ordinance, the county commission or municipality shall give the public notice as provided in subdivisions (1) and (2), subsection (b) of this section, hold a public hearing, as provided in subdivision (4), subsection (b) of this section, ~~and obtain the approval of the director of the Development Office, and obtain the formal consent of the governing body of any Class I, II, III or IV municipality a portion of which is located within the boundaries of the development or redevelopment district following the procedures for establishing a new development or redevelopment district.~~ In the event any tax increment financing obligations are outstanding with respect to the development or redevelopment district, any change in the boundaries shall not reduce the amount of tax increment available to secure the outstanding tax increment financing obligations.

§7-11B-9. Project plan – amendment.

(a) The county commission may by order, or the governing body of a municipality by ordinance, adopt an amendment to a project plan.

(b) Adoption of an amendment to a project plan shall be preceded by a public hearing held by the county commission, or governing body of the municipality, at which interested parties shall be afforded a reasonable opportunity to express their views on the amendment.

(1) Notice of the hearing shall be published as a Class II legal advertisement in accordance with ~~section two, article three, chapter fifty nine~~ §59-3-2 of this code.

(2) Prior to publication, a copy of the notice shall be sent by first-class mail to the chief executive officer of all other local levying bodies having the power to levy taxes on property within the development or redevelopment district.

(3) Copies of the proposed plan amendments shall be made available to the public at the county clerk's office or municipal clerk's office at least fifteen days prior to the hearing.

(c) One or more existing development or redevelopment districts may be combined pursuant to lawfully adopted amendments to the original plans for each district: *Provided*, That the county commission, or governing body of the municipality, finds that the combination of the districts will not impair the security for any tax increment financing obligations previously issued pursuant to this article.

(1) The base assessed value of the real and tangible personal property located in the combined development or redevelopment district following such combination shall be the same base assessed value as existed for such real and tangible personal property in each of the separate development or redevelopment districts prior to such combination.

(2) The termination date for the combined development or redevelopment district which results from the combination of two or more previously created districts shall be the termination date as provided pursuant to §7-11B-10 of this code of the development or redevelopment district which had the latest termination date prior to the combination of such districts.

§7-11B-10. Termination of development or redevelopment district.

(a) No development or redevelopment district may be in existence for a period longer than thirty years and no tax increment financing obligations may have a final maturity date later than the termination date of the area or district: *Provided*, That, for any existing development or redevelopment district for which tax increment financing obligations have been issued by a county commission, or the governing body of a municipality, prior to December 31, 2020, the termination date for that existing development or redevelopment district may be extended not more than five years or until December 31, 2050, whichever is earlier.

(b) The county commission or governing body of the municipality creating the development or redevelopment district may set a shorter period for the existence of the district. In this event, no tax increment financing obligations may have a final maturity date later than the termination date of the district. The county commission or the governing body of the municipality which created the development or redevelopment district may not take action to terminate a district prior to the time otherwise provided in its official action creating or extending the district if the county commission or the governing body of the municipality then has tax increment revenue obligations which remain outstanding and unpaid.

(c) Upon termination of the district, no further ad valorem tax revenues shall be distributed to the tax increment financing fund of the district.

(d) The county commission shall adopt, upon the expiration of the time periods set forth in this section, an order terminating the development or redevelopment district created by the county

commission: *Provided*, That no district shall be terminated so long as bonds with respect to the district remain outstanding.

(e) The governing body of the ~~county commission~~ municipality shall repeal, upon the expiration of the time periods set forth in this section, the ordinance establishing the development or redevelopment district: *Provided*, That no district shall be terminated so long as bonds with respect to the district remain outstanding.

§7-11B-18. Payments in lieu of taxes and other revenues.

(a) The county commission or municipality that created the development or redevelopment district shall deposit in the tax increment financing fund of the development or redevelopment district all payments in lieu of taxes received pursuant to any agreement entered into on or subsequent to the date of creation of a development or redevelopment district on tax exempt property located within the development or redevelopment district, and prior to the amendments to this section enacted in the 2021 regular session of the Legislature.

~~(b) The lessee of property that is exempt from property taxes because it is owned by this state, a political subdivision of this state or an agency or instrumentality thereof, which is the lessee of any facilities financed, in whole or in part, with tax increment financing obligations, shall execute a payment in lieu of tax agreement that shall remain in effect until the tax increment financing obligations are paid, during which period of time the lessee agrees to pay to the county sheriff an amount equal to the amount of ad valorem property taxes that would have been levied against the assessed value of the property were it owned by the lessee rather than a tax exempt entity. The~~

(b) Any real or personal property located within the development or redevelopment district and owned by this state, a political subdivision of this state or an agency or instrumentality thereof may be made subject to a payment in lieu of taxes agreement. The real and personal property subject to a payment in lieu of taxes agreement is deemed public property and exempt from ad valorem property taxation by this state, a political subdivision of this state, an agency or instrumentality thereof or other levying body, so long as it is owned in title by this state, a political subdivision of this state or an agency or instrumentality thereof. The exemption from ad valorem property taxation is applicable to any leasehold or similar interest held by persons other than this state, a political subdivision of this state or an agency or instrumentality thereof, if acquired or constructed with the written agreement of the county school board, county commission and any municipal authority within whose jurisdiction the real and personal property is physically situated.

(c) Any payment in lieu of taxes agreement shall be made between the public entity that owns the property, the lessee of the property who would be making the payment in lieu of taxes and the county school board, county commission and any municipal authority within whose jurisdiction the real or personal property is situate. The payment in lieu of taxes agreement shall provide the amount that shall be paid by the lessee and the amount, if any, that shall be attributable to the base assessed value of the property and the incremental value.

(d) Following the amendments to this section enacted in the 2021 regular session of the Legislature, any portion of the payment in lieu of taxes attributable in the payment in lieu of tax agreement to the incremental value shall be deposited in the tax increment financing fund. Following the amendments to this section enacted in the 2021 regular session of the Legislature, the remaining portion of the in lieu payment shall be distributed among the levying bodies as follows:

(1) The portion of the in lieu tax payment attributable to the base value of the property shall be distributed to the levying bodies in the same manner as taxes attributable in the payment in lieu of tax agreement to the base value of other property in the district are distributed; and

(2) The portions of the in lieu tax payment attributable in the payment in lieu of tax agreement to levies for bonded indebtedness and excess levies shall be distributed in the same manner as those levies on other property in the district are distributed.

(e) ~~(e)~~ Other revenues to be derived from the development or redevelopment district may also be deposited in the tax increment financing fund at the direction of the county commission.

§7-11B-22. Tax increment financing obligations — terms, conditions.

(a) Tax increment financing obligations may not be issued in an amount exceeding the estimated aggregate project costs, including all costs of issuance of the tax increment financing obligations.

(b) Tax increment financing obligations shall not be included in the computation of the Constitutional debt limitation of the county commission or municipality issuing the tax increment financing obligations.

(c) Tax increment financing obligations shall mature over a period not exceeding thirty years ~~from the date of entry of the county commission's order, or the effective date of the municipal ordinance, creating the development or redevelopment district and approving the development or redevelopment plan~~ their issue date, or a period terminating with the date of termination of the development or redevelopment district, whichever period terminates earlier.

(d) Tax increment financing obligations may contain a provision authorizing their redemption, in whole or in part, at stipulated prices, at the option of the county commission or municipality issuing the obligations, and, if so, the obligations shall provide the method of selecting the tax increment financing obligations to be redeemed.

(e) The principal and interest on tax increment financing obligations may be payable at any place set forth in the resolution, trust indenture or other document governing the obligations.

(f) Bonds or notes shall be issued in registered form.

(g) Bonds or notes may be issued in any denomination.

(h) Each tax increment financing obligation issued under this article is declared to be a negotiable instrument.

(i) The tax increment financing obligations may be sold at public or private sale.

(j) Insofar as they are consistent with subsections (a), (b) and (c) of this section, the procedures for issuance, form, contents, execution, negotiation and registration of county and municipal industrial or commercial revenue bonds set forth in ~~article two-c, chapter thirteen~~ §13-2C-1 et seq. of this code are incorporated by reference herein.

(k) The bonds may be refunded or refinanced and refunding bonds may be issued in any principal amount: *Provided*, That the last maturity of the refunding bonds shall not be later than

~~the last maturity of the bonds being refunded~~ termination date of the district as set forth in §7-11B-10 of this code.

And,

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

H. B. 3301 – “A Bill to amend and reenact §7-11B-3, §7-11B-7, §7-11B-9, §7-11B-10, §7-11B-18, and §7-11B-22 of the Code of West Virginia, 1931, as amended, relating generally to property tax increment financing districts; authorizing payment in lieu of tax agreements for property located within property tax increment financing districts; authorizing a county commission or municipality to extend the termination time of certain districts; modifying the revenue sources for a district that is extended; eliminating certain existing limitations on the terms of property tax increment financing obligations issued to refund existing obligations; and providing clarifications with respect to the base assessed value and termination date when two or more tax increment financing districts have been combined.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 612**), and there were—yeas 99, nays 1, absent and not voting none, with the nays being as follows:

Nays: Paynter.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3301) passed.

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

A message from the Senate, by

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

H. B. 3304, Authorizing the Division of Corrections and Rehabilitation to establish a Reentry and Transitional Housing Program.

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

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

“CHAPTER 15A.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY.

“ARTICLE 4A. EXPANDED WORK RELEASE PILOT PROGRAM.

§15A-4A-1. Purpose of article and legislative findings. The purpose of this article is to establish an expanded required work release pilot program in no more than five locations in this state.

(a) The Legislature finds that the primary reasons for requiring participation in a work release program are to increase public protection while aiding the transition of the offender back into the community where he or she will be going with or without work release program participation. Participating in work release may reduce the likelihood of recidivism by gradually reintroducing an offender to the community while providing security, structure, and supervision and providing necessary services.

(b) The Legislature further finds that participation in a work release program provides an transitional environment for offenders nearing the end of their sentences while maintaining structure, supervision, offender accountability, improved program opportunities, employment counseling and placement, substance abuse, and life skills training.

§15A-4A-2. Definitions.

As used in this article, unless the context clearly requires a different meaning, the term:

(1) 'Commissioner' means the commissioner of the Division of Corrections and Rehabilitation;

(2) 'Division' means the Division of Corrections and Rehabilitation;

(3) 'Offender' means a person sentenced to the custody of the Commissioner for service of a sentence of incarceration due to conviction of a felony or felonies.

§15A-4A-3. Expanded work release pilot program.

The Commissioner of the Division of Corrections and Rehabilitation is hereby authorized to establish a pilot program expanding available work release facilities to no more than a total of five locations be used for eligible offenders who are sentenced to serve a term of imprisonment in the custody of the commissioner and whom the commissioner requires to serve the last portion of their sentences in a work release facility in accordance with this article.

§15A-4A-4. Eligibility; Funding.

(a) An offender is eligible to participate in the work release program if he or she :

(1) Is 18 years of age or older;

(2) Is physically and psychologically able, as determined by the commissioner, to participate in the program: *Provided*, That offenders with medical conditions or disabilities shall be eligible for work release placement.

(3) Is directed by the Commissioner of Corrections to participate in the work release program; and

(4) Meets other criteria as the commissioner of the Division of Corrections and Rehabilitation may direct.

(b) The expansion of work release authorized by this article is subject to funds being appropriated by the legislature therefor or appropriated funds being redirected thereto.

§15A-4A-5. Limitations on eligibility for work release participation.

The following persons may not participate in the work release program:

- (1) An offender who requires inpatient psychological or psychiatric treatment;
- (2) An offender who refuses to participate in the Offender Financial Responsibility Program;
- (3) An offender who refuses to participate in the Institution Release Preparation Program; and
- (4) An offender determined by the commissioner, in his or her sole discretion, to pose a threat to the safety of another or to the community or to be an otherwise inappropriate candidate for participation in the program.

§15A-4A-6. Internal policy development.

(a) The commissioner shall develop operational procedures and policies for the work release program. The procedures and policies may, pursuant to §15A-3-12 of this code, allow the division to partner with contractors to be established at multiple sites, which sites shall subject to the control and authority of the commissioner.

(b) The procedures and policies shall include the following:

(1) A period of Imprisonment in work release of no more than 6 months prior to release on parole or discharge which period of Imprisonment may include substance abuse education, mandatory employment or employment skills training, social skills training, and psychological evaluation and treatment. Additionally, the state Board of Education and State Superintendent of Schools, pursuant to section five, article twenty, chapter eighteen of this code, respectively, may, as funds are available, establish an education program for those eligible offenders who are not recipients of a high school diploma or a certificate of high school equivalency.

(2) Policies and procedures identifying the facilities subject to the control and authority of the commissioner that will be used for offenders serving a sentence in a work release program;

(3) Policies and procedures establishing additional criteria the commissioner deems necessary and appropriate to determine eligibility and of offenders to serve the last portion of his or her sentence in a work release program;

(4) Policies and procedures to effectuate notification to a sentencing court of the performance of an eligible offender serving part of his or her sentence in a work release facility; and

(5) Any other policies and procedures that are necessary for the proper operation of the program.

(c) Upon successful completion of the work release program, an offender shall be released on parole or discharged in accordance with this article.

(d) An offender who does not satisfactorily complete the work release program shall be removed from the program and returned to serve the remainder of his or her sentence in a facility designated by the commissioner.

§15A-4A-7. Funding and financial implications.

Funding for the expanded work release pilot program may be derived from the state's general revenue fund or budget assigned annually to the division.

And,

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

H. B. 3304 – “A Bill to amend the Code of West Virginia 1931 as amended, by adding thereto a new article, designated §15A-4A-1, 15A-4A-2, 15A-4A-3, 15A-4A-4, 15A-4A-5, 15A-4A-6 and 15A-4A-7, all relating generally to creating an expanded required work release pilot project within the Division of Corrections and Rehabilitation; stating the purposes of the article, setting forth findings; limiting programs to no more than five locations; defining terms; establishing eligibility and ineligibility criteria; directing the commissioner to establish policies and procedures; and providing for the return offenders who do not successfully complete work release to other facilities.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 613**), and there were—yeas 96, nays 4, absent and not voting none, with the nays being as follows:

Nays: Foster, Jennings, Kimes and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3304) passed.

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

On this question, the yeas and nays were taken (**Roll No. 614**), and there were—yeas 99, nays 1, absent and not voting none, with the nays being as follows:

Nays: Kimes.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3304) takes effect from its passage.

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

A message from the Senate, by

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

Com. Sub. for S. B. 684, Adding Curator of Division of Arts, Culture, and History as ex officio voting member to Library Commission.

Delegate Summers moved the House of Delegates concur in the following Senate title amendment:

Com. Sub. for S. B. 684 – “A Bill to amend and reenact §10-1-12 of the Code of West Virginia, 1931, as amended, relating to the State Library Commission; adding the Curator of the West Virginia Department of Arts, Culture and History as an ex officio voting member; and updating other language.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 615**), and there were—yeas 88, nays 12, absent and not voting none, with the nays being as follows:

Nays: Barach, Bruce, Doyle, Fast, Fluharty, Kimes, Pushkin, Thompson, Walker, Williams, Young and Zukoff.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 684) passed.

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

At the request of Delegate Summers, and by unanimous consent, the House of Delegates proceeded to the Seventh Order of Business for the purpose of introducing resolutions.

Resolutions Introduced

Delegates Kimble, Barnhart, Bridges, Bruce, Conley, Cooper, Foster, Hanna, Holstein, Horst, Householder, Jennings, J. Kelly, Longanacre, Mallow, Martin, Maynard, Mazzocchi, McGeehan, J. Pack, Phillips, Pinson, Reed, Reynolds, Sypolt, Tully, Wamsley, G. Ward and Worrell offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 112 - "Requesting the Joint Committee on Government and Finance to study the effects of the United State House of Representatives House Resolution 1814, passed during the 117th Congress, which authorizes the Secretary of Education to make grants to support educational programs in civics and history, and for other purposes."

Whereas, The United State House of Representatives passed House Resolution 1814 during the 117th Congress; and

Whereas, This resolution authorizes the Secretary of Education to make grants to support educational programs in civics and history, and for other purposes; and

Whereas, This resolution may have a fiscal impact on the State of West Virginia; and

Whereas, This resolution creates a need to evaluate the state's current educational standards to see if they align with the newly created mandates; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance shall undertake a study of the state's current educational standards as related to the requirements of House Resolution 1814, determining whether or not they meet the newly passed requirements, and further studying what fiscal impact this resolution will have on the State of West Virginia; and, be it

Further Resolved, That the Joint Committee on Government and Finance shall report to the regular session of the Legislature, 2022, on its findings, conclusions, and recommendations, together with drafts of any legislation or resolutions necessary to effectuate its recommendations; and, be it

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

Delegate Hanshaw (Mr. Speaker) offered the following resolution, which was reported by the Clerk as follows:

H. C. R. 113 - "Extending the regular session of the Legislature, 2021."

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

That the first regular session of the Eighty-fifth Legislature, 2021, is hereby extended pursuant to section twenty-two, article VI of the Constitution of the State of West Virginia, until and including the tenth day of May, 2021, for reconsideration of any bills vetoed or disapproved by the Governor and any budget bill or supplementary appropriation bill vetoed, disapproved or reduced by the Governor as to any item or part or as to the entire bill; and, be it

Further Resolved, That when adjournment is taken by the two houses of the Legislature at the close of their respective sessions on the tenth day of April, 2021, such adjournment shall be until the date and time of reconvening specified by the presiding officers of the House of Delegates and Senate.

At the respective requests of Delegate Summers, and by unanimous consent, reference of the resolution (H. C. R. 113) to a committee was dispensed with, and it was taken up for immediate consideration and put upon its adoption.

The question now being on the adoption of the resolution, the yeas and nays were taken (**Roll No. 616**), and there were—yeas 100, nays none, absent and not voting none.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the resolution (H. C. R. 113) adopted.

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

Delegate Hanshaw (Mr. Speaker) offered the following resolution, which was reported by the Clerk as follows:

H. C. R. 114 – "Providing for an adjournment of the Legislature until May 10, 2021."

Resolved by the Legislature of West Virginia:

That when adjournment is taken by the two houses of the Legislature at the close of their respective sessions on April 10, 2021, such adjournment shall be until May 10, 2021, pursuant to section 23, article VI of the Constitution of the State of West Virginia, unless called prior to that time by the presiding officers of the House of Delegates and Senate.

At the respective requests of Delegate Summers, and by unanimous consent, reference of the resolution (H. C. R. 114) to a committee was dispensed with, and it was taken up for immediate consideration, and adopted.

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

At 2:48 p.m., on motion of Delegate Summers, the House of Delegates recessed until 4:00 p.m.

* * * * *

Afternoon Session

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-continued-

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

Messages from the Senate

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

Com. Sub. for H. B. 2363, Relating to “Best Interests of the Child Protection Act of 2021”.

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

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

“CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 1. GENERAL PROVISIONS, DEFINITIONS.

§48-1-220. Decision-making responsibility defined.

‘Decision-making responsibility’ refers to authority for making significant life decisions on behalf of a child, including, but not limited to, the child’s education, spiritual guidance and health care: *Provided*, That with regard to healthcare, both parents in any shared parenting plan, regardless of the relative ratio of parenting time allocated between the parents, shall have the authority to make emergency or other non-elective healthcare decisions concerning their child necessary for the child’s health or welfare during such parent’s parenting time.

§48-1-239. Shared parenting defined.

(a) ‘Shared parenting’ means either basic shared parenting or extended shared parenting.

(b) ‘Basic shared parenting’ means an arrangement under which one parent keeps a child or children overnight for less than 35 percent of the year and under which both parents contribute to the expenses of the child or children in addition to the payment of child support.

(c) 'Extended shared parenting' means an arrangement under which each parent keeps a child or children overnight for more than 35 percent of the year and under which both parents contribute to the expenses of the child or children in addition to the payment of child support.

(d) In any case where, in the absence of an agreement between the parents, a court orders shared parenting at a ratio of, or further disparate than, 65 percent to 35 percent, the order shall be in writing and include specific findings of fact supporting the court's determination.

§48-1-239a. Shared legal custody defined.

'Shared legal custody' means a continued mutual responsibility and involvement by both parents in major decisions regarding the child's welfare including matters of education, medical care, and emotional, moral, and religious development consistent with the provisions of §48-9-207 of this code.

§48-1-239b. Sole legal custody defined.

'Sole legal custody' means that one parent has the right and responsibility to make major decisions regarding the child's welfare including matters of education, non-emergency medical care, and emotional, moral, and religious development.

§48-1-241a. Shared physical custody defined.

'Shared physical custody' means a child has periods of residing with, and being under the supervision of, each parent consistent with the provisions of §48-9-206 of this code: *Provided*, That physical custody shall be shared by the parents in such a way as to assure a child has frequent and continuing contact with both parents. Such frequent and continuing contact with both parents is rebuttably presumed to be in the best interests of the child unless the evidence shows otherwise.

§48-1-241b. Sole physical custody defined.

'Sole physical custody' means a child resides with and is under the supervision of one parent, subject to reasonable visitation by the other parent, unless the court determines that the visitation would not be in the best interests of the child.

ARTICLE 9. ALLOCATION OF CUSTODIAL RESPONSIBILITY AND DECISION-MAKING RESPONSIBILITY OF CHILDREN.

§48-9-102. Objectives; best interests of the child.

- (a) The primary objective of this article is to serve the child's best interests, by facilitating:
- (1) Stability of the child;
 - (2) Parental planning and agreement about the child's custodial arrangements and upbringing;
 - (3) Continuity of existing parent-child attachments;
 - (4) Meaningful contact between a child and each parent;

(5) Caretaking and parenting relationships by adults who love the child, know how to provide for the child's needs, and who place a high priority on doing so;

(6) Security from exposure to physical or emotional harm; ~~and~~

(7) Expeditious, predictable decision-making and avoidance of prolonged uncertainty respecting arrangements for the child's care and control; and

(8) Meaningful contact between a child and his or her siblings, including half-siblings.

(b) A secondary objective of article is to achieve fairness between the parents.

§48-9-105. Venue for custodial allocation actions independent of divorce.

(a) Venue for the initial determination of custodial allocation or child custody determination within a divorce action shall be governed by §48-5-106 or §48-20-101 et seq. of this code, or both.

(b) Venue for the initial determination of custodial allocation or child custody determination as between parties who reside in separate states shall be governed by §48-20-101 et seq. of this code.

(c) Venue for modification of custodial allocation or modification of child custody determination which was previously determined in a tribunal of a state other than West Virginia shall be governed by §48-20-101 et seq. of this code.

(d) When all persons with potential custodial responsibility reside within the State of West Virginia and the home state of the child is West Virginia as defined in §48-20-102(g) of this code:

(1) Venue for an initial determination of custodial allocation shall be properly had in the county where the parties and the child last resided together or in the child's home county, which is where the child has resided for at least six consecutive months or since birth. If a child, over the age of six months, has not resided in any county for six consecutive months, then venue lies in the county where the respondent resides at the time of the filing of the action.

(2) Venue for a modification of custodial allocation remains in the county in which the initial custodial allocation was determined until such time as:

(A) Neither the child nor any person with custodial responsibility has resided in the county where the initial custodial allocation was determined for a period of not less than six months preceding the filing of the modification action; neither the child nor any person with custodial responsibility resides within 40 miles of the county seat of the county where the initial custodial allocation was determined; a modification action has been filed in the county where the initial custodial allocation was determined; and a motion to change venue to the residence of the responding party has been filed.

(B) If the conditions of paragraph (A) of this subdivision are satisfied, the matter shall be transferred to the family court in the responding party's county of residence; or

(C) If the conditions of paragraph (A) of this subdivision are met and all parties consent, the matter may be transferred to the family court in the petitioning party's county of residence.

§48-9-203. Proposed temporary parenting plan; temporary order; amendment; vacation of order.

(a) A parent seeking a temporary order relating to parenting shall file and serve a proposed temporary parenting plan by motion. The other parent, if contesting the proposed temporary parenting plan, shall file and serve a responsive proposed parenting plan. Either parent may move to have a proposed temporary parenting plan entered as part of a temporary order. The parents may enter an agreed temporary parenting plan at any time as part of a temporary order. The proposed temporary parenting plan may be supported by relevant evidence and shall be verified and shall state at a minimum the following:

(1) The name, address and length of residence with the person or persons with whom the child has lived for the preceding twelve months;

(2) The performance by each parent during the last 12 months of the parenting functions relating to the daily needs of the child;

(3) The parents' work and child-care schedules for the preceding twelve months;

(4) The parents' current work and child-care schedules; and

(5) Any of the circumstances set forth in ~~section 9-209~~ §48-9-209 of this code that are likely to pose a serious risk to the child and that warrant limitation on the award to a parent of temporary residence or time with the child pending entry of a permanent parenting plan.

(b) At the hearing, the court shall enter a temporary parenting order incorporating a temporary parenting plan which includes:

(1) A schedule for the child's time with each parent when appropriate;

(2) Designation of a temporary residence for the child;

(3) Allocation of decision-making authority, if any. Absent allocation of decision-making authority consistent with ~~section two hundred seven of this article~~ §48-9-207 of this code, neither party shall make any decision for the child other than those relating to day-to-day or emergency care of the child, which shall be made by the party who is present with the child;

(4) Provisions for temporary support for the child; ~~and~~

(5) Restraining orders, if applicable; and

(6) Specific findings of fact upon which the court bases its determinations.

(c) A parent may make a motion for an order to show cause and the court may enter a temporary order, including a temporary parenting plan, upon a showing of necessity.

(d) A parent may move for amendment of a temporary parenting plan, and the court may order amendment to the temporary parenting plan, if the amendment conforms to the limitations of ~~section 9-209~~ §48-9-209 of this code and is in the best interest of the child. The court's order modifying the plan shall be in writing and contain specific findings of fact upon which the court bases its determinations.

§48-9-204. Criteria for temporary parenting plan.

(a) After considering the proposed temporary parenting plan filed pursuant to ~~section 9-203~~ §48-9-203 of this code and other relevant evidence presented, the court shall make a temporary parenting plan that is in the best interest of the child, which shall be in writing and contain specific findings of fact upon which the court bases its determinations. In making this determination, the court shall give particular consideration to:

(1) Which parent has taken greater responsibility during the last 12 months for performing caretaking and/or parenting functions relating to the daily needs of the child; and

(2) Which parenting arrangements will cause the least disruption to the child's emotional stability while the action is pending.

(b) The court shall also consider the factors used to determine residential provisions in the permanent parenting plan.

(c) Upon credible evidence of one or more of the circumstances set forth in ~~subsection 9-209(a)~~ §48-9-209(a) of this code, the court shall issue a temporary order limiting or denying access to the child as required by that section, in order to protect the child or the other party, pending adjudication of the underlying facts. The temporary order shall be in writing and include specific findings of fact supporting the court's determination.

(d) Expedited procedures shall be instituted to facilitate the prompt issuance of a parenting plan.

§48-9-206. Allocation of custodial responsibility.

(a) Unless otherwise resolved by agreement of the parents under §48-9-201 of this code or unless harmful to the child, the court shall allocate custodial responsibility so that, except to the extent required under §48-9-209 of this code, the custodial time the child spends with each parent may be expected to achieve any of the following objectives:

(1) To permit the child to have a meaningful relationship with each parent who has performed a reasonable share of parenting functions;

(2) To accommodate, if the court determines it is in the best interests of the child, the firm and reasonable preferences of a child who is 14 years of age or older; and to accommodate, if the court determines it is in the best interests of the child, the firm and reasonable preferences of a child under 14 years of age, but sufficiently matured that he or she can intelligently express a voluntary preference for one parent;

(3) To keep siblings together when the court finds that doing so is necessary to their welfare;

(4) To protect the child's welfare when, under an otherwise appropriate allocation, the child would be harmed because of a gross disparity in the quality of the emotional attachments between each parent and the child, or in each parent's demonstrated ability or availability to meet a child's needs;

(5) To take into account any prior agreement of the parents that, under the circumstances as a whole, including the reasonable expectations of the parents in the interest of the child, would be appropriate to consider;

(6) To avoid an allocation of custodial responsibility that would be extremely impractical or that would interfere substantially with the child's need for stability in light of economic, physical, or other circumstances, including the distance between the parents' residences, the cost and difficulty of transporting the child, the parents' and child's daily schedules, and the ability of the parents to cooperate in the arrangement;

(7) To apply the principles set forth in §48-9-403(d) of this code if one parent relocates or proposes to relocate at a distance that will impair the ability of a parent to exercise the amount of custodial responsibility that would otherwise be ordered under this section;

(8) To consider the stage of a child's development; ~~and~~

(9) To consider which parent will encourage and accept a positive relationship between the child and the other parent, including which parent is more likely to keep the other parent involved in the child's life and activities;

(10) To take into account the preference that time allocated to the parent resulting in the child being under the care and custody of that parent is preferred to time allocated to the parent resulting in the child being under the care or custody of a family member of that parent or a third party; and

(11) To allow reasonable access to the child by telephone or other electronic contact, which shall be defined in the parenting plan.

(b) The court may consider the allocation of custodial responsibility arising from temporary agreements made by the parties after separation if the court finds, by a preponderance of the evidence, that such agreements were consensual. The court shall afford those temporary consensual agreements the weight the court believes the agreements are entitled to receive, based upon the evidence. The court may not consider the temporary allocation of custodial responsibility imposed by a court order on the parties.

(c) If the court is unable to allocate custodial responsibility under §48-9-206(a) of this code because the allocation under §48-9-206(a) of this code would be harmful to the child, or because there is no history of past performance of caretaking functions, as in the case of a newborn, or because the history does not establish a pattern of caretaking sufficiently dispositive of the issues of the case, the court shall allocate custodial responsibility based on the child's best interest, taking into account the factors in considerations that are set forth in this section and in §48-9-209 and §48-9-403(d) of this code and preserving to the extent possible this section's priority on the share of past caretaking functions each parent performed: Provided, That if either parent or both has demonstrated reasonable participation in parenting functions as defined in §48-1-235.2 of this code, the court cannot rely solely on caretaking functions, and shall consider the parents' participation in parenting functions.

(d) In determining how to schedule the custodial time allocated to each parent, the court shall take account of the economic, physical, and other practical circumstances such as those listed in §48-9-206(a)(6) of this code.

(e) In the absence of an agreement of the parents, the court's determination of allocation of custodial responsibility under this section shall be made pursuant to a hearing, which shall not be conducted exclusively by the presentation of evidence by proffer. The court's order determining allocation of custodial responsibility shall be in writing, and include specific findings of fact supporting the determination.

§48-9-207. Allocation of significant decision-making responsibility.

(a) Unless otherwise resolved by agreement of the parents under ~~section 9-204~~ §48-9-201 of this code, the court shall allocate responsibility for making significant life decisions on behalf of the child, including the child's education and health care, to one parent or to two parents jointly, in accordance with the child's best interest, in light of:

(1) The allocation of custodial responsibility under ~~section 9-206 of this article~~ §48-9-206 of this code;

(2) The level of each parent's participation in past decision-making on behalf of the child;

(3) The wishes of the parents;

(4) The level of ability and cooperation the parents have demonstrated in decision-making on behalf of the child;

(5) Prior agreements of the parties; and

(6) The existence of any limiting factors, as set forth in section 9-209 of this article.

(b) If each of the child's legal parents has been exercising a reasonable share of parenting functions for the child, the court shall presume that an allocation of decision-making responsibility to both parents jointly is in the child's best interests. The presumption is overcome if there is a history of domestic abuse, neglect, or abandonment, or by a showing that joint allocation of decision-making responsibility is not in the child's best interest: Provided, That the court's determination shall be in writing and include specific findings of fact supporting any determination that joint allocation of decision-making responsibility is not in the child's best interest.

(c) Unless otherwise provided or agreed by the parents, each parent who is exercising custodial responsibility shall be given sole responsibility for day-to-day decisions for the child, while the child is in that parent's care and control, including emergency decisions affecting the health and safety of the child.

PART 2 – PARENTING PLANS

§48-9-209. Parenting plan; limiting factors.

(a) If either of the parents so requests, or upon receipt of credible information thereof, the court shall determine whether a parent who would otherwise be allocated responsibility under a parenting plan:

(1) Has abused, neglected or abandoned a child, as defined by state law;

(2) Has sexually assaulted or sexually abused a child as those terms are defined in ~~articles eight b and eight d, chapter sixty one~~ §61-8B-1 et seq. and §61-8D-1 et seq. of this code;

(3) Has committed domestic violence, as defined in ~~section 27-202~~ §48-27-202 of this code;

(4) Has ~~interfered persistently with the other parent's access to the child,~~ overtly or covertly, persistently violated, interfered with, impaired, or impeded the rights of a parent or a child with respect to the exercise of shared authority, residence, visitation, or other contact with the child, except in the case of actions taken for the purpose of protecting the safety of the child or the interfering parent or another family member, pending adjudication of the facts underlying that belief; or

(5) Has made one or more fraudulent reports of domestic violence or child abuse: *Provided*, That a person's withdrawal of or failure to pursue a report of domestic violence or child support shall not alone be sufficient to consider that report fraudulent.

(b) If a parent is found to have engaged in any activity specified by subsection (a) of this section, the court shall impose limits that are reasonably calculated to protect the child or child's parent from harm. The limitations that the court shall consider include, but are not limited to:

(1) An adjustment of the custodial responsibility of the parents, including but not limited to:

(A) Increased parenting time with the child to make up for any parenting time the other parent lost as a result of the proscribed activity;

(B) An additional allocation of parenting time in order to repair any adverse effect upon the relationship between the child and the other parent resulting from the proscribed activity; or

(C) The allocation of exclusive custodial responsibility to one of them;

(2) Supervision of the custodial time between a parent and the child;

(3) Exchange of the child between parents through an intermediary, or in a protected setting;

(4) Restraints on the parent from communication with or proximity to the other parent or the child;

(5) A requirement that the parent abstain from possession or consumption of alcohol or nonprescribed drugs while exercising custodial responsibility and in the twenty-four hour period immediately preceding such exercise;

(6) Denial of overnight custodial responsibility;

(7) Restrictions on the presence of specific persons while the parent is with the child;

(8) A requirement that the parent post a bond to secure return of the child following a period in which the parent is exercising custodial responsibility or to secure other performance required by the court;

(9) A requirement that the parent complete a program of intervention for perpetrators of domestic violence, for drug or alcohol abuse, or a program designed to correct another factor; or

(10) Any other constraints or conditions that the court deems necessary to provide for the safety of the child, a child's parent or any person whose safety immediately affects the child's welfare.

(c) If a parent is found to have engaged in any activity specified in subsection (a) of this section, the court may not allocate custodial responsibility or decision-making responsibility to that parent without making special written findings that the child and other parent can be adequately protected from harm by such limits as it may impose under subsection (b) of this section. The parent found to have engaged in the behavior specified in subsection (a) of this section has the burden of proving that an allocation of custodial responsibility or decision-making responsibility to that parent will not endanger the child or the other parent.

(d) If the court determines, based on the investigation described in part three of this article or other evidence presented to it, that an accusation of child abuse or neglect, or domestic violence made during a child custody proceeding is false and the parent making the accusation knew it to be false at the time the accusation was made, the court may order reimbursement to be paid by the person making the accusations of costs resulting from defending against the accusations. Such reimbursement may not exceed the actual reasonable costs incurred by the accused party as a result of defending against the accusation and reasonable attorney's fees incurred.

(e) (1) A parent who believes he or she is the subject of activities by the other parent described in subdivision (5) of subsection (a), may move the court pursuant to subdivision (4), subsection (b), section one hundred and one, article five, chapter forty-nine of this code for the Department of Health and Human Resources to disclose whether the other parent was the source of the allegation and, if so, whether the department found the report to be:

- (A) Substantiated;
- (B) Unsubstantiated;
- (C) Inconclusive; or
- (D) Still under investigation.

(2) If the court grants a motion pursuant to this subsection, disclosure by the Department of Health and Human Resources shall be in camera. The court may disclose to the parties information received from the department only if it has reason to believe a parent knowingly made a false report.

PART 3. FACT FINDING.

§48-9-301. Court-ordered investigation.

(a) In its discretion, the court may order a written investigation and report to assist it in determining any issue relevant to proceedings under this article: Provided, That the court must serve notice to all parties of the court's order. The investigation and report may be made by the guardian ad litem, the staff of the court, or other professional social service organization experienced in counseling children and families: Provided, That the court shall identify to all parties the identity of the assigned investigator, and the investigator shall be a compulsory witness for any party desiring to call the witness for hearing testimony. The court shall specify the scope and objective of the investigation or evaluation and the authority of the investigator.

(b) In preparing the report concerning a child, the investigator may consult any person who may have information about the child and the potential parenting or custodian arrangements; Provided, That the person(s) consulted by the investigator shall be identified to the parties and may be subject to discovery. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if the child has reached the age of twelve, unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection (c) of this section are fulfilled, the investigator's report may be received in evidence at the hearing.

(c) The investigator shall deliver the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing unless a shorter time is ordered by the court for good cause shown: Provided, That in no event shall the hearing take place until after the report has been provided to the parties. The court may grant a continuance, upon motion by a party showing good cause that discovery cannot be adequately completed within 10 days. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, records or documents reviewed or relied upon by the investigator, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (b) of this section, and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call as a hearing witness the investigator and any person whom the investigator has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing.

(d) Services and tests ordered under this section shall be ordered only if at no cost to the individuals involved, or at a cost that is reasonable in light of the available financial resources.

PART 4. MODIFICATION OF PARENTING PLAN.

§48-9-403. Relocation of a parent.

~~(a) The relocation of a parent constitutes a substantial change in the circumstances under subsection 9-401(a) of the child only when it significantly impairs either parent's ability to exercise responsibilities that the parent has been exercising.~~

~~(b) Unless otherwise ordered by the court, a parent who has responsibility under a parenting plan who changes, or intends to change, residences for more than ninety days must give a minimum of sixty days' advance notice, or the most notice practicable under the circumstances, to any other parent with responsibility under the same parenting plan. Notice shall include:~~

~~(1) The relocation date;~~

~~(2) The address of the intended new residence;~~

~~(3) The specific reasons for the proposed relocation;~~

~~(4) A proposal for how custodial responsibility shall be modified, in light of the intended move; and~~

~~(5) Information for the other parent as to how he or she may respond to the proposed relocation or modification of custodial responsibility.~~

~~Failure to comply with the notice requirements of this section without good cause may be a factor in the determination of whether the relocation is in good faith under subsection (d) of this section and is a basis for an award of reasonable expenses and reasonable attorney's fees to another parent that are attributable to such failure.~~

~~The Supreme Court of Appeals shall make available through the offices of the circuit clerks and the secretary clerks of the family courts a form notice that complies with the provisions of this subsection. The Supreme Court of Appeals shall promulgate procedural rules that provide for an expedited hearing process to resolve issues arising from a relocation or proposed relocation.~~

~~(c) When changed circumstances are shown under subsection (a) of this section, the court shall, if practical, revise the parenting plan so as to both accommodate the relocation and maintain the same proportion of custodial responsibility being exercised by each of the parents. In making such revision, the court may consider the additional costs that a relocation imposes upon the respective parties for transportation and communication, and may equitably allocate such costs between the parties.~~

~~(d) When the relocation constituting changed circumstances under subsection (a) of this section renders it impractical to maintain the same proportion of custodial responsibility as that being exercised by each parent, the court shall modify the parenting plan in accordance with the child's best interests and in accordance with the following principles:~~

~~(1) A parent who has been exercising a significant majority of the custodial responsibility for the child should be allowed to relocate with the child so long as that parent shows that the relocation is in good faith for a legitimate purpose and to a location that is reasonable in light of the purpose. The percentage of custodial responsibility that constitutes a significant majority of custodial responsibility is seventy percent or more. A relocation is for a legitimate purpose if it is to be close to significant family or other support networks, for significant health reasons, to protect the safety of the child or another member of the child's household from significant risk of harm, to pursue a significant employment or educational opportunity or to be with one's spouse who is established, or who is pursuing a significant employment or educational opportunity, in another location. The relocating parent has the burden of proving of the legitimacy of any other purpose. A move with a legitimate purpose is reasonable unless its purpose is shown to be substantially achievable without moving or by moving to a location that is substantially less disruptive of the other parent's relationship to the child.~~

~~(2) If a relocation of the parent is in good faith for legitimate purpose and to a location that is reasonable in light of the purpose and if neither has been exercising a significant majority of custodial responsibility for the child, the court shall reallocate custodial responsibility based on the best interest of the child, taking into account all relevant factors including the effects of the relocation on the child.~~

~~(3) If a parent does not establish that the purpose for that parent's relocation is in good faith for a legitimate purpose into a location that is reasonable in light of the purpose, the court may modify the parenting plan in accordance with the child's best interests and the effects of the relocation on the child. Among the modifications the court may consider is a reallocation of primary custodial responsibility, effective if and when the relocation occurs, but such a reallocation shall not be ordered if the relocating parent demonstrates that the child's best interests would be served by the relocation.~~

~~(4) The court shall attempt to minimize impairment to a parent-child relationship caused by a parent's relocation through alternative arrangements for the exercise of custodial responsibility appropriate to the parents' resources and circumstances and the developmental level of the child.~~

~~(e) In determining the proportion of caretaking functions each parent previously performed for the child under the parenting plan before relocation, the court may not consider a division of functions arising from any arrangements made after a relocation but before a modification hearing on the issues related to relocation.~~

~~(f) In determining the effect of the relocation or proposed relocation on a child, any interviewing or questioning of the child shall be conducted in accordance with the provisions of rule 17 of the rules of practice and procedure for family law as promulgated by the Supreme Court of Appeals.~~

(a) The relocation of a parent constitutes a substantial change in the circumstances of the child under §48-9-401(a) of this code when it impairs either parent's ability to exercise responsibilities that the parent has been exercising, or when it impairs the schedule of custodial allocation that has been ordered by the court for a parent or any other person.

(b) A parent who has responsibility under a parenting plan who changes, or intends to change, residences must file a verified petition with the court for modification of the parenting plan, and cause a copy of the same to be served upon the other parent and upon all other persons who, pursuant to the court's order in effect at the time of the petition, have been allocated custodial time with the child. The petition shall be filed at least 90 days prior to any relocation, and the summons must be served at least 60 days in advance of any relocation, unless the relocating parent establishes that it was impracticable under the circumstances to provide such notice 90 days in advance. The verified petition shall include:

(1) The proposed relocation date;

(2) The address of the intended new residence;

(3) The specific reasons for the proposed relocation;

(4) A proposal for how custodial responsibility shall be modified, in light of the intended move;
and

(5) A request for a hearing.

Failure to comply with the requirements of this section may be a factor in the determination of whether the relocation is in good faith under subsection (d) of this section, and may also be a basis for reallocation of the primary residence and custodial responsibility for the child and for an award of reasonable expenses and reasonable attorney's fees to another parent or another person exercising custodial responsibility for the child pursuant to an order of the court that are attributable to such failure.

(c) A hearing on the petition shall be held by the court at least 30 days in advance of the proposed date of relocation. A parent proposing to relocate may move for an expedited hearing upon the petition in circumstances under which the parent needs an answer expeditiously. If the hearing is held fewer than 30 days in advance of the proposed date of relocation, the court's order shall include findings of fact as to why the hearing was not held at least 30 days prior to the petition's proposed date of relocation. After a hearing upon a petition filed under this section, the

court shall, if practical, revise the parenting plan so as to both accommodate the relocation and maintain the same proportion of custodial responsibility being exercised by each of the parents and all such other persons exercising custodial responsibility for the child pursuant to the order of the court. In making such revision, the court may consider the additional costs that a relocation imposes upon the respective parties for transportation and communication, and may equitably allocate such costs between the parties and may consider §48-13-702 of this code authorizing the court to disregard the child support formula relating to long distance visitation costs.

(d) (1) At the hearing held pursuant to this section, the relocating parent has the burden of proving that: (A) The reasons for the proposed relocation are legitimate and made in good faith; (B) that allowing relocation of the relocating parent with the child is in the best interests of the child as defined in §48-9-102 of this code; and (C) that there is no reasonable alternative, other than the proposed relocation, available to the relocating parent that would be in the child's best interests and less disruptive to the child.

(2) A relocation is for a legitimate purpose if it is to be close to immediate family members, for substantial health reasons, to protect the safety of the child or another member of the child's household from significant risk of harm, to pursue a significant employment or educational opportunity, or to be with one's spouse or significant other with whom the relocating parent has cohabitated for at least a year, who is established, or who is pursuing a significant employment or educational opportunity, in another location.

(3) The relocating parent has the burden of proving the proposed relocation is for one of these legitimate purposes. The relocating parent has the burden of proving the legitimacy of any other purpose. A move with a legitimate purpose is unreasonable unless the relocating parent proves that the purpose is not substantially achievable without moving, and that moving to a location that is substantially less disruptive of the other parent's relationship to the child is not feasible.

(4) When the relocation is for a legitimate purpose, in good faith, and renders it impractical to maintain the same proportion of custodial responsibility as that being exercised by each parent and all other persons exercising custodial responsibility for the child pursuant to an order of the court, the court shall modify the parenting plan in accordance with the child's best interests.

(5) If the relocating parent does not establish that the purpose for that parent's relocation is made in good faith for a legitimate purpose to a location that is reasonable in light of the purpose, the court may modify the parenting plan in accordance with the child's best interests and the effects of the relocation on the child. Among the modifications the court may consider is a reallocation of primary custodial responsibility, to become effective if and when the parent's relocation occurs.

(6) The court shall attempt to minimize impairment to a parent-child relationship caused by a parent's relocation through alternative arrangements for the exercise of custodial responsibility appropriate to the parents' resources and circumstances and the developmental level of the child.

(e) If the parties file with the court a modified parenting plan signed by all the parties the court may enter an order modifying custodial responsibility in accordance with the parenting plan if the court determines that the parenting plan is in the best interest of the child to do so.

(f) Except in extraordinary circumstance articulated in the court's order, a relocation may not be considered until an initial permanent parenting plan is established.

(g) In determining the effect of the relocation or proposed relocation on a child, any interviewing or questioning of the child shall be conducted in accordance with the provisions of Rule 17 of the Rules of Practice and Procedure for Family Court as promulgated by the Supreme Court of Appeals.

PART 6. MISCELLANEOUS PROVISIONS.

§48-9-601. Access to a child's records.

(a)(1) Each parent has full and equal access to a child's educational records absent a court order to the contrary. Neither parent may veto the access requested by the other parent. Educational records are academic, attendance and disciplinary records of public and private schools in all grades pre-kindergarten through 12 and any form of alternative school. Educational records are any and all school records concerning the child that would otherwise be properly released to the primary custodial parent, including, but not limited to, report cards and progress reports, attendance records, disciplinary reports, results of the child's performance on standardized tests and statewide tests and information on the performance of the school that the child attends on standardized statewide tests; curriculum materials of the class or classes in which the child is enrolled; names of the appropriate school personnel to contact if problems arise with the child; information concerning the academic performance standards, proficiencies, or skills the child is expected to accomplish; school rules, attendance policies, dress codes and procedures for visiting the school; and information about any psychological testing the school does involving the child.

(2) In addition to the right to receive school records, the nonresidential parent has the right to participate as a member of a parent advisory committee or any other organization comprised of parents of children at the school that the child attends.

(3) The nonresidential parent or noncustodial parent has the right to question anything in the child's record that the parent feels is inaccurate or misleading or is an invasion of privacy and to receive a response from the school.

(4) Each parent has a right to arrange appointments for parent-teacher conferences absent a court order to the contrary. Neither parent can be compelled against their will to exercise this right by attending conferences jointly with the other parent.

(b)(1) Each parent has full and equal access to a child's medical records and vital records absent a court order to the contrary. Neither parent may veto the access requested by the other parent. If necessary, either parent is required to authorize medical providers to release to the other parent copies of any and all information concerning medical care provided to the child which would otherwise be properly released to either parent.

(2) If the child is in the actual physical custody of one parent, that parent is required to promptly inform the other parent of any illness of the child which requires medical attention.

(3) Each parent is required to consult with the other parent prior to any elective surgery being performed on the child, and in the event emergency medical procedures are undertaken for the child which require the parental consent of either parent, if time permits, the other parent shall be consulted, or if time does not permit such consultation, the other parent shall be promptly informed of the emergency medical procedures: *Provided*, That nothing contained herein alters or amends

the law of this state as it otherwise pertains to physicians or health care facilities obtaining parental consent prior to providing medical care or performing medical procedures.

(c)(1) Each parent has full and equal access to a child's juvenile court records, process and pleadings, absent a court order to the contrary. Neither parent may veto any access requested by the other parent. Juvenile court records are limited to those records which are normally available to a parent of a child who is a subject of the juvenile justice system.

(2) Each parent has the right to be notified by the other party if the minor child is the victim of an alleged crime, including the name of the investigating law-enforcement officer or agency, if known. There is no duty to notify if the party to be notified is the alleged perpetrator.

PART 6. MISCELLANEOUS PROVISIONS.

§48-9-603. Effect of enactment; operative dates.

(a) The enactment of this article, formerly enacted as article eleven of this chapter during the second extraordinary session of the 1999 Legislature, is prospective in operation unless otherwise expressly indicated.

(b) The provisions of ~~section 9-202~~ §48-9-202 of this code, insofar as they provide for parent education and mediation, became operative on January 1, 2000. Until that date, parent education and mediation with regard to custody issues were discretionary unless made mandatory under a particular program or pilot project by rule or direction of the Supreme Court of Appeals or a circuit court.

(c) The provisions of this article that authorize the court, in the absence of an agreement of the parents, to order an allocation of custodial responsibility and an allocation of significant decision-making responsibility became operative on January 1, 2000, at which time the primary caretaker doctrine was replaced with a system that allocates custodial and decision-making responsibility to the parents in accordance with this article. Any order entered prior to January 1, 2000, based on the primary caretaker doctrine remains in full force and effect until modified by a court of competent jurisdiction.

(d) The amendments to this chapter made during the 2021 session of the Legislature shall become applicable upon the effective date of those amendments. Those amendments shall not, without more, be considered a substantial change in the circumstances of the child or of one or both parents under §48-9-401 et seq. of this code. Any order entered prior to the effective date of those amendments remains in full force and effect until modified by a court of competent jurisdiction."

And,

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

Com. Sub. for H. B. 2363 – "A Bill to amend the Code of West Virginia, 1931, as amended by adding thereto five new sections, designated §48-1-239a, §48-1-239b, §48-1-241a, §48-1-241b, and §48-9-105; to amend and reenact §48-1-220, §48-1-239, §48-9-102, §48-9-203, §48-9-204, §48-9-206, §48-9-207, §48-9-209, §48-9-301, §48-9-403, §48-9-601, §48-9-603 of said

code, all relating to ‘Best Interests of the Child Protection Act of 2021’; providing definitions; amending definitions; clarifying the authority of parents to make emergency and non-elective healthcare decisions; requiring the court to consider parenting functions in determining best interests of the child; adding meaningful contact between a child and his or her siblings, including half-siblings, as an objective of the best interests of the child; providing for venue of custody actions outside of divorce proceedings; requiring the court to consider parenting functions in temporary parenting plans and allocation of custody; adding a preference time allocated to the parent resulting in the child being under the care of that parent is preferred to the parent resulting in time allocated to the parent resulting in the child being under the care of a third party as an objective in allocation determinations; adding an objective for reasonable access to the child by telephone or other electronic contact as an objective in allocation determinations; requiring that, in the absence of agreement of the parents, a final allocation determination must be made pursuant to hearing which cannot be conducted exclusively by presentation of evidence by proffer; adding neglect and abandonment as criteria that may overcome presumption that joint decision-making responsibility is in the best interests of the child; clarifying criteria of interference with the other parent’s relationship with the child; providing notice requirements during a court-ordered investigation; requires that a hearing cannot take place until after the investigation report is provided to the parties; allowing for continuance of a hearing following an investigation; providing a mechanism for the adjudication of requests for relocation of a parent with a child; providing circumstances for which relocation of a parent constitutes a substantial change in the circumstances of the child; requiring the relocating parent to file a verified petition for the court for modification of the parenting plan; identifying consequences of failure to comply with the requirements of this section; requiring a copy of the petition to be served on the other parent and all other persons allocated custodial time with the child; establishing requirements for the petition for modification of the parenting plan; requiring a hearing to be held on the petition at least 30 days in advance of the proposed date of relocation; providing for an expedited hearing; authorizing the court to revise the parenting plan; authorizing the court to allocate costs between the parties; establishing the burden of proof for the relocating parent; defines when a relocation is for a legitimate purpose; establishing a move with a legitimate purpose is unreasonable unless the relocating parent proves that the purpose is not substantially achievable without moving and that moving to a location that is substantially less disruptive of the other parent’s relationship to the child is not feasible; requiring the court to consider the best interests of the child when modifying the parenting plan; requiring the court to minimize impairment to a parent-child relationship caused by a parent’s relocation through alternative arrangements; setting forth the opportunity for parties to file a modified parenting plan signed by all parties; conditionally requiring an initial permanent parenting plan to be established before a relocation is considered; requiring interviewing or questioning of the child to be conducted in accordance with Rule 17 of the Rules of Practice and Procedure for Family Court; providing for parental access to a child’s vital records; requiring notice to the other party if the child is a victim of a crime unless the other party is the perpetrator; providing an effective date; providing that the 2021 amendments shall not, without more, be considered a substantial change in circumstances for modification of a parenting plan order; and providing that existing orders remain in effect unless modified by a court of competent jurisdiction.”

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

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

“CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 1. GENERAL PROVISIONS, DEFINITIONS.

§48-1-220. Decision-making responsibility defined.

‘Decision-making responsibility’ refers to authority for making significant life decisions on behalf of a child, including, but not limited to, the child’s education, spiritual guidance and health care: Provided, That with regard to healthcare, both parents in any shared parenting plan, regardless of the relative ratio of parenting time allocated between the parents, shall have the authority to make emergency or other non-elective healthcare decisions concerning their child necessary for the child’s health or welfare during such parent’s parenting time.

§48-1-239. Shared parenting defined.

(a) ‘Shared parenting’ means either basic shared parenting or extended shared parenting.

(b) ‘Basic shared parenting’ means an arrangement under which one parent keeps a child or children overnight for less than 35 percent of the year and under which both parents contribute to the expenses of the child or children in addition to the payment of child support.

(c) ‘Extended shared parenting’ means an arrangement under which each parent keeps a child or children overnight for more than 35 percent of the year and under which both parents contribute to the expenses of the child or children in addition to the payment of child support.

(d) In any case where, in the absence of an agreement between the parents, a court orders shared parenting; the order shall be in writing and include specific findings of fact supporting the Court’s determination

§48-1-239a. Shared legal custody defined.

‘Shared legal custody’ means a continued mutual responsibility and involvement by both parents in major decisions regarding the child’s welfare including matters of education, medical care, and emotional, moral, and religious development consistent with the provisions of §48-9-207 of this code.

§48-1-239b. Sole legal custody defined.

‘Sole legal custody’ means that one parent has the right and responsibility to make major decisions regarding the child’s welfare including matters of education, non-emergency medical care, and emotional, moral, and religious development.

§48-1-241a. Shared physical custody defined.

‘Shared physical custody’ means a child has periods of residing with, and being under the supervision of, each parent consistent with the provisions of §48-9-206 of this code: *Provided, That physical custody shall be shared by the parents in such a way as to assure a child has frequent and continuing contact with both parents. Such frequent and continuing contact with both*

parents is rebuttably presumed to be in the best interests of the child unless the evidence shows otherwise.

§48-1-241b. Sole physical custody defined.

'Sole physical custody' means a child resides with and is under the supervision of one parent, subject to reasonable visitation by the other parent, unless the court determines that the visitation would not be in the best interests of the child.

ARTICLE 9. ALLOCATION OF CUSTODIAL RESPONSIBILITY AND DECISION-MAKING RESPONSIBILITY OF CHILDREN.

§48-9-102. Objectives; best interests of the child.

(a) The primary objective of this article is to serve the child's best interests, by facilitating:

(1) Stability of the child;

(2) Parental planning and agreement about the child's custodial arrangements and upbringing;

(3) Continuity of existing parent-child attachments;

(4) Meaningful contact between a child and each parent;

(5) Caretaking and parenting relationships by adults who love the child, know how to provide for the child's needs, and who place a high priority on doing so;

(6) Security from exposure to physical or emotional harm; ~~and~~

(7) Expedient, predictable decision-making and avoidance of prolonged uncertainty respecting arrangements for the child's care and control; and

(8) Meaningful contact between a child and his or her siblings, including half-siblings.

(b) A secondary objective of article is to achieve fairness between the parents.

§48-9-105. Venue for custodial allocation actions independent of divorce.

(a) Venue for the initial determination of custodial allocation or child custody determination within a divorce action shall be governed by §48-5-106 or §48-20-101 et seq. of this code, or both.

(b) Venue for the initial determination of custodial allocation or child custody determination as between parties who reside in separate states shall be governed by §48-20-101 et seq. of this code.

(c) Venue for modification of custodial allocation or modification of child custody determination which was previously determined in a tribunal of a state other than West Virginia shall be governed by §48-20-101 et seq. of this code.

§48-9-203. Proposed temporary parenting plan; temporary order; amendment; vacation of order.

(a) A parent seeking a temporary order relating to parenting shall file and serve a proposed temporary parenting plan by motion. The other parent, if contesting the proposed temporary parenting plan, shall file and serve a responsive proposed parenting plan. Either parent may move to have a proposed temporary parenting plan entered as part of a temporary order. The parents may enter an agreed temporary parenting plan at any time as part of a temporary order. The proposed temporary parenting plan may be supported by relevant evidence and shall be verified and shall state at a minimum the following:

(1) The name, address and length of residence with the person or persons with whom the child has lived for the preceding twelve months;

(2) The performance by each parent during the last 12 months of the parenting functions relating to the daily needs of the child;

(3) The parents' work and child-care schedules for the preceding twelve months;

(4) The parents' current work and child-care schedules; and

(5) Any of the circumstances set forth in ~~section 9-209~~ §48-9-209 of this code that are likely to pose a serious risk to the child and that warrant limitation on the award to a parent of temporary residence or time with the child pending entry of a permanent parenting plan.

(b) At the hearing, the court shall enter a temporary parenting order incorporating a temporary parenting plan which includes:

(1) A schedule for the child's time with each parent when appropriate;

(2) Designation of a temporary residence for the child;

(3) Allocation of decision-making authority, if any. Absent allocation of decision-making authority consistent with ~~section two hundred seven of this article~~ §48-9-207 of this code, neither party shall make any decision for the child other than those relating to day-to-day or emergency care of the child, which shall be made by the party who is present with the child;

(4) Provisions for temporary support for the child; ~~and~~

(5) Restraining orders, if applicable; and

(6) Specific findings of fact upon which the court bases its determinations.

(c) A parent may make a motion for an order to show cause and the court may enter a temporary order, including a temporary parenting plan, upon a showing of necessity.

(d) A parent may move for amendment of a temporary parenting plan, and the court may order amendment to the temporary parenting plan, if the amendment conforms to the limitations of ~~section 9-209~~ §48-9-209 of this code and is in the best interest of the child. The court's order modifying the plan shall be in writing and contain specific findings of fact upon which the court bases its determinations.

§48-9-204. Criteria for temporary parenting plan.

(a) After considering the proposed temporary parenting plan filed pursuant to ~~section 9-203~~ §48-9-203 of this code and other relevant evidence presented, the court shall make a temporary

parenting plan that is in the best interest of the child, which shall be in writing and contain specific findings of fact upon which the court bases its determinations. In making this determination, the court shall give particular consideration to:

(1) Which parent has taken greater responsibility during the last 12 months for performing caretaking and/or parenting functions relating to the daily needs of the child; and

(2) Which parenting arrangements will cause the least disruption to the child's emotional stability while the action is pending.

(b) The court shall also consider the factors used to determine residential provisions in the permanent parenting plan.

(c) Upon credible evidence of one or more of the circumstances set forth in ~~subsection 9-209(a)~~ §48-9-209(a) of this code, the court shall issue a temporary order limiting or denying access to the child as required by that section, in order to protect the child or the other party, pending adjudication of the underlying facts. The temporary order shall be in writing and include specific findings of fact supporting the court's determination.

(d) Expedited procedures shall be instituted to facilitate the prompt issuance of a parenting plan.

§48-9-206. Allocation of custodial responsibility.

(a) Unless otherwise resolved by agreement of the parents under §48-9-201 of this code or unless harmful to the child, the court shall allocate custodial responsibility so that, except to the extent required under §48-9-209 of this code, the custodial time the child spends with each parent may be expected to achieve any of the following objectives:

(1) To permit the child to have a meaningful relationship with each parent who has performed a reasonable share of parenting functions;

(2) To accommodate, if the court determines it is in the best interests of the child, the firm and reasonable preferences of a child who is 14 years of age or older; and to accommodate, if the court determines it is in the best interests of the child, the firm and reasonable preferences of a child under 14 years of age, but sufficiently matured that he or she can intelligently express a voluntary preference for one parent;

(3) To keep siblings together when the court finds that doing so is necessary to their welfare;

(4) To protect the child's welfare when, under an otherwise appropriate allocation, the child would be harmed because of a gross disparity in the quality of the emotional attachments between each parent and the child, or in each parent's demonstrated ability or availability to meet a child's needs;

(5) To take into account any prior agreement of the parents that, under the circumstances as a whole, including the reasonable expectations of the parents in the interest of the child, would be appropriate to consider;

(6) To avoid an allocation of custodial responsibility that would be extremely impractical or that would interfere substantially with the child's need for stability in light of economic, physical,

or other circumstances, including the distance between the parents' residences, the cost and difficulty of transporting the child, the parents' and child's daily schedules, and the ability of the parents to cooperate in the arrangement;

(7) To apply the principles set forth in §48-9-403(d) of this code if one parent relocates or proposes to relocate at a distance that will impair the ability of a parent to exercise the amount of custodial responsibility that would otherwise be ordered under this section;

(8) To consider the stage of a child's development; ~~and~~

(9) To consider which parent will encourage and accept a positive relationship between the child and the other parent, including which parent is more likely to keep the other parent involved in the child's life and activities;

(10) To take into account the preference that time allocated to the parent resulting in the child being under the care and custody of that parent is preferred to time allocated to the parent resulting in the child being under the care or custody of a family member of that parent or a third party; and

(11) To allow reasonable access to the child by telephone or other electronic contact, which shall be defined in the parenting plan.

(b) The court may consider the allocation of custodial responsibility arising from temporary agreements made by the parties after separation if the court finds, by a preponderance of the evidence, that such agreements were consensual. The court shall afford those temporary consensual agreements the weight the court believes the agreements are entitled to receive, based upon the evidence. The court may not consider the temporary allocation of custodial responsibility imposed by a court order on the parties.

(c) If the court is unable to allocate custodial responsibility under §48-9-206(a) of this code because the allocation under §48-9-206(a) of this code would be harmful to the child, or because there is no history of past performance of caretaking functions, as in the case of a newborn, or because the history does not establish a pattern of caretaking sufficiently dispositive of the issues of the case, the court shall allocate custodial responsibility based on the child's best interest, taking into account the factors in considerations that are set forth in this section and in §48-9-209 and §48-9-403(d) of this code and preserving to the extent possible this section's priority on the share of past caretaking functions each parent performed; Provided, That if either parent or both has demonstrated reasonable participation in parenting functions as defined in §48-1-235.2 of this code, the court cannot rely solely on caretaking functions, and shall consider the parents' participation in parenting functions.

(d) In determining how to schedule the custodial time allocated to each parent, the court shall take account of the economic, physical, and other practical circumstances such as those listed in §48-9-206(a)(6) of this code.

(e) In the absence of an agreement of the parents, the court's determination of allocation of custodial responsibility under this section shall be made pursuant to a hearing, which shall not be conducted exclusively by the presentation of evidence by proffer. The court's order determining allocation of custodial responsibility shall be in writing, and include specific findings of fact supporting the determination.

§48-9-207. Allocation of significant decision-making responsibility.

(a) Unless otherwise resolved by agreement of the parents under ~~section 9-204~~ §48-9-201 of this code, the court shall allocate responsibility for making significant life decisions on behalf of the child, including the child's education and health care, to one parent or to two parents jointly, in accordance with the child's best interest, in light of:

(1) The allocation of custodial responsibility under ~~section 9-206 of this article~~ §48-9-206 of this code;

(2) The level of each parent's participation in past decision-making on behalf of the child;

(3) The wishes of the parents;

(4) The level of ability and cooperation the parents have demonstrated in decision-making on behalf of the child;

(5) Prior agreements of the parties; and

(6) The existence of any limiting factors, as set forth in section 9-209 of this article.

(b) If each of the child's legal parents has been exercising a reasonable share of parenting functions for the child, the court shall presume that an allocation of decision-making responsibility to both parents jointly is in the child's best interests. The presumption is overcome if there is a history of domestic abuse, neglect, or abandonment, or by a showing that joint allocation of decision-making responsibility is not in the child's best interest: Provided, That the court's determination shall be in writing and include specific findings of fact supporting any determination that joint allocation of decision-making responsibility is not in the child's best interest.

(c) Unless otherwise provided or agreed by the parents, each parent who is exercising custodial responsibility shall be given sole responsibility for day-to-day decisions for the child, while the child is in that parent's care and control, including emergency decisions affecting the health and safety of the child.

PART 2 – PARENTING PLANS**§48-9-209. Parenting plan; limiting factors.**

(a) If either of the parents so requests, or upon receipt of credible information thereof, the court shall determine whether a parent who would otherwise be allocated responsibility under a parenting plan:

(1) Has abused, neglected or abandoned a child, as defined by state law;

(2) Has sexually assaulted or sexually abused a child as those terms are defined in ~~articles eight b and eight d, chapter sixty one~~ §61-8B-1 et seq. and §61-8D-1 et seq. of this code;

(3) Has committed domestic violence, as defined in ~~section 27-202~~ §48-27-202 of this code;

(4) Has interfered persistently with the other parent's access to the child, overtly or covertly, persistently violated, interfered with, impaired, or impeded the rights of a parent or a child with respect to the exercise of shared authority, residence, visitation, or other contact with the child,

except in the case of actions taken for the purpose of protecting the safety of the child or the interfering parent or another family member, pending adjudication of the facts underlying that belief; or

(5) Has made one or more fraudulent reports of domestic violence or child abuse: *Provided*, That a person's withdrawal of or failure to pursue a report of domestic violence or child support shall not alone be sufficient to consider that report fraudulent.

(b) If a parent is found to have engaged in any activity specified by subsection (a) of this section, the court shall impose limits that are reasonably calculated to protect the child or child's parent from harm. The limitations that the court shall consider include, but are not limited to:

(1) An adjustment of the custodial responsibility of the parents, including but not limited to:

(A) Increased parenting time with the child to make up for any parenting time the other parent lost as a result of the proscribed activity;

(B) An additional allocation of parenting time in order to repair any adverse effect upon the relationship between the child and the other parent resulting from the proscribed activity; or

(C) The allocation of exclusive custodial responsibility to one of them;

(2) Supervision of the custodial time between a parent and the child;

(3) Exchange of the child between parents through an intermediary, or in a protected setting;

(4) Restraints on the parent from communication with or proximity to the other parent or the child;

(5) A requirement that the parent abstain from possession or consumption of alcohol or nonprescribed drugs while exercising custodial responsibility and in the twenty-four hour period immediately preceding such exercise;

(6) Denial of overnight custodial responsibility;

(7) Restrictions on the presence of specific persons while the parent is with the child;

(8) A requirement that the parent post a bond to secure return of the child following a period in which the parent is exercising custodial responsibility or to secure other performance required by the court;

(9) A requirement that the parent complete a program of intervention for perpetrators of domestic violence, for drug or alcohol abuse, or a program designed to correct another factor; or

(10) Any other constraints or conditions that the court deems necessary to provide for the safety of the child, a child's parent or any person whose safety immediately affects the child's welfare.

(c) If a parent is found to have engaged in any activity specified in subsection (a) of this section, the court may not allocate custodial responsibility or decision-making responsibility to that parent without making special written findings that the child and other parent can be adequately protected from harm by such limits as it may impose under subsection (b) of this

section. The parent found to have engaged in the behavior specified in subsection (a) of this section has the burden of proving that an allocation of custodial responsibility or decision-making responsibility to that parent will not endanger the child or the other parent.

(d) If the court determines, based on the investigation described in part three of this article or other evidence presented to it, that an accusation of child abuse or neglect, or domestic violence made during a child custody proceeding is false and the parent making the accusation knew it to be false at the time the accusation was made, the court may order reimbursement to be paid by the person making the accusations of costs resulting from defending against the accusations. Such reimbursement may not exceed the actual reasonable costs incurred by the accused party as a result of defending against the accusation and reasonable attorney's fees incurred.

(e) (1) A parent who believes he or she is the subject of activities by the other parent described in subdivision (5) of subsection (a), may move the court pursuant to subdivision (4), subsection (b), section one hundred and one, article five, chapter forty-nine of this code for the Department of Health and Human Resources to disclose whether the other parent was the source of the allegation and, if so, whether the department found the report to be:

- (A) Substantiated;
- (B) Unsubstantiated;
- (C) Inconclusive; or
- (D) Still under investigation.

(2) If the court grants a motion pursuant to this subsection, disclosure by the Department of Health and Human Resources shall be in camera. The court may disclose to the parties information received from the department only if it has reason to believe a parent knowingly made a false report.

PART 3. FACT FINDING.

§48-9-301. Court-ordered investigation.

(a) In its discretion, the court may order a written investigation and report to assist it in determining any issue relevant to proceedings under this article: Provided, That the court must serve notice to all parties of the court's order. The investigation and report may be made by the guardian ad litem, the staff of the court, or other professional social service organization experienced in counseling children and families: Provided, That the court shall identify to all parties the identity of the assigned investigator, and the investigator shall be a compulsory witness and subject to full examination and cross-examination by both parties. The court shall specify the scope and objective of the investigation or evaluation and the authority of the investigator.

(b) In preparing the report concerning a child, the investigator may consult any person who may have information about the child and the potential parenting or custodian arrangements: Provided, That the person(s) consulted by the investigator shall be identified to the parties and shall be subject to complete discovery including but not limited to pre-hearing deposition. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric or other expert persons who have served the child in the past without obtaining the consent of the parent or the

child's custodian; but the child's consent must be obtained if the child has reached the age of twelve, unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection (c) of this section are fulfilled, the investigator's report may be received in evidence at the hearing.

(c) The investigator shall deliver the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing unless a shorter time is ordered by the court for good cause shown: Provided, That in no event shall the hearing take place until after the report has been provided to the parties and the completion of any discovery requested thereupon. The court may grant a continuance, upon motion by a party showing good cause that discovery cannot be adequately completed within 10 days. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, records or documents reviewed or relied upon by the investigator, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (b) of this section, and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call as a hearing witness the investigator and any person whom the investigator has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing.

(d) Services and tests ordered under this section shall be ordered only if at no cost to the individuals involved, or at a cost that is reasonable in light of the available financial resources.

PART 4. MODIFICATION OF PARENTING PLAN.

§48-9-403. Relocation of a parent.

~~(a) The relocation of a parent constitutes a substantial change in the circumstances under subsection 9-401(a) of the child only when it significantly impairs either parent's ability to exercise responsibilities that the parent has been exercising.~~

~~(b) Unless otherwise ordered by the court, a parent who has responsibility under a parenting plan who changes, or intends to change, residences for more than ninety days must give a minimum of sixty days' advance notice, or the most notice practicable under the circumstances, to any other parent with responsibility under the same parenting plan. Notice shall include:~~

~~(1) The relocation date;~~

~~(2) The address of the intended new residence;~~

~~(3) The specific reasons for the proposed relocation;~~

~~(4) A proposal for how custodial responsibility shall be modified, in light of the intended move; and~~

~~(5) Information for the other parent as to how he or she may respond to the proposed relocation or modification of custodial responsibility.~~

~~Failure to comply with the notice requirements of this section without good cause may be a factor in the determination of whether the relocation is in good faith under subsection (d) of this section and is a basis for an award of reasonable expenses and reasonable attorney's fees to another parent that are attributable to such failure.~~

~~The Supreme Court of Appeals shall make available through the offices of the circuit clerks and the secretary clerks of the family courts a form notice that complies with the provisions of this subsection. The Supreme Court of Appeals shall promulgate procedural rules that provide for an expedited hearing process to resolve issues arising from a relocation or proposed relocation.~~

~~(c) When changed circumstances are shown under subsection (a) of this section, the court shall, if practical, revise the parenting plan so as to both accommodate the relocation and maintain the same proportion of custodial responsibility being exercised by each of the parents. In making such revision, the court may consider the additional costs that a relocation imposes upon the respective parties for transportation and communication, and may equitably allocate such costs between the parties.~~

~~(d) When the relocation constituting changed circumstances under subsection (a) of this section renders it impractical to maintain the same proportion of custodial responsibility as that being exercised by each parent, the court shall modify the parenting plan in accordance with the child's best interests and in accordance with the following principles:~~

~~(1) A parent who has been exercising a significant majority of the custodial responsibility for the child should be allowed to relocate with the child so long as that parent shows that the relocation is in good faith for a legitimate purpose and to a location that is reasonable in light of the purpose. The percentage of custodial responsibility that constitutes a significant majority of custodial responsibility is seventy percent or more. A relocation is for a legitimate purpose if it is to be close to significant family or other support networks, for significant health reasons, to protect the safety of the child or another member of the child's household from significant risk of harm, to pursue a significant employment or educational opportunity or to be with one's spouse who is established, or who is pursuing a significant employment or educational opportunity, in another location. The relocating parent has the burden of proving of the legitimacy of any other purpose. A move with a legitimate purpose is reasonable unless its purpose is shown to be substantially achievable without moving or by moving to a location that is substantially less disruptive of the other parent's relationship to the child.~~

~~(2) If a relocation of the parent is in good faith for legitimate purpose and to a location that is reasonable in light of the purpose and if neither has been exercising a significant majority of custodial responsibility for the child, the court shall reallocate custodial responsibility based on the best interest of the child, taking into account all relevant factors including the effects of the relocation on the child.~~

~~(3) If a parent does not establish that the purpose for that parent's relocation is in good faith for a legitimate purpose into a location that is reasonable in light of the purpose, the court may modify the parenting plan in accordance with the child's best interests and the effects of the relocation on the child. Among the modifications the court may consider is a reallocation of primary custodial responsibility, effective if and when the relocation occurs, but such a reallocation shall not be ordered if the relocating parent demonstrates that the child's best interests would be served by the relocation.~~

~~(4) The court shall attempt to minimize impairment to a parent-child relationship caused by a parent's relocation through alternative arrangements for the exercise of custodial responsibility appropriate to the parents' resources and circumstances and the developmental level of the child.~~

~~(e) In determining the proportion of caretaking functions each parent previously performed for the child under the parenting plan before relocation, the court may not consider a division of~~

~~functions arising from any arrangements made after a relocation but before a modification hearing on the issues related to relocation.~~

~~(f) In determining the effect of the relocation or proposed relocation on a child, any interviewing or questioning of the child shall be conducted in accordance with the provisions of rule 17 of the rules of practice and procedure for family law as promulgated by the Supreme Court of Appeals.~~

(a) The relocation of a parent constitutes a substantial change in the circumstances of the child under §48-9-401(a) of this code when it impairs either parent's ability to exercise responsibilities that the parent has been exercising, or when it impairs the schedule of custodial allocation that has been ordered by the court for a parent or any other person.

(b) A parent who has responsibility under a parenting plan who changes, or intends to change, residences must file a verified petition with the court for modification of the parenting plan, and cause a copy of the same to be served upon the other parent and upon all other persons who, pursuant to the court's order in effect at the time of the petition, have been allocated custodial time with the child. The petition shall be filed at least 90 days prior to any relocation, and the summons must be served at least 60 days in advance of any relocation, unless the relocating parent establishes that it was impracticable under the circumstances to provide such notice 90 days in advance. The verified petition shall include:

(1) The proposed relocation date;

(2) The address of the intended new residence;

(3) The specific reasons for the proposed relocation;

(4) A proposal for how custodial responsibility shall be modified, in light of the intended move; and

(5) A request for a hearing.

Failure to comply with the requirements of this section may be a factor in the determination of whether the relocation is in good faith under subsection (d) of this section, and may also be a basis for reallocation of the primary residence and custodial responsibility for the child and for an award of reasonable expenses and reasonable attorney's fees to another parent or another person exercising custodial responsibility for the child pursuant to an order of the court that are attributable to such failure.

(c) A hearing on the petition shall be held by the court at least 30 days in advance of the proposed date of relocation. A parent proposing to relocate may move for an expedited hearing upon the petition in circumstances under which the parent needs an answer expeditiously. If the hearing is held fewer than 30 days in advance of the proposed date of relocation, the court's order shall include findings of fact as to why the hearing was not held at least 30 days prior to the petition's proposed date of relocation. After a hearing upon a petition filed under this section, the court shall, if practical, revise the parenting plan so as to both accommodate the relocation and maintain the same proportion of custodial responsibility being exercised by each of the parents and all such other persons exercising custodial responsibility for the child pursuant to the order of the court. In making such revision, the court may consider the additional costs that a relocation imposes upon the respective parties for transportation and communication, and may equitably

allocate such costs between the parties and may consider §48-13-702 of this code authorizing the court to disregard the child support formula relating to long distance visitation costs.

(d) (1) At the hearing held pursuant to this section, the relocating parent has the burden of proving that: (A) The reasons for the proposed relocation are legitimate and made in good faith; (B) that allowing relocation of the relocating parent with the child is in the best interests of the child as defined in §48-9-102 of this code; and (C) that there is no reasonable alternative, other than the proposed relocation, available to the relocating parent that would be in the child's best interests and less disruptive to the child.

(2) A relocation is for a legitimate purpose if it is to be close to immediate family members, for substantial health reasons, to protect the safety of the child or another member of the child's household from significant risk of harm, to pursue a significant employment or educational opportunity, or to be with one's spouse or significant other with whom the relocating parent has cohabitated for at least a year, who is established, or who is pursuing a significant employment or educational opportunity, in another location.

(3) The relocating parent has the burden of proving the proposed relocation is for one of these legitimate purposes. The relocating parent has the burden of proving the legitimacy of any other purpose. A move with a legitimate purpose is unreasonable unless the relocating parent proves that the purpose is not substantially achievable without moving, and that moving to a location that is substantially less disruptive of the other parent's relationship to the child is not feasible.

(4) When the relocation is for a legitimate purpose, in good faith, and renders it impractical to maintain the same proportion of custodial responsibility as that being exercised by each parent and all other persons exercising custodial responsibility for the child pursuant to an order of the court, the court shall modify the parenting plan in accordance with the child's best interests.

(5) If the relocating parent does not establish that the purpose for that parent's relocation is made in good faith for a legitimate purpose to a location that is reasonable in light of the purpose, the court may modify the parenting plan in accordance with the child's best interests and the effects of the relocation on the child. Among the modifications the court may consider is a reallocation of primary custodial responsibility, to become effective if and when the parent's relocation occurs.

(6) The court shall attempt to minimize impairment to a parent-child relationship caused by a parent's relocation through alternative arrangements for the exercise of custodial responsibility appropriate to the parents' resources and circumstances and the developmental level of the child.

(e) If the parties file with the court a modified parenting plan signed by all the parties the court may enter an order modifying custodial responsibility in accordance with the parenting plan if the court determines that the parenting plan is in the best interest of the child to do so.

(f) Except in extraordinary circumstance articulated in the court's order, a relocation may not be considered until an initial permanent parenting plan is established.

(g) In determining the effect of the relocation or proposed relocation on a child, any interviewing or questioning of the child shall be conducted in accordance with the provisions of Rule 17 of the Rules of Practice and Procedure for Family Court as promulgated by the Supreme Court of Appeals.

PART 6. MISCELLANEOUS PROVISIONS.

§48-9-601. Access to a child's records.

(a)(1) Each parent has full and equal access to a child's educational records absent a court order to the contrary. Neither parent may veto the access requested by the other parent. Educational records are academic, attendance and disciplinary records of public and private schools in all grades pre-kindergarten through 12 and any form of alternative school. Educational records are any and all school records concerning the child that would otherwise be properly released to the primary custodial parent, including, but not limited to, report cards and progress reports, attendance records, disciplinary reports, results of the child's performance on standardized tests and statewide tests and information on the performance of the school that the child attends on standardized statewide tests; curriculum materials of the class or classes in which the child is enrolled; names of the appropriate school personnel to contact if problems arise with the child; information concerning the academic performance standards, proficiencies, or skills the child is expected to accomplish; school rules, attendance policies, dress codes and procedures for visiting the school; and information about any psychological testing the school does involving the child.

(2) In addition to the right to receive school records, the nonresidential parent has the right to participate as a member of a parent advisory committee or any other organization comprised of parents of children at the school that the child attends.

(3) The nonresidential parent or noncustodial parent has the right to question anything in the child's record that the parent feels is inaccurate or misleading or is an invasion of privacy and to receive a response from the school.

(4) Each parent has a right to arrange appointments for parent-teacher conferences absent a court order to the contrary. Neither parent can be compelled against their will to exercise this right by attending conferences jointly with the other parent.

(b)(1) Each parent has full and equal access to a child's medical records and vital records absent a court order to the contrary. Neither parent may veto the access requested by the other parent. If necessary, either parent is required to authorize medical providers to release to the other parent copies of any and all information concerning medical care provided to the child which would otherwise be properly released to either parent.

(2) If the child is in the actual physical custody of one parent, that parent is required to promptly inform the other parent of any illness of the child which requires medical attention.

(3) Each parent is required to consult with the other parent prior to any elective surgery being performed on the child, and in the event emergency medical procedures are undertaken for the child which require the parental consent of either parent, if time permits, the other parent shall be consulted, or if time does not permit such consultation, the other parent shall be promptly informed of the emergency medical procedures: *Provided*, That nothing contained herein alters or amends the law of this state as it otherwise pertains to physicians or health care facilities obtaining parental consent prior to providing medical care or performing medical procedures.

(c)(1) Each parent has full and equal access to a child's juvenile court records, process and pleadings, absent a court order to the contrary. Neither parent may veto any access requested

by the other parent. Juvenile court records are limited to those records which are normally available to a parent of a child who is a subject of the juvenile justice system.

(2) Each parent has the right to be notified by the other party if the minor child is the victim of an alleged crime, including the name of the investigating law-enforcement officer or agency, if known. There is no duty to notify if the party to be notified is the alleged perpetrator.

§48-9-603. Effect of enactment; operative dates.

(a) The enactment of this article, formerly enacted as article eleven of this chapter during the second extraordinary session of the 1999 Legislature, is prospective in operation unless otherwise expressly indicated.

(b) The provisions of ~~section 9-202~~ §48-9-202 of this code, insofar as they provide for parent education and mediation, became operative on January 1, 2000. Until that date, parent education and mediation with regard to custody issues were discretionary unless made mandatory under a particular program or pilot project by rule or direction of the Supreme Court of Appeals or a circuit court.

(c) The provisions of this article that authorize the court, in the absence of an agreement of the parents, to order an allocation of custodial responsibility and an allocation of significant decision-making responsibility became operative on January 1, 2000, at which time the primary caretaker doctrine was replaced with a system that allocates custodial and decision-making responsibility to the parents in accordance with this article. Any order entered prior to January 1, 2000, based on the primary caretaker doctrine remains in full force and effect until modified by a court of competent jurisdiction.

(d) The amendments to this chapter made during the 2021 session of the Legislature shall become applicable upon the effective date of those amendments. Any order entered prior to the effective date of those amendments remains in full force and effect until modified by a court of competent jurisdiction."

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 617**), and there were— yeas 88, nays 12, absent and not voting none, with the nays being as follows:

Nays: Boggs, Doyle, Espinosa, Fleischauer, Hansen, Hardy, Howell, Martin, Pethtel, Rowe, Tully and Williams.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2363) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2368, Mylissa Smith's Law, creating patient visitation privileges.

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

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

"CHAPTER 16. PUBLIC HEALTH.

ARTICLE 39. PATIENT SAFETY AND VISITATION ACT.

§16-39-1. Short title.

This article may be cited as the 'Patient Safety Act of 2001'. The amendments made to this article during the 2021 Regular Session of the Legislature shall be known as 'Mylissa Smith's Law.'

§16-39-2. Legislative findings and purpose.

[Repealed.]

§16-39-3. Definitions.

For purposes of this article, the following words and phrases have the following meanings:

~~(1)~~ 'Appropriate authority' means a federal, state, county, or municipal government body, agency or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or waste or any member, officer, agent, representative, or supervisory employee ~~there~~ thereof;

~~(2)~~ 'Commissioner' means the commissioner of the division of health;

~~(3)~~ 'Direct patient care' means health care that provides for the physical, diagnostic, emotional, or rehabilitational needs of a patient or health care that involves examination, treatment, or preparation for diagnostic tests or procedures.

~~(4)~~ 'Discrimination or retaliation' includes any threat, intimidation, discharge, or any adverse change in a health care worker's position, location, compensation, benefits, privileges, or terms or conditions of employment that occurs as a result of a health care worker engaging in any action protected by this article.

~~(5)~~ 'Good faith report' means a report of conduct defined in this article as wrongdoing or waste that is made without malice or consideration of personal benefit and which the person making the report has reasonable cause to believe is true.

~~(6)~~ 'Health care entity' includes a health care facility, such as a hospital, clinic, nursing facility, or other provider of health care services.

'Health care facility' means:

(1) A hospital licensed pursuant to §16-5B-1 et seq. of this code;

(2) A nursing home licensed pursuant to §16-5C-1 et seq. of this code;

(3) An assisted living residence licensed pursuant to §16-5D-1 et seq. of this code; and

(4) Hospice licensed pursuant to §16-5I-1 et seq. of this code.

(7) 'Health care worker' means a person who provides direct patient care to patients of a health care entity and who is an employee of the health care entity, a subcontractor, or independent contractor for the health care entity, or an employee of ~~such~~ the subcontractor or independent contractor. The term includes, but is not limited to, a nurse, nurse's aide, laboratory technician, physician, intern, resident, physician assistant, physical therapist, or any other ~~such~~ person who provides direct patient care.

'Patient' means a person living or receiving services as an inpatient at a healthcare facility.

'Public Health State of Emergency' means a federal or state declaration of a state of emergency arising from or relating to a public health crisis.

'Visitor' means any visitor from the patient's family, hospice or clergy visiting a patient in a healthcare facility.

(8) 'Waste' means the conduct, act, or omission by a health care entity that results in substantial abuse, misuse, destruction, or loss of funds, resources, or property belonging to a patient, a health care entity, or any federal or state program.

(9) 'Wrongdoing' means a violation of any law, rule, regulation, or generally recognized professional or clinical standard that relates to care, services, or conditions and which potentially endangers one or more patients or workers or the public.

§16-39-8. Visitation of a patient in a health care facility.

(a) During a declared public health state of emergency for a contagious disease, a health care facility shall permit visitation of a patient. If the patient's death is imminent, the health care facility shall allow visitation upon request at any time and frequency. In all other instances, the health care facility shall allow visitation not less than once every five days. Provided, That visitation permitted by any health care entity may not be inconsistent with any applicable federal law, rule, policy, or guidance in effect for the same emergency.

(b) A visitor shall comply with the applicable procedures established by the health care facility.

(c) The health care facility may deny a visitor entry to the health care facility, may subject a visitor to expulsion from the facility, or may permanently revoke visitation rights to a visitor who does not comply with the applicable procedures established by the health care facility.

(d) A healthcare facility is not liable to a person visiting another person, nor to any other patient or resident of the health care facility, for any civil damages for injury or death resulting from or related to actual or alleged exposure during, or through the performance of, the visitation in compliance with this section, unless the health care facility failed to substantially comply with the applicable health and safety procedures established by the health care facility."

And,

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

Com. Sub. for H. B. 2368 – “A Bill to repeal §16-39-2 the Code of West Virginia, 1931, as amended, and to amend and reenact §16-39-1 and §16-39-3, and to amend said code by adding thereto a new section designated §16-39-8 of the code, all relating to the short title; defining terms; and, providing for visitation of a patient in a health care facility during a declared state of emergency.”

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

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

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 618**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2368) passed.

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

On this question, the yeas and nays were taken (**Roll No. 619**), and there were—yeas 100, nays none, absent and not voting none.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2368) takes effect from its passage.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2581, Providing for the valuation of natural resources property and an alternate method of appeal of proposed valuation of natural resources property.

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

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

“§11-1C-10. Valuation of industrial property and natural resources property by Tax Commissioner; penalties; methods; values sent to assessors.

(a) As used in this section:

(1) 'Industrial property' means real and personal property integrated as a functioning unit intended for the assembling, processing and manufacturing of finished or partially finished products.

(2) 'Natural resources property' means coal, oil, natural gas, limestone, fireclay, dolomite, sandstone, shale, sand and gravel, salt, lead, zinc, manganese, iron ore, radioactive minerals, oil shale, managed timberland as defined in section two of this article, and other minerals.

(b) All owners of industrial property and natural resources property each year shall make a return to the State Tax Commissioner and, if requested in writing by the assessor of the county where situated, to such county assessor at a time and in the form specified by the commissioner of all industrial or natural resources property owned by them. The commissioner may require any information to be filed which would be useful in valuing the property covered in the return. Any penalties provided for in this chapter or elsewhere in this code relating to failure to list any property or to file any return or report may be applied to any owner of property required to make a return pursuant to this section.

(c) The State Tax Commissioner shall value all industrial property in the state at its fair market value within three years of the approval date of the plan for industrial property required in subsection (e) of this section. The commissioner shall thereafter maintain accurate values for all such property. The Tax Commissioner shall forward each industrial property appraisal to the county assessor of the county in which that property is located and the assessor shall multiply each such appraisal by sixty percent and include the resulting assessed value in the land book or the personal property book, as appropriate for each tax year. The commissioner shall supply support data that the assessor might need to evaluate the appraisal.

(d) Within three years of the approval date of the plan required for natural resources property required pursuant to subsection (e) of this section, the State Tax Commissioner shall determine the fair market value of all natural resources property in the state. ~~The commissioner shall~~ and thereafter maintain accurate values for all such property.

(1) In order to qualify for identification as managed timberland for property tax purposes the owner must annually certify, in writing to the Division of Forestry, that the property meets the definition of managed timberland as set forth in this article and contracts to manage property according to a plan that will maintain the property as managed timberland. In addition, each owner's certification must state that forest management practices will be conducted in accordance with approved practices from the publication 'Best Management Practices for Forestry'. Property certified as managed timberland shall be valued according to its use and productive potential. The Tax Commissioner shall promulgate rules for certification as managed timberland.

(2) In the case of all other natural resources property, the commissioner shall develop an inventory on a county by county basis of all such property and may use any resources, including, but not limited to, geological survey information; exploratory, drilling, mining and other information supplied by natural resources property owners; and maps and other information on file with the state Division of Environmental Protection and office of miners' health, safety and training. Any information supplied by natural resources owners or any proprietary or otherwise privileged information supplied by the state Division of Environmental Protection and office of miner's health, safety and training shall be kept confidential unless needed to defend an appraisal challenged by a natural resources owner. Formulas for natural resources valuation may contain differing variables based upon known geological or other common factors. The Tax Commissioner shall forward each natural resources property appraisal to the county assessor of the county in which

that property is located and the assessor shall multiply each such appraisal by sixty percent and include the resulting assessed value in the land book or the personal property book, as appropriate, for each tax year. The commissioner shall supply support data that the assessor might need to explain or defend the appraisal. The commissioner shall directly defend any challenged appraisal when the assessed value of the property in question exceeds \$2 million or an owner challenging an appraisal holds or controls property situated in the same county with an assessed value exceeding \$2 million. At least every five years, the commissioner shall review current technology for the recovery of natural resources property to determine if valuation methodologies need to be adjusted to reflect changes in value which result from development of new recovery technologies.

(3) The Tax Commissioner shall, no later than July 1, 2021, propose emergency rules in accordance with §29A-3-15 of this code regarding valuation of property producing oil, natural gas, natural gas liquids, or any combination thereof. For purposes of the emergency rules required by this subdivision regarding valuation of property producing oil, natural gas, natural gas liquids, or any combination thereof, fair market value shall be determined through the process of applying a yield capitalization model to the net proceeds. Net proceeds shall mean actual gross receipts on a sales volume basis determined from the actual price received by the taxpayers as reported on the taxpayer's returns, less royalties, and less actual annual operating costs as reported on the taxpayer's returns. For the purposes of this subdivision:

(A) 'Natural gas liquids' means propane, ethane, butanes, and pentanes (also referred to as condensate), or a combination of them that are subject to recovery from raw gas liquids by processing in field separators, scrubbers, gas processing and reprocessing plants, or cycling plants.

(B) 'Actual annual operating costs' shall only include lease operating expenses, lifting costs, gathering, compression, processing, separation, fractionation, and transportation charges.

(e) The Tax Commissioner shall develop a plan for the valuation of industrial property and a plan for the valuation of natural resources property. The plans shall include expected costs and reimbursements, and shall be submitted to the property valuation training and procedures commission on or before January 1, 1991, for its approval on or before July 1, of such year. Such plan shall be revised, resubmitted to the commission and approved every three years thereafter.

(f) To perform the valuation duties under this section, the State Tax Commissioner has the authority to contract with a competent property appraisal firm or firms to assist with or to conduct the valuation process as to any discernible species of property statewide if the contract and the entity performing such contract is specifically included in a plan required by subsection (e) of this section or otherwise approved by the commission. If the Tax Commissioner desires to contract for valuation services only in one county or a group of counties, the contract must be approved by the commission.

(g) The county assessor may accept the appraisal provided, pursuant to this section, by the State Tax Commissioner: *Provided*, That if the county assessor fails to accept the appraisal provided by the State Tax Commissioner, the county assessor shall show just cause to the valuation commission for the failure to accept such appraisal and shall further provide to the valuation commission a plan by which a different appraisal will be conducted.

(h) The costs of appraising the industrial and natural resources property within each county, and any costs of defending same shall be paid by the state: *Provided*, That the office of the state

Attorney General shall provide legal representation on behalf of the Tax Commissioner or assessor, at no cost, in the event the industrial and natural resources appraisal is challenged in court.

(i) For purposes of revaluing managed timberland as defined in section two of this article, any increase or decrease in valuation by the commissioner does not become effective prior to July 1, 1991. The property owner may request a hearing by the director of the Division of Forestry, who may thereafter rescind the disqualification or allow the property owner a reasonable period of time in which to qualify the property. A property owner may appeal a disqualification to the circuit court of the county in which the property is located.

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-15c. Petition for assessor review of improper valuation of real property.

(a) A taxpayer who is of the opinion that his or her real property has been valued too high or otherwise improperly valued or listed in the notice given as provided in ~~section two-a of this article §11-3-2a of this code~~ may, but is not required to, file a petition for review with the assessor on a written form prescribed by the Tax Commissioner. This section shall not apply to industrial and natural resource property appraised by the Tax Commissioner.

(b) The petition shall state the taxpayer's opinion of the true and actual value of the property and substantial information that justifies that opinion of value for the assessor to consider for purposes of basing a change in classification or correction of the valuation. For purposes of this subsection, the taxpayer shall provide substantial information to justify the opinion of value. The taxpayer may provide an appraisal of the property from a licensed real estate appraiser stating its true and actual value for its current use. ~~by stating the method or methods of valuation on which the opinion is based:~~

~~(1) Under the income approach, including the information required in section fifteen-e of this article;~~

~~(2) Under the market approach, including the true and actual value of at least three comparable properties in the same geographic area or the sale of the subject property; or~~

~~(3) Under the cost approach, including the replacement cost or the cost to build or rebuild the property, plus the true and actual value of the land.~~

(c) The petition may include more than one parcel of property if they are part of the same economic unit according to the Tax Commissioner's guidelines or if they are owned by the same owner, have the same use, are appealed on the same basis, and are located in the same tax district or in contiguous tax districts of the county, and are in a form prescribed by the Tax Commissioner.

(d) The petition shall be filed within eight business days after the date the taxpayer receives the notice of increased assessment under ~~section two-a of this article §11-3-2a of this code~~ or the notice of increased value was published as a Class II-0 legal advertisement as provided in that section. For purposes of this section, 'business day' means any day other than Saturday, Sunday, or any legal holiday set forth in section one, article two, chapter two of this code.

§11-3-15f. Rejection of petition; ~~for failure to include substantial information~~ amended petition; appeal options.

If the assessor rejects a petition filed pursuant to ~~section fifteen-c, fifteen-d or fifteen-e~~ §11-3-15c, §11-3-15d, or §11-3-15e of this article code, the petitioner may appeal to the county ~~board of equalization and review~~ Board of Equalization and Review as provided in ~~section twenty-four of this article~~ §11-3-24 of this code or the Office of Tax Appeals.

§11-3-15h. Ruling on petition.

(a) In all cases the assessor shall consider the petition and shall rule on each petition filed pursuant to ~~section fifteen-c, fifteen-d or fifteen-e~~ §11-3-15c, §11-3-15d, or §11-3-15e of this article code by February 10 of the assessment year. Written notice shall be served by regular mail on the person who filed the petition.

(b) In considering a petition filed pursuant to ~~section fifteen-c, fifteen-d or fifteen-e~~ §11-3-15c, §11-3-15d, or §11-3-15e of this article code, the assessor shall consider the valuation fixed by the assessor on other similar property that is similarly situated.

(c) The consideration of a petition for review with the assessor is to be an informal process. Formal rules of evidence shall not be required; the assessor may consider all evidence presented and may give each item the weight, in his or her opinion, it commands.

(d) The standard of proof which a taxpayer must meet to defend his or her opinion of the true and actual value of the subject property during reviews by the assessor shall be no greater than a simple preponderance of the evidence standard.

§11-3-15i. Petitioner's right to appeal.

(a) If the assessor grants the requested relief, the petitioner may not appeal the ruling of the assessor.

(b) If the petitioner and the assessor reach an agreement within five business days after the conclusion of the meeting held as provided in ~~section fifteen-g~~ §11-3-15g of this article code, both parties shall sign the agreement and both parties waive the right to further appeal.

(c) If all or part of the petitioner's request under ~~section fifteen-c, fifteen-d or fifteen-e~~ §11-3-15c, §11-3-15d, or §11-3-15e of this article code is denied, the assessor shall mail, on the date of the ruling, to the petitioner at the address shown on the petition notice of the grounds of the refusal to make the change or changes requested in the petition. A petitioner whose request is denied, in whole or in part, or a petitioner who does not receive a response from the assessor by February 10, as provided in ~~section fifteen-h~~ §11-3-15h of this article code, may file a protest with the county commission sitting as a board of equalization and review, as provided in ~~section 24 of this article~~ §11-3-24 of this code, or the Office of Tax Appeals.

§11-3-23. Alterations in property books.

After the copies of the landbook or personal property book ~~shall~~ have been verified and delivered, no alteration shall be made in them, or either of them, affecting the taxes of that year, except on the final order of the court on a successful review or appeal from the assessment.

§11-3-23a. Informal review and resolution of classification, taxability and valuation issues.

(a) *General.* - Anytime after real or tangible personal property is returned for taxation, the taxpayer may apply to the assessor of the county in which the property was situated on the assessment date for information about the classification, taxability, or valuation of the property for property tax purposes for the tax year following the July 1 assessment date. A taxpayer who is not satisfied with the response of the assessor and wants to further pursue the matter ~~must~~ shall follow the procedures set forth in this section.

(b) *Classification or taxability.* - A taxpayer who wants to contest the classification or taxability of property must follow the procedures set forth in ~~section twenty-four a of this article~~ §11-3-24a of this code.

(c) *Valuation issues - property appraised and assessed by county assessor.* —

(1) A taxpayer who is dissatisfied with the response of the assessor on a question of valuation and who receives a notice of increase in the assessed value of real property as provided in ~~section two a of this article~~ §11-3-2a of this code, or a notice of increase in the assessed value of business personal property as provided in ~~section fifteen b of this article~~ §11-3-15b of this code, who disagrees with the assessed value stated in the notice, may ~~utilize~~ use the informal review process specified in this article if the taxpayer decides to challenge the assessed value.

(2) A taxpayer may apply for relief to the county commission sitting as a ~~board of equalization and review~~ Board of Equalization and Review pursuant to ~~section twenty-four of this article~~ §11-3-24 of this code, or to the Office of Tax Appeals not later than February 20 of the tax year by filing a written protest with the clerk of the county commission ~~or the Office of Tax Appeals~~ that identifies the amount of the assessed value the taxpayer believes to be in controversy and states generally the taxpayer's reason or reasons for filing the protest. The board ~~or the Office of Tax Appeals~~ shall then set a date and time to hear the taxpayer's protest. ~~Provided, That in the written protest or in a separate notice filed with the board on or before the day of the hearing, the taxpayer or taxpayer's representative may notify the board of the taxpayer's election to have the matter heard when the county commission convenes as a board of assessment appeals in the fall of the tax year as provided in section twenty-four b of this article. A copy of this election shall be served on the assessor, and the Tax Commissioner in the case of industrial property or natural resources property, by personal service or by certified mail. The notice of election shall include an acknowledgment by the taxpayer that The taxpayer will~~ shall timely pay first and second half installment payments of taxes levied for the current tax year on or before they become due and that any reduction in assessed value that is administratively or judicially determined in a decision that becomes final will result in a credit being established against taxes that become due for a tax year subsequent to the tax year in which the decision becomes final, except as otherwise stated in the decision or as otherwise provided in this article. In the event the board Board of Equalization and Review adjourns sine die before February 20 of the tax year, a taxpayer may ~~still~~ file its written protest and the acknowledgment described in this subdivision with the ~~county clerk on or before February 20 of the tax year and the petition shall be heard when the county commission meets as a board of assessment appeals, as provided in section twenty-four b of this article~~ Office of Tax Appeals. If a taxpayer fails to provide its written protest on or before February 20, and the board Board of Equalization and Review unilaterally increases the assessed value subsequent to that date, the taxpayer may ~~still~~ file a written protest and the acknowledgment described in this subdivision with the ~~county clerk and the petition shall be heard when the county commission meets as a board of assessment appeals as provided in section twenty-four b of this article~~ Office of Tax Appeals.

(d) *Valuation issues - property appraised by Tax Commissioner and assessed by county assessor. -*

(1) A taxpayer who receives a notice of tentative appraised value of natural resource property or industrial property from the Tax Commissioner pursuant to ~~article six k of this chapter~~ §11-6K-1 et seq. of this code.

(2) A taxpayer may apply for relief to the county commission sitting as a board of equalization and review pursuant to ~~section twenty-four of this article~~ §11-3-24 of this code or to the Office of Tax Appeals no later than February 20 of the tax year by filing a written protest with the clerk of the county commission or to the Office of Tax Appeals that identifies the amount of the assessed value the taxpayer believes to be in controversy and states generally the taxpayer's reason or reasons for filing the protest. The board or the Office of Tax Appeals shall then set a date and time to hear the taxpayer's protest. ~~Provided, That in the written protest or in a separate notice filed with the board on or before the day of the hearing, the taxpayer or taxpayer's representative may notify the board of the taxpayer's election to have the matter heard when the county commission convenes as a board of assessment appeals in the fall of the tax year as provided in section twenty-four b of this article. A copy of this election shall be served on the assessor, and the Tax Commissioner in the case of industrial property or natural resources property, by personal service or by certified mail. The notice of election shall include an acknowledgment by the taxpayer that.~~ The taxpayer ~~will~~ shall timely pay first and second half installment payments of taxes levied for the current tax year on or before they become due and that any reduction in assessed value that is administratively or judicially determined in a decision that becomes final will result in a credit being established against taxes that become due for a tax year subsequent to the tax year in which the decision becomes final, except as otherwise stated in the decision or as otherwise provided in this article. In the event the ~~board~~ Board of Equalization and Review adjourns sine die before February 20 of the tax year, a taxpayer may ~~still~~ file its written protest and the acknowledgment described in this subdivision with the ~~county clerk on or before February 20 of the tax year and the petition shall be heard when county commission meets as a board of assessment appeals, as provided in section twenty-four b of this article~~ Office of Tax Appeals. If a taxpayer fails to provide its written protest on or before February 20, and the ~~board~~ Board of Equalization and Review unilaterally increases the assessed value subsequent to that date, the taxpayer may ~~still~~ file a written protest and the acknowledgment described in this subdivision with the ~~county clerk and the petition shall be heard when the county commission meets as a board of assessment appeals as provided in section twenty-four b of this article~~ Office of Tax Appeals.

(e) The standard of proof which a taxpayer must meet at all levels of review and appeal under this section shall be a preponderance of the evidence standard.

§11-3-24. Review and equalization by county commission.

(a) The county commission shall annually, not later than February 1 of the tax year, meet as a board of equalization and review for the purpose of reviewing and equalizing the assessment made by the assessor. The board shall not adjourn for longer than three business days at a time, not including a Saturday, Sunday or legal holiday in this state, until this work is completed. The board may adjourn sine die anytime after February 15 of the tax year and shall adjourn sine die not later than the last day of February of the tax year.

(b) At the first meeting of the board, the assessor shall submit the property books for the current year, which shall be complete ~~in every particular~~, except that the levies shall not be

extended. The assessor and the assessor's assistants shall attend and render every assistance possible in connection with the value of property assessed by them.

(c) The board shall proceed to examine and review the property books, and shall add on the books the names of persons, the value of personal property and the description and value of real estate liable to assessment which was omitted by the assessor. The board shall correct all errors in the names of persons, in the description and valuation of property, and shall cause to be done whatever else is necessary to make the assessed valuations comply with the provisions of this chapter. But in no case shall any question of classification or taxability be considered or reviewed by the board.

(d) If the board determines that any property or interest is assessed at more or less than 60 percent of its true and actual value as determined under this chapter, it shall fix it at 60 percent of its true and actual value: *Provided*, That no assessment shall be increased without giving the taxpayer at least five days' notice, in writing, of the intention to make the increase and no assessment shall be greater than 60 percent of the true and actual value of the property.

(e) Service of notice of the increase upon the taxpayer shall be sufficient, or upon his or her agent or attorney, if served in person, or if sent by registered or certified mail to the property owner, his or her agent, or attorney, at the last known mailing address of the person as shown in the records of the assessor or the tax records of the county sheriff. If such person cannot be found and has no last known mailing address, then notice shall be given by publication thereof as a Class I legal advertisement in compliance with the provisions of ~~article three, chapter fifty-nine~~ §59-3-1, et seq. of this code and the publication area shall be the county. The date of the publication shall be at least five days, not including a Saturday, Sunday or legal holiday in this state, prior to the day the board acts on the increase. When the board intends to increase the entire valuation in any one tax district by a general increase, notice shall be given by publication thereof as a Class II-0 legal advertisement in compliance with the provisions of ~~article three, chapter fifty-nine~~ §59-3-1, et seq. of this code and the publication area shall be the county. The date of the last publication shall be at least five days, not including a Saturday, Sunday or legal holiday in this state, prior to the meeting at which the increase in valuation is acted on by the board. When an increase is made, the same valuation shall not again be changed unless notice is again given as ~~heretofore~~ provided.

The clerk of the county commission shall publish notice of the time, place, and general purpose of the meeting as a Class II legal advertisement in compliance with the provisions of ~~article three, chapter fifty-nine~~ §59-3-1, et seq. of this code and the publication area shall be the county. The expense of publication shall be paid out of the county treasury.

(f) Any person who receives notice as provided in subsection (e) of this section may appear before the board at the time and place specified in the notice to object to the proposed increase in the valuation of taxpayer's property. After hearing the board's reason or reasons for the proposed increase, the taxpayer may present his or her objection or objections to the increase and the reason or reasons for the objections. ~~and may either orally or in writing advise the board that the taxpayer elects for the matter to be heard in the fall of the tax year when the county commission meets as a board of assessment appeals as provided in section twenty-four b of this article: *Provided*, That taxpayer's election shall not stay a decision by the board to increase the assessed value of the property for the current tax year~~

(g) The board may approve an agreement signed by the taxpayer or taxpayer's representative and the assessor, and by a representative of the Tax Commissioner when the property is industrial

property or natural resources property, that resolves a valuation matter while the land and personal property books are before the Board for Equalization and Review.

(h) If any person fails to apply for relief at this meeting, he or she shall have waived the right to ask for correction in the assessment list for the current year, and shall not thereafter be permitted to question the correctness of the list as finally fixed by the board, except on appeal to the Office of Tax Appeals, ~~the circuit court~~ or as otherwise provided in this article.

(i) After the board completes the review and equalization of the property books, a majority of the board shall sign a statement that it is the completed assessment of the county for the tax year. Then the property books shall be delivered to the assessor and the levies extended as provided by law.

(j) A taxpayer who elects to have a hearing before the ~~board of equalization and review~~ Board of Equalization and Review may appeal the board's order to the Office of Tax Appeals, ~~as provided in section twenty five of this article. A taxpayer who elects to have a hearing before the board of assessment appeals may only appeal the assessed value as provided in section twenty-four b of this article~~

(k) The standard of proof which a taxpayer must meet at all levels of review and appeal under this section shall be a preponderance of the evidence standard.

§11-3-24a. Protest of classification or taxability to assessor; appeal to Tax Commissioner, appeal to Office of Tax Appeals.

(a) At any time after property is returned for taxation, and up to and including the time the property books are before the county commission sitting as a board of equalization and review, any taxpayer may apply to the assessor for information regarding the classification and taxability of the taxpayer's property. In case the taxpayer is dissatisfied with the classification of property assessed to the taxpayer or believes that the property is exempt or otherwise not subject to taxation, the taxpayer shall file objections in writing with the assessor. The assessor shall decide the question by either sustaining the protest and making proper corrections, or by stating, in writing if requested, the reasons for refusal to grant the protest.

(b) The assessor may, and if the taxpayer requests, the assessor shall, certify the question to the State Tax Commissioner in a statement sworn to by both parties, or if the parties are unable to agree, in separate sworn statements, giving a full description of the property and any other information which the Tax Commissioner requires. The Tax Commissioner shall prescribe forms on which the ~~aforsaid~~ question shall be certified and the Tax Commissioner ~~shall have the authority to~~ may pursue any inquiry and procure any information necessary for the disposition of the issue.

(c) The Tax Commissioner shall, as soon as possible on receipt of the question, but in no case later than February 28 of the assessment year, instruct the assessor as to how the property shall be treated. The instructions issued and forwarded by mail to the assessor shall be binding upon the assessor, but either the assessor or the taxpayer may apply to the ~~circuit court of the county~~ Office of Tax Appeals within 30 days after receiving written notice of the Tax Commissioner's ruling for review of the question of classification or taxability. ~~in the same fashion as is provided for appeals from the county commission sitting as a board of equalization and review in section twenty five of this article~~

(d) The amendments to this section enacted in the year 2010 shall apply to classification and taxability rulings issued for taxes levied after December 31, 2011.

(e) The standard of proof which a taxpayer must meet at all levels of review and appeal under this section shall be a preponderance of the evidence standard.

§11-3-24b. Board of Assessment Appeals.

[Repealed.]

§11-3-25. Relief in circuit court against erroneous assessment.

[Repealed.]

§11-3-25a. Payment of taxes that become due while appeal is pending.

(a) All taxes levied and assessed against the property for the year on which a protest or an appeal has been filed by the taxpayer as provided in ~~section twenty four or twenty four b~~ §11-3-24 or §11-3-24a of this ~~article~~ code shall be paid before they become delinquent. If the taxes are not paid before becoming delinquent, the ~~circuit court~~ governing body having jurisdiction of the appeal, as appropriate, shall dismiss the appeal unless the delinquent taxes and interest due are paid in full within 30 days after taxes for the second half of the tax year become delinquent.

(b) In the event the order of a court or other governing body becomes final and the order results in an overpayment of taxes levied for the tax year that have been paid to the sheriff, the amount of the overpayment shall be refunded to the taxpayer if the overpayment is \$25,000 or less within 30 days after the time for appealing the decision or order expires or, if the decision or order is appealed, within 30 days of the date the appeals court or other governing body turns down the appeal. ~~Provided, That, if the taxpayer's protest before the county commission below was heard pursuant to the provisions of section twenty four b of this article, the refund shall be paid pursuant to the provisions of that section~~ If the overpayment is more than \$25,000, a credit in the amount of the overpayment shall be established by the county sheriff and allowed as a credit against taxes owed up to the following two tax years: *Provided*, That the county commission may elect to refund the amount of overpayment rather than having a credit established as provided in this section: *Provided, further however*, That if any portion of the overpayment remains unused after the date on which taxes payable for the second half of the second tax year following the tax year of the overpayment become delinquent, that portion shall be refunded to the taxpayer by the county sheriff no later than 30 days after that date, or 30 days from the date that the ~~circuit court~~ order becomes final, whichever date occurs later. Whenever an overpayment is refunded or credited under this section, the county shall pay interest at the rate established in ~~section seventeen and seventeen a, article ten of this chapter~~ §11-10-17 and §11-10-17a of this code for overpayments of taxes collected by the Tax Commissioner, which interest shall be computed from the date the overpayment was received by the sheriff to the date of the refund check or the date the credit is actually taken against taxes that become due after the order of the court becomes final.

§11-3-32. Effective date of amendments.

(a) Unless specified otherwise in this article, all amendments to this article adopted in the year 2010 shall apply to the assessment years beginning on or after July 1, 2011.

(b) Unless specified otherwise in this article, all amendments to this article adopted in the year 2021 apply to the assessment years beginning on or after July 1, 2022.

ARTICLE 10A. WEST VIRGINIA OFFICE OF TAX APPEALS.

§11-10A-1. Legislative finding; purpose.

The Legislature finds that there is a need for an independent quasi-judicial agency separate and apart from the Tax Division to resolve disputes between the Tax Commissioner, county assessors, county commissions, and taxpayers ~~in order~~ to maintain public confidence in the state tax system. The Legislature does therefore declare that the purpose of this article is to create the West Virginia office of tax appeals to resolve disputes between the Tax Commissioner, county assessors, county commissions, and taxpayers and to prescribe the powers and duties of the office of tax appeals.

§11-10A-7. Powers and duties of Chief Administrative Law Judge; all employees, except Chief Administrative Law Judge, members of classified service; qualifications of administrative law judges.

(a) The Chief Administrative Law Judge is the chief executive officer of the Office of Tax Appeals and he or she may employ one person to serve as executive director, ~~one~~ two staff ~~attorney attorneys,~~ and other clerical personnel as necessary for the proper administration of this article. The Chief Administrative Law Judge may delegate administrative duties to other employees, but the Chief Administrative Law Judge ~~shall be~~ is responsible for all official delegated acts.

(1) Upon the request of the Chief Administrative Law Judge, the Governor may appoint up to ~~two~~ three administrative law judges as necessary for the proper administration of this article.

(2) All employees of the Office of Tax Appeals, except the Chief Administrative Law Judge, shall be in the classified service and shall be governed by the provisions of the statutes, rules, and policies of the classified service in accordance with the provisions of ~~article six, chapter twenty-nine~~ §29-6-1 et seq. of this code.

(3) Prior to employment by the Office of Tax Appeals, all administrative law judges shall be admitted to the practice of law in this state and have at least two years of full-time or equivalent part-time experience as an attorney with federal or state tax law expertise.

(4) The Chief Administrative Law Judge and all administrative law judges shall be members of the Public Employees Retirement System and do not qualify as participants in the judicial retirement system during their tenure with the Office of Tax Appeals.

(b) The Chief Administrative Law Judge shall:

- (1) Direct and supervise the work of the legal staff;
- (2) Make hearing assignments;
- (3) Maintain the records of the Office of Tax Appeals;

(4) Review and approve decisions of administrative law judges as to legal accuracy, clarity and other requirements;

(5) Publish decisions in accordance with the provisions of ~~section sixteen of this article~~ §11-10A-16 of this code;

(6) Submit to the Legislature, on or before February 15, an annual report summarizing the Office of Tax Appeals' activities since the end of the last report period, including a statement of the number and type of matters handled by the Office of Tax Appeals during the preceding fiscal year and the number of matters pending at the end of the year; and

(7) Perform the other duties necessary and proper to carry out the purposes of this article.

§11-10A-8. Jurisdiction of Office of Tax Appeals.

The Office of Tax Appeals has exclusive and original jurisdiction to hear and determine all:

(1) Appeals from tax assessments issued by the Tax Commissioner pursuant to article ten of this chapter;

(2) Appeals from decisions or orders of the Tax Commissioner denying refunds or credits for all taxes administered in accordance with the provisions of ~~article ten of this chapter~~ §11-10-1 et seq. of this code;

(3) Appeals from orders of the Tax Commissioner denying, suspending, revoking, refusing to renew any license, or imposing any civil money penalty for violating the provisions of any licensing law administered by the Tax Commissioner;

(4) Questions presented when a hearing is requested pursuant to the provisions of any article of this chapter which is administered by the provisions of ~~article ten of this chapter~~ §11-10-1 et seq. of this code;

(5) Matters which the Tax Division is required by statute or legislatively approved rules to hear, except employee grievances filed pursuant to ~~article two, chapter six-e~~ §6C-2-1 et seq. of this code; and

(6) Other matters which may be conferred on the office of tax appeals by statute or legislatively approved rules; and

(7) Appeals by any party aggrieved by the valuation of real property and personal property tax assessments and classifications or taxability as set forth in §11-3-1 et. seq. of this code.

§11-10A-10. Hearing procedures.

(a) The office of tax appeals shall assign a date, time, and place for a hearing on a petition and shall notify the parties to the hearing by written notice at least 20 days in advance of the hearing date. The hearing shall be held within 45 days of the due date of the commissioner's answer unless continued by order of the office of tax appeals for good cause.

(b) A hearing before the office of tax appeals shall be heard *de novo* and conducted pursuant to the provisions of the contested case procedure set forth in ~~article five, chapter twenty-nine-a~~

§29A-5-1 et seq. of this code to the extent not inconsistent with the provisions of this article. In case of conflict, the provisions of this article shall govern. The provisions of ~~section five, article five, chapter twenty-nine-a~~ §29A-5-5 of this code are not applicable to a hearing before the office of tax appeals.

(c) The office of tax appeals is not bound by the rules of evidence as applied in civil cases in the circuit courts of this state. The office of tax appeals may admit and give probative effect to evidence of a type commonly relied upon by a reasonably prudent person in the conduct of his or her affairs.

(d) All testimony shall be given under oath.

(e) Except as otherwise provided by this code or legislative rules, the taxpayer or petitioner has the burden of proof.

(f) The administrative law judge may ask for proposed findings of fact and conclusions of law from the parties prior to the issuance by the office of tax appeals of the decision in the matter.

(g) Hearings shall be exempt from the requirements of ~~article nine-a, chapter six and article one, chapter twenty-nine-b~~ §6-9A-1 et seq. and §29B-1-1 et seq. of this code.

(h) For all appeals regarding property tax assessments, taxability, and classifications pursuant to §11-3-1 et. seq., the standard of proof which a taxpayer must meet at all levels of review and appeal shall be a preponderance of the evidence standard.

§11-10A-19. Judicial review of office of tax appeals decisions.

(a) Either the taxpayer or the commissioner, or both, or in the case of property taxes the county assessor, or county commission, may appeal the final decision or order of the office of tax appeals by taking an appeal to the circuit courts of this state within 60 days after being served with notice of the final decision or order.

(b) The office of tax appeals may not be made a party in any judicial review of a decision or order it issued.

(c)(1) If the taxpayer appeals, the appeal may be taken in the circuit court of Kanawha County or any county:

(A) ~~Wherein~~ In which the activity sought to be taxed was engaged in;

(B) ~~Wherein~~ In which the taxpayer resides; ~~or~~

(C) ~~Wherein~~ In which the will of the decedent was probated or letters of administration granted; ~~or~~

(D) Wherein In which the real or personal property is assessed.

(2) If the Tax Commissioner appeals, the appeal may be taken in Kanawha County: *Provided*, That the taxpayer shall have the right to remove the appeal to the county:

(A) Wherein the activity sought to be taxed was engaged in;

(B) Wherein the taxpayer resides; or

(C) Wherein the will of the decedent was probated or letters of administration granted; or

(D) Wherein the real or personal property is assessed.

(3) In the event ~~both~~ parties appeal to different circuit courts, the appeals shall be consolidated. In the absence of agreement by the parties, the appeal shall be consolidated in the circuit court of the county in which the taxpayer filed the petition for appeal.

(d) The appeal proceeding shall be instituted by filing a petition for appeal with the circuit court, or the judge thereof in vacation, within the 60 day period prescribed in subsection (a) of this section. A copy of the petition for appeal shall be served on all parties appearing of record, other than the party appealing, by registered or certified mail. The petition for appeal shall state whether the appeal is taken on questions of law or questions of fact, or both, and set forth with particularity the items of the decision objected to, together with the reasons for the objections.

(e) If the appeal is of an assessment, except a jeopardy assessment for which security in the amount thereof was previously filed with the Tax Commissioner, then within 90 days after the petition for appeal is filed, or sooner if ordered by the circuit court, the petitioner shall file with the clerk of the circuit court a cash bond or a corporate surety bond approved by the clerk. The surety must be qualified to do business in this state. These bonds shall be conditioned upon the petitioner performing the orders of the court. The penalty of this bond shall be not less than the total amount of tax or revenue plus additions to tax, penalties, and interest for which the taxpayer was found liable in the administrative decision of the office of tax appeals. Notwithstanding the foregoing and in lieu of the bond, the Tax Commissioner, upon application of the petitioner, may upon a sufficient showing by the taxpayer, certify to the clerk of the circuit court that the assets of the taxpayer are adequate to secure performance of the orders of the court: *Provided*, That if the Tax Commissioner refuses to certify that the assets of the taxpayer or other indemnification are adequate to secure performance of the orders of the court, then the taxpayer may apply to the circuit court for the certification. No bond may be required of the Tax Commissioner.

(f) The circuit court shall hear the appeal as provided in ~~section four, article five, chapter twenty-nine-a~~ §29A-5-4 of this code: *Provided*, That when the appeal is to review a decision or order on a petition for refund or credit, the court may determine the legal rights of the parties, but in no event shall it enter a judgment for money.

(g) Unless the Tax Commissioner appeals an adverse court decision, the commissioner, upon receipt of the certified order of the court, shall promptly correct his or her assessment or issue his or her requisition on the treasury or establish a credit for the amount of an overpayment.

(h) Either party may appeal to the Supreme Court of Appeals as provided in ~~article six, chapter twenty-nine-a~~ §29A-6-1 et seq. of this code.

(i) For all appeals regarding property tax assessments, taxability, and classifications pursuant to §11-3-1 et. seq., the standard of proof which a taxpayer must meet at all levels of review and appeal shall be a preponderance of the evidence standard."

And,

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

Com. Sub. for H. B. 2581 - “A Bill to repeal §11-3-24b and §11-3-25 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-1C-10 of said code; and to amend and reenact §11-3-15c, §11-3-15f, §11-3-15h, §11-3-15i, §11-3-23, §11-3-23a, §11-3-24, §11-3-24a, §11-3-25a, and §11-3-32 of said code, and to amend and reenact §11-10A-1, §11-10A-7, §11-10A-8, §11-10A-10, and §11-10A-19 of said code, all generally relating to the valuation, assessment, review, and appellate rights of property owners regarding valuation, classification, and taxability of real estate and personal property taxation; directing the Tax Commissioner to, no later than July 1, 2021, propose emergency rules concerning the valuation of property producing oil, natural gas, natural gas liquids, or any combination thereof; providing methodology to determine fair market value and net proceeds; defining terms; providing taxpayers the option to furnish a formal appraisal to establish the value of their real property; providing that an assessor’s review is to be an informal process and defining the standard of proof which a taxpayer must meet to be no greater than a preponderance of the evidence; expanding the jurisdiction of the Office of Tax Appeals to include property tax valuation, classification, and taxability; providing that if an assessor rejects a petition, the petitioner may appeal to the county Board of Equalization and Review or the Office of Tax Appeals; allowing for certain appeals from decisions of the Tax Commissioner and Board of Equalization and Review to the Office of Tax Appeals; repealing and eliminating the Board of Assessment Appeals; providing for an increase in the number of administrative law judges and staff attorneys within the Office of Tax Appeals; providing for an effective date; and allowing appeal of decision of the Office of Tax Appeals to be made in the county in which the real or personal property is assessed.”

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

The yeas and nays having been ordered, they were taken (**Roll No. 620**), and there were—yeas 66, nays 34, absent and not voting none, with the nays being as follows:

Nays: Barnhart, Bates, Booth, Brown, Bruce, Dean, Doyle, Evans, Ferrell, Fleischauer, Gearheart, Griffith, Hansen, Hornbuckle, Howell, J. Jeffries, Jennings, D. Kelly, Longanacre, Mallow, Mandt, McGeehan, Miller, Nestor, Paynter, Pethtel, Phillips, Pushkin, Reynolds, Rowe, Smith, Storch, Toney and G. Ward.

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

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 621**), and there were—yeas 57, nays 43, absent and not voting none, with the nays being as follows:

Nays: Barach, Barnhart, Boggs, Booth, Bridges, Brown, Bruce, Dean, Diserio, Doyle, Evans, Ferrell, Fleischauer, Fluharty, Garcia, Gearheart, Griffith, Hansen, Hornbuckle, J. Jeffries, Jennings, D. Kelly, Longanacre, Lovejoy, Mallow, Mandt, McGeehan, Miller, Nestor, Paynter, Pethtel, Phillips, Pushkin, Reynolds, Rowe, Smith, Storch, Thompson, Toney, Walker, G. Ward, Williams and Zukoff.

So, a majority of the members elected to the House having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2581) passed.

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

On this question, the yeas and nays were taken (**Roll No. 622**), and there were—yeas 73, nays 27, absent and not voting none, with the nays being as follows:

Nays: Barnhart, Booth, Bridges, Brown, Dean, Doyle, Fleischauer, Fluharty, Hansen, Hornbuckle, D. Kelly, Lovejoy, Mallow, McGeehan, Nestor, Paynter, Pethtel, Phillips, Pushkin, Reynolds, Storch, Thompson, Toney, Walker, G. Ward, Williams and Zukoff.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2581) takes effect from its passage.

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

A message from the Senate, by

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

Com. Sub. for H. B. 2770, Including home confinement officers in definition of law-enforcement officers.

Delegate Kessinger moved the House concur in the following amendment of the amendment by the Senate to the House amendment with further amendment:

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

“CHAPTER 15A. DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY.

ARTICLE 7. BUREAU OF COMMUNITY CORRECTIONS.

§15A-7-5. Powers and duties of state parole officers.

(a) Each state probation and parole officer employed by the Division of Corrections and Rehabilitation shall:

(1) Investigate all cases referred to him or her for investigation by the Commissioner of Corrections and Rehabilitation and report in writing on the investigation;

(2) Update the standardized risk and needs assessment adopted by the Division of Corrections and Rehabilitation pursuant to §62-12-13(h) of this code for each parolee for whom an assessment has not been conducted for parole by a specialized assessment officer;

(3) Supervise each parolee according to the assessment and supervision standards determined by the Commissioner of Corrections and Rehabilitation;

(4) Furnish to each parolee under his or her supervision a written statement of the conditions of his or her parole together with a copy of the rules prescribed by the Commissioner of Corrections and Rehabilitation for the supervision of parolees;

(5) Keep informed concerning the conduct and condition of each parolee under his or her supervision and report on the conduct and condition of each parolee in writing as often as required by the Commissioner of Corrections and Rehabilitation;

(6) Use all practicable and suitable methods to aid and encourage a parolee and to bring about improvement in his or her conduct and condition;

(7) Keep detailed records of his or her work;

(8) Keep accurate and complete accounts of, and give receipts for, all money collected from parolees under his or her supervision, and pay over the money to persons designated by a circuit court or the Commissioner of Corrections and Rehabilitation;

(9) Give bond with good security, to be approved by the Commissioner of Corrections and Rehabilitation, in a penalty of not less than \$1,000 nor more than \$3,000, as determined by the Commissioner of Corrections and Rehabilitation; and

(10) Perform any other duties required by the Commissioner of Corrections and Rehabilitation.

(b) Each probation and parole officer, as described in this article, may, with or without an order or warrant: (1) Arrest or order confinement of any parolee or probationer under his or her supervision; and (2) search a parolee or probationer, or a parolee or probationer's residence or property, under his or her supervision. A probation and parole officer may apply for a search warrant, and execute the search warrant, in connection to a parolee's whereabouts, or a parolee's activities. He or she has all the powers of a notary public, with authority to act anywhere within the state.

(c) The Commissioner of Corrections and Rehabilitation may issue a certificate authorizing any state parole officer who has successfully completed the Division of Corrections and Rehabilitation's training program for firearms certification, which is the equivalent of that required of any correctional employee under §15A-3-10 of this code, to carry firearms or concealed weapons. Any parole officer authorized by the Commissioner of Corrections and Rehabilitation may, without a state license, carry firearms and concealed weapons. Each state parole officer, authorized by the Commissioner of Corrections and Rehabilitation, shall carry with him or her a certificate authorizing him or her to carry a firearm or concealed weapon bearing the official signature of the Commissioner of Corrections and Rehabilitation.

(d) In recognition of their duties in their employment which constitute law enforcement, state parole officers are determined to be qualified law enforcement officers as that term is used in 18 U.S.C §926B.

(e) Any state parole officer may carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U.S.C. §926B if the following criteria are met:

(1) The Division of Corrections and Rehabilitation has a written policy authorizing a state parole officer to carry a concealed firearm for self-defense purposes;

(2) There shall be in place in the Division of Corrections and Rehabilitation a requirement that state parole officers must annually qualify in the use of a firearm with standards which are equal to or exceed those required of sheriff's deputies by the Law-Enforcement Professional Standards Program;

(3) The Division of Corrections and Rehabilitation issues a photographic identification and certification card which identify the state parole officers as law-enforcement employees of the home incarceration program as that term is contemplated by 18 U.S.C §926B.

(4) Any policy instituted pursuant to this subsection includes provisions which: (A) Preclude or remove a person from participation in the concealed firearm program; (B) preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm and; (C) prohibit persons from carrying a firearm pursuant to the provisions of this subsection while in an impaired state as defined in §17C-5-2 of this code.

(5) Any state parole officer who participates in a program authorized by the provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(6) It is the intent of the Legislature in enacting the amendments to this section during the 2021 regular session of the Legislature to authorize state parole officers wishing to do so to meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. §926B.

CHAPTER 49. CHILD WELFARE.

ARTICLE 4. COURT ACTIONS.

§49-4-719. Juvenile probation officers; appointment; salary; facilities; expenses; duties; powers.

(a)(1) Each circuit court, subject to the approval of the Supreme Court of Appeals and in accordance with the rules of the Supreme Court of Appeals, shall appoint one or more juvenile probation officers and clerical assistants for the circuit. A probation officer or clerical assistant may not be related by blood or marriage to the appointing judge.

(2) The salary for juvenile probation officers and clerical assistants shall be determined and fixed by the Supreme Court of Appeals. All expenses and costs incurred by the juvenile probation officers and their staff shall be paid by the Supreme Court of Appeals in accordance with its rules. The county commission of each county shall provide adequate office facilities for juvenile probation officers and their staff. All equipment and supplies required by juvenile probation officers and their staff shall be provided by the Supreme Court of Appeals.

~~(3) A juvenile probation officer may not be considered a law enforcement official under this chapter.~~

(b) In recognition of their duties in their employment which constitute law enforcement, state juvenile probation officers are determined to be qualified law enforcement officers as that term is used in 18 U.S.C 926B.

(c) Any state juvenile probation officer may carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U.S.C. §926B if the following criteria are met:

(1) The Supreme Court of Appeals has a written policy authorizing a state juvenile probation officer to carry a concealed firearm for self-defense purposes;

(2) There shall be in place in the Supreme Court of Appeals a requirement that state juvenile probation officers must annually qualify in the use of a firearm with standards which are equal to or exceed those required of sheriff's deputies by the Law-Enforcement Professional Standards Program;

(3) The Supreme Court of Appeals issues a photographic identification and certification card which identify the state juvenile probation officers as law-enforcement employees as that term is contemplated by 18 U.S.C §926B.

(4) Any policy instituted pursuant to this subsection includes provisions which: (A) preclude or remove a person from participation in the concealed firearm program; (B) preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm and; (C) prohibit persons from carrying a firearm pursuant to the provisions of this subsection while in an impaired state as defined in §17C-5-2 of this code.

(5) Any state juvenile probation officer who participates in a program authorized by the provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(6) It is the intent of the Legislature in enacting the amendments to this section during the 2021 regular session of the Legislature to authorize state juvenile probation officers wishing to do so to meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. §926B.

(d) The privileges authorized by the amendments to this section enacted during the 2021 regular session of the legislature are wholly within the discretion of the Commissioner of Corrections and Rehabilitation.

~~(b)~~ (e) The clerk of a court shall notify, if practicable, the chief probation officer of the county, or his or her designee, when a juvenile is brought before the court or judge for proceedings under this article. When notified, or if the probation officer otherwise obtains knowledge of such fact, he or she or one of his or her assistants shall:

(1) Make investigation of the case; and

(2) Furnish information and assistance that the court or judge may require.

~~(e)~~ (f) (1) The Supreme Court of Appeals may develop a system of community-based juvenile probation sanctions and incentives to be used by probation officers in response to violations of terms and conditions of probation and to award incentives for positive behavior.

(2) The community-based juvenile probation sanctions and incentives may consist of a continuum of responses from the least restrictive to the most restrictive, designed to respond swiftly, proportionally and consistently to violations of the terms and conditions of probation and to reward compliance therewith.

(3) The purpose of community-based juvenile probation sanctions and incentives is to reduce the amount of resources and time spent by the court addressing probation violations, to reduce the likelihood of a new status or delinquent act, and to encourage and reward positive behavior by the juvenile on probation prior to any attempt to place a juvenile in an out-of-home placement.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by school principals; suspension of driver's license; possessing deadly weapons on premises housing courts of law and family law courts.

(a) The Legislature finds that the safety and welfare of the citizens of this state are inextricably dependent upon assurances of safety for children attending and persons employed by schools in this state and for persons employed by the judicial department of this state. It is for the purpose of providing assurances of safety that §61-7-11a(b), §61-7-11a(g), and §61-7-11a(h), of this code and §61-7-11a(b)(2)(l) of this code, are enacted as a reasonable regulation of the manner in which citizens may exercise the rights accorded to them pursuant to section 22, article III of the Constitution of the State of West Virginia.

(b) (1) It is unlawful to possess a firearm or other deadly weapon:

(A) On a school bus as defined in §17A-1-1 of this code;

(B) In or on the grounds of any primary or secondary educational facility of any type: *Provided*, That it shall not be unlawful to possess a firearm or other deadly weapon in or on the grounds of any private primary or secondary school, if such institution has adopted a written policy allowing for possession of firearms or other deadly weapons in the facility or on the grounds thereof of the facility; or

(C) At a school-sponsored function that is taking place in a specific area that is owned, rented, or leased by the West Virginia Department of Education, the West Virginia Secondary Schools Activities Commission, a county school board, or local public school for the actual period of time the function is occurring;

(2) This subsection does not apply to:

(A) A law-enforcement officer employed by a federal, state, county, or municipal law-enforcement agency;

(B) Any probation officer appointed pursuant to §62-12-5 or §49-4-719 of this code, in the performance of his or her duties;

(C) Any home incarceration supervisor employed by a county commission pursuant to §61-11B-7a of this code in the performance of his or her duties;

(D) A state juvenile probation officer appointed pursuant to §15A-7-5 of this code, while in performance of his or he official duties;

~~(G)~~ (E) A retired law-enforcement officer who meets all the requirements to carry a firearm as a qualified retired law-enforcement officer under the Law-Enforcement Officer Safety Act of 2004, as amended, pursuant to 18 U.S.C. §926C(c), carries that firearm in a concealed manner, and has on his or her person official identification in accordance with that act;

~~(D)~~ (F) A person, other than a student of a primary and secondary facility, specifically authorized by the board of education of the county or principal of the school where the property is located to conduct programs with valid educational purposes;

~~(E)~~ (G) A person who, as otherwise permitted by the provisions of this article, possesses an unloaded firearm or deadly weapon in a motor vehicle or leaves an unloaded firearm or deadly weapon in a locked motor vehicle;

~~(F)~~ (H) Programs or raffles conducted with the approval of the county board of education or school which include the display of unloaded firearms;

~~(G)~~ (I) The official mascot of West Virginia University, commonly known as the Mountaineer, acting in his or her official capacity;

~~(H)~~ (J) The official mascot of Parkersburg South High School, commonly known as the Patriot, acting in his or her official capacity; or

~~(I)~~ (K) Any person, 21 years old or older, who has a valid concealed handgun permit. That person may possess a concealed handgun while in a motor vehicle in a parking lot, traffic circle, or other areas of vehicular ingress or egress to a public school: *Provided*, That:

(i) When he or she is occupying the vehicle the person stores the handgun out of view from persons outside the vehicle; or

(ii) When he or she is not occupying the vehicle the person stores the handgun out of view from persons outside the vehicle, the vehicle is locked, and the handgun is in a glove box or other interior compartment, or in a locked trunk, or in a locked container securely fixed to the vehicle.

(3) A person violating this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a definite term of years of not less than two years nor more than 10 years, or fined not more than \$5,000, or both fined and imprisoned.

(c) A school principal subject to the authority of the State Board of Education who discovers a violation of §61-7-11a(b) of this code shall report the violation as soon as possible to:

(1) The State Superintendent of Schools. The State Board of Education shall keep and maintain these reports and may prescribe rules establishing policy and procedures for making and delivering the reports as required by this subsection; and

(2) The appropriate local office of the State Police, county sheriff or municipal police agency.

(d) In addition to the methods of disposition provided by §49-5-1 *et seq.* of this code, a court which adjudicates a person who is 14 years of age or older as delinquent for a violation of §61-7-11a(b) of this code, may order the Division of Motor Vehicles to suspend a driver's license or instruction permit issued to the person for a period of time as the court considers appropriate, not to extend beyond the person's nineteenth birthday. If the person has not been issued a driver's license or instruction permit by this state, a court may order the Division of Motor Vehicles to deny the person's application for a license or permit for a period of time as the court considers appropriate, not to extend beyond the person's nineteenth birthday. A suspension ordered by the court pursuant to this subsection is effective upon the date of entry of the order. Where the court orders the suspension of a driver's license or instruction permit pursuant to this subsection, the court shall confiscate any driver's license or instruction permit in the adjudicated person's possession and forward it to the Division of Motor Vehicles.

(e)(1) If a person 18 years of age or older is convicted of violating §61-7-11a(b) of this code, and if the person does not act to appeal the conviction within the time periods described in §61-7-11a(e)(2) of this code, the person's license or privilege to operate a motor vehicle in this state shall be revoked in accordance with the provisions of this section.

(2) The clerk of the court in which the person is convicted as described in §61-7-11a(e)(1) of this code shall forward to the commissioner a transcript of the judgment of conviction. If the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the transcript when the person convicted has not requested an appeal within 20 days of the sentencing for the conviction. If the conviction is the judgment of a circuit court, the circuit clerk shall forward a transcript of the judgment of conviction when the person convicted has not filed a notice of intent to file a petition for appeal or writ of error within 30 days after the judgment was entered.

(3) If, upon examination of the transcript of the judgment of conviction, the commissioner determines that the person was convicted as described in §61-7-11a(e)(1) of this code, the commissioner shall make and enter an order revoking the person's license or privilege to operate a motor vehicle in this state for a period of one year or, in the event the person is a student enrolled in a secondary school, for a period of one year or until the person's twentieth birthday, whichever is the greater period. The order shall contain the reasons for the revocation and the revocation period. The order of suspension shall advise the person that because of the receipt of the court's transcript, a presumption exists that the person named in the order of suspension is the same person named in the transcript. The commissioner may grant an administrative hearing which substantially complies with the requirements of the provisions of §17C-5A-2 of this code upon a preliminary showing that a possibility exists that the person named in the notice of conviction is not the same person whose license is being suspended. The request for hearing shall be made within 10 days after receipt of a copy of the order of suspension. The sole purpose of this hearing is for the person requesting the hearing to present evidence that he or she is not the person named in the notice. If the commissioner grants an administrative hearing, the commissioner shall stay the license suspension pending the commissioner's order resulting from the hearing.

(4) For the purposes of this subsection, a person is convicted when he or she enters a plea of guilty or is found guilty by a court or jury.

(f)(1) It is unlawful for a parent, guardian, or custodian of a person less than 18 years of age who knows that the person is in violation of §61-7-11a(b) of this code or has reasonable cause to believe that the person's violation of §61-7-11a(b) of this code is imminent to fail to immediately report his or her knowledge or belief to the appropriate school or law-enforcement officials.

(2) A person violating this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or shall be confined in jail not more than one year, or both fined and confined.

(g)(1) It is unlawful for a person to possess a firearm or other deadly weapon on the premises of a court of law, including family courts.

(2) This subsection does not apply to:

(A) A law-enforcement officer acting in his or her official capacity; and

(B) A person exempted from the provisions of this subsection by order of record entered by a court with jurisdiction over the premises or offices.

(3) A person violating this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or shall be confined in jail not more than one year, or both fined and confined.

(h)(1) It is unlawful for a person to possess a firearm or other deadly weapon on the premises of a court of law, including family courts, with the intent to commit a crime.

(2) A person violating this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a definite term of years of not less than two years nor more than 10 years, or fined not more than \$5,000, or both fined and imprisoned.

(i) Nothing in this section may be construed to be in conflict with the provisions of federal law.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 11B. HOME INCARCERATION ACT.

§62-11B-7a. Employment by county commission of home incarceration supervisors; authority of supervisors.

(a) The county commission may employ one or more persons with the approval of the circuit court and who ~~shall be~~ is subject to the supervision of the sheriff as a home incarceration supervisor or may designate the county sheriff to supervise offenders ordered to undergo home incarceration and to administer the county's home incarceration program. Any ~~person so supervising~~ supervisor shall have authority, equivalent to that granted to a probation officer pursuant to §62-12-10 of this code, to arrest a home incarceration participant when reasonable cause exists to believe that ~~such~~ the participant has violated the conditions of his or her home incarceration. Unless otherwise specified, the use of the term "supervisor" in this article shall refer to a home incarceration supervisor.

(b) In recognition of the duties in their employment which constitute law enforcement, home confinement supervisors are determined to be qualified law enforcement officers as that term is used in 18 U.S.C. §926B.

(c) Any home incarceration supervisor may carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U.S.C. §926B if the following criteria are met:

(1) The home incarceration program has a written policy authorizing home incarceration supervisors to carry a concealed firearm for self-defense purposes.

(2) There is in place in the home incarceration program a requirement that the home incarceration supervisors must regularly qualify in the use of a firearm with standards for qualification which are equal to, or exceed those required of sheriff's deputies in the county in which the home incarceration supervisors are employed; and

(3) The home incarceration program issues a photographic identification and certification card which identify the home incarceration supervisors as law-enforcement employees of the home incarceration program of §30-29-12 of this code.

(4) Any policy instituted pursuant to subsection (b) of this section shall include provisions which: (A) preclude or remove a person from participation in the concealed firearm program; (B) preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm and; (C) prohibit persons from carrying a firearm pursuant to the provisions of this subsection while in an impaired state as defines in §17C-5-2 of this code.

(5) Any home incarceration supervisor who participates in a program authorized by the provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(6) The privileges authorized by the amendments to this section enacted during the 2021 regular session of the Legislature are wholly within the discretion of the supervising authority over the home confinement supervisors.

(7) It is the intent of the Legislature in enacting the amendments to this section during the 2021 regular session of the Legislature to authorize home incarceration programs wishing to do so to allow home incarceration supervisors to meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. §926B.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-5. Probation officers and assistants.

(a) Each circuit court, subject to the approval of the Supreme Court of Appeals and in accordance with its rules, is authorized to appoint one or more probation officers and clerical assistants.

(b) The appointment of probation officers and clerical assistants shall be in writing and entered on the order book of the court by the judge making such appointment and a copy of ~~said the~~ order of appointment shall be delivered to the Administrative Director of the Supreme Court of Appeals. The order of appointment shall state the annual salary, fixed by the judge and approved by the Supreme Court of Appeals, to be paid to the appointed probation officer or clerical ~~assistants so~~ appointed.

(c) The salary of probation officers and clerical assistants shall be paid at least twice per month, as the Supreme Court of Appeals by rule may direct and they shall be reimbursed for all reasonable and necessary expenses actually incurred in the line of duty in the field. The salary and expenses shall be paid by the state from the judicial accounts thereof. The county commission shall provide adequate office space for the probation officer and his or her assistants to be approved by the appointing court. The equipment and supplies as may be needed by the probation officer and his or her assistants shall be provided by the state and the cost thereof shall be charged against the judicial accounts of the state.

(d) ~~No~~ A judge may not appoint any probation officer, assistant probation officer or clerical assistant who is related to him or her either by consanguinity or affinity.

(e) Subject to the approval of the Supreme Court of Appeals and in accordance with its rules, a judge of a circuit court whose circuit comprises more than one county may appoint a probation officer and a clerical assistant in each county of the circuit or may appoint the same persons to serve in these respective positions in two or more counties in the circuit.

(f) Nothing contained in this section alters, modifies, affects or supersedes the appointment or tenure of any probation officer, medical assistant or psychiatric assistant appointed by any court under any special act of the Legislature heretofore enacted, and the salary or compensation of those persons shall remain as specified in the most recent amendment of any special act until changed by the court, with approval of the Supreme Court of Appeals, by order entered of record, and any such salary or compensation shall be paid out of the State Treasury.

(g) In order to carry out the supervision responsibilities set forth in §62-26-12 of this code, the Administrative Director of the Supreme Court of Appeals, or his or her designee, in accordance with the court's procedures, ~~is authorized~~ may to hire multijudicial-circuit probation officers, to be employed through the court's Division of Probation Services. Such officers may also supervise probationers who are on probation for sexual offences with the approval of the administrative director of the Supreme Court of Appeals or his or her designee.

(h) In recognition of their duties in their employment which constitute law enforcement, state probation officers are determined to be qualified law enforcement officers as that term is used in 18 U.S.C. §926B. (i) Any state probation officer may carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U.S.C. §926B if the following criteria are met:

(1) The Supreme Court of Appeals has a written policy authorizing probation officers to carry a concealed firearm for self-defense purposes.

(2) There is in place a requirement that the state probation officers annually qualify in the use of a firearm with standards for qualification which are equal to, or exceed those required of sheriff's deputies by the Law-Enforcement Professional Standards Program;

(3) The Supreme Court of Appeals issues a photographic identification and certification card which identify the state probation officers as qualified law-enforcement employees pursuant to the provisions of §30-29-12 of this code.

(4) Any policy instituted pursuant to this subsection shall include provisions which: (A) Preclude or remove a person from participation in the concealed firearm program; (B) preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm and; (C) prohibit persons from carrying a firearm pursuant to the provisions of this subsection while in an impaired state as defines in §17C-5-2 of this code.

(5) Any state juvenile probation officer who participates in a program authorized by the provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(6) It is the intent of the Legislature in enacting the amendments to this section during the 2021 regular session of the Legislature to authorize state probation officers wishing to do so to meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. §926B consistent with subsection (i) of this section.

(d) The privileges authorized by the amendments to this section enacted during the 2021 regular session of the Legislature are wholly within the discretion of the Supreme Court of Appeals.

§62-12-6. Powers and duties of probation officers.

(a) Each probation officer shall:

(1) Investigate all cases which the court refers to the officer for investigation and shall report in writing on each case;

(2) Conduct a standardized risk and needs assessment, using the instrument adopted by the Supreme Court of Appeals of West Virginia, for any probationer for whom an assessment has not

been conducted either prior to placement on probation or by a specialized assessment officer. The results of all standardized risk and needs assessments are confidential;

(3) Supervise the probationer and enforce probation according to assessment and supervision standards adopted by the Supreme Court of Appeals of West Virginia;

(4) Furnish to each person released on probation under the officer's supervision a written statement of the probationer's conditions of probation together with a copy of the rules prescribed by the Supreme Court of Appeals of West Virginia;

(5) Stay informed concerning the conduct and condition of each probationer under the officer's supervision and report on the conduct and condition of each probationer in writing as often as the court requires;

(6) Use all practicable and suitable methods to aid and encourage the probationer to improve his or her conduct and condition;

(7) Perform random drug and alcohol testing on probationers under his or her supervision as directed by the circuit court;

(8) Maintain detailed work records; and

(9) Perform any other duties the court requires.

(b) The probation officer may, with or without an order or warrant, arrest any probationer as provided in section ten of this article, and arrest any person on supervised release when there is reasonable cause to believe that the person on supervised release has violated a condition of release. A person on supervised release who is arrested shall be brought before the court for a prompt and summary hearing.

(c) Notwithstanding any provision of this code to the contrary:

(1) Any probation officer appointed on or after July 1, 2002, may carry handguns in the course of the officer's official duties after meeting specialized qualifications established by the Governor's Committee on Crime, Delinquency and Correction. The qualifications shall include the successful completion of handgun training, which is comparable to the handgun training provided to law-enforcement officers by the West Virginia State Police and includes a minimum of four hours' training in handgun safety.

(2) Probation officers may only carry handguns in the course of their official duties after meeting the specialized qualifications set forth in subdivision (1) of this subsection.

~~(3) Nothing in this subsection includes probation officers within the meaning of law-enforcement officers as defined in section one, article twenty nine, chapter thirty of this code.~~

(d) The Supreme Court of Appeals of West Virginia may adopt a standardized risk and needs assessment with risk cut-off scores for use by probation officers, taking into consideration the assessment instrument adopted by the Division of Corrections under subsection (h), section thirteen of this article and the responsibility of the Division of Justice and Community Services to evaluate the use of the standardized risk and needs assessment. The results of any standardized risk and needs assessment are confidential."

And,

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

Com. Sub. for H. B. 2770 - “A Bill to amend and reenact §15A-7-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §49-4-719 of said code; to amend and reenact §61-7-11a of said code; to amend and reenact §62-11B-7a of said code; to amend and reenact §62-12-5, of said code and to amend and reenact §62-12-6 of said code, all relating generally to additional persons qualifying for the provisions of the Law-Enforcement Officers Safety Act; clarifying that home incarceration supervisors, state adult probation officers, juvenile probation officers, and state parole officers are qualified law enforcement officers who may carry a concealed firearm nationwide, as authorized by the federal Law-Enforcement Officers Safety Act; exempting certain persons from prohibition for carrying deadly weapons on the premises of educational facilities; providing the statutory authority to give home incarceration supervisors, state probation officers, juvenile probation officers, and parole officers the option to carry firearms pursuant to applicable federal law; requiring annual firearm training pursuant to federal law; removing inconsistent language relating to probation officers; clarifying that supervisory entities retain sole discretion as to authorizing participation of qualified officers in such program; providing for training to enable home incarceration supervisors, state probation officers, juvenile probation officers, and state parole officers to fully qualify as law enforcement officers if they have not previously done so; and setting forth the duties of supervising authorities as to participation of home incarceration supervisors, state probation officers, juvenile probation officers, and state parole officers.”

Because the motion by Delegate Kessinger would involve amending the bill to the fourth degree, the Speaker put the question of a rule suspension before the House.

On this question, the yeas and nays were taken (**Roll No. 623**), and there were—yeas 94, nays 6, absent and not voting none, with the nays being as follows:

Nays: Burkhammer, Cooper, Doyle, Fleischauer, J. Kelly and Summers.

So, two thirds of the members present having voted in the affirmative, the motion prevailed.

The House then concurred in the Senate amendment, with the further amendment, sponsored by Delegate Summers, being as follows:

On page one, section two, subsection (a), after the word “Certification”, by inserting the following:

“: *Provided*, That faith-based programs shall be given priority in the license application review process.”

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

“CHAPTER 15A. DEPARTMENT OF HOMELAND SECURITY.

ARTICLE 7. BUREAU OF COMMUNITY CORRECTIONS.

§15A-7-5. Powers and duties of state parole officers.

(a) Each state probation and parole officer employed by the Division of Corrections and Rehabilitation shall:

(1) Investigate all cases referred to him or her for investigation by the Commissioner of Corrections and Rehabilitation and report in writing on the investigation;

(2) Update the standardized risk and needs assessment adopted by the Division of Corrections and Rehabilitation pursuant to §62-12-13(h) of this code for each parolee for whom an assessment has not been conducted for parole by a specialized assessment officer;

(3) Supervise each parolee according to the assessment and supervision standards determined by the Commissioner of Corrections and Rehabilitation;

(4) Furnish to each parolee under his or her supervision a written statement of the conditions of his or her parole together with a copy of the rules prescribed by the Commissioner of Corrections and Rehabilitation for the supervision of parolees;

(5) Keep informed concerning the conduct and condition of each parolee under his or her supervision and report on the conduct and condition of each parolee in writing as often as required by the Commissioner of Corrections and Rehabilitation;

(6) Use all practicable and suitable methods to aid and encourage a parolee and to bring about improvement in his or her conduct and condition;

(7) Keep detailed records of his or her work;

(8) Keep accurate and complete accounts of, and give receipts for, all money collected from parolees under his or her supervision, and pay over the money to persons designated by a circuit court or the Commissioner of Corrections and Rehabilitation;

(9) Give bond with good security, to be approved by the Commissioner of Corrections and Rehabilitation, in a penalty of not less than \$1,000 nor more than \$3,000, as determined by the Commissioner of Corrections and Rehabilitation; and

(10) Perform any other duties required by the Commissioner of Corrections and Rehabilitation.

(b) Each probation and parole officer, as described in this article, may, with or without an order or warrant:

(1) Arrest or order confinement of any parolee or probationer under his or her supervision; and

(2) search a parolee or probationer, or a parolee or probationer's residence or property, under his or her supervision. A probation and parole officer may apply for a search warrant, and execute the search warrant, in connection to a parolee's whereabouts, or a parolee's activities. He or she has all the powers of a notary public, with authority to act anywhere within the state.

(c) (1) Notwithstanding any other provision of this section, The Commissioner of Corrections and Rehabilitation may issue a certificate authorizing any state parole officer who has successfully completed the Division of Corrections and Rehabilitation's training program for firearms certification, which is the equivalent of that required of any correctional employee under §15A-3-

10 of this code, to carry firearms or concealed weapons. Any parole officer authorized by the Commissioner of Corrections and Rehabilitation may, without a state license, carry firearms and concealed weapons. Each state parole officer, authorized by the Commissioner of Corrections and Rehabilitation, shall carry with him or her a certificate authorizing him or her to carry a firearm or concealed weapon bearing the official signature of the Commissioner of Corrections and Rehabilitation.

(2) State parole officers, in recognition of the duties in their employment supervising incarceration and supervised release and the inherent arrest powers for violation of the same which constitute law enforcement, are determined to be qualified law enforcement officers as that term is used in 18 U.S.C §926B.

(3) Any state parole officer may carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U.S.C. §926B if the following criteria are met:

(A) The Division of Corrections and Rehabilitation has a written policy authorizing a state parole officer to carry a concealed firearm for self-defense purposes.

(B) For those state parole officers wishing to avail themselves of the provisions of this subdivision, there shall be in place in the Division of Corrections and Rehabilitation a requirement that those state parole officers must annually qualify in the use of a firearm with standards which are equal to or exceed those required of sheriff's deputies by the Law-Enforcement Professional Standards Program; and

(C) The Division of Corrections and Rehabilitation issues a photographic identification and certification card which identify the state parole officers who meet the provisions of this subdivision, as law-enforcement employees of the Division of Corrections and Rehabilitation pursuant to the provisions of §30-29-12 of this code.

(D) Any policy instituted pursuant to this subsection includes provisions which:

(i) Preclude or remove a person from participation in the concealed firearm program;

(ii) preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm and;

(iii) prohibit persons from carrying a firearm pursuant to the provisions of this subsection while in an impaired state as defined in §17C-5-2 of this code.

(E) Any state parole officer who participates in a program authorized by the provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(F) It is the intent of the Legislature in enacting the amendments to this section during the 2021 regular session of the Legislature to authorize those state parole officers wishing to do so to meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. §926B:

(G) The privileges authorized by the amendments in this section enacted during the 2021 regular session of the legislature are wholly within the discretion of the Commissioner of Corrections and Rehabilitation.

CHAPTER 49. CHILD WELFARE.**ARTICLE 4. COURT ACTIONS.****§49-4-719. Juvenile probation officers; appointment; salary; facilities; expenses; duties; powers.**

(a)(1) Each circuit court, subject to the approval of the Supreme Court of Appeals and in accordance with the rules of the Supreme Court of Appeals, shall appoint one or more juvenile probation officers and clerical assistants for the circuit. A probation officer or clerical assistant may not be related by blood or marriage to the appointing judge.

(2) The salary for juvenile probation officers and clerical assistants shall be determined and fixed by the Supreme Court of Appeals. All expenses and costs incurred by the juvenile probation officers and their staff shall be paid by the Supreme Court of Appeals in accordance with its rules. The county commission of each county shall provide adequate office facilities for juvenile probation officers and their staff. All equipment and supplies required by juvenile probation officers and their staff shall be provided by the Supreme Court of Appeals.

~~(3) A juvenile probation officer may not be considered a law enforcement official under this chapter.~~

(b) In recognition of the duties in their employment supervising incarceration and supervised release and the inherent arrest powers for violation of the same which constitute law enforcement, state juvenile probation officers are determined to be qualified law enforcement officers as that term is used in 18 U.S.C §926B.

(c) Any state juvenile probation officer may carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U.S.C. §926B if the following criteria are met:

(1) The Supreme Court of Appeals has a written policy authorizing a state juvenile probation officer to carry a concealed firearm for self-defense purposes;

(2) There shall be in place in the Supreme Court of Appeals a requirement that state juvenile probation officers must annually qualify in the use of a firearm with standards which are equal to or exceed those required of sheriff's deputies by the Law-Enforcement Professional Standards Program;

(3) The Supreme Court of Appeals issues a photographic identification and certification card which identify the state juvenile probation officers as law-enforcement employees as that term is contemplated by 18 U.S.C §926B.

(4) Any policy instituted pursuant to this subsection includes provisions which:

(A) preclude or remove a person from participation in the concealed firearm program;

(B) preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm and;

(C) prohibit persons from carrying a firearm pursuant to the provisions of this subsection while in an impaired state as defined in §17C-5-2 of this code.

(5) Any state juvenile probation officer who participates in a program authorized by the provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(6) It is the intent of the Legislature in enacting the amendments to this section during the 2021 regular session of the Legislature to authorize state juvenile probation officers wishing to do so to meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. §926B.

(7) The privileges authorized by the amendments to this section enacted during the 2021 regular session of the legislature are wholly within the discretion of the Commissioner of Corrections and Rehabilitation.

~~(b)~~ (e) The clerk of a court shall notify, if practicable, the chief probation officer of the county, or his or her designee, when a juvenile is brought before the court or judge for proceedings under this article. When notified, or if the probation officer otherwise obtains knowledge of such fact, he or she or one of his or her assistants shall:

(1) Make investigation of the case; and

(2) Furnish information and assistance that the court or judge may require.

~~(e)~~ (f) (1) The Supreme Court of Appeals may develop a system of community-based juvenile probation sanctions and incentives to be used by probation officers in response to violations of terms and conditions of probation and to award incentives for positive behavior.

(2) The community-based juvenile probation sanctions and incentives may consist of a continuum of responses from the least restrictive to the most restrictive, designed to respond swiftly, proportionally and consistently to violations of the terms and conditions of probation and to reward compliance therewith.

(3) The purpose of community-based juvenile probation sanctions and incentives is to reduce the amount of resources and time spent by the court addressing probation violations, to reduce the likelihood of a new status or delinquent act, and to encourage and reward positive behavior by the juvenile on probation prior to any attempt to place a juvenile in an out-of-home placement.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by school principals; suspension of driver's license; possessing deadly weapons on premises housing courts of law and family law courts.

(a) The Legislature finds that the safety and welfare of the citizens of this state are inextricably dependent upon assurances of safety for children attending and persons employed by schools in this state and for persons employed by the judicial department of this state. It is for the purpose of providing assurances of safety that §61-7-11a(b), §61-7-11a(g), and §61-7-11a(h), of this code and §61-7-11a(b)(2)(l) of this code, are enacted as a reasonable regulation of the manner in which citizens may exercise the rights accorded to them pursuant to section 22, article III of the Constitution of the State of West Virginia.

(b) (1) It is unlawful to possess a firearm or other deadly weapon:

(A) On a school bus as defined in §17A-1-1 of this code;

(B) In or on the grounds of any primary or secondary educational facility of any type: *Provided*, That it shall not be unlawful to possess a firearm or other deadly weapon in or on the grounds of any private primary or secondary school, if such institution has adopted a written policy allowing for possession of firearms or other deadly weapons in the facility or on the grounds ~~thereof~~ of the facility; or

(C) At a school-sponsored function that is taking place in a specific area that is owned, rented, or leased by the West Virginia Department of Education, the West Virginia Secondary Schools Activities Commission, a county school board, or local public school for the actual period of time the function is occurring;

(2) This subsection does not apply to:

(A) A law-enforcement officer employed by a federal, state, county, or municipal law-enforcement agency;

(B) Any probation officer appointed pursuant to §62-12-5 or state juvenile probation officer appointed pursuant to §49-4-719 chapter 49 of this code, in the performance of his or her duties;

(C) Any home incarceration supervisor employed by a county commission pursuant to §61-11B-7a of this code in the performance of his or her duties;

(D) A state parole officer appointed pursuant to §15A-7-5 of this code, while in performance of his or her official duties;

~~(C)~~ (E) A retired law-enforcement officer who meets all the requirements to carry a firearm as a qualified retired law-enforcement officer under the Law-Enforcement Officer Safety Act of 2004, as amended, pursuant to 18 U.S.C. §926C(c), carries that firearm in a concealed manner, and has on his or her person official identification in accordance with that act;

~~(D)~~ (F) A person, other than a student of a primary and secondary facility, specifically authorized by the board of education of the county or principal of the school where the property is located to conduct programs with valid educational purposes;

~~(E)~~ (G) A person who, as otherwise permitted by the provisions of this article, possesses an unloaded firearm or deadly weapon in a motor vehicle or leaves an unloaded firearm or deadly weapon in a locked motor vehicle;

~~(F)~~ (H) Programs or raffles conducted with the approval of the county board of education or school which include the display of unloaded firearms;

~~(G)~~ (I) The official mascot of West Virginia University, commonly known as the Mountaineer, acting in his or her official capacity;

~~(H)~~ (J) The official mascot of Parkersburg South High School, commonly known as the Patriot, acting in his or her official capacity; or

(H) (K) Any person, 21 years old or older, who has a valid concealed handgun permit. That person may possess a concealed handgun while in a motor vehicle in a parking lot, traffic circle, or other areas of vehicular ingress or egress to a public school: *Provided, That:*

(i) When he or she is occupying the vehicle, the person stores the handgun out of view from persons outside the vehicle; or

(ii) When he or she is not occupying the vehicle, the person stores the handgun out of view from persons outside the vehicle, the vehicle is locked, and the handgun is in a glove box or other interior compartment, or in a locked trunk, or in a locked container securely fixed to the vehicle.

(3) A person violating this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a definite term of years of not less than two years nor more than 10 years, or fined not more than \$5,000, or both fined and imprisoned.

(c) A school principal subject to the authority of the State Board of Education who discovers a violation of §61-7-11a(b) of this code shall report the violation as soon as possible to:

(1) The State Superintendent of Schools. The State Board of Education shall keep and maintain these reports and may prescribe rules establishing policy and procedures for making and delivering the reports as required by this subsection; and

(2) The appropriate local office of the State Police, county sheriff or municipal police agency.

(d) In addition to the methods of disposition provided by §49-5-1 *et seq.* of this code, a court which adjudicates a person who is 14 years of age or older as delinquent for a violation of §61-7-11a(b) of this code, may order the Division of Motor Vehicles to suspend a driver's license or instruction permit issued to the person for a period of time as the court considers appropriate, not to extend beyond the person's nineteenth birthday. If the person has not been issued a driver's license or instruction permit by this state, a court may order the Division of Motor Vehicles to deny the person's application for a license or permit for a period of time as the court considers appropriate, not to extend beyond the person's nineteenth birthday. A suspension ordered by the court pursuant to this subsection is effective upon the date of entry of the order. Where the court orders the suspension of a driver's license or instruction permit pursuant to this subsection, the court shall confiscate any driver's license or instruction permit in the adjudicated person's possession and forward it to the Division of Motor Vehicles.

(e)(1) If a person 18 years of age or older is convicted of violating §61-7-11a(b) of this code, and if the person does not act to appeal the conviction within the time periods described in §61-7-11a(e)(2) of this code, the person's license or privilege to operate a motor vehicle in this state shall be revoked in accordance with the provisions of this section.

(2) The clerk of the court in which the person is convicted as described in §61-7-11a(e)(1) of this code shall forward to the commissioner a transcript of the judgment of conviction. If the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the transcript when the person convicted has not requested an appeal within 20 days of the sentencing for the conviction. If the conviction is the judgment of a circuit court, the circuit clerk shall forward a transcript of the judgment of conviction when the person convicted has not filed a notice of intent to file a petition for appeal or writ of error within 30 days after the judgment was entered.

(3) If, upon examination of the transcript of the judgment of conviction, the commissioner determines that the person was convicted as described in §61-7-11a(e)(1) of this code, the commissioner shall make and enter an order revoking the person's license or privilege to operate a motor vehicle in this state for a period of one year or, in the event the person is a student enrolled in a secondary school, for a period of one year or until the person's twentieth birthday, whichever is the greater period. The order shall contain the reasons for the revocation and the revocation period. The order of suspension shall advise the person that because of the receipt of the court's transcript, a presumption exists that the person named in the order of suspension is the same person named in the transcript. The commissioner may grant an administrative hearing which substantially complies with the requirements of the provisions of §17C-5A-2 of this code upon a preliminary showing that a possibility exists that the person named in the notice of conviction is not the same person whose license is being suspended. The request for hearing shall be made within 10 days after receipt of a copy of the order of suspension. The sole purpose of this hearing is for the person requesting the hearing to present evidence that he or she is not the person named in the notice. If the commissioner grants an administrative hearing, the commissioner shall stay the license suspension pending the commissioner's order resulting from the hearing.

(4) For the purposes of this subsection, a person is convicted when he or she enters a plea of guilty or is found guilty by a court or jury.

(f)(1) It is unlawful for a parent, guardian, or custodian of a person less than 18 years of age who knows that the person is in violation of §61-7-11a(b) of this code or has reasonable cause to believe that the person's violation of §61-7-11a(b) of this code is imminent to fail to immediately report his or her knowledge or belief to the appropriate school or law-enforcement officials.

(2) A person violating this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or shall be confined in jail not more than one year, or both fined and confined.

(g)(1) It is unlawful for a person to possess a firearm or other deadly weapon on the premises of a court of law, including family courts.

(2) This subsection does not apply to:

(A) A law-enforcement officer acting in his or her official capacity; and

(B) A person exempted from the provisions of this subsection by order of record entered by a court with jurisdiction over the premises or offices.

(3) A person violating this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or shall be confined in jail not more than one year, or both fined and confined.

(h)(1) It is unlawful for a person to possess a firearm or other deadly weapon on the premises of a court of law, including family courts, with the intent to commit a crime.

(2) A person violating this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a definite term of years of not less than two years nor more than 10 years, or fined not more than \$5,000, or both fined and imprisoned.

(i) Nothing in this section may be construed to be in conflict with the provisions of federal law.

CHAPTER 62. CRIMINAL PROCEDURE.**ARTICLE 11B. HOME INCARCERATION ACT.****§62-11B-7a. Employment by county commission of home incarceration supervisors; authority of supervisors.**

(a) The county commission may employ one or more persons with the approval of the circuit court and who shall be subject to the supervision of the sheriff as a home incarceration supervisor or may designate the county sheriff to supervise offenders ordered to undergo home incarceration and to administer the county's home incarceration program. ~~Any person so supervising supervisor~~ shall have authority, equivalent to that granted to a probation officer pursuant to §62-12-10 of this code, to arrest a home incarceration participant when reasonable cause exists to believe that ~~such the~~ participant has violated the conditions of his or her home incarceration. Unless otherwise specified, the use of the term 'supervisor' in this article shall refer to a home incarceration supervisor.

(b) In recognition of the duties in their employment supervising incarceration and supervised release and the inherent arrest powers for violation of the same which constitute law enforcement, home confinement supervisors, are determined to be qualified law enforcement officers as that term is used in 18 U.S.C. §926B.

(c) Any home incarceration supervisor may carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U.S.C. §926B if the following criteria are met:

(1) The home incarceration program has a written policy authorizing home incarceration supervisors to carry a concealed firearm for self-defense purposes.

(2) There is in place in the home incarceration program a requirement that the home incarceration supervisors must regularly qualify in the use of a firearm with standards for qualification which are equal to, or exceed those required of sheriff's deputies in the county in which the home incarceration supervisors are employed; and

(3) The home incarceration program issues a photographic identification and certification card which identify the home incarceration supervisors as law-enforcement employees of the home incarceration program of §30-29-12 of this code.

(4) Any policy instituted pursuant to subsection (b) of this section shall include provisions which:

(A) preclude or remove a person from participation in the concealed firearm program;

(B) preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm and;

(C) prohibit persons from carrying a firearm pursuant to the provisions of this subsection while in an impaired state as defines in §17C-5-2 of this code.

(5) Any home incarceration supervisor who participates in a program authorized by the provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(6) The privileges authorized by the amendments to this section enacted during the 2021 regular session of the Legislature are wholly within the discretion of the supervising authority over the home confinement supervisors.

(7) It is the intent of the Legislature in enacting the amendments to this section during the 2021 regular session of the Legislature to authorize home incarceration programs wishing to do so to allow home incarceration supervisors to meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. §926B.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-5. Probation officers and assistants.

(a) Each circuit court, subject to the approval of the Supreme Court of Appeals and in accordance with its rules, is authorized to appoint one or more probation officers and clerical assistants.

(b) The appointment of probation officers and clerical assistants shall be in writing and entered on the order book of the court by the judge making such appointment and a copy of ~~said the~~ order of appointment shall be delivered to the Administrative Director of the Supreme Court of Appeals. The order of appointment shall state the annual salary, fixed by the judge and approved by the Supreme Court of Appeals, to be paid to the appointed probation officer or clerical assistants-~~so appointed~~.

(c) The salary of probation officers and clerical assistants shall be paid at least twice per month, as the Supreme Court of Appeals by rule may direct and they shall be reimbursed for all reasonable and necessary expenses actually incurred in the line of duty in the field. The salary and expenses shall be paid by the state from the judicial accounts thereof. The county commission shall provide adequate office space for the probation officer and his or her assistants to be approved by the appointing court. The equipment and supplies as may be needed by the probation officer and his or her assistants shall be provided by the state and the cost thereof shall be charged against the judicial accounts of the state.

(d) ~~No~~ A judge may not appoint any probation officer, assistant probation officer or clerical assistant who is related to him or her either by consanguinity or affinity.

(e) Subject to the approval of the Supreme Court of Appeals and in accordance with its rules, a judge of a circuit court whose circuit comprises more than one county may appoint a probation officer and a clerical assistant in each county of the circuit or may appoint the same persons to serve in these respective positions in two or more counties in the circuit.

(f) Nothing contained in this section alters, modifies, affects or supersedes the appointment or tenure of any probation officer, medical assistant or psychiatric assistant appointed by any court under any special act of the Legislature heretofore enacted, and the salary or compensation of those persons shall remain as specified in the most recent amendment of any special act until changed by the court, with approval of the Supreme Court of Appeals, by order entered of record, and any such salary or compensation shall be paid out of the State Treasury.

(g) In order to carry out the supervision responsibilities set forth in §62-26-12 of this code, the Administrative Director of the Supreme Court of Appeals, or his or her designee, in accordance with the court's procedures, ~~is authorized~~ may to hire multijudicial-circuit probation officers, to be

employed through the court's Division of Probation Services. Such officers may also supervise probationers who are on probation for sexual offences with the approval of the administrative director of the Supreme Court of Appeals or his or her designee.

(h) In recognition of the duties in their employment supervising incarceration and supervised release and the inherent arrest powers for violation of the same which constitute law enforcement, state probation officers are determined to be qualified law enforcement officers as that term is used in 18 U.S.C. §926B.

(i) Any state probation officer may carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U.S.C. §926B if the following criteria are met:

(1) The Supreme Court of Appeals has a written policy authorizing probation officers to carry a concealed firearm for self-defense purposes.

(2) There is in place a requirement that the state probation officers annually qualify in the use of a firearm with standards for qualification which are equal to, or exceed those required of sheriff's deputies by the Law-Enforcement Professional Standards Program;

(3) The Supreme Court of Appeals issues a photographic identification and certification card which identify the state probation officers as qualified law-enforcement employees pursuant to the provisions of §30-29-12 of this code.

(4) Any policy instituted pursuant to this subsection shall include provisions which:

(A) Preclude or remove a person from participation in the concealed firearm program;

(B) preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm and;

(C) prohibit persons from carrying a firearm pursuant to the provisions of this subsection while in an impaired state as defines in §17C-5-2 of this code.

(5) Any state juvenile probation officer who participates in a program authorized by the provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(6) It is the intent of the Legislature in enacting the amendments to this section during the 2021 regular session of the Legislature to authorize state probation officers wishing to do so to meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. §926B.

(7) The privileges authorized by the amendments to this section enacted during the 2021 regular session of the Legislature are wholly within the discretion of the Supreme Court of Appeals.

§62-12-6. Powers and duties of probation officers.

(a) Each probation officer shall:

(1) Investigate all cases which the court refers to the officer for investigation and shall report in writing on each case;

(2) Conduct a standardized risk and needs assessment, using the instrument adopted by the Supreme Court of Appeals of West Virginia, for any probationer for whom an assessment has not been conducted either prior to placement on probation or by a specialized assessment officer. The results of all standardized risk and needs assessments are confidential;

(3) Supervise the probationer and enforce probation according to assessment and supervision standards adopted by the Supreme Court of Appeals of West Virginia;

(4) Furnish to each person released on probation under the officer's supervision a written statement of the probationer's conditions of probation together with a copy of the rules prescribed by the Supreme Court of Appeals of West Virginia;

(5) Stay informed concerning the conduct and condition of each probationer under the officer's supervision and report on the conduct and condition of each probationer in writing as often as the court requires;

(6) Use all practicable and suitable methods to aid and encourage the probationer to improve his or her conduct and condition;

(7) Perform random drug and alcohol testing on probationers under his or her supervision as directed by the circuit court;

(8) Maintain detailed work records; and

(9) Perform any other duties the court requires.

(b) The probation officer may, with or without an order or warrant, arrest any probationer as provided in section ten of this article, and arrest any person on supervised release when there is reasonable cause to believe that the person on supervised release has violated a condition of release. A person on supervised release who is arrested shall be brought before the court for a prompt and summary hearing.

(c) Notwithstanding any provision of this code to the contrary:

(1) Any probation officer appointed on or after July 1, 2002, may carry handguns in the course of the officer's official duties after meeting specialized qualifications established by the Governor's Committee on Crime, Delinquency and Correction. The qualifications shall include the successful completion of handgun training, which is comparable to the handgun training provided to law-enforcement officers by the West Virginia State Police and includes a minimum of four hours' training in handgun safety.

(2) Probation officers may only carry handguns in the course of their official duties after meeting the specialized qualifications set forth in subdivision (1) of this subsection.

~~(3) Nothing in this subsection includes probation officers within the meaning of law-enforcement officers as defined in section one, article twenty-nine, chapter thirty of this code.~~

(d) The Supreme Court of Appeals of West Virginia may adopt a standardized risk and needs assessment with risk cut-off scores for use by probation officers, taking into consideration the assessment instrument adopted by the Division of Corrections under subsection (h), section thirteen of this article and the responsibility of the Division of Justice and Community Services to

evaluate the use of the standardized risk and needs assessment. The results of any standardized risk and needs assessment are confidential.”

And,

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

Com. Sub. for H. B. 2770 – “A Bill to amend and reenact §15A-7-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §49-4-719 of said code; to amend and reenact §61-7-11a of said code; to amend and reenact §62-11B-7a of said code; to amend and reenact §62-12-5, of said code and to amend and reenact §62-12-6 of said code, all relating generally to additional persons qualifying for the provisions of the Law-Enforcement Officers Safety Act; clarifying that home incarceration supervisors, state adult probation officers, juvenile probation officers, and state parole officers are, by virtue of their duties, qualified law enforcement officers who may carry a concealed firearm nationwide, as authorized by the federal Law-Enforcement Officers Safety Act; exempting certain persons from prohibition for carrying deadly weapons on the premises of educational facilities; providing the statutory authority to give home incarceration supervisors, state probation officers, juvenile probation officers, and parole officers the option to carry firearms pursuant to applicable federal law; requiring annual firearm training pursuant to federal law; removing inconsistent language relating to probation officers; clarifying that supervisory entities retain sole discretion as to authorizing participation of qualified officers in such program; providing for training to enable home incarceration supervisors, state probation officers, juvenile probation officers, and state parole officers to fully qualify as law enforcement officers if they have not previously done so; and setting forth the duties of supervising authorities as to participation of home incarceration supervisors, state probation officers, juvenile probation officers, and state parole officers.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 624**), and there were— yeas 95, nays 5, absent and not voting none, with the nays being as follows:

Nays: Doyle, Fleischauer, Horst, J. Kelly and J. Pack.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2770) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, to take effect from passage, a bill of the House of Delegates, as follows:

H. B. 2895, Supplementing and amending the appropriations of public moneys to the Department of Veterans’ Assistance.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, to take effect from passage, a bill of the House of Delegates, as follows:

H. B. 2900, Expiring funds to the balance of the Department of Education – State Board of Education – School Building Authority – School Construction Fund.

A message from the Senate, by

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

H. B. 3288, Supplementing and amending appropriations by decreasing and increasing existing items of appropriation in the DHHR.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, to take effect from passage, a bill of the House of Delegates, as follows:

H. B. 3313, Making supplemental appropriation to the Division of Motor Vehicles.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, to take effect from passage, a bill of the House of Delegates, as follows:

H. B. 3314, Making supplemental appropriation to West Virginia State Police.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, to take effect from passage, a bill of the House of Delegates, as follows:

H. B. 3315, Making supplemental appropriation to Division of Environmental Protection - Oil and Gas Reclamation Fund.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, to take effect from passage, a bill of the House of Delegates, as follows:

H. B. 3316, Supplemental appropriation to the Department of Education, State Board of Education.

A message from the Senate, by

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

Com. Sub. for S. B. 34, Creating exemption to state sales and use tax for rental and leasing of equipment.

A message from the Senate, by

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

Com. Sub. for S. B. 263, Permitting online raffles to benefit charitable and public service organizations.

On motion of Delegate Summers, the House concurred in the following amendments by the Senate:

On page seven, section fifteen, subsection (a), by striking out the word “twenty-five”.

And,

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

Com. Sub. for S. B. 263 – “A Bill to amend and reenact §47-20-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §47-20-15 of said code; to amend and reenact §47-21-2 of said code and to amend and reenact §47-21-15 of said code, all relating to charitable bingo and charitable raffles generally; authorizing charitable and public service organizations to raise funds by conducting raffles and bingo virtually over the Internet and authorizing reasonable, necessary, and actual expenses in operating charitable bingo and lottery occasions to not exceed forty percent of gross proceeds; and defining terms.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 625**), and there were—yeas 82, nays 16, absent and not voting 2, with the nays, and the absent and not voting being as follows:

Nays: Barnhart, Bruce, Burkhammer, Conley, Fast, Ferrell, D. Jeffries, Jennings, D. Kelly, Kimes, Mazzocchi, L. Pack, Pinson, Toney, G. Ward and Worrell.

Absent and Not Voting: Foster and Longanacre.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 263) passed.

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

On this question, the yeas and nays were taken (**Roll No. 626**), and there were—yeas 84, nays 16, absent and not voting none, with the nays being as follows:

Nays: Barnhart, Bruce, Burkhammer, Conley, Fast, Hanna, D. Jeffries, Jennings, D. Kelly, Kimes, Mazzocchi, Pinson, Toney, B. Ward, G. Ward and Worrell.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 263) takes effect from its passage.

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

A message from the Senate, by

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

Com. Sub. for S. B. 318, Relating generally to public notice of unclaimed property held by State Treasurer.

A message from the Senate, by
The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, of

Com. Sub. for S. B. 398, Limiting eligibility of certain employers to participate in PEIA plans.

A message from the Senate, by
The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, of

S. B. 532, Limiting claims for state tax credits and rebates.

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

Com. Sub. for S. B. 542, Relating generally to public electric utilities and facilities fuel supply for existing coal-fired plants.

Delegate Kessinger moved that the House of Delegates recede from its amendments.

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

The yeas and nays having been ordered, they were taken (**Roll No. 627**), and there were—yeas 70, nays 30, absent and not voting none, with the nays being as follows:

Nays: Barach, Bates, Boggs, Brown, Capito, Dean, Diserio, Doyle, Evans, Fleischauer, Fluharty, Garcia, Griffith, Hansen, Hornbuckle, Lovejoy, Mallow, McGeehan, Paynter, Pethtel, Pushkin, Queen, Rowe, Skaff, Thompson, Toney, Walker, Williams, Young and Zukoff.

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

The question now being on the passage of the bill, the yeas and nays were taken (**Roll No. 628**), and there were—yeas 89, nays 11, absent and not voting none, with the nays being as follows:

Nays: Barach, Diserio, Doyle, Fleischauer, Griffith, Hansen, Hornbuckle, McGeehan, Pushkin, Rowe and Young.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 542) passed.

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

A message from the Senate, by
The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules as follows:

S. C. R. 76 - "Requesting the Joint Committee on Government and Finance study mental health parity in the State of West Virginia."

Whereas, Mental health parity is complicated and difficult to ascertain even among mental health providers and insurers; and

Whereas, On one hand, providers of mental health services believe that these services are not being reimbursed or delivered on par with physical health services; yet, insurance companies believe that medical necessity criteria and their own internal standards should dictate the level of care; and

Whereas, To determine whether or not these services are being properly reimbursed or delivered, data must be produced by the insurance company; and

Whereas, Federal mental health parity laws require that limitations on mental health and addiction treatment be no greater than those for medical or surgical benefits; and

Whereas, Recently a federal court concluded in *Wit. V. United Healthcare* that the health insurer “breached its fiduciary duty by violating its duty of loyalty, its duty of care, and its duty to comply with plan terms by adopting Guidelines that [were] unreasonable and [did] not reflect generally accepted standards of care” for both residential mental health treatment and intensive outpatient mental health treatment. The court further states that insureds were harmed by being denied their right to fair adjudication of their claims for coverage based on guidelines that were developed solely for the insurer’s benefit. Furthermore, the court found “by a preponderance of the evidence, that [the insurer’s] guidelines were unreasonable and an abuse of discretion because they were more restrictive than generally accepted standards of care.”; and

Whereas, Mental health care providers experience burdensome utilization review paperwork and overly frequent reviews; and

Whereas, Managed care organizations are not following American Society of Addiction Medicine’s criteria for addiction treatment; and

Whereas, Timeliness of prior authorization denials for mental health care treatment by managed care organizations are resulting in loss of revenue for providers; and

Whereas, There are many inconsistencies between managed care organizations for mental health treatment guidelines which make consistent treatment difficult; and

Whereas, West Virginia is facing an ongoing opioid addiction epidemic, which harms not only affected citizens, but their families and communities; and

Whereas, Mental health initiatives are becoming increasingly important across the country as mental health diagnoses have risen; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance study mental health parity in the State of West Virginia; and, be it

Further Resolved, That the study include analysis of guidelines used by managed plan organizations and health insurers in the state as applied to nonquantitative treatment limitations for benefits for behavioral health, mental health, and substance use disorders; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2022, on its findings, conclusions, and recommendations, together with drafts of any legislation or resolutions necessary to effectuate its recommendations; and, be it

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules as follows:

S. C. R. 77 - "Requesting the Joint Committee on Government and Finance to study the fiscal impact of elimination or reduction of current tangible property tax, including commercial machinery and equipment, business inventory and tangible personal property, and corresponding revenue replacement mechanisms to mitigate the budgetary effects on political subdivisions including county and municipal governments, county school boards, and levying bodies."

Whereas, Property taxes provide substantial revenues necessary to finance the provisions of local government services and substantive modifications to the current property taxation may significantly impact delivery of such; and

Whereas, Elimination or reduction of property taxes will have a disparate effect on political subdivisions across this state; and

Whereas, Revenue replacement mechanisms will also have a disparate effect in mitigating potential losses resulting from the elimination or reduction of property taxes; and

Whereas, Participation by all impacted political subdivisions and levying bodies is tantamount to ensuring sustainable delivery of public services to the citizenry; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the fiscal impact of elimination or reduction of current tangible property tax, including commercial machinery and equipment, business inventory and tangible personal property, and corresponding revenue replacement mechanisms to mitigate the budgetary effects on political subdivisions including county and municipal governments, county school boards and levying bodies; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2022, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

At 6:18 p.m., on motion of Delegate Summers, the House of Delegates recessed until 8:00 p.m.

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Evening Session

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

Reordering of the Calendar

Pursuant to the action of the Committee on Rules, Delegate Summers announced that Com. Sub. for S. B. 702, on Third reading, House Calendar, had been transferred to the Special Calendar.

In the absence of objection, **Com. Sub. for S. B. 702**, Relating to involuntary hospitalization, competency, and criminal responsibility of persons charged or convicted of certain crimes, was taken up for consideration.

The bill was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 629**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 702) passed.

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

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect May 27, 2021, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2002, Relating to Broadband.

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

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

“CHAPTER 17. ROADS AND HIGHWAY.

ARTICLE 2E. DIG ONCE POLICY.

§17-2E-3. Use of rights-of-way; broadband conduit installation in rights-of-way; permits; agreements; compensation; valuation of compensation; telecommunications facilities construction and installation in rights of way.

~~(a) Before obtaining a permit for the construction or installation of a telecommunications facility in a right of way, a telecommunications carrier, must enter into an agreement with the division consistent with the requirements of this article.~~

~~(b) Before granting a permit for longitudinal access or wireless access to a right of way, the division shall:~~

~~(1) First enter into an agreement with a telecommunications carrier, that is competitively neutral and nondiscriminatory as to other telecommunications carriers, and~~

~~(2) Upon receipt of any required approval or concurrence by the Federal Highway Administration the division may issue a permit granting access under this section: *Provided*, That the division shall comply with all applicable federal regulations with respect to approval of an agreement, including, but not limited to, 23 C.F.R. §710.403 and 23 C.F.R. §710.405. The agreement shall be approved by the Commissioner of Highways in order to be effective and, without limitation:~~

~~(A) Specify the terms and conditions for renegotiation of the agreement;~~

~~(B) Set forth the maintenance requirements for each telecommunications facility;~~

~~(C) Be nonexclusive; and~~

~~(D) Be for a term of not more than 30 years;~~

~~(c) Unless specifically provided for in an agreement entered into pursuant to subsection (a) of this section, the division may not grant a property interest in a right of way pursuant to this article.~~

~~(d) A telecommunications carrier shall compensate the division for the use of spare conduit or related facilities owned or controlled by the division as part of any longitudinal access or wireless access granted to a right of way pursuant to this section. The compensation must be, without limitation:~~

~~(1) At fair market value: *Provided*, That because the social, environmental, and economic benefits from such use of state highway rights-of-way is of overwhelming value to the citizens of this state and is in the overall public interest, the division shall establish the fair market value for purposes of this article at \$0 in monetary compensation;~~

~~(2) Competitively neutral;~~

~~(3) Nondiscriminatory;~~

~~(4) Open to public inspection;~~

~~(5) Determined based on the geographic region of this state, taking into account the population and the impact on private right of way users in the region; and once determined, set at an amount that encourages the deployment of digital infrastructure within this state; and~~

~~(6) Paid with in-kind compensation.~~

~~(e) The division may consider adjustments for areas the division, in conjunction with the council, determines are underserved or unserved areas of the state and may consider the value~~

~~to such areas for economic development, enhancing the transportation system, expanding opportunities for digital learning, and telemedicine.~~

~~(f) For the purpose of determining the amount of in-kind compensation a telecommunications carrier must pay the division for the use of spare conduit or excess conduit or related facilities of the division as part of any longitudinal access or wireless access granted to a right-of-way pursuant to this section, the division may:~~

~~(1) Conduct an analysis once every five years, in accordance with the rules, policies, or guidelines of the division, to determine the fair market value of a right-of-way to which access has been granted pursuant to this section; and~~

~~(2) Determine the fair market value of the in-kind compensation based on the incremental costs for the installation of conduit and related facilities~~

(a) If in-ground construction or installation of a telecommunications facility in rights-of-way owned or controlled by the division serves a public purpose and shall be accommodated as a utility pursuant to federal and state law, the division will receive applications and issue a permit consistent with this section with respect to requirements and conditions for performing work in division rights-of-way.

(b) Upon receipt of a complete application as specified in the Accommodation of Utilities on Highway Right-of-Way and Adjustment and Relocation of Utility Facilities on Highway Projects Policy, or equivalent policy, as may be currently enforced by the division, that specifies the requirements and conditions for performing work in a right-of-way, the division shall, within 60 business days, advise applicant in writing of any deficiencies with the planned project that:

(1) Adversely affect the safety, design, construction, operation, maintenance, or stability of the state road system;

(2) Interfere with or impair the present use or planned future expansion of any affected highway or bridge;

(3) Conflict with applicable division policy with respect to requirements and conditions for performing work in division rights-of-way; or

(4) Violates applicable federal or state law.

(c) An applicant may correct any deficiencies and resubmit the application, which shall be reviewed by the division and either approved or denied within 30 days of the resubmittal. Any denial of a resubmittal shall be in writing and explain any deficiencies as provided in subsection (b) of this section. After the division approves a permit application, notwithstanding any other provision of this code to the contrary, the division shall issue a specific district level construction authorization for the approved project within 10 business days unless specific logistical issues reasonably prevent commencement.

(d) Compliance with applicable environmental laws shall at all times be the responsibility of the applicant. If any environmental clearance must be performed by the division before an application is approved, the division will notify the applicant in writing of all necessary requirements for such clearance within 15 business days of receiving a complete application. The

division will also provide a list of all known federal and state entities with whom an applicant may also need to consult and coordinate for environmental clearance purposes.

(e) The division will create and make available for potential applicants an informational notice specific to in-ground telecommunications facility construction and installation that explains routine issues for such projects, including a consolidated checklist or flow chart of all state or federal regulatory requirements, including but not limited to applicable permits, required reviews, required approvals, and required forms. The division shall annually update such informational notice for accuracy and completeness by coordination with each state or federal agency having required regulatory action in the permitting process legal, regulatory, and division requirements and may request the assistance of the Office of Broadband in preparing this informational notice.

~~(g)~~ (f) The provisions of this article shall not apply to the relocation or modification of existing telecommunications facilities in a right-of-way, nor shall these provisions apply to aerial telecommunications facilities or associated apparatus or equipment in a right-of-way. Relocation of telecommunications facilities within rights-of-way for state highways shall be in accordance with the provisions of §17-4-17b of this code.

§17-2E-5. Telecommunications carrier initiated construction and joint use.

(a) Upon application for a permit, ~~the applying telecommunications carrier~~ applicant shall notify, by email, the ~~council~~ Office of Broadband and all other telecommunications carriers on record with the ~~council~~ office of the application. Other telecommunications carriers have 15 calendar days to notify the applicant of their interest to share the applicant's trench. This requirement extends to all underground construction technologies.

(b) If no competing telecommunications carrier provides notice of interest to share the applicant's trench within 15 calendar days of notice of the project, ~~the carrier applying for the permit~~ applicant shall ~~affirm that fact to the division prior to being issued a permit~~ provide written certification in accordance with subsection (g) of this section.

(c) If a competing telecommunications carrier provides notice of interest to share the applicant's trench, an agreement between the two (or more) telecommunications carriers shall be executed by those entities within 30 days of the notice of interest, outlining the responsibilities and financial obligations of each, with respect to the installation within the right-of-way. The financial obligations of each carrier shall be based on the proportionate sharing of costs between each carrier for joint trenching or trench sharing based on the amount of conduit or innerduct space or excess conduit that is authorized in the agreements entered into pursuant to this article. If the division uses a trench, it shall also pay its proportional share unless it is utilizing the trench as in-kind payment for use of the right-of-way, or the division has otherwise determined, in its sole discretion, that including the division in the apportionment of costs is not warranted. A copy of the executed agreement shall be provided to the division.

(d) Should a dispute arise between the initial applying telecommunications carrier and a competing telecommunications carrier, including a failure to execute an agreement required by subsection (c) of this section, the dispute shall be adjudicated by the Public Service Commission. All disputes brought to the Public Service Commission under this article shall be adjudicated within 45 days.

(e) If two or more telecommunications carriers are required or authorized to share a single trench, each carrier in the trench must share the cost and benefits of the trench in a fair,

reasonable, competitively neutral, and nondiscriminatory manner. This requirement extends to all underground construction technologies.

~~(f) The commissioner of the division shall promulgate rules governing the relationship between the telecommunications carriers, as hereinafter provided in this article~~

~~(g)~~ The provisions of this section do not apply to the following projects:

(1) Projects where the total continuous length of the trench is less than 1,000 feet;

(2) Projects that use the direct bury of cable or wire facilities;

(3) Projects that are solely for the service of entities involved in national security matters or where the disclosure or sharing of a trench location would be against federal policy; or

(4) Projects made available for lease to competing telecommunications carriers on a nondiscriminatory basis at rates established by the rules of the Federal Communications Commission Projects where the telecommunications carrier installs an amount of spare conduit or innerduct equal to what is being installed for its own use and which is given to the Office of Broadband. Such spare conduit or innerduct shall be made available for sale or lease to competing telecommunications carriers on a nondiscriminatory basis at rates apportioned on the basis of the cost of the installation thereof, to other telecommunications providers, and the revenues derived from such sale, less any costs associated therewith, shall be remitted to the telecommunications carrier that installed such spare conduit or innerduct established by the rules of the Federal Communications Commission in a manner consistent with all applicable state and federal law and regulations. All carriers installing spare conduit or innerduct shall notify the council and the Office of Broadband of the location and capacity of such spare conduit and innerduct upon completion of the project, and the council shall make such information publicly available for competing telecommunications carriers.

(g) The Office of Broadband is responsible for ensuring compliance with this section and will provide the division and the applicant with certification of compliance at such time as the applicant has met all of the requirements of this section.

§17-2E-6. In-kind compensation.

[Repealed].

§17-2E-7. ~~Multiple carriers in a single trench.~~ Use of telecommunications facilities owned or controlled by Division of Highways.

~~(a) If the Division of Highways enters into an agreement with two or more telecommunications carriers, a consortium or other entity whose members, partners or other participants are two or more telecommunications carriers, or, if the Division requires or allows two or more telecommunications carriers to share a single trench, the agreements entered into pursuant to this article shall require that the telecommunications carriers share the obligation of compensating the Division of Highways on a fair, reasonable and equitable basis, taking into consideration the proportionate uses and benefits to be derived by each telecommunications carrier from the trench, conduits, and other telecommunications facilities installed under the agreements.~~

~~(b) The provisions of §17-2E-7(a) of this code do not prevent the Division of Highways from requiring every participating telecommunications carrier to bear joint and several liability for the obligations owed to the Division of Highways under the agreements.~~

~~(c) Any agreement requiring two or more telecommunications carriers to share the obligation of compensating the Division of Highways shall provide the Division the right to review and audit the records and contracts of and among the participating carriers to ensure compliance with §17-2E-7(a) of this code~~

The division may enter into an agreement and issue a permit consistent with the requirements of §17-2E-3 of this code to allow any carrier to use excess telecommunications facilities owned or controlled by the division: *Provided*, That this section shall be subject to the provisions of the Vertical Real Estate Management and Availability Act, as provided for in §31G-5-1 *et seq.* of this code, and no excess telecommunications facilities owned or controlled by the division subject to §31G-5-1 *et seq.* of this code shall be governed by the provisions of this section.

§17-2E-8. Existing policies. Disposal of in-kind compensation; excess telecommunications facilities.

~~(a) The requirements set forth in this article do not alter existing rules, policies, and procedures relating to other utility facilities within a right-of-way or for accommodating utility facilities or other facilities under the control of the Division of Highways.~~

~~(b) The Division of Highways may consider the financial and technical qualifications of a telecommunications carrier when determining specific insurance requirements for contractors authorized to enter a right-of-way to construct, install, inspect, test, maintain, or repair telecommunications facilities with longitudinal access or wireless access to the right-of-way.~~

~~(c) If the Division of Highways authorizes longitudinal access, wireless access, or the use of, and access to, conduit or related facilities of the Division for construction and installation of a telecommunications facility, the Division may require an approved telecommunications carrier to install the telecommunications facility in the same general location as similar facilities already in place, coordinate their planning and work with other contractors performing work in the same geographic area, install in a joint trench when two or more telecommunications carriers are performing installations at the same time and equitably share costs between such carriers.~~

~~(d) The placement, installation, maintenance, repair, use, operation, replacement, and removal of telecommunications facilities with longitudinal access or wireless access to a right-of-way or that use or access conduit or related facilities of the Division shall be accommodated only when in compliance with this code and Division of Highways rules, policies and guidelines.~~

~~(e) Access to a right-of-way must be administered in compliance with the Telecommunications Act of 1996, 47 U.S.C. §151, *et seq.*, as amended~~

Upon written approval of the Governor, the division may transfer or assign the ownership, control, or any rights related to any excess telecommunications facilities owned or controlled by the division to any other state agency.

§17-2E-9. Rule-making authority.

~~The Commissioner of the Division of Highways may promulgate rules pursuant to the provisions of §29A-3-15 of this code as may be necessary to carry out the purpose of this article, and as may have been specifically delineated within this article~~

The commissioner of the division may promulgate rules pursuant to the provisions of §29A-3-1 et seq. of this code as may be necessary to carry out the purpose of this article.

CHAPTER 31G. BROADBAND ENHANCEMENT AND EXPANSION POLICIES.

ARTICLE 1. BROADBAND ENHANCEMENT COUNCIL.

§31G-1-4. Powers and duties of the council generally.

(a) The council shall

(1) Explore any and all ways to expand access to broadband services, including, but not limited to, middle mile, last mile and wireless applications;

(2) Gather data regarding the various speeds provided to consumers in comparison to what is advertised. The council may request the assistance of the Legislative Auditor in gathering this data;

(3) Explore the potential for increased use of broadband service for the purposes of education, career readiness, workforce preparation and alternative career training;

(4) Explore ways for encouraging state and municipal agencies to expand the development and use of broadband services for the purpose of better serving the public, including audio and video streaming, voice-over Internet protocol, teleconferencing and wireless networking; ~~and~~

(5) Cooperate and assist in the expansion of electronic instruction and distance education services; and

(6) Explore ways to achieve digital equality of opportunity throughout the state, which is a condition where all individuals and communities have the information technology capacity needed for full participation in our society, democracy and economy.

(b) In addition to the powers set forth elsewhere in this article, the council is hereby granted ~~has and may exercise the powers~~ authority ~~necessary or appropriate to carry out and effectuate the purpose and intent of this article, as to:~~ The council shall have the power and capacity to

~~(1) Provide consultation services to project sponsors in connection with the planning, acquisition, improvement, construction or development of any broadband deployment project~~

~~(2)~~ (1) Promote awareness of public facilities that have community broadband access that can be used for distance education and workforce development;

~~(3)~~ (2) Advise on deployment of e-government portals such that all public bodies and political subdivisions have homepages, encourage one-stop government access and that all public entities stream audio and video of all public meetings;

~~(4)~~ (3) Make and execute contracts, commitments and other agreements necessary or convenient for the exercise of its powers, including, but not limited to, the hiring of consultants to

~~perform the duties of the council assist in the mapping of the state and categorization of areas within the state;~~

~~(5) (4) Acquire by gift or purchase, hold, or dispose of real property and personal property in the exercise of its powers and performance of its duties as set forth in this article; and~~

~~(4) (5) Receive and dispense funds appropriated for its use by the Legislature or other funding sources or solicit, apply for and receive any funds, property or services from any person, governmental agency or organization to carry out its statutory duties.~~

~~(7) to oversee the use of conduit installed pursuant to section two of article three of this chapter; and to~~

~~(8) Perform any and all other activities in furtherance of its purpose~~

(c) The council shall ~~exercise its powers and authority to~~ advise and make recommendations to the ~~Legislature~~ Office of Broadband, and shall coordinate with the office on bringing broadband service to unserved and underserved areas, as well as to propose statutory changes that may enhance and expand broadband in the state.

(d) The council shall report to the Secretary of Economic Development ~~Joint Committee on Government and Finance~~ on or before January ~~December~~ 1 of each year. The report shall include the action that was taken by the council during the previous year in carrying out the provisions of this article. The council shall also make any other reports as may be required by the Legislature or the Governor.

§31G-1-6. Mapping of areas within state.

[Repealed]

§31G-1-9. Collection of data.

[Repealed]

§31G-1-12. Grants.

[Repealed]

ARTICLE 1A. OFFICE OF BROADBAND.

§31G-1A-1. Office of Broadband; Director of Office.

There is hereby established an Office of Broadband, which shall be organized within the Department of Economic Development under the authority of the Secretary of Economic Development. The Office of Broadband shall be managed by a director, who shall report to the Secretary of Economic Development.

§31G-1A-2. Powers and duties of the Office of Broadband generally.

(a) The Office of Broadband shall have the following duties:

(1) Explore any and all ways to expand access to broadband services, including, but not limited to, middle mile, last mile, and wireless applications;

(2) Gather data regarding the various speeds provided to consumers in comparison to what is advertised. The office may request the assistance of the Legislative Auditor in gathering this data;

(3) Cooperate and assist in the expansion of electronic instruction and distance education services;

(4) Gather and report data regarding the adoption by broadband services, by speed, and by community, separately for residential and non-residential consumers;

(5) Gather and report data regarding prices charged for broadband services to residential and non-residential consumers, including, but not limited to one-time fees, monthly fees, termination fees, equipment fees, and other fees;

(6) Incorporate the goal of digital equality in its fulfillment of responsibilities, which is a condition where all individuals and communities have the information technology capacity needed for full participation in our society, democracy, and economy;

(7) Provide for the increased public awareness of issues concerning broadband services; and

(8) Report to the Joint Committee on Government and Finance of the West Virginia Legislature on or before December 30 of each year.

(b) In addition to the powers set forth elsewhere in this article, the Office of Broadband is hereby granted the authority necessary and appropriate to carry out and effectuate the purpose and intent of this article, including, but not limited to, the authority to:

(1) Make and execute contracts, commitments, and other agreements necessary or convenient for the exercise of its powers, including, but not limited to, the hiring of consultants to assist in the mapping of the state and categorization of areas within the state;

(2) Acquire by gift or purchase, hold, or dispose of real or personal property in the exercise of its powers and performance of its duties as set forth in this article;

(3) Receive and dispense funds appropriated for its use by the Legislature or other funding sources or solicit, apply for, and receive any funds, property, or services from any person, governmental agency, or organization to carry out its statutory duties;

(4) To oversee the use of conduit installed pursuant to §31G-3-2 of this code;

(5) Make recommendations to the Legislature on bringing broadband service to areas of the state;

(6) Contract with and retain outside expert consultants to assist in the purposes of this article;

(7) Create guidelines for, and recommend to the Legislature, a means of implementing a voluntary donation program to allow for pipeline, railroad, and other similar structures and rights-

of-way in the state to be donated to the state for use by public or private entities to facilitate broadband service and availability through placement of fiber;

(8) Create guidelines for, and recommend to the Legislature, a means of implementing a program to allow for an easement program to be established to allow public or private entities to facilitate broadband service and availability through placement of fiber;

(9) Coordinate with the Consumer Protection Division of the Office of the Attorney General to provide for the following consumer protections:

(A) If a broadband service to a subscriber is interrupted for more than 24 continuous hours, such subscriber shall, upon request, receive a credit or refund from the broadband operator in an amount that represents the proportionate share of such service not received in a billing period, provided such interruption is not caused by the subscriber;

(B) A broadband operator may not deny service, deny access, or otherwise discriminate against subscribers, channel users, or any other citizens on the basis of age, race, religion, sex, physical handicap, political affiliation, political views, or exercise of other speech protected by the 1st Amendment to the United States Constitution, or country of natural origin;

(C) A broadband operator shall provide subscribers 30 days advance written notice of any changes to rates or charges, including the expiration of any promotion or special pricing that would result in an increase in the subscribers billing or cost of service; and

(D) A broadband operator shall inform subscribers and provide written notice to subscribers that disputes regarding interrupted or substandard service or billing issues, which are unresolved to satisfaction of the subscriber; and

(10) Perform any and all other activities in furtherance of the purposes of this article.

(c) In furtherance of the purposes of this article, the Office of Broadband is permitted to seek non-state funding and grants. The Office of Broadband may utilize funding and grants to support the responsibilities, initiatives, and projects set forth in this article. The Office of Broadband may additionally disburse such moneys to fund projects and initiatives in furtherance of the enhancement and expansion of broadband services in this state, and the other purposes of this article.

§31G-1A-3. Mapping of areas within state.

(a) Based on its analysis of data, broadband demand, and other relevant information, the Office of Broadband shall establish a mapping of broadband services in the state. The council shall publish an annual assessment and map of the status of broadband, including specific designations of unserved areas of the state. With respect to unserved areas of the state, the Office of Broadband shall, to the extent it is able, map project areas with funding provided by public entities. For the purposes of this section, the term 'unserved area' means an area lacking broadband internet service from at least one terrestrial broadband internet service provider offering all of the following in at least one service plan to residential consumers: (1) an actual downstream data rate of at least 25 megabits per second; and (2) an actual upstream data rate of at least three megabits per second; and (3) unlimited data usage without overage charges; and (4) unlimited data usage without 'throttling' or reduction of downstream or upstream data rate due, in whole or in part, to the amount of data transferred in any period.

(b) To the extent possible, and subject to limitations contained in subsection (g) of this section, the Office of Broadband shall additionally establish an interactive public map reflecting estimated or actual downstream data rate and upstream data rate in a particular region, area, community, street or location. Any such mapping may only specify data rates at a particular street address or physical location, and shall not make public the IP address or the name of the specific individual at such location. This map shall be known as the West Virginia Broadband Availability Map.

(c) To the extent possible, and subject to limitations contained in subsection (g) of this section, the Office of Broadband shall additionally establish an interactive public map reflecting the adoption of broadband services, separately by estimated or actual downstream data rate and upstream data rates, in a particular region, area, community, street or location. Any such mapping shall provide data separately for residential connections and non-residential connections. This map shall be known as the West Virginia Broadband Adoption Map.

(d) The mapping provided for in this section may be based on information collected or received by the Broadband Council and Office of Broadband, including, but not limited to, data collected from:

(1) State and federal agencies or entities that collect data on broadband services;

(2) Industry provided information;

(3) Consumer data provided to the Broadband Council or Office of Broadband pursuant to §31G-1A-6 and §31G-1A-9 of this code; and

(4) Other data sources procured by or provided to the Office of Broadband or the Broadband Council.

(e) Any entity that has received or hereinafter receives state or federal moneys, and which has used those moneys to install infrastructure used for broadband services, shall furnish detailed information concerning the location, type, and extent of such infrastructure to the Office of Broadband for use in mapping and shall furnish the location, type, and prices of any broadband services subscribed to by residential (and separately non-residential) consumers as a result of the installed infrastructure.

(f) The mapping and designations provided for under this section may be revised on a continuing basis by the office as warranted by the data and information provided.

(g) In addition to the provisions of §31G-1A-13 of this code, the mapping of broadband services may exclude from public accessibility and availability:

(1) The location or identity of any critical infrastructure used by public or private entities in furtherance of their internet services;

(2) Personal name and personal IP addresses connected with particular data rates; and

(3) Information designated as confidential for public security reasons by either state or federal homeland security agencies: *Provided*, That it shall be duty of the public and private entities to make the Office of Broadband aware of such confidential designation: *Provided, however*, That unless the Office of Broadband determines good cause exists, the actual or estimated upstream

and downstream data rates of an area or region of the state shall not be excluded from public or private availability.

(h) All executive agencies which have permitting and/or regulatory approval authority over any project permitted or reviewed and approved pursuant to §17-2E-3 of this code shall cooperate with and provide all necessary information to the Office of Broadband to determine the feasibility and federal allowability of creating Advanced Regulatory Environment Analysis (AREA) maps. AREA maps will pre-survey likely routes for middle-mile infrastructure so all relevant information can be included in a centralized GIS mapping system to be maintained by the Office of Broadband for utilization by the private sector when extending new fiber infrastructure pursuant to §17-2E-1 et seq. of this code. AREA mapping shall also include, but is not limited to, any areas already granted Finding of No Significant Impact ('FONSI'), categorical exclusions ('CATEX'), areas prior approved by the West Virginia State Historic Preservation Office ('SHPO'), and all West Virginia Division of Highways mapping for permits that include installation of infrastructure.

(i) If in analyzing the consumer-supplied speed data for an area of two square miles or more, the Office of Broadband finds that speeds supplied by a provider are less than 80% of the lowest speed tier advertised by the provider in more than 40% of the tests in that area in a calendar year, then the Office of Broadband shall notify the Consumer Protection Division of the Attorney General's Office, and shall transmit such records of any relevant speed tests in their custody to the Consumer Protection Division of the Attorney General's Office.

§31G-1A-4. Collection of data.

(a) In order to ascertain, categorize, analyze, map, and update the status of broadband in the state, as well as to enable the Office of Broadband to make informed policy and legislative recommendations, the Office of Broadband may establish a voluntary data collection program. The program may include voluntarily submitted data from internet service providers, including any home or region data rate meters utilized by the provider. The program may also utilize and collect voluntarily submitted data rate information submitted by any person reflecting the person's personal data rate at a particular IP address. This personal data rate may be based upon a web-based test or analysis program.

(b) Any and all data collected by the Office of Broadband shall not be deemed public information and is not subject to public release or availability pursuant to §29B-1-1 et seq. of this code.

(c) Any data collection program established by the Office of Broadband shall:

(1) Make clear to those providers or persons submitting information that the data rate speed may become public, including specific reference to the person's physical address;

(2) Make clear this is a voluntary data collection program and that submission of information shall be deemed consent to use and make public such data rate information; and

(3) Not include any person's personal web history or search information, or otherwise publicly identify the person's name in connection with an IP address or physical address.

(d) The Office of Broadband may establish guidelines and additional rules governing a data collection program through the legislative rulemaking pursuant to the provisions of §29A-3-1 et seq. of this code.

§31G-1A-5. Protection of proprietary business information.

(a) Broadband deployment information provided to the Office of Broadband or its consultants and other agents, including, but not limited to, physical plant locations, subscriber levels, and market penetration data, constitutes proprietary business information and, along with any other information that constitutes trade secrets, shall be exempt from disclosure under the provisions of §29B-1-1 et seq. of this code: *Provided*, That the information is identified as or would reasonably be contemplated to be confidential information when submitted to the Office of Broadband.

(b) Trade secrets or proprietary business information obtained by the council or the Office of Broadband from broadband providers and other persons or entities shall be secured and safeguarded by the state. Such information or data shall not be disclosed to the public or to any firm, individual, or agency other than officials or authorized persons of the state.

(c) The official charged with securing and safeguarding trade secrets and proprietary data for the Office of Broadband is the Secretary of Economic Development, who is authorized to establish and administer appropriate security measures.

§31G-1A-6. Legislative rule-making authority.

In order to implement and carry out the intent of this article, the Secretary of the Department of Economic Development may propose rules for legislative approval pursuant to the provisions of §29A-3-1 et seq. of this code.

ARTICLE 3. CONDUIT INSTALLATION; MICROTRENCHING.**§31G-3-3. Conduit installation or fiber installation by counties, municipalities, and other political subdivisions.**

(a) Notwithstanding any other provision of this code to the contrary, any county, municipality, or other political subdivision of the State of West Virginia may:

(1) Install or contract with any entity for the installation of conduit, fiber, or broadband facilities throughout that political subdivision;

(2) Partner with any of the following entities, or any combination thereof, to install such conduit or communications facilities throughout that political subdivision:

(A) Nonprofit organization;

(B) Cooperative association;

(C) Another county, municipality, or political subdivision;

(D) Private corporations, company, or person; or

(E) Public-private partnership; and

(4) Partner with any of the following entities, or any combination thereof, which operate a network operations center, to operate a fiber network: *Provided*, That a political subdivision may operate a network for their own use:

- (A) Nonprofit organization;
- (B) Cooperative association;
- (C) Another county, municipality, or political subdivision;
- (D) Private corporations, company, or person; or
- (E) Public-private partnership.

§31G-3-4. Compatible use.

(a) A broadband operator shall be authorized to construct or operate a broadband system:

(1) Over public rights-of-way; and

(2) Through easements, which are within the area to be served by the broadband system and which have been dedicated for compatible uses.

(b) In installing, operating, and maintaining facilities, the broadband operator shall avoid all unnecessary damage and injury to any trees, structures, and improvements in and along the routes utilized for the system.

(c) The broadband operator shall indemnify and hold the state, county and municipality harmless at all times from any and all claims for injury and damage to persons or property, both real and personal, caused by the installation, operation, or maintenance of its broadband system, notwithstanding any negligence on the part of the state, county, and/or municipality, their employees, or agents. Upon receipt of notice in writing from the state, county, and/or municipality, the broadband operator shall, at its own expense, defend any action or proceeding against the state, county and/or municipality in which it is claimed that personal injury or property damage was caused by activities of the broadband operator in the installation, operation or maintenance of its broadband system.

(d) The use of public highways and other public places shall be subject to:

(1) All applicable state statutes, municipal ordinances and all applicable rules governing the construction, maintenance, and removal of overhead and underground facilities of public utilities;

(2) For county highways, all applicable rules adopted by the governing body of the county in which the county highways are situated;

(3) For state or federal-aid highways, all public welfare rules adopted by the Commissioner of the Division of Highways; and

(4) With respect to the use of any public highway that crosses the trackway of any railroad, nothing in this article shall be construed to provide for any greater or any lesser compliance with any safety policy or procedure established by the railroad with respect to the construction of utility crossings across the railroad's trackway that is applicable to any other similarly situated utility, whether utilizing aerial or buried lines.

(e) In the use of easements dedicated for compatible uses, the broadband operator shall ensure:

(1) That the safety, functioning, and appearance of the property and the convenience and safety of other persons is not adversely affected by the installation or construction of facilities necessary for a broadband system; and

(2) That the owner of the property is justly compensated by the broadband operator for any damages caused by the installation, construction, operation, or removal of facilities by the broadband operator.

(f) An 'easement dedicated for compatible uses' is a public or private easement for electric, gas, telephone, or other utility transmission

ARTICLE 4. MAKE-READY POLE ACCESS.

§31G-4-1. Definitions.

As used in this article, the following terms are defined as follows:

(1) 'Applicable codes' means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, including, but not limited to, the National Electrical Safety Code, or any local amendments to those codes: *Provided*, That notwithstanding any other provisions of said applicable codes, the Code of West Virginia, or the West Virginia Code of State Rules, variances for the installation and maintenance of broadband service infrastructure on utility poles shall be permitted if these are agreed upon between infrastructure owners.

~~(1)~~ (2) 'Attacher' means any person, corporation, or other entity, or the agents or contractors of such seeking to permanently or temporarily fasten or affix any type of equipment, antenna, line, or facility of any kind to a utility pole in the right of way or its adjacent ground space.

~~(2)~~ (3) 'Attachment Application' means the application made by an Attacher to a Pole Owner for attachment of equipment, antenna, line or facility of any kind to a utility pole. It shall include:

(A) Proof of insurance; or

(B) An indemnification agreement prepared by the Pole Owner.

~~(3)~~ (4) 'Make Ready Costs' means the costs incurred by an Attacher associated with the transfer of the facilities, antenna, lines, or equipment of a Pre-Existing Third Party User, undertaken by an Attacher to enable attachment to the utility pole or similar structure. Make-Ready Costs that are to be paid by an Attacher include, without limitation, all costs and expenses to relocate or alter the attachments or facilities of any Pre-Existing Third Party User as may be necessary to accommodate an Attacher's attachment.

~~(4)~~ (5) 'Pole Owner' means a person, corporation or entity having ownership of a pole or similar structure in the right of way to which utilities, including without limitation, electric and communications facilities, are located or may be located whether such ownership is in fee simple or by franchise.

~~(5)~~ (6) 'Pre-Existing Third Party User' means the owner of any currently operating facilities, antenna, lines or equipment on a pole or its adjacent ground space in the right of way.

§31G-4-2. Attachment to third party facilities.

(a) Upon approval of an Attachment Application, an Attacher may relocate or alter the attachments or facilities of any Pre-Existing Third Party User as may be necessary to accommodate an Attacher's attachment using Pole Owner approved contractors; provided, however, that an Attacher will not effectuate a relocation or alteration of a Pre-Existing Third Party User's facilities that causes or would reasonably be expected to cause a customer outage without first providing 45 days prior written notice to the Pre-Existing Third Party User, in order to permit the Pre-Existing Third Party User to relocate its facilities on its own.

(b) In the event the Pre-Existing Third Party Users of such other facilities fail to transfer or rearrange their facilities within ~~forty-five~~ 45 days from receipt of notice of relocation or alteration of a Pre-Existing Third Party User's facilities that causes or would reasonably be expected to cause a customer outage, an Attacher may undertake such work.

(c) Within 30 days of the completion of any relocation or alteration, an Attacher shall send notice of the move and as-built reports to the Pre-Existing Third Party User and the owner of all poles or other structures on which such relocations or alterations were made. The as-built reports shall include a unique field label identifier, and an address or coordinates.

(d) Upon receipt of the as-built reports, the Pre-Existing Third Party User and pole or structure owner(s) may conduct an inspection within 14 days at an Attacher's expense. An Attacher shall pay the actual, reasonable, and documented expenses incurred by the Pre-Existing Third Party User and pole or structure owner for the inspection. If any such relocation or alteration results in the facilities of the Pre-Existing Third Party User on the pole or other structure failing to conform with the applicable safety Pole Owner's standards, the Pre-Existing Third Party User shall, within seven days of the inspection, notify an Attacher of such failure to conform.

(e) In a notice, the Pre-Existing Third Party User may elect to either:

(1) Perform the correction itself and bill the Attacher for the actual, reasonable and documented costs of the correction, or

(2) Instruct the Attacher to correct such conditions at Attacher's expense. Any post-inspection corrections performed by the Attacher must be completed within 30 days of such notification.

(f) As a condition of exercising the ability to relocate, rearrange, or alter a Pre-Existing Third Party User's facilities pursuant to this section, an Attacher shall indemnify, defend and hold harmless the owner or owners of all poles or other structures on which such relocation, rearrangement or alteration takes place, the affiliates of such owner or owners, and the officers, directors and employees of such owner or owners and their affiliates, each being deemed an Indemnitee, from and against all third party damage, loss, claim, demand, suit, liability, penalty or forfeiture of every kind and nature, including, but not limited to, costs and expenses of defending against the same, payment of any settlement or judgment therefor and reasonable attorney's fees, that are actually and reasonably incurred by an Indemnitee, by reason of any claim by an affected Pre-Existing Third Party User or any person or entity claiming through such Pre-Existing Third Party User arising from such relocation, rearrangement or alteration.

(g) All work performed must be in accordance with applicable codes, as defined in section one of this article, including, but not limited to, the National Electrical Safety Code ~~and other generally~~

accepted safety codes; *Provided*, That the variances to applicable codes and to private agreements as set forth in §31G-6-1 of this code shall apply to this section.

(h) In the event an ILEC accepts payment for make-ready work, and fails to perform that work within 45 days, the ILEC which has been paid and which has failed to perform the work, shall immediately return and refund the moneys paid for that work which was not completed. Failure to return those funds within 14 calendar days shall be cause for a fine, payable to the Public Service Commission, equal to the amount of the payment and a cause of action in circuit court for return of the payment and is subject to treble damages, reasonable attorney's fees, and any applicable court costs. Good-cause and good-faith efforts to have performed the work shall be a defense against the imposition of any fine: *Provided*, That the provisions of this subsection shall not apply to any make-ready work where a pole replacement is necessary.

§31G-4-4. Public Service Commission jurisdiction; rulemaking; enforcement.

(a) The Public Service Commission shall possess and exercise regulatory jurisdiction over the provisions of this article. The commission shall administer and adjudicate disputes relating to the issues and procedures provided for under this article.

(b) The commission shall adopt the rates, terms, and conditions of access to and use of poles, ducts, conduits, and rights-of-way as provided in 47 U.S.C. § 224 and 47 C.F.R. § 1.1401 – 1.1415, inclusive, of the dispute resolution process incorporated by reference in those regulations and any subsequent modifications or additions to the provisions of the United States Code or Code of Federal Regulations provisions referenced herein.

(c) The commission shall certify to the Federal Communications Commission that this state, as evidenced by the enactment of this article, hereby exercises jurisdiction over the regulation of pole attachments. The certification shall include notice that the State of West Virginia hereby:

(1) Regulates the rates, terms, and conditions related to pole attachments; and

(2) In so regulating such rates, terms, and conditions, the state has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the services.

(d) (1) Notwithstanding subsection (b), the commission shall promulgate rules to address abandoned cable, conductor, and related facilities attached to utility poles. The rules shall include provisions that:

(A) Provide for the pole owner to fully recover from the owner of the attachment the costs incurred by the pole owner for the removal and disposal of abandoned cable, conductors, and related facilities;

(B) Address situations where the pole owner is unable to receive full recovery of its removal and disposal costs from the owner of the attachment by instead receiving recovery of its net unrecovered costs from its jurisdictional customers, including other Attachers, in such manner as the commission determines is just and reasonable; and

(C) Allow the pole owner to book or defer these net costs on its accounting books and request recovery to the commission outside of a base rate case proceeding through a surcharge or other rate recovery mechanism.

(2) Any pole owner, after making reasonable efforts to require the attachment owner to remove abandoned facilities, that proceeds to remove what the pole owner reasonably believes is abandoned cable, conductor, and related facilities, shall be released and held harmless from liability from claims or any related losses claimed by the Attacher or others for the pole owner's removal work, including any loss of property value, potential business value, salvage value, or any other value of such cable, conductor, and related facilities.

(e) Notwithstanding subsection (b), the commission shall promulgate rules to govern the timely transfer of facilities from an old pole to a new pole and the removal of utility poles that have had electric facilities moved to new poles but continue to have other facilities attached in the telecommunications space on the old existing poles. Should the attached facilities not be transferred in a timely manner from the old pole to the new pole by the owner of the attachments, as determined by the commission, the rules shall address this matter and include the right and mechanism of the pole owner itself to transfer the facilities to the new pole, to remove the old pole, and to recover its costs fully and timely from the owner of the facilities transferred. Any pole owner who transfers facilities from an old pole to a new pole, after reasonable due diligence, shall be released and held harmless from liability for its transfer work, except for acts of negligence or willful misconduct.

ARTICLE 6. PRE-EMPTION OF CONFLICTING LOCAL ORDINANCES AND PRIVATE RESTRICTIONS

§31G-6-1. Pre-emption in favor of broadband services; construction of language in agreements.

(a) Notwithstanding any other provision of the West Virginia Code or the West Virginia Code of State Rules to the contrary, any ordinance of any political subdivision relating to broadband service is hereby pre-empted to the extent necessary in favor of such broadband installation.

(b) No corporate policy, organizational policy, institutional policy, agreement, contract, or other like document, including the rules and regulations of any Home Owners Association, or any similar entity or organization, promulgated or made effective after the effective date of this section, may regulate or prevent the exterior installation of antennas and equipment necessary to or typically utilized for broadband deployment and the terms of any such document shall be strictly construed in favor of encouraging and assisting broadband installation and deployment.

§31G-6-2. Pre-emption in favor of broadband service in pole attachments; construction of language in pole attachment agreements.

(a) Notwithstanding any other provision of the West Virginia Code or the West Virginia Code of State Rules to the contrary, any ordinance of any political subdivision regarding pole attachment spacing, positioning, or order by or between any Investor Owned Utility ('IOU') and any Incumbent Local Exchange Carrier ('ILEC') and/or Competitive Local Exchange Carrier ('CLEC') which would seek to provide broadband service, is hereby pre-empted to the extent necessary in favor of such broadband installation or deployment.

(b) Any corporate policy, individual agreement, organizational policy, contract, or like document relating to pole attachment spacing, positioning, or order by or between any Investor Owned Utility ('IOU') and any Incumbent Local Exchange Carrier ('ILEC') and/or Competitive Local Exchange Carrier ('CLEC') shall be strictly construed in favor of encouraging and assisting broadband installation and deployment."

And,

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

Com. Sub. for H. B. 2002 – “A Bill to repeal §17-2E-6 of the Code of West Virginia, 1931, as amended; to repeal §31G-1-6, §31G-1-9, and §31G-1-12 of said code; to amend and reenact §17-2E-3, §17-2E-5, §17-2E-7, §17-2E-8, and §17-2E-9 of said code; to amend and reenact §31G-1-4 of said code; to amend said code by adding thereto a new article, designated §31G-1A-1, §31G-1A-2, §31G-1A-3, §31G-1A-4, §31G-1A-5, and §31G-1A-6; to amend said code by adding thereto a new section, designated §31G-3-3 and §31G-3-4; to amend and reenact §31G-4-1, §31G-4-2, and §31G-4-4 of said code; and to amend said code by adding thereto a new article, designated §31G-6-1 and §31G-6-2, all relating to broadband expansion policies; establishing requirements for agreements between the Division of Highways and an entity seeking to install telecommunications facilities; providing that if such installation can be accommodated as a utility pursuant to federal and state law, the division shall issue a permit for access to rights-of-way; providing for permit procedures and requirements; requiring notice to the Office of Broadband of a telecommunication entity’s intent to seek construction in division rights-of-way; providing the Office of Broadband is responsible for ensuring compliance with certain terms of permit requirements; granting the division authority to determine whether its use of a telecommunication carrier’s trench warrants apportionment of costs to it; modifying exceptions to dig once requirements; providing the division authority to allow carriers to use excess telecommunications facilities; allowing the division to transfer or assign ownership of excess telecommunications facilities to another state agency upon approval by Governor; providing rulemaking authority to the division; modifying the powers and duties of Broadband Enhancement Council; establishing the Office of Broadband within the Department of Economic Development; creating the position of the Director of the Office of Broadband; requiring the Office of Broadband report annually to the Joint Committee on Government and Finance; establishing the powers and duties of the Office of Broadband; requiring the Office of Broadband to coordinate with the Consumer Protection Division of the Attorney General’s Office on specified consumer protection claims; requiring the Office of Broadband to map broadband in the state and establish an interactive public map; defining ‘unserved area’; requiring certain executive agencies to cooperate and provide information to the Office of Broadband regarding AREA maps; allowing Office of Broadband to establish a voluntary data collection program; providing that information collected in program not subject to the Freedom of Information Act; providing procedures and requirements for a data collection program; protecting proprietary business information provided to the Office of Broadband and exempting such information from Freedom of Information Act requirements; providing rulemaking authority to the Office of Broadband; establishing requirements for counties, municipalities, and political subdivisions regarding installation of conduit; authorizing a broadband operator to construct or operate a system over public rights-of-way and through easements which are within the area to be served and which have been dedicated for compatible uses; establishing requirements for broadband operators related to installation and construction; requiring broadband operators to indemnify the state for any claims for injury and damage to persons or property; establishing requirements for broadband operator related to the use of public highways and other public places; providing installations in railroad rights of way and trackways do not have any greater or lesser requirement to comply with stated railroad safety requirements; establishing requirements for broadband operator related easements; defining terms; requiring that an ILEC who accepts payment for make-ready work, and fails to perform that work within 45 days, to immediately return and refund the moneys paid for that work which was not completed, and providing remedies and exceptions in such instances; requiring the Public Service Commission

to promulgate rules to address abandoned cable, conductor, and related facilities attached to utility poles and providing requirements for said rules; requiring the Public Service Commission to promulgate rules to govern the timely transfer of facilities from an old pole to a new pole and the removal of utility poles that have had electric facilities moved to new poles but continue to have other facilities attached in the telecommunications space on the old existing poles and providing requirements for said rules; providing for preemption of West Virginia Code, the Code of State Rules, and ordinances relating to installation of certain broadband equipment; providing private agreements, promulgated or effective after the effective date of this legislation, may not regulate or prevent the exterior installation of antennas and equipment necessary to or typically utilized for broadband deployment; providing for scheme of construction of such language in favor of encouraging and assisting broadband installation and deployment; providing for preemption of West Virginia Code, the Code of State Rules, and ordinances relating to pole attachment of certain broadband equipment; and providing for scheme of construction of language of private agreements relating to pole attachment.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 630**), and there were—yeas 99, nays 1, absent and not voting none, with the nays being as follows:

Nays: McGeehan.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2002) passed.

Delegate Summers moved that the bill take effect May 27, 2021.

On this question, the yeas and nays were taken (**Roll No. 631**), and there were—yeas 98, nays 2, absent and not voting none, with the nays being as follows:

Nays: Bates and McGeehan.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2002) takes effect May 27, 2021.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2025, Provide liquor, wine, and beer licensees with some new concepts developed during the State of Emergency utilizing new technology to provide greater freedom to operate in a safe and responsible manner.

Delegate Steele moved that the House of Delegates concur in the following amendment of the bill by the Senate, with further amendment:

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

“CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3ss. County option election on forbidding nonintoxicating beer, wine, or alcoholic liquors to be sold, given, or dispensed after ~~10:00~~ 6:00 a.m. on Sundays.

~~Beginning July 1, 2019, the~~ The county commission of any county may conduct a county option election on the question of whether the sale or dispensing of nonintoxicating beer, wine, or alcoholic liquors in or on a licensed premises shall be allowed in the county beginning 1:00 p.m. on any Sunday, as provided in §11-16-18, ~~of this code, §60-7-12, of this code, and §60-8-34 of this code,~~ upon approval as provided in this section. The option election on this question may be placed on the ballot in each county at any primary or general election. The county commission of the county shall give notice to the public of the election by publication of the notice as a Class II-0 legal advertisement in compliance with the provisions of ~~§60-59-3~~ §59-3-1 et seq. of this code, and the publication area for publication shall be the county in which the election is to be held. The date of the last publication of the notice shall fall on a date within the period of the 14 consecutive days next preceding the election. On the local option election ballot shall be printed the following: ‘Shall the beginning hour at which nonintoxicating beer, wine, and alcoholic liquor be sold or dispensed for licensed on-premises ~~only~~ in _____ County on Sundays be changed from ~~10:00~~ 6:00 a.m. to 1:00 p.m.’

If approved by the voters this would forbid private clubs and restaurants licensed to sell and dispense nonintoxicating beer, wine, and alcoholic liquor; licensed private wine restaurants, private wine spas, and private wine bed and breakfasts to sell and dispense wine; and licensed Class A retail dealers to sell and dispense nonintoxicating beer for on-premises consumption until 1:00 p.m.

Yes No

(Place a cross mark in the square opposite your choice.)

The ballots shall be counted, returns made and canvassed as in general elections, and the results certified by the commissioners of election to the county commission. The county commission shall, without delay, certify the result of the election. Upon receipt of the results of the election, in the event a majority of the votes are marked ‘Yes’, all applicable licensees shall be forbidden to sell and dispense beer, wine, or alcoholic liquors until 1:00 p.m. on Sundays. In the event a majority of the votes are marked ‘No’, all applicable licensees will continue to be required to comply with existing law.

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-6d. Nonintoxicating beer or nonintoxicating craft beer delivery license for a licensed Class A retail dealer or a third party; requirements; limitations; third party license fee; retail transportation permit; and requirements.

(a) A Class A retail dealer who is licensed to sell nonintoxicating beer or nonintoxicating craft beer may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license permitting the order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer in a sealed

original container of bottles or cans, and sealed growlers, when separately licensed for growler sales. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when completed by the licensee or the licensee's employees to a person purchasing the nonintoxicating beer or nonintoxicating craft beer by telephone, a mobile ordering application, or a web-based software program, as authorized by the licensee's license. There is no additional fee for licensed Class A retail dealers to obtain a nonintoxicating beer or nonintoxicating craft beer delivery license. The order, sale, and delivery process shall meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for nonintoxicating beer or nonintoxicating craft beer sales or distribution, may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license for the privilege and convenience to offer ordering and delivery services of nonintoxicating beer or nonintoxicating craft beer in the sealed original container of bottles or cans, and sealed growlers, from a licensee with a growler license. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when the Class A retail dealer sells to a person purchasing the nonintoxicating beer or nonintoxicating craft beer through telephone orders, a mobile ordering application, or a web-based software program. The annual nonintoxicating beer or nonintoxicating craft beer delivery license fee is \$200 per third party entity, with no limit on the number of drivers and vehicles. The delivery license fee under this subsection may not be prorated nor refunded.

(c) The nonintoxicating beer or nonintoxicating craft beer delivery license application shall comply with licensure requirements in §11-16-8 of this code, and shall require any information set forth in this article and as reasonably required by the commissioner.

(d) Sale Requirements. -

(1) The nonintoxicating beer or nonintoxicating craft beer purchase shall accompany the purchase of prepared food or a meal and the completion of the sale may be accomplished by the delivery of the prepared food or meal and nonintoxicating beer or nonintoxicating craft beer by the Class A retail dealer or third party licensee;

(2) Any person purchasing nonintoxicating beer or nonintoxicating craft beer shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this article for the sale of nonintoxicating beer or nonintoxicating craft beer;

(3) 'Prepared food or a meal' shall, for purposes of this article, mean food that has been cooked, grilled, fried, deep-fried, air-fried, smoked, boiled, broiled, twice baked, blanched, sautéed, or in any other manner freshly made and prepared, and does not include pre-packaged food from the manufacturer;

(4) An order, sale, or delivery consisting of multiple meals shall not amount to any combination of bottles, cans, or sealed growlers in excess of 384 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; and

(5) A third party delivery licensee may not have a pecuniary interest in a Class A retail dealer, as set forth in this article, therefore a third party delivery licensee may only charge a convenience fee for the delivery of any nonintoxicating beer or nonintoxicating craft beer. The third party licensee may not collect a percentage of the delivery order for the delivery of alcohol, but may

continue to collect a percentage of the delivery order directly related to the prepared food or a meal. The convenience fee charged by the third party delivery licensee to the person purchasing may not be greater than five dollars per delivery order where nonintoxicating beer or nonintoxicating craft beer are ordered by the purchasing person. For any third party licensee also licensed for wine growler delivery as set forth in §60-8-6c of the code, or craft cocktail growler delivery as set forth in §60-7-8f of the code, the total convenience fee of any order, sale, and delivery of a sealed growler, wine growler, or craft cocktail growler shall not exceed five dollars.

(e) Delivery Requirements. -

(1) Delivery persons employed for the delivery of nonintoxicating beer or nonintoxicating craft beer shall be 21 years of age or older. The licensed Class A retail dealer and the third party delivery licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) A Class A retail dealer or third party delivery licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication and shall submit certification of the training to the commissioner;

(3) The Class A retail dealer or third party delivery licensee shall hold a retail transportation permit for each delivery vehicle delivering sealed nonintoxicating beer or nonintoxicating craft beer pursuant to §11-16-6d(g) of this code: *Provided*, That a delivery driver may retain an electronic copy of his or her permit;

(4) A Class A retail dealer or third party delivery licensee may only deliver prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer orders in the county or contiguous counties where the Class A retail dealer is located;

(5) A Class A retail dealer or third party delivery licensee may only deliver prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer to addresses located in West Virginia. A Class A retail dealer or third party delivery licensee shall pay and account for all sales and municipal taxes;

(6) A Class A retail dealer or third party delivery licensee may not deliver prepared food or a meal, and nonintoxicating beer or nonintoxicating craft beer to any other Class A licensee;

(7) A Class A retail dealer or third party delivery licensee may only deliver prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer for personal use, and not for resale; and

(8) A Class A retail dealer or third party delivery licensee shall not deliver and leave prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer at any address without verifying a person's age and identification as required by this section.

(f) Telephone, mobile ordering application, or web-based software requirements. -

(1) The delivery person may only permit the person who placed the order through a telephone, mobile ordering application, or web-based software to accept the prepared food or a meal, and nonintoxicating beer or nonintoxicating craft beer delivery which is subject to age verification upon delivery with the delivery person's visual review and age verification and, as applicable, a stored scanned image of the purchasing person's legal identification;

(2) Any mobile ordering application or web-based software used shall create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery person for verification, and shall include the delivery driver's name and vehicle information;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's legal identification and details of the sale, accessible by the delivery person for verification, and shall include the delivery driver's name and vehicle information;

(4) All records are subject to inspection by the commissioner. A Class A retail dealer or third party delivery licensee shall retain all records for three years, and may not unreasonably withhold the records from the commissioner's inspection; and

(5) Each vehicle delivering nonintoxicating beer or nonintoxicating craft beer must be issued a retail transportation permit per §11-16-6d(g) of this code.

(g) Retail Transportation Permit. -

(1) A Class A retail dealer or third party delivery licensee shall obtain and maintain a retail transportation permit for the delivery of prepared food and nonintoxicating beer or nonintoxicating craft beer.

(2) A Class A retail dealer or a third party licensee shall apply for a permit and provide vehicle and driver information, as required by the commissioner. Upon any change in vehicles or drivers, the Class A retail dealer or third party delivery licensee shall update the vehicle and driver information with the commissioner within 10 days of the change.

(h) Enforcement. -

(1) A Class A retail dealer or third party delivery licensee are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple Class A retail dealers or licensees, employees, or independent contractors.

(2) A license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the Class A retail dealer or third party delivery licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a growler subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, or accepting delivery of orders are considered to be purchasers.

§11-16-6e. License required for sale and shipment of nonintoxicating beer or nonintoxicating craft beer by a brewer or resident brewer; shipment of limited quantities of nonintoxicating beer or nonintoxicating craft beer; requirements; license fee; and penalties.

(a) Authorization. - Notwithstanding the provisions of this article or any other law to the contrary, any person that is currently licensed and in good standing in its domicile state as a

brewer, resident brewer, other nonintoxicating beer or nonintoxicating craft beer manufacturer, and who also obtains a nonintoxicating beer or nonintoxicating craft beer direct shipper's license from the commissioner, as provided in this article, may sell and ship nonintoxicating beer or nonintoxicating craft beer brewed by the brewer, resident brewer, other nonintoxicating beer or nonintoxicating craft beer manufacturer by mail to a purchasing person who is 21 years of age or older, for personal use, and not for resale. A nonintoxicating beer or nonintoxicating craft beer direct shipper may ship nonintoxicating beer or nonintoxicating craft beer by mail to a purchasing person who is 21 years of age or older who purchases nonintoxicating beer or nonintoxicating craft beer, subject to the requirements of this article, in and throughout West Virginia. A nonintoxicating beer or nonintoxicating craft beer direct shipper may sell and ship nonintoxicating beer or nonintoxicating craft beer out of this state by mail to a purchasing person who is 21 years of age or older subject to the recipient state's or country's requirements, laws, and international laws.

(b) License requirements. – Before sending any shipment of nonintoxicating beer or nonintoxicating craft beer to a purchasing person who is 21 years of age or older, the nonintoxicating beer or nonintoxicating craft beer direct shipper must first:

(1) File a license application with the commissioner with the appropriate background check information, using forms required by the commissioner. Criminal background checks will not be required of applicants licensed in their state of domicile who can provide a certificate of good standing from their state of domicile;

(2) Pay to the commissioner the \$250 non-prorated and nonrefundable annual license fee to ship and sell only nonintoxicating beer or nonintoxicating craft beer;

(3) Obtain a business registration number from the Tax Commissioner;

(4) Register with the office of the Secretary of State;

(5) Provide the commissioner a true copy of its current active license issued in the state of domicile, proving that the nonintoxicating beer or nonintoxicating craft beer direct shipper is licensed in its state of domicile as a brewer, resident brewer, or other nonintoxicating beer or nonintoxicating craft beer manufacturer;

(6) Obtain from the commissioner a nonintoxicating beer or nonintoxicating craft beer direct shipper's license;

(7) Submit to the commissioner a list of all brands and labels of nonintoxicating beer or nonintoxicating craft beer to be shipped to West Virginia and attest that all nonintoxicating beer or nonintoxicating craft beer brands and labels are manufactured by the brewer, resident brewer or other nonintoxicating beer or nonintoxicating craft beer manufacturer seeking licensure and are not counterfeit or adulterated nonintoxicating beer or nonintoxicating craft beer;

(8) Attest that the brewer, resident, brewer or other nonintoxicating beer or nonintoxicating craft beer manufacturer brews less than 25,000 barrels of beer per calendar year and provide documentary evidence along with the attestation.

(9) Meet all other licensing requirements of this chapter and provide any other information that the commissioner may reasonably require.

(c) Shipping Requirements. - All nonintoxicating beer or nonintoxicating craft beer direct shipper licensees shall:

(1) Not ship more than a maximum of two, 24 bottle or can, cases of nonintoxicating beer or nonintoxicating craft beer based on a 12-fluid ounce bottle or can, however no combination of bottles or cans may exceed a total for the two cases of 576 fluid ounces of nonintoxicating beer residing in West Virginia, for such person's personal use and consumption, and not for resale.

(2) Not ship to any licensed brewers, resident brewers, retailers, retail liquor outlets, any type of private club, private caterers, private wine restaurants, private wine spas, private wine bed and breakfasts, wine retailers, wine specialty shops, taverns, or other licensees licensed under this article or chapter 60 of this code;

(3) Ensure that all containers of nonintoxicating beer or nonintoxicating craft beer shipped directly to a purchasing person who is 21 years of age or older are clearly and conspicuously labeled with the words 'CONTAINS ALCOHOL: SIGNATURE OF PERSON 21 OR OLDER REQUIRED FOR DELIVERY';

(4) Not ship nonintoxicating beer or nonintoxicating craft beer that has not been registered with the commissioner, register and pay any registration fees, and prove by documentation that the direct shipper has the rights from the manufacturer to ship the nonintoxicating beer or nonintoxicating craft beer;

(6) Not ship or deliver to:

(A) Any person under the age of 21;

(B) To an intoxicated person; or

(C) To a person physically incapacitated due to the consumption of nonintoxicating beer or nonintoxicating craft beer, wine, or liquor, or the use of drugs;

(7) Obtain a written or electronic signature upon delivery to a person who the nonintoxicating beer or nonintoxicating craft beer direct shipper's carrier verifies in-person is at least 21 years of age or older, and if the carrier is not able to verify the age of the person and obtain that person's signature, then the carrier may not complete the delivery of the nonintoxicating beer or nonintoxicating craft beer shipment;

(8) Utilize a licensed and bonded shipping carrier who has obtained a transportation permit as specified in §60-6-12 of the code;

(9) First deliver any nonintoxicating beer or nonintoxicating craft beer shipment being shipped in and throughout West Virginia to the nonintoxicating beer or nonintoxicating craft beer brand's nearest appointed distributor who has the nonintoxicating beer or nonintoxicating craft beer brand's franchise territory located in the purchasing person's county of residence in West Virginia: *Provided*, That, if no distributor has been appointed for the nonintoxicating beer or nonintoxicating craft beer brand, then the brewer of the brand shall appoint a franchise distributor in the franchise territory where the purchasing person of the nonintoxicating beer or nonintoxicating craft beer resides;

(10) Have the appointed distributor complete any nonintoxicating beer or nonintoxicating craft beer shipment order with an in-person pickup, at the location of appointed distributor's distributorship, to the purchasing person subject to age and identity verification by the appointed distributor: *Provided*, That, the appointed distributor is not a retailer, and therefore cannot charge an additional fee for the in-person pickup for the nonintoxicating beer or nonintoxicating craft beer shipment as this would be considered a part of the service provided under the appointed distributor's franchise agreement.

(d) *Payment of Fees and Taxes.*

(1) Any nonintoxicating beer or nonintoxicating craft beer direct shipper licensee must meet the markup requirements for retail sales set forth in §47-11A-6 of the code.

(2) Further, the nonintoxicating beer or nonintoxicating craft beer direct shipper licensee shall collect and remit all beer barrel tax, state sales tax, and local sales tax on the sale of nonintoxicating beer or nonintoxicating craft beer to the Tax Commissioner at the close of each month and file a monthly return, on a form provided by the Tax Commissioner, reflecting the taxes paid for all sales and shipments to persons residing in West Virginia. No nonintoxicating beer or nonintoxicating craft beer direct shipper shall pay any beer barrel or sales tax more than once.

(3) File monthly returns to the commissioner showing the total of nonintoxicating beer or nonintoxicating craft beer, by type, brand, sold, and shipped into West Virginia for the preceding month;

(4) Permit the Tax Commissioner or commissioner or their designees to perform an audit of the nonintoxicating beer or nonintoxicating craft beer direct shipper's records upon request;

(5) The payment of fees to the commissioner and taxes to the Tax Commissioner may be in addition to fees and taxes levied by the nonintoxicating beer or nonintoxicating craft beer direct shipper's domicile state.

(6) No nonintoxicating beer or nonintoxicating craft beer direct shipper will be required to pay any fees to the commissioner or taxes to the Tax Commissioner more than once.

(e) *Jurisdiction.* - By obtaining a nonintoxicating beer or nonintoxicating craft beer direct shipper licensee the licensee shall be considered to have agreed and consented to the jurisdiction of the commissioner, which is Charleston, West Virginia and the Kanawha County circuit court, concerning enforcement of this chapter and any other related laws or rules.

(f) *Records and reports.* -

(1) Licensed nonintoxicating beer or nonintoxicating craft beer direct shippers must maintain accurate records of all shipments sent to West Virginia.

(2) Provide proof or records to the commissioner, upon request, that all direct shipments of liquor were purchased and delivered to a purchasing person who is 21 years of age or older.

(g) The nonintoxicating beer or nonintoxicating craft beer direct shipper may annually renew its license with the commissioner by application, paying the nonintoxicating beer or nonintoxicating craft beer direct shipper license fee and providing the commissioner with a true copy of a current brewer, resident brewer, or other nonintoxicating beer or nonintoxicating craft

beer manufacturer's license from the nonintoxicating beer or nonintoxicating craft beer direct shipper's domicile state.

(h) The commissioner may promulgate rules to effectuate the purposes of this law.

(i) *Penalties.* –

(1) The commissioner may enforce the requirements of this chapter by administrative proceedings as set forth in §11-16-23 and §11-16-24 of this code to suspend or revoke a nonintoxicating beer or nonintoxicating craft beer direct shipper's license, and the commissioner may accept payment of a penalties as set forth in §11-16-23 and §11-16-24 of this code or an offer in compromise in lieu of suspension, at the commissioner's discretion. Hearings and appeals on such notices may be had in the same manner as in the case of revocations of licenses set forth in §11-16-23 and §11-16-24a of this code.

(2) If any licensee violates the provisions of this article, the commissioner may determine to suspend the privileges of the brewer, resident brewer, or other nonintoxicating beer or nonintoxicating craft beer manufacturer to sell, ship, or deliver nonintoxicating beer or nonintoxicating craft beer to a purchasing person who is 21 years of age or older or to the commissioner, or otherwise engage in the liquor business in this state for a period of one year from the date a notice is mailed to such person by the commissioner of the fact that such person has violated the provisions of this article. During such one-year period, it shall be unlawful for any person within this state to knowingly buy or receive nonintoxicating beer or nonintoxicating craft beer from such licensee or to have any dealings with such licensee with respect thereto.

(k) *Criminal Penalties.* – A shipment of nonintoxicating beer or nonintoxicating craft beer directly to citizens in West Virginia from persons who do not possess a valid nonintoxicating beer or nonintoxicating craft beer direct shipper's license is prohibited. Any person who knowingly makes, participates in, transports, imports, or receives such an unlicensed and unauthorized direct shipment of nonintoxicating beer or nonintoxicating craft beer is guilty of a felony and, shall, upon conviction thereof, be fined in an amount not to exceed \$10,000 per violation. Without limitation on any punishment or remedy, criminal or civil, any person who knowingly makes, participates in, transports, imports, or receives such a direct shipment constitutes an act that is an unfair trade practice.

§11-16-6f. Nonintoxicating beer or nonintoxicating craft beer delivery license for a licensed Class B retail dealer or a third party; requirements; limitations; third party license fee; retail transportation permit; and requirements.

(a) A Class B retail dealer who is licensed to sell nonintoxicating beer or nonintoxicating craft beer may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license permitting the order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer in a sealed original container of bottles or cans, and sealed growlers, when separately licensed for growler sales. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when completed by the licensee or the licensee's employees to a person purchasing the nonintoxicating beer or nonintoxicating craft beer by a telephone, a mobile ordering application, or web-based software program, as authorized by the licensee's license. There is no additional fee for licensed Class B retail dealers to obtain a nonintoxicating beer or nonintoxicating craft beer delivery license. The order, sale, and delivery process shall meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for nonintoxicating beer or nonintoxicating craft beer sales or distribution, may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license for the privilege and convenience to offer ordering and delivery services of nonintoxicating beer or nonintoxicating craft beer in the sealed original container of bottles or cans, and sealed growlers, from a licensee with a growler license. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when the Class B retail dealer sells to a person purchasing the nonintoxicating beer or nonintoxicating craft beer through a telephone order, a mobile ordering application, or web-based software program. The nonintoxicating beer or nonintoxicating craft beer delivery annual license fee is \$200 per third party licensee, with no limit on the number of drivers and vehicles. The delivery license fee under this subsection may not be prorated nor refunded.

(c) The nonintoxicating beer or nonintoxicating craft beer delivery license application shall comply with licensure requirements in §11-16-8 of this code and shall require any information set forth in this article and as reasonably required by the commissioner.

(d) Sale Requirements. -

(1) The nonintoxicating beer or nonintoxicating craft beer purchase shall accompany the purchase of food and the completion of the sale may be accomplished by the delivery of food and nonintoxicating beer or nonintoxicating craft beer by the licensee or third party licensee;

(2) Any person purchasing nonintoxicating beer or nonintoxicating craft beer shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and meet the requirements set forth in this article for the sale of nonintoxicating beer or nonintoxicating craft beer;

(3) Food, for purposes of this section, means food that has been cooked, microwaved, or that is pre-packaged food from the manufacturer;

(4) An order, sale, or delivery consisting of food and any combination of sealed nonintoxicating beer or nonintoxicating craft beer bottles, cans, or growlers shall not be in excess of 384 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; and

(5) A third party delivery licensee shall not have a pecuniary interest in a Class B retail dealer, as set forth in this article. A third party delivery licensee may only charge a convenience fee for the delivery of any nonintoxicating beer or nonintoxicating craft beer. The third party licensee may not collect a percentage of the delivery order for the delivery of nonintoxicating beer or nonintoxicating craft beer, but may continue to collect a percentage of the delivery order directly related to food. The convenience fee charged by the third party delivery licensee to the purchasing person may not be greater than five dollars per delivery order. For any third party licensee also licensed for wine delivery as set forth in §60-8-6f of this code the total convenience fee for any order, sale, and delivery of sealed wine may not exceed five dollars.

(e) Delivery Requirements. -

(1) Delivery persons employed for the delivery of nonintoxicating beer or nonintoxicating craft beer shall be 21 years of age or older. A Class B retail dealer and a third party licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) A Class B retail dealer and a third party licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication and submit the certification of the training to the commissioner;

(3) The Class B retail dealer or third party delivery licensee shall hold a retail transportation permit for each delivery vehicle delivering sealed nonintoxicating beer or nonintoxicating craft beer pursuant to §11-16-6f(g) of this code: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of the licensure;

(4) A Class B retail dealer and a third party licensee may deliver food and sealed nonintoxicating beer or nonintoxicating craft beer orders in the county where the Class B retail dealer is located;

(5) A Class B retail dealer and a third party licensee may only deliver food and sealed nonintoxicating beer or nonintoxicating craft beer to addresses located in West Virginia. A Class B retail dealer and a third party licensee shall pay and account for all sales and municipal taxes;

(6) A Class B retail dealer and a third party licensee may not deliver food and nonintoxicating beer or nonintoxicating craft beer to any other Class B licensee;

(7) Deliveries of food and sealed nonintoxicating beer or nonintoxicating craft beer are only for personal use, and not for resale; and

(8) A Class B retail dealer and a third party licensee shall not deliver and leave food and sealed nonintoxicating beer or nonintoxicating craft beer at any address without verifying a person's age and identification as required by this section.

(f) *Telephone, mobile ordering application, or web-based software requirements. -*

(1) The delivery person may only permit the person who placed the order through a telephone, mobile ordering application, or web-based software to accept the food and nonintoxicating beer or nonintoxicating craft beer delivery. The delivery is subject to age verification upon delivery with the delivery person's visual review and age verification and, as applicable, requires a stored scanned image of the purchasing person's legal identification;

(2) Any mobile ordering application or web-based software used must create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery person for verification, and shall include the delivery driver's name and vehicle information;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's legal identification and details of the sale, accessible by the delivery person for verification, and shall include the delivery driver's name and vehicle information;

(4) All records are subject to inspection by the commissioner. A Class B retail dealer and a third party licensee shall retain all records for three years, and may not unreasonably withhold the records from the commissioner's inspection; and

(5) Each vehicle delivering nonintoxicating beer or nonintoxicating craft beer shall be issued a retail transportation permit in accordance with §11-16-6f(g) of this code.

(g) Retail Transportation Permit. -

(1) A Class B retail dealer and a third party licensee shall obtain and maintain a retail transportation permit for the delivery of food and nonintoxicating beer or nonintoxicating craft beer.

(2) A Class B retail dealer or a third party licensee shall apply for a permit and provide vehicle and driver information, required by the commissioner. Upon any change in vehicles or drivers, Class B retail dealer and a third party licensee shall update the vehicle and driver information with the commissioner within 10 days of the change.

(h) Enforcement. -

(1) The Class B retail dealer and a third party licensee are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple Class B retail dealers or third party licensees, employees, or independent contractors.

(2) A license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the Class B retail dealer or third party licensee, their employees, or independent contractors.

(3) It is a violation for any Class B retail dealer or third party licensee, their employees, or independent contractors to break the seal of a growler subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, or accepting delivery of orders are considered to be purchasers.

§11-16-9. Amount of license tax; Class A and Class B retail dealers; purchase and sale of nonintoxicating beer permitted; distributors; brewers; brewpubs.

(a) All retail dealers, distributors, brewpubs, brewers, and resident brewers of nonintoxicating beer and of nonintoxicating craft beer shall pay an annual fee to maintain an active license as required by this article. The license period begins on July 1 of each year and ends on June 30 of the following year. If the license is granted for a shorter period, then the license fee shall be computed semiannually in proportion to the remainder of the fiscal year: *Provided*, That if a licensee fails to complete a renewal application and make payment of its annual license fee in renewing its license on or before June 30 of any subsequent year, ~~after initial application~~, then an additional \$150 reactivation fee shall be charged and paid by the licensee; the fee may not be prorated or refunded, prior to the processing of any renewal application and applicable full year annual license fee; and furthermore a licensee who continues to operate ~~upon~~ after the expiration of its license is subject to all fines, penalties, and sanctions available in §11-16-23 of this code, all as determined by the commissioner.

(b) The annual license fees are as follows:

(1) Retail dealers shall be divided into two classes: Class A and Class B.

(A) For a Class A retail dealer, the license fee is \$150 for each place of business; the license fee for social, fraternal, or private clubs not operating for profit, and ~~having which have~~ been in continuous operation for two years or more immediately preceding the date of application, is \$150:

Provided, That railroads operating in this state may dispense nonintoxicating beer upon payment of an annual license tax of \$10 for each dining, club, or buffet car in which the beer is dispensed.

Class A licenses issued for railroad dining, club, or buffet cars authorize the licensee to sell nonintoxicating beer at retail for consumption only on the licensed premises where sold. All other ~~Class A licenses authorize the licensee to~~ licensees may sell nonintoxicating beer or nonintoxicating craft beer at retail, as licensed, for consumption on the licensed premises or off the licensed premises. Class A licensees may sell nonintoxicating beer or nonintoxicating craft beer for consumption off the licensed premises when it is in a sealed original container and sold for personal use, and not for resale. Class A licensees shall provide prepared food or meals along with sealed nonintoxicating beer or nonintoxicating craft beer in the original container or in a sealed growler as set forth for sales and service in §11-16-6d of this code, to a purchasing person who is in-person or in-vehicle picking up prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer orders-to-go, subject to verification that the purchasing person is 21 years of age or older, and not visibly or noticeably intoxicated, and as otherwise specified in this article.

(B) For a Class B retail dealer, the license fee, authorizing the sale of both chilled and unchilled beer, is \$150 for each place of business. A Class B license authorizes the licensee to sell nonintoxicating beer at retail in bottles, cans, or other sealed containers only, and only for consumption off the licensed premises. A Class B retailer may sell to a ~~patron~~ purchasing person, for personal use, and not for resale, quantities of draught beer in original containers that are no larger in size than one-half barrel for off-premises consumption.

The Commissioner may only issue a A Class B license ~~may be issued only~~ to the proprietor or owner of a grocery store. For the purpose of this article, the term “grocery store” means any retail establishment commonly known as a grocery store or delicatessen, and caterer or party supply store, where food or food products are sold for consumption off the premises, and includes a separate and segregated portion of any other retail store which is dedicated solely to the sale of food, food products, and supplies for the table for consumption off the premises. Caterers or party supply stores ~~are required to~~ shall purchase the appropriate licenses from the Alcohol Beverage Control Administration.

(C) A Class A retail dealer may contract, purchase, or develop a mobile ordering application or web-based software program to permit the ordering and purchase of nonintoxicating beer or nonintoxicating craft beer, as authorized by the licensee’s license. The nonintoxicating beer or nonintoxicating craft beer shall be in a sealed original container or a sealed growler and meet the requirements of §11-16-6d of this code.

(2) For a distributor, the license fee is \$1,000 for each place of business.

(3) For a brewer or a resident brewer with its principal place of business or manufacture located in this state and who produces:

(A) Twelve thousand five hundred barrels or less of nonintoxicating beer or nonintoxicating craft beer, the license fee is \$500 for each place of manufacture;

(B) Twelve thousand five hundred one barrels and up to 25,000 barrels of nonintoxicating beer or nonintoxicating craft beer, the license fee is \$1,000 for each place of manufacture;

(C) More than 25,001 barrels of nonintoxicating beer or nonintoxicating craft beer, the license fee is \$1,500 for each place of manufacture.

(4) For a brewer whose principal place of business or manufacture is not located in this state, the license fee is \$1,500. The brewer is exempt from the requirements set out in subsections (c), (d), and (e) of this section: *Provided*, That a brewer whose principal place of business or manufacture is not located in this state that produces less than 25,000 barrels of nonintoxicating beer or nonintoxicating craft beer may choose to apply, in writing, to the commissioner to be subject to the variable license fees of subdivision (3), subsection (b) of this section and the requirements set out in subsections (c), (d), and (e) of this section subject to investigation and approval by the commissioner as to brewer requirements.

(5) For a brewpub, the license fee is \$500 for each place of manufacture.

(c) As part of the application or renewal application and in order to determine a brewer or resident brewer's license fee pursuant to this section, a brewer or resident brewer shall provide the commissioner, on a form provided by the commissioner, with an estimate of the number of nonintoxicating beer or nonintoxicating craft beer barrels and gallons it ~~will~~ may produce during the year based upon the production capacity of the brewer's or resident brewer's manufacturing facilities and the prior year's production and sales volume of nonintoxicating beer or nonintoxicating craft beer.

(d) On or before July 15 of each year, every brewer, or resident brewer who is granted a license shall file a final report, on a form provided by the commissioner, that is dated as of June 30 of ~~each~~ that year, stating the actual volume of nonintoxicating beer or nonintoxicating craft beer in barrels and gallons produced at its principal place of business and manufacture during the prior year.

(e) If the actual total production of nonintoxicating beer or nonintoxicating craft beer by the brewer or resident brewer exceeded the brewer's or resident brewer's estimate that was filed with the application or renewal application for a brewer's or resident brewer's license for that period, then the brewer or resident brewer shall include a remittance for the balance of the license fee pursuant to this section that would be required for the final, higher level of production.

(f) Any brewer or resident brewer failing to file the reports required in subsections (c) and (d) of this section, and who is not exempt from the reporting requirements, shall, at the discretion of the commissioner, be subject to the penalties set forth in §11-16-23 of this code.

(g) Notwithstanding subsections (a) and (b) of this section, the license fee per event for a nonintoxicating beer floor plan extension is ~~\$50~~ \$400, and the fee may not be prorated or refunded., ~~and must be accompanied with a license~~ A licensee shall submit an application, certification that the event meets certain requirements in the this code and rules, and ~~such~~ any other information as required by the commissioner ~~may reasonably require~~, at least 15 days prior to the event, all as determined by the commissioner.

(h) Notwithstanding subsections (a) and (b) of this section, a Class A retail dealer, in good standing with the commissioner, may apply, on a form provided by the commissioner, to sell, serve, and furnish nonintoxicating beer or nonintoxicating craft beer for on-premises consumption in an outdoor dining area or outdoor street dining area, as authorized by any municipal government or county commission in the which the licensee operates. The Class A retail dealer shall submit to the municipal government or county commission, for approval, a revised floorplan

and a request to sell and serve nonintoxicating beer or nonintoxicating craft beer, subject to the commissioner's requirements, in an approved outdoor area. For private outdoor street dining, or private outdoor dining, the approved and bounded outdoor area need not be adjacent to the licensee's licensed premises, but in close proximity and under the licensee's control with right of ingress and egress. For purposes of this section, "close proximity" means an available area within 150 feet of the Class A retail dealer's licensed premises. A Class A retail dealer may operate a nonintoxicating beer or nonintoxicating craft beer outdoor dining or outdoor street dining in conjunction with a temporary private outdoor dining or temporary private outdoor street dining area set forth in §60-7-8d of this code and temporary private wine outdoor dining or temporary private wine outdoor street dining set forth in §60-8-32a of this code.

(i) For purposes of this article, "nonintoxicating beer or nonintoxicating craft beer outdoor dining and nonintoxicating beer or nonintoxicating craft beer outdoor street dining" includes dining areas that are:

(1) Outside and not served by an HVAC system for air handling services and use outside air;

(2) Open to the air; and

(3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally approve a partial enclosure with up to three temporary or fixed walls.

Any area where seating is incorporated inside a permanent building with ambient air through HVAC is not considered outdoor dining pursuant to this subsection.

§11-16-11c. Unlicensed brewer or unlicensed home brewer temporary license; fees; requirements.

(a) An unlicensed brewer or home brewer may obtain a temporary special license, upon meeting the requirements set forth in this section, to offer its nonintoxicating beer or nonintoxicating craft beer for sampling and sales at a fair and festival licensed under §11-16-11 and §11-16-11b of this code, when granted approval by the fair and festival licensee. The unlicensed brewer or home brewer is exempt from the requirements of registering the brand and using a distributor and a franchise agreement due to the limited nature of this temporary license.

(b) An unlicensed brewer or home brewer is subject to the limits, taxes, fees, requirements, restrictions, and penalties set forth in this article: *Provided*, That the commissioner may, by rule or order, provide for certain waivers or exceptions with respect to the provisions, laws, rules, or orders as required by the circumstances of each festival or fair. The commissioner may revoke or suspend any license issued pursuant to this section prior to any notice or hearing, notwithstanding the provisions §11-16-23 and §11-16-24 of this code: *Provided, however*, That under no circumstances shall the provisions of §11-16-8(a)(1), §11-16-8(a)(2), and §11-16-8(a)(3) of this code, be waived nor shall any exception be granted with respect to those provisions.

(c) A brewer or home brewer, regardless of its designation in its domicile state, that is duly licensed and in good standing in its domicile state, but unlicensed in this state, or an unlicensed brewer or home brewer that is a resident of West Virginia, shall pay a \$150 nonrefundable and non-prorated fee and submit an application for a temporary license on a one-day basis. The temporary special license allows the unlicensed brewer or home brewer to sell nonintoxicating beer or nonintoxicating craft beer to a licensed fair or festival for the sampling and sale of the nonintoxicating beer or nonintoxicating craft beer for on-premises consumption at the licensed

fair or festival. The brewer or home brewer shall pay all taxes due and the appropriate markup on the nonintoxicating beer or nonintoxicating craft beer.

(2) The unlicensed brewer or home brewer temporary license application shall include, but is not limited to, the person or entity's name, address, taxpayer identification number, and location; if the unlicensed brewer or home brewer is from out of state, a copy of its licensure in its domicile state; a signed and notarized verification that it produces 25,000 barrels or less of nonintoxicating beer or nonintoxicating craft beer per year; a signed and notarized verification that it is in good standing with its domicile state; copies of its federal certificate of label approvals and a certified lab alcohol analysis for the nonintoxicating beer or nonintoxicating craft beer it plans to sell to a fair or festival licensed under §11-16-11 and §11-16-11b of this code; and any other information required by the commissioner.

(3) The applicant shall include in its application a list of all nonintoxicating beers or nonintoxicating craft beers it proposes to provide, in sealed containers, to a licensed fair or festival for sampling or sale so that the commissioner may review them in the interest of public health and safety. Once approved, the submitted nonintoxicating beer or nonintoxicating craft beer list creates a temporary nonintoxicating beer or nonintoxicating craft beer brand registration for up to two days at any event licensed under §11-16-11 and §11-16-11b of this code, for no additional fee.

(4) An applicant that receives this temporary license for any event licensed under §11-16-11 and §11-16-11b of this code shall provide a signed and notarized agreement acknowledging that it is the applicant's duty to pay all municipal, local, and sales taxes applicable to the sale of nonintoxicating beer or nonintoxicating craft beer in West Virginia.

(5) The unlicensed brewer or home brewer shall submit an application for each temporary special license sought for an event licensed under §11-16-11 and §11-16-11b of this code, at which the applicant proposes to provide nonintoxicating beer or nonintoxicating craft beer for sampling or sale. The license fee covers up to two separate one-day licenses for the event before an additional fee is required. Any applicant desiring to attend more than four events per year or otherwise operate in West Virginia shall seek appropriate licensure as a brewery or resident brewery in this state.

(6) Notwithstanding the provisions of this article and requirements for licensure, brand registration, franchise requirements, payment of beer barrel tax, and the appointment of a distributor franchise network, this temporary special license for an event licensed under §11-16-11 and §11-16-11b of this code, once granted, permits the licensee to operate in this limited capacity only at the approved specific, events licensed under §11-16-11 and §11-16-11b of this code, subject to the limitations noted in this section.

(7) The applicant shall also apply for and receive a nonintoxicating beer or nonintoxicating craft beer transportation permit in order to legally transport nonintoxicating beer or nonintoxicating craft beer in the state as required by §11-16-10(f) of this code: *Provided*, That the commissioner may not charge or collect an additional fee for a nonintoxicating beer or nonintoxicating craft beer transportation permit to an applicant seeking a temporary special license under this section.

(8) The licensee is subject to all applicable violations and/or penalties under this article and related legislative rules that are not otherwise excepted by this section: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions of this code, rules, or orders required by the circumstances of each festival or fair. The

commissioner may revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions of §11-16-23 and §11-16-24 of this code: *Provided, however,* That under no circumstances shall the provisions of §11-16-8(a)(1), §11-16-8(a)(2), and §11-16-8(a)(3) of this code, be waived nor shall any exception be granted with respect to those provisions.

§11-16-18. Unlawful acts of licensees; criminal penalties.

(a) It is unlawful:

(1) ~~Except as provided for in §7-1-3ss and this chapter~~ of this code, for any licensee, his, her, its, or their servants, agents, or employees to sell, give, or dispense, or any individual to drink or consume, in or on any licensed premises or in any rooms directly connected thereto, nonintoxicating beer ~~or cooler on weekdays between the hours of 2:00 a.m. and 7:00 a.m., or between the hours of 2:00 a.m. and 10:00 a.m.,~~ or a Class A retail dealer to sell nonintoxicating beer for on-premises consumption only between the hours of 2:00 a.m. and ~~4:00 p.m.~~ 6:00 a.m.; ~~in any county upon approval as provided for in §7-1-3ss of this code, on any Sunday, except in private clubs licensed under the provisions of §60-7-1 et seq. of this code, where the hours shall conform with the hours of sale of alcoholic liquors;~~

(2) For any licensee, his, her, its, or their servants, agents, or employees to sell, furnish, or give any nonintoxicating beer, as defined in this article, to any person visibly or noticeably intoxicated or to any person known to be insane or known to be a habitual drunkard;

(3) For any licensee, his, her, its, or their servants, agents, or employees to sell, furnish, or give any nonintoxicating beer as defined in this article to any person who is less than 21 years of age;

(4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer as defined in this article, except for cash and a right of action shall not exist to collect any claims for credit extended contrary to the provisions of this subdivision. Nothing ~~herein~~ contained in this section prohibits a licensee from crediting to a purchasing person the actual price charged for packages or containers returned by the original purchasing person as a credit on any sale, or from refunding to any purchasing person the amount paid or deposited for the containers when title is retained by the vendor: *Provided*, That a distributor may accept an electronic transfer of funds if the transfer of funds is initiated by an irrevocable payment order on the invoiced amount for the nonintoxicating beer. The cost of the electronic fund transfer shall be borne by the retailer and the distributor shall initiate the transfer no later than noon of one business day after the delivery;

(5) For any brewer or distributor to give, furnish, rent, or sell any equipment, fixtures, signs, supplies, or services directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail or to offer any prize, premium, gift, or other similar inducement, except advertising matter, including indoor electronic or mechanical signs, of nominal value up to \$25.00 per stock keeping unit, to either trade or consumer buyers: *Provided*, That a distributor may offer, for sale or rent, tanks of carbonic gas: *Provided, however*, That, in the interest of public health and safety, a distributor may, independently or through a subsidiary or affiliate, furnish, sell, install, or maintain draught line equipment, supplies, and cleaning services to a licensed retailer so long as the furnishing or sale of draught line services may be negotiated at no less than ~~direct~~ actual cost: *Provided further*, That a distributor may furnish, rent, or sell equipment, fixtures, signs, services, or supplies directly or indirectly or through

a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail under the conditions and within the limitations as prescribed ~~herein~~ in this section. Nothing contained in this section prohibits a brewer from sponsoring any professional or amateur athletic event or from providing prizes or awards for participants and winners in any events.

(6) For any brewer or distributor to sponsor any professional or amateur athletic event or provide prizes or awards for participants and winners when a majority of the athletes participating in the event are minors, unless the event is specifically authorized by the commissioner;

(7) For any retail licensee to sell or dispense nonintoxicating beer through draught lines where the draught lines have not been cleaned at least every two weeks in accordance with rules promulgated by the commissioner, and where written records of all cleanings are not maintained and available for inspection;

(8) For any licensee to permit in his or her premises any lewd, immoral, or improper entertainment, conduct, or practice;

(9) For any licensee, except the holder of a license to operate a private club issued under the provisions of §60-7-1 *et seq.* of this code or a holder of a license or a private wine restaurant issued under the provisions of §60-8-1 *et seq.* of this code to possess a federal license, tax receipt, or other permit entitling, authorizing, or allowing the licensee to sell liquor or alcoholic drinks other than nonintoxicating beer;

(10) For any licensee to obstruct the view of the interior of his or her premises by enclosure, lattice, drapes, or any means which would prevent plain view of the patrons occupying the premises. The interior of all licensed premises shall be adequately lighted at all times: *Provided*, That provisions of this subdivision do not apply to the premises of a Class B retailer, the premises of a private club licensed under the provisions of §60-7-1 *et seq.* of this code, or the premises of a private wine restaurant licensed under the provisions of §60-8-1 *et seq.* of this code;

(11) For any licensee to manufacture, import, sell, trade, barter, possess, or acquiesce in the sale, possession, or consumption of any alcoholic liquors on the premises covered by a license or on premises directly or indirectly used in connection with it: *Provided*, That the prohibition contained in this subdivision with respect to the selling or possessing or to the acquiescence in the sale, possession, or consumption of alcoholic liquors is not applicable with respect to the holder of a license to operate a private club issued under the provisions of §60-7-1 *et seq.* of this code, nor shall the prohibition be applicable to a private wine restaurant licensed under the provisions of §60-8-1 *et seq.* of this code insofar as the private wine restaurant is authorized to serve wine;

(12) For any retail licensee to sell or dispense nonintoxicating beer, as defined in this article, purchased or acquired from any source other than a distributor, brewer, or manufacturer licensed under the laws of this state;

(13) For any licensee to permit loud, boisterous, or disorderly conduct of any kind upon his or her premises or to permit the use of loud musical instruments if either or any of the same may disturb the peace and quietude of the community where the business is located: *Provided*, That a licensee may have speaker systems for outside broadcasting as long as the noise levels do not create a public nuisance or violate local noise ordinances;

(14) For any person whose license has been revoked, as provided in this article, to obtain employment with any retailer within the period of one year from the date of the revocation, or for any retailer to knowingly employ that person within the specified time;

(15) For any distributor to sell, possess for sale, transport, or distribute nonintoxicating beer except in the original container;

(16) For any licensee to knowingly permit any act to be done upon the licensed premises, the commission of which constitutes a crime under the laws of this state;

(17) For any Class B retailer to permit the consumption of nonintoxicating beer upon his or her licensed premises;

(18) For any Class A licensee, his, her, its, or their servants, agents, or employees, or for any licensee by or through any servants, agents, or employees, to allow, suffer, or permit any person less than 18 years of age to loiter in or upon any licensed premises; except, however, that the provisions of this subdivision do not apply where a person under the age of 18 years is in or upon the premises in the immediate company of ~~his or her parent or parents~~ a parent or legal guardian, or where and while a person under the age of 18 years is in or upon the premises for the purpose of and actually making a lawful purchase of any items or commodities sold, or for the purchase of and actually receiving any lawful service rendered in the licensed premises, including the consumption of any item of food, drink, or soft drink lawfully prepared and served or sold for consumption on the premises;

(19) For any distributor to sell, offer for sale, distribute, or deliver any nonintoxicating beer outside the territory assigned to any distributor by the brewer or manufacturer of nonintoxicating beer or to sell, offer for sale, distribute, or deliver nonintoxicating beer to any retailer whose principal place of business or licensed premises is within the assigned territory of another distributor of the nonintoxicating beer: *Provided*, That nothing in this section is considered to prohibit sales of convenience between distributors licensed in this state where one distributor sells, transfers, or delivers to another distributor a particular brand or brands for sale at wholesale; and

(20) For any licensee or any agent, servant, or employee of any licensee to knowingly violate any rule lawfully promulgated by the commissioner in accordance with the provisions of chapter 29A of this code.

(b) Any person who violates any provision of this article, including, but not limited to, any provision of this section, or any rule, or order lawfully promulgated by the commissioner, or who makes any false statement concerning any material fact in submitting an application for a license or for a renewal of a license or in any hearing concerning the revocation of a license, or who commits any of the acts in this section declared to be unlawful is guilty of a misdemeanor and, upon conviction thereof, shall be punished for each offense by a fine of not less than \$25, nor more than \$500, or confined in the county or regional jail for not less than 30 days nor more than six months, or by both fine and confinement. Magistrates have concurrent jurisdiction with the circuit court and any other courts having criminal jurisdiction in their county for the trial of all misdemeanors arising under this article.

(c) (1) A Class B licensee that:

(A) Has installed a transaction scan device on its licensed premises; and

(B) Can demonstrate that it requires each employee, servant, or agent to verify the age of any individual to whom nonintoxicating beer or nonintoxicating craft beer is sold, furnished, or given away by the use of the transaction device ~~may not be~~ is not subject to: (i) Any criminal penalties whatsoever, including those set forth in subsection (b) of this section; (ii) any administrative penalties from the commissioner; or (iii) any civil liability whatsoever for the improper sale, furnishing, or giving away of nonintoxicating beer or nonintoxicating craft beer to an individual who is less than 21 years of age by one of his or her employees, servants, or agents. Any agent, servant, or employee who has improperly sold, furnished, or given away nonintoxicating beer to an individual less than 21 years of age is subject to the criminal penalties of subsection (b) of this section. Any agent, servant, or employee who has improperly sold, furnished, or given away nonintoxicating beer to an individual less than 21 years of age is subject to termination from employment, and the employer shall have no civil liability for the termination.

(2) For purposes of this section, a Class B licensee can demonstrate that it requires each employee, servant, or agent to verify the age of any individual to whom nonintoxicating beer is sold by providing evidence: (A) That it has developed a written policy which requires each employee, servant, or agent to verify the age of each individual to whom nonintoxicating beer will be sold, furnished, or given away; (B) that it has communicated this policy to each employee, servant, or agent; and (C) that it monitors the actions of its employees, servants, or agents regarding the sale, furnishing, or giving away of nonintoxicating beer and that it has taken corrective action for any discovered noncompliance with this policy.

(3) 'Transaction scan' means the process by which a person checks, by means of a transaction scan device, the age and identity of the cardholder, and 'transaction scan device' means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information enclosed on the magnetic strip or bar code of a driver's license or other governmental identity card.

(d) Nothing in this article nor any rule of the commissioner shall prevent or be considered to prohibit any licensee from employing any person who is at least 18 years of age to serve in the licensee's lawful employ, including the sale or ~~delivery~~ distribution of nonintoxicating beer as defined in this article. With the prior approval of the commissioner, a licensee whose principal business is the sale of food or consumer goods, or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores, and convenience stores, may employ persons who are less than 18 years of age, but at least 16 years of age: *Provided*, That the person's duties may ~~not~~ include the sale ~~or delivery~~ of nonintoxicating beer or alcoholic liquors only when directly supervised by a person 21 years of age or older: *Provided, however*, That the authorization to employ persons under the age of 18 years shall be clearly indicated on the licensee's license.

CHAPTER 19. AGRICULTURE.

ARTICLE 2. MARKETING AGRICULTURAL PRODUCTS.

§19-2-12. Agriculture Development Fund; administration; purpose; funding.

(a) There is hereby created in the State Treasury a special revenue account to be known as the Agriculture Development Fund. The fund shall be administered by the Department of Agriculture. The fund shall consist of all moneys deposited into the fund pursuant to §60-8A-3 of this code; any moneys that may be designated for deposit in this fund by an act of the Legislature;

any moneys appropriated and designated for the fund by the Legislature; any moneys able to be transferred into the fund by authority of the commissioner from other funds; and gifts, donations, and interest or other returns earned from investment of the fund.

(b) Expenditures from the fund shall be for the purpose of fostering and supporting the development of agricultural sectors, such as hard cider, within the state, and are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 et seq. of this code and upon the fulfillment of the provisions set forth in §11B-2-1 et seq. of this code. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund, but shall remain in the fund and be expended as provided by this section.

§19-2-13. Hard cider development program; purpose; funding.

The commissioner shall establish a program to foster the development and growth of the hard cider industry in the state. The purpose of the program shall be to assist in the development of fruit inputs necessary for the production of hard cider in the state. The program shall be funded using moneys deposited within the Agriculture Development Fund created pursuant to §19-2-12 of this code.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5a. Farm wineries defined.

(a) For the purpose of this chapter 'Farm winery' means an establishment where in any year 50,000 gallons or less of wine, which includes hard cider, and nonfortified dessert wine are manufactured exclusively by natural fermentation from grapes, apples, pears, peaches, other fruits or honey, or other agricultural products containing sugar and where port, sherry, and Madeira wine may also be manufactured, with 25 percent of such raw products being produced by the owner of ~~such~~ the farm winery on the premises of that establishment and no more than 25 percent of such produce originating from any source outside this state. Any port, sherry, or Madeira wine manufactured by a winery or a farm winery ~~must~~ shall not exceed an alcoholic content of 22 percent alcohol by volume and shall be matured in wooden barrels or casks.

(b) Notwithstanding the provisions of subsection (a) of this section, a farm winery may include one off-farm location. The owner of a farm winery may provide to the commissioner evidence, accompanied by written findings by the West Virginia Agriculture Commissioner in support thereof, that the owner has planted on the premises of the farm winery young nonbearing fruit plants. The commissioner may grant permission for one off-farm location when the location produces in an amount equal to that reasonably expected to be produced when the nonbearing fruit plants planted on the farm winery come into full production. The length of time of the permission to use an off-farm location shall be determined by the commissioner after consultation with the Agriculture Commissioner.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-3b. Private liquor delivery license for a retail liquor outlet or a third party; requirements; limitations; third party license fee; private liquor bottle delivery permit; requirements, and curbside in-person and in-vehicle delivery by a retail liquor outlet.

(a) A retail liquor outlet that is licensed to sell liquor for off-premises consumption may apply for a private liquor delivery license permitting the order, sale, and delivery of sealed liquor bottles or cans in the original container. The order, sale, and delivery of sealed liquor bottles or cans in the original container is permitted for off-premises consumption when completed by the licensee to a person purchasing the sealed liquor bottles or cans through a telephone, a mobile ordering application, or a web-based software program, authorized by the licensee's license. There is no additional fee for a licensed retail liquor outlet to obtain a private liquor delivery license. The order, sale, and delivery process shall meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for liquor sales or distribution, may apply for a private liquor delivery license for the privilege of ordering and delivery of sealed liquor bottles or cans, from a licensed retail liquor outlet. The order and delivery of sealed liquor bottles or cans permitted for off-premises consumption by a third party licensee when a retail liquor outlet sells to a person purchasing the sealed liquor bottles or cans through telephone orders, a mobile ordering application, or a web-based software program. The private liquor delivery license non-prorated, nonrefundable annual fee is \$200 per third party entity, with no limit on the number of drivers and vehicles.

(c) The private liquor delivery license application shall comply with licensure requirements in this article and shall provide any information required by the commissioner.

(d) *Sale Requirements.* -

(1) The purchase of sealed liquor bottles or cans in the original container may accompany the purchase of food and the completion of the sale may be accomplished by the delivery of food and sealed liquor bottles or cans in the original container by the licensee or third party licensee;

(2) Any purchasing person shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this chapter for the sale of alcoholic liquors and in §11-16-1 *et seq.* of the code, for nonintoxicating beer or nonintoxicating craft beer.

(3) 'Food', for purposes of this section, means food that has been cooked, microwaved, or that is pre-packaged food from the manufacturer.

(4) An order, sale, and delivery may consist of up to five 750 milliliter sealed liquor bottles for each order; *Provided*, That the entire delivery order may not contain any combination of sealed liquor bottles or cans in the original container, where the combination is more than 128 fluid ounces of liquor total; and

(5) A third party delivery licensee shall not have a pecuniary interest in a retail liquor outlet, as set forth in this article. A third party private liquor delivery licensee may only charge a convenience fee for the delivery of any alcohol. The third party private liquor delivery licensee may not collect a percentage of the liquor delivery order, but may continue to collect a percentage of the delivery order directly related to food. The convenience fee charged by the third-party private liquor delivery licensee to the purchasing person shall be no greater than five dollars per delivery order where a sealed liquor bottle or can in the original container is ordered by the purchasing person. For any third party licensee also licensed for other nonintoxicating beer or nonintoxicating craft beer delivery pursuant to §11-16-1 *et seq.* of this code, wine delivery pursuant to §60-8-1 *et seq.* of this code, or a sealed craft cocktail growler delivery pursuant to

§60-7-1 et seq. of this code, the total convenience fee of any order, sale, and delivery of sealed alcoholic liquor or nonintoxicating beer, or nonintoxicating craft beer shall not exceed five dollars.

(e) Private Liquor Delivery Requirements. -

(1) Delivery persons employed for the delivery of a sealed liquor bottles or cans in the original container shall be 21 years of age or older and a retail liquor outlet and a third-party private liquor delivery licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) A retail liquor outlet and a third-party private liquor delivery licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication. A retail liquor outlet and a third-party private liquor delivery licensee shall submit certification of the training to the commissioner;

(3) The retail liquor outlet or third party private liquor delivery licensee shall hold a private liquor bottle delivery permit for each vehicle delivering a sealed liquor bottle or can in the original container pursuant to subsection (g) of this section: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of licensure;

(4) A retail liquor outlet or third party private liquor delivery licensee shall deliver food and a sealed liquor bottle or can order in the original container in the market zone or contiguous market zone where the licensed retail liquor outlet is located;

(5) A retail liquor outlet or third party private liquor delivery licensee may only deliver food and a sealed liquor bottle or can in the original container to addresses located in West Virginia, The retail liquor outlet or third party private liquor delivery licensee shall pay and account for all sales and municipal taxes;

(6) A retail liquor outlet or third party private liquor delivery licensee may not deliver food and a sealed liquor bottle or can in the original container to any licensee licensed under §11-16-1 et seq. of this code, and under this chapter;

(7) Deliveries of food and a sealed liquor bottle or can in the original container are only for personal use, and not for resale; and

(8) A retail liquor outlet or third party private liquor delivery licensee shall not deliver and leave food and a sealed liquor bottle or can in the original container at any address without verifying a person's age and identification as required by this section.

(f) Telephone, mobile ordering application, or web-based software requirements. -

(1) The delivery person shall only permit the person who placed the order through a telephone order, a mobile ordering applicant, or web-based software to accept the food and a sealed liquor bottle or can in the original container for delivery which is subject to verification upon delivery with the delivery person's visual review and verification and, as applicable, a stored scanned image of the purchasing person's legal identification;

(2) Any mobile ordering application or web-based software used shall create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by

the delivery driver for verification, and shall include the delivery driver's name and vehicle information;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and shall include the delivery driver's name and vehicle information;

(4) All records are subject to inspection by the commissioner. A retail liquor outlet or third party private liquor delivery licensee shall retain records for three years, and shall not unreasonably withhold the records from the commissioner's inspection; and

(5) The retail liquor outlet or third party delivery licensee shall hold a valid private liquor bottle delivery permit required by subsection (g) of this section for each vehicle that may offer delivery.

(g) *Private Liquor Bottle Delivery Permit.* -

(1) A retail liquor outlet or third party delivery licensee shall obtain and maintain a retail transportation permit for the delivery of and a sealed liquor bottle or can in the original container.

(2) A retail liquor outlet or third party private delivery licensee shall provide vehicle and driver information, requested by the commissioner. Upon any change in vehicles or drivers, the licensee shall update the driver and vehicle information with the commissioner within 10 days of the change.

(3) Subject to the requirement of §60-6-12 of this code, a private liquor bottle delivery permit shall meet the requirements of a transportation permit authorizing the permit holder to transport liquor subject to the requirements of this chapter.

(h) *Enforcement.* -

(1) The retail liquor outlet or the licensed third party are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple licensees, employees, or independent contractors.

(2) Any license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a sealed liquor bottle. A person who violates the provisions of this subdivision is subject to the maximum penalties available in this chapter.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, and accepting delivery of orders are considered to be purchasers.

(i) Retail liquor outlets licensed for off-premises sales of sealed liquor bottles and cans in the original container may provide for the sale and curbside in-person or in-vehicle pick-up of sealed liquor bottles or cans in the original container, subject to verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

(j) Retail liquor outlets licensed for off-premises sales of sealed liquor bottles and cans in the original container may provide for the sale and delivery through a drive up or drive through structure, approved by the commissioner, of sealed liquor bottles or cans in the original container, subject to verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

§60-3A-25. Certain acts of retail licensees prohibited; criminal penalties.

(a) It is unlawful for any retail licensee, or agent or employee thereof, on such the retail licensee's premises to:

(1) Sell or offer for sale any liquor other than from the original package or container;

(2) Sell, give away, or permit the sale of, gift of, or the procurement of, any liquor, for or to any person under 21 years of age;

(3) Sell, give away, or permit the sale of, gift of, or the procurement of, any liquor, for or to any person visibly intoxicated;

(4) Sell or offer for sale any liquor other than during the hours permitted for the sale of liquor by retail licensees as provided under this article;

(5) Permit the consumption by any person of any liquor;

(6) With the intent to defraud, alter, change, or misrepresent the quality, quantity, or brand name of any liquor;

(7) Permit any person under 18 years of age to sell, furnish, or give liquor to any other person, except as provided in subsection (c) of this section;

(8) Purchase or otherwise obtain liquor in any manner or from any source other than that specifically authorized in this article; or

(9) Permit any person to break the seal on any package, can or bottle of liquor.

(b) Any person who violates any provision of this article, except section 24 of this article, including, but not limited to, any provision of this section, or any rule promulgated by the board or the commissioner, or who makes any false statement concerning any material fact, or who omits any material fact with intent to deceive, in submitting an application for a retail license or for a renewal of a retail license or in any hearing concerning the suspension or revocation thereof, or who commits any of the acts declared in this article to be unlawful, is guilty of a misdemeanor and, shall, upon conviction thereof, for each offense be fined not less than \$100 or more than \$5,000, or imprisoned in the county jail for not less than 30 days nor more than one year, or both fined and imprisoned. Magistrates have concurrent jurisdiction with the circuit courts for offenses under this article.

(c) Nothing in this article, or any rule of the board or commissioner, prevents or prohibits any retail licensee from employing any person who is at least 18 years of age to serve in any retail licensee's lawful employment at any retail outlet operated by ~~such~~ the retail licensee, or from having ~~such~~ the person sell or deliver liquor or transport liquor on behalf of a manufacturer under the provisions of this article. With the prior approval of the commissioner, a retail licensee may

employ persons at any retail outlet operated by ~~such a~~ retail licensee who are less than 18 years of age but at least 16 years of age, ~~but such the persons' duties shall not~~ may include the sale or delivery of liquor only when directly supervised by a person 21 years of age or older: *Provided*, That the authorization to employ such the persons under the age of 18 years shall be clearly indicated on the retail licensee's license issued to any such retail licensee. *Provided, however*, That nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be considered to prohibit any licensee from employing any person who is at least 21 years of age for the ordering and delivery of liquor when licensed for liquor ordering and delivery under the provisions of this chapter.

ARTICLE 4. LICENSES.

§60-4-3a. Distillery and mini-distillery license to manufacture and sell.

(a) *Sales of liquor.* — An operator of a distillery, mini-distillery, or micro-distillery may offer liquor for retail sale to customers from the distillery, mini-distillery, or micro-distillery for consumption off premises only. Except for complimentary samples offered pursuant to §60-6-1 of this code, ~~customers are prohibited from consuming~~ may not consume any liquor on the premises of the distillery, mini-distillery, or micro-distillery and except for a distillery, mini-distillery, or micro-distillery that obtains a private manufacturer club license set forth in §60-7-1 et seq. of this code, and a Class A retail dealer license set forth in §11-16-1 et seq. of the code: *Provided*, That a licensed distillery, mini-distillery, or micro-distillery may offer complimentary samples of alcoholic liquors as authorized per by this subsection of when alcoholic liquors are manufactured by that licensed distillery, mini-distillery, or micro-distillery for consumption on the licensed premises, only, on Sundays beginning at 10:00 a.m. in any county in which the same has been approved as provided for in §7-1-3pp of this code. Notwithstanding any other provision of law to the contrary, a licensed distillery, mini-distillery, or micro-distillery may sell, furnish, and serve alcoholic liquors when licensed accordingly beginning at 6:00 a.m. unless otherwise determined by the residents of the county pursuant to §7-1-3ss of this code.

(b) *Retail off-premises consumption sales.* — Every licensed distillery, mini-distillery, or micro-distillery shall comply with the provisions of §60-3A-9, §60-3A-11, §60-3A-13, §60-3A-16, §60-3A-17, §60-3A-18, §60-3A-19, §60-3A-22, §60-3A-23, §60-3A-24, §60-3A-25, and §60-3A-26 of this code, and the provisions of §60-3-1 et seq. and §60-4-1 et seq., of this code, applicable to liquor retailers and distillers.

(c) *Payment of taxes and fees.* — The distillery, mini-distillery, or micro-distillery shall pay all taxes and fees required of licensed retailers and meet applicable licensing provisions as required by this chapter and by rule of the commissioner, except for payments of the wholesale markup percentage and the handling fee provided by rule of the commissioner: *Provided*, That all liquor for sale to customers from the distillery, mini-distillery, or micro-distillery for off-premises consumption ~~shall be~~ is subject of a five percent wholesale markup fee and an 80 cents per case bailment fee to be paid to the commissioner: *Provided, however*, That ~~no~~ liquor sold by the distillery, mini-distillery, or micro-distillery shall not be priced less than the price set by the commissioner pursuant §60-3A-17 of this code.

(d) *Payments to market zone retailers.* — Each distillery, mini-distillery, or micro-distillery shall submit to the commissioner two percent of the gross sales price of each retail liquor sale for the value of all sales at the distillery, mini-distillery, or micro-distillery each month. This collection shall be distributed by the commissioner, at least quarterly, to each market zone retailer located in the distillery, mini-distillery, or micro-distillery's market zone, proportionate to each market zone

retailer's annual gross prior years pretax value sales. The maximum amount of market zone payments that a distillery, mini-distillery, or micro-distillery shall ~~be required to~~ submit to the commissioner is \$15,000 per annum.

(e) *Limitations on licensees.* — ~~No~~ A distillery, mini-distillery, or micro-distillery may not sell more than 3,000 gallons of product at the distillery, mini-distillery, or micro-distillery location during the initial two years 24 month period of licensure. The distillery, mini-distillery, or micro-distillery may increase sales at the distillery, mini-distillery, or micro-distillery location by 2,000 gallons following the initial 24 month period of licensure and may increase sales at the distillery, mini-distillery, or micro-distillery location each subsequent 24 month period by 2,000 gallons, not to exceed 10,000 gallons a year of total sales at the distillery, mini-distillery, or micro-distillery location. No licensed mini-distillery may produce more than 50,000 gallons per calendar year at the mini-distillery location. ~~No~~ A licensed micro-distillery may not produce more than 10,000 gallons per calendar year at the micro-distillery location. ~~No~~ The commissioner may issue more than one distillery or mini-distillery license may be issued to a single person or entity and no a person may not hold both a distillery and a mini-distillery license. The owners of a licensed distillery, mini-distillery, or micro-distillery may operate a winery, farm winery, brewery, or as a resident brewer as otherwise specified in the code.

(f) Building code and tax classification- Notwithstanding any provision of this code to the contrary, the mere addition of a distillery, mini-distillery, or micro-distillery licensed under this article on a property does not change the nature or use of the property which otherwise qualifies as agricultural use for building code and property tax classification purposes.

§60-4-3b. Winery and farm winery license to manufacture and sell.

(a) An operator of a winery or farm winery may offer wine produced by the winery, farm winery, or a farm entity authorized by §60-1-5c of this code, for retail sale to customers from the winery or farm winery for consumption off the premises only. Customers may consume wine on the premises when an operator of a winery or farm winery offers. Except for free complimentary samples offered pursuant to §60-6-1 of this code, the winery or farm winery is licensed as a private wine restaurant, or the winery or farm winery is licensed as a private manufacturer club. customers Customers are prohibited from consuming may not consume any wine on the licensed premises of the winery, farm winery, or a farm entity authorized by §60-1-5c of this code, unless such the winery, farm winery, or farm entity has obtained a multi-capacity winery or farm winery license: Provided, That under this subsection, a licensed winery or farm winery may offer complimentary samples per this subsection of wine manufactured by that licensed winery or farm winery for consumption on the premises only on Sundays beginning at 40:00 6:00 a.m. in any county in which the same has been approved as provided in §7-1-3ss of this code. Notwithstanding any other provision of law to the contrary, a licensed winery or farm winery may sell, serve, and furnish wine, for on-premises consumption when licensed accordingly, beginning at 6:00 a.m., and for off-premises consumption beginning at 6:00 a.m. on any day of the week, unless otherwise determined by the residents of the county pursuant to §7-1-3ss of this code.

(b) Complimentary samples allowed by the provisions of this section may not exceed two fluid ounces and no more than three ~~such~~ samples may be given to a patron in any one day.

(c) Complimentary samples may be provided only for on-premises consumption.

(d) A winery, farm winery, or farm entity pursuant to §60-1-5c of this code may offer for retail sale from their licensed premises sealed original container bottles of wine for off-premises consumption only.

(e) A winery, farm winery, or farm entity licensed pursuant to §60-1-5c of this code, holding a multicapacity license and a private wine restaurant license may offer wine by the drink or glass in a private wine restaurant located on the property of the winery, farm winery, or farm entity licensed pursuant to §60-1-5c of this code.

(f) Every licensed winery or farm winery shall comply with the provisions of §60-3-1 *et seq.*, §60-4-1 *et seq.*, and §60-8-1 *et seq.* of this code as applicable to wine retailers, wineries, and suppliers when properly licensed in such capacities.

(g) (1) The winery or farm winery shall pay all taxes and fees required of licensed wine retailers and meet applicable licensing provisions as required by this chapter and by rules promulgated by the commissioner.

(2) Each winery or farm winery acting as its own supplier shall submit to the Tax Commissioner the liter tax for all sales at the winery or farm winery each month, as provided in §60-8-1 *et seq.* of this code.

(3) The five percent wine excise tax, levied pursuant to §60-3-9d of this code, or pursuant to §8-13-7 of this code, may not be imposed or collected on purchases of wine in the original sealed package for the purpose of resale in the original sealed package, if the final purchase of ~~such~~ the wine is subject to the excise tax or if the purchase is delivered outside this state.

(4) No liter tax shall be collected on wine sold in the original sealed package for the purpose of resale in the original sealed package if a subsequent sale of ~~such~~ the wine is subject to the liter tax.

(5) This section shall not be interpreted to authorize a purchase for resale exemption in contravention of §11-15-9a of this code.

(h) A winery or farm winery may advertise a particular brand or brands of wine produced by it. ~~and the~~ The price of the wine is subject to federal requirements or restrictions.

(i) A winery or farm winery ~~must~~ shall maintain a separate winery or farm winery supplier, retailer, and direct shipper licenses when acting in one or more of those capacities and ~~must~~ shall pay all associated license fees, unless ~~such~~ the winery or farm winery holds a license issued pursuant to the provisions of §60-8-3(b)(12) of this code. A winery or farm winery, if holding the appropriate licenses or a multi-capacity winery or farm winery license, may act as its own supplier; retailer for off-premises consumption of its wine as specified in §60-6-2 of this code; private wine restaurant; and direct shipper for wine produced by the winery or farm winery. A winery or farm winery that has applied, paid all fees, and met all requirements may obtain a private manufacturer club license subject to the requirements of §60-7-1 et seq. of this code, and a Class A retail dealer license subject to the requirements of §11-16-1 et seq. of the code. All wineries must use a distributor to distribute and sell their wine in the state, except for farm wineries. ~~No more than one winery or farm winery license may be issued to a single person or entity and no person may hold both a winery and a farm winery license~~ Wineries or farm wineries may enter into alternating wine proprietorship agreements pursuant to §60-1-5c of this code.

(j) The owners of a licensed winery or farm winery may operate a distillery, mini-distillery, or micro-distillery, brewery, or as a resident brewer, as otherwise specified in the code.

(j) (k) For purposes of this section, terms will have the same meaning as provided in §8-13-7 of this code.

(l) Building code and tax classification- Notwithstanding any provision of this code to the contrary, the mere addition of a winery or farm winery licensed under this article on a property does not change the nature or use of the property which otherwise qualifies as agricultural use for building code and property tax classification purposes.

§60-4-3c. License required for sale and shipment of liquor by a distillery, mini-distillery or micro-distillery; shipment of limited quantities of liquor permitted by a private direct shipper; requirements; license fee, and penalties.

(a) Authorization. - Except for the commissioner, no person may offer for sale liquor, sell liquor, or offer liquor for shipment in this state, except for a licensed private direct shipper. A distillery, mini-distillery, or micro-distillery, whose licensed premises is located in this state or whose licensed premises is located and licensed out of this state, who desires to engage in the sale and shipment of liquor produced by the distillery, mini-distillery, or micro-distillery on its licensed premises, shall ship directly from the licensee's primary place of distilling by mail, using a mail shipping carrier to a purchasing person who is 21 years of age or older, for personal use, and not for resale under this article. The distillery, mini-distillery, or micro distillery shall obtain a private direct shipper license. Shipments to a purchasing person shall only be to a retail liquor outlet in the market zone in which the purchasing person resides. A private direct shipper may ship liquor subject to the requirements in this chapter in and throughout West Virginia, except for those local option areas designated as "dry" areas under §60-5-1 et seq. of this code. A private direct shipper may also sell, and ship liquor out of this state directly from its primary place of distilling by mail, using a mail shipping carrier to a purchasing person who is 21 years of age or older subject to the recipient state's or country's requirements, laws, and international laws.

(b) License requirements. – Before sending any shipment of liquor to a purchasing person who is 21 years of age or older, the private direct shipper must first:

(1) File a license application with the commissioner with the appropriate background check information, using forms required by the commissioner. Criminal background checks will not be required of applicants licensed in their state of domicile who can provide a certificate of good standing from their state of domicile;

(2) Pay to the commissioner the \$250 non-prorated and nonrefundable annual license fee to ship and sell only liquor;

(3) Obtain a business registration number from the Tax Commissioner;

(4) Register with the office of the Secretary of State;

(5) Provide the commissioner a true copy of its current active license issued in the state of domicile, proving that the private direct shipper is licensed in its state of domicile as a distillery, is authorized by such state to ship liquor;

(6) Obtain from the commissioner a private direct shipper's license;

(7) Submit to the commissioner a list of all brands of liquor to be shipped to West Virginia and attest that all liquor brands are manufactured by the distillery on its licensed premises seeking licensure and are not counterfeit or adulterated liquor;

(8) Attest that the distillery, mini-distillery, or micro-distillery distills less than 50,000 gallons of liquor each calendar year and provide documentary evidence along with the attestation; and

(9) Meet all other licensing requirements of this chapter and provide any other information that the commissioner may reasonably require.

(c) Shipping Requirements. - All private direct shipper licensees shall:

(1) Not ship more than two bottles of liquor per month to a retail liquor outlet for pickup by a purchasing person who is 21 years of age or older for his or her personal use and consumption, and not for resale. The combined fluid volume of both bottles shall not exceed three liters;

(2) Not ship to any address in an area identified by the commissioner as a 'dry' or local option area where it is unlawful to sell liquor under §60-5-1 et seq. of this code;

(3) Not ship to any licensed suppliers, brokers, distributors, retailers, private clubs, or other licensees licensed under this chapter or §11-16-1 et seq. of this code;

(4) Not ship liquor from overseas or internationally;

(5) Ensure that all containers of liquor shipped to a retail liquor outlet for pickup by a purchasing person who is 21 years of age or older, are clearly and conspicuously labeled with the words 'CONTAINS ALCOHOL: SIGNATURE OF PERSON 21 OR OLDER REQUIRED FOR DELIVERY';

(6) Require a retail liquor outlet to obtain a written or electronic signature upon delivery to a purchasing person who is 21 years of age or older when picking up a sealed liquor delivery order; and

(7) Utilize a licensed and bonded shipping carrier who has obtained a transportation permit as specified in §60-6-12 of the code.

(d) Payment of Fees and Taxes.

(1) Any private direct shipper licensee on all sales of liquor must collect and remit the entire wholesale markup percentage and any handling fees, in full, as set forth in §60-3A-17 of the code and by rule of the commissioner to the commissioner at the close of each month and file a monthly report, on a form provided by the commissioner.

(2) Further, the private direct shipper licensee on all sales of liquor shall collect and remit all state sales tax, municipal tax, and local sales tax to the Tax Commissioner at the close of each month and file a monthly return, on a form provided by the Tax Commissioner, reflecting the taxes paid for all sales and shipments.

(3) The payment of fees to the commissioner and taxes to the Tax Commissioner may be in addition to fees and taxes levied by the private direct shipper's domicile state.

(4) No private direct shipper will be required to pay any fees to the commissioner or taxes to the Tax Commissioner more than once.

(5) A retail liquor outlet which has entered a written agreement with a private direct shipper to accept a liquor shipment under this section may charge an additional fee not less than ten percent fee based on the total price of the liquor shipment, excluding the shipping charges, to a lawful purchaser.

(e) Jurisdiction. - By obtaining a private direct shipper licensee be deemed to have agreed and consented to the jurisdiction of the commissioner, which is Charleston, West Virginia and the Kanawha County circuit court, concerning enforcement of this chapter and any other related laws or rules.

(f) Records and reports. –

(1) Licensed private direct shippers and retail liquor outlets must maintain accurate records of all shipments sent to West Virginia.

(2) Provide proof or records to the commissioner, upon request, that all direct shipments of liquor were purchased and delivered to a purchasing person who is 21 years of age or older.

(g) The private direct shipper may annually renew its license with the commissioner by application, paying the private direct shipper license fee and providing the commissioner with a true copy of a current distillery license from the private direct shipper's domicile state.

(h) The commissioner may promulgate legislative rules to effectuate the purposes of this law.

(i) Penalties. –

(1) The commissioner may enforce the requirements of this chapter by administrative proceedings as set forth in §60-7-13 and §60-7-13a of this code to suspend or revoke a private direct shipper's license or retail liquor outlet's license, and the commissioner may accept payment of a penalties as set forth in §60-7-13 and §60-7-13a of this code or an offer in compromise in lieu of suspension, at the commissioner's discretion. Hearings and appeals on such notices may be had in the same manner as in the case of revocations of licenses set forth in §60-7-13 and §60-7-13a of this code.

(2) If any such distillery violates the provisions of this chapter, the commissioner may determine to suspend the privileges of the distillery to sell, ship, or deliver liquor to a purchasing person who is 21 years of age or older or to the commissioner, or otherwise engage in the liquor business in this state for a period of one year from the date a notice is mailed to such person by the commissioner of the fact that such person has violated the provisions of this article. During such one-year period, it shall be unlawful for any person within this state to buy or receive liquor from such person or to have any dealings with such person with respect thereto.

(k) Criminal Penalties. – A shipment of liquor directly to citizens in West Virginia from persons who do not possess a valid private direct shipper's license is prohibited. Any person who knowingly makes, participates in, transports, imports, or receives such an unlicensed and unauthorized direct shipment is guilty of a felony and, shall, upon conviction thereof, be fined in an amount not to exceed \$10,000 per violation. Without limitation on any punishment or remedy,

criminal or civil, any person who knowingly makes, participates in, transports, imports, or receives such a direct shipment constitutes an act that is an unfair trade practice.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-8. Unlawful sale or possession by licensee.

A licensed person shall not:

(1) Sell, furnish, tender, or serve alcoholic liquors of a kind other than that which ~~such~~ the license or this chapter authorizes him or her to sell;

(2) Sell, furnish, tender, or serve beer to which wine, spirits, or alcohol has been added;

(3) Sell, furnish, tender, or serve wine to which other alcoholic spirits have been added, otherwise than as required in the manufacture ~~thereof~~ of the wine under ~~regulations~~ rules of the commission;

(4) Sell, furnish, tender, or serve alcoholic liquors to a person specified in §60-3-22 of this code;

(5) Sell, furnish, tender, or serve alcoholic liquors except as authorized by ~~his or her~~ its license;

(6) Sell, furnish, tender, or serve alcoholic liquors other than by the drink, poured from the alcoholic liquors' original container: *Provided*, That under certain requirements exceptions to liquor by the drink are as follows:

(A) A private club licensed under §60-7-1 *et seq.* of this code, that is in good standing with the commissioner and has paid a \$1000 on-premises only bottle service fee to the commissioner, may sell or serve liquor by the bottle to two or more persons for consumption on the licensed premises only, and any liquor bottle sold by ~~such a~~ the private club shall be sold at retail for personal use, and not for resale, to a person for not less than 300 percent of the private club's cost, and ~~no such~~ the liquor bottle shall ~~not~~ be removed from the licensed premises by any person or the licensee; and

(B) A Class A licensee licensed under §60-8-1 *et seq.* of this code may sell or serve wine by the bottle to two or more persons for consumption on the licensed premises only, unless ~~such~~ the licensee has obtained a license or privilege authorizing other activity;

(7) Sell, furnish, tender, or serve pre-mixed alcoholic liquor that is not in the original container: *Provided*, That a licensee may sell, furnish, tender, and serve up to 15 recipes of pre-mixed beverages consisting of alcoholic liquors, and nonalcoholic mixer, and ice if in a manner approved by the commissioner and in accord with public health and safety standards:

(A) The licensee shall use approved dispensing and storage equipment which shall be cleaned at the end of the day. Failure to clean the dispensing and storage equipment shall result in the immediate suspension or revocation of the permit;

(B) The licensee shall sanitize and clean the pre-mixing beverage storage equipment after each use or after each batch of the pre-mixed beverage is made;

~~(A) The frozen drink mixing beverage machine is emptied and sanitized daily; and~~

~~(B)~~(C) That The licensee shall maintain a written record reflecting the cleaning and sanitizing of the storage and dispensing equipment ~~frozen drink machine is maintained~~ for inspection by the commissioner and health inspectors;

(D) A violation or violations this subdivision may result in the suspension or revocation of the permit and may result in additional sanctions under this chapter or §11-16-1 et seq. of this code;

(8) Sell, furnish, tender, or serve any alcoholic liquor when forbidden by the provisions of this chapter;

(9) Sell, possess, possess for sale, tender, serve, furnish, or provide any powdered alcohol;

(10) Keep on the premises covered by his or her license alcoholic liquor other than that which he or she is authorized to sell, furnish, tender, or serve by such license or by this chapter.

A person who violates any provision of this section ~~shall be~~ is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined in jail not less than 30 days nor more than one year, or both ~~such fine~~ fined and confined ~~confinement~~ for the first offense. Upon conviction of a second or subsequent offense, the court may ~~in its discretion~~ impose a penalty of ~~confinement~~ imprisonment in a state correctional facility for a period not to exceed three years. A person who violates any provision of this section for the second or any subsequent offense under this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a period not to exceed three years.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-2. Definitions; authorizations; requirements for certain licenses. power to lease building for establishment of private club.

Unless the context in which used clearly requires a different meaning, as used in this article:

(a) 'Applicant' means a private club applying for a license under the provisions of this article.

(b) 'Code' means the official Code of West Virginia, 1931, as amended.

(c) 'Commissioner' means the West Virginia Alcohol Beverage Control Commissioner.

(d) 'Licensee' means the holder of a license to operate a private club granted under this article, which ~~license shall remain~~ remains unexpired, unsuspended, and unrevoked.

(e) 'Private club' means any corporation or unincorporated association which either: (1) Belongs to or is affiliated with a nationally recognized fraternal or veterans' organization which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises to which club are admitted only duly elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests; ~~or~~ (2) is a nonprofit social club, which is operated exclusively for the benefit of its

members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises to which club are admitted only duly elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests; or (3) is organized and operated for legitimate purposes which has at least 100 duly elected or approved dues-paying members in good standing, which owns or leases a building or other premises, including any vessel licensed or approved by any federal agency to carry or accommodate passengers on navigable waters of this state, to which club are admitted only duly elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment and employs a sufficient number of persons for serving meals to members and their guests; or (4) is organized for legitimate purposes and owns or leases a building or other delimited premises in any state, county, or municipal park or at any airport, in which building or premises a club has been established, to which club are admitted only duly elected and approved dues-paying members in good standing and their guests while in the company of a member and to which club the general public is not admitted, and which maintains in connection with the club a suitable kitchen and dining facility and related equipment and employs a sufficient number of persons for serving meals in the club to the members and their guests.

(f) 'Private caterer' means a licensed private club restaurant authorized by the commissioner to cater and serve food and sell and serve alcoholic liquors, or non-intoxicating beer, or non-intoxicating craft beer. A private caterer shall purchase wine sold or served at a catering event from a wine distributor. A private caterer shall purchase nonintoxicating beer and nonintoxicating craft beer sold or served at the catering event from a licensed beer distributor. A private caterer shall purchase liquor from a retail liquor outlet authorized to sell in the market zone, where the catering event is held. The private caterer or the persons or entity holding the catering event shall:

(1) Have at least 10 members and guests attending the catering event;

(2) Have obtained an open container waiver or have otherwise been approved by a municipality or county in which the event is being held;

(3) Operate a private club restaurant on a daily operating basis;

(4) Only use its employees, independent contractors, or volunteers to sell and serve alcoholic liquors who have received certified training in verifying the legal identification, the age of a purchasing person, and the signs of visible, noticeable, and physical intoxication;

(5) Provide to the commissioner, at least 7 days before the event is to take place:

(A) The name and business address of the unlicensed private venue where the private caterer is to provide food and alcohol for a catering event;

(B) The name of the owner or operator of the unlicensed private venue;

(C) A copy of the contract or contracts between the private caterer, the person contracting with the caterer, and the unlicensed private venue;

(D) A floorplan of the unlicensed private venue to comprise the private catering premises, which shall only include spaces in buildings or rooms of an unlicensed private venue where the private caterer has control of the space for a set time period where the space safely accounts for the ingress and egress of the stated members and guests who will be attending the private catering event at the catering premises. The unlicensed private venue's floorplan during the set time period as stated in the contract shall comprise the private caterer's licensed premises, which is authorized for the lawful sale, service, and consumption of alcoholic liquors, nonintoxicating beer and nonintoxicating craft beer, and wine throughout the licensed private catering premises; *Provided*, That the unlicensed private venue shall: (i) Be inside a building or structure, (ii) have other facilities to prepare and serve food and alcohol, (iii) have adequate restrooms, and sufficient building facilities for the number of members and guests expected to attend the private catering event, and (iv) otherwise be in compliance with health, fire, safety, and zoning requirements;

(6) Not hold more than 15 private catering events per calendar year. Upon reaching the 16th event, the unlicensed venue shall obtain its own private club license;

(7) Submit to the commissioner, evidence that any noncontiguous area of an unlicensed venue is within 150 feet of the private caterer's submitted floorplan and may submit a floorplan extension for authorization to permit alcohol and food at an outdoor event;

(8) Meet and be subject to all other private club requirements; and

(9) Use an age verification system approved by the commissioner.

(g) 'Private club bar' means an applicant for a private club or licensed private club licensee that has a primary function for the use of the licensed premises as a bar for the sale and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer when licensed for such sales, while providing a limited food menu for members and guests, and meeting the criteria set forth in this subsection which:

(1) Has at least 100 members;

(2) Operates a bar with a kitchen, including at least: (A) A two-burner hot plate, air fryer, or microwave oven; (B) a sink with hot and cold running water; (C) a 17 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer, which is not used for alcohol cold storage; (D) kitchen utensils and other food consumption apparatus, as determined by the commissioner; and (E) food fit for human consumption available to be served during all hours of operation on the licensed premises;

(3) Maintains, at any one time, \$500 of food inventory capable of being prepared in the private club bar's kitchen. In calculating the food inventory, the commissioner shall include television dinners, bags of chips or similar products, microwavable food or meals, frozen meals, prepackaged foods, or canned prepared foods;

(4) Uses an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 18 who are in the private club bar are accompanied by a parent or legal guardian, and if a person under 18 years of age is not accompanied by a parent or legal guardian that person may not be admitted as a guest; and

(5) Meets and is subject to all other private club requirements.

(h) 'Private club restaurant' means an applicant for a private club or licensed private club licensee that has a primary function of using the licensed premises as a restaurant for serving freshly prepared meals and dining in the restaurant area. The private club restaurant may have a bar area separate from or commingled with the restaurant, seating requirements for members and guests must be met by the restaurant area. The applicant for a private club restaurant license shall meet the criteria set forth in this subsection which:

(1) Has at least 100 members;

(2) Operate a restaurant and full kitchen with at least: (A) Ovens and four-burner ranges; (B) refrigerators or freezers, or some combination of refrigerators and freezers, greater than 50 cubic feet, or a walk-in refrigerator or freezer; (C) other kitchen utensils and apparatus, as determined by the commissioner; and (D) freshly prepared food fit for human consumption available to be served during all hours of operation on the licensed premises;

(3) Maintains, at any one time, \$1,000 of fresh food inventory capable of being prepared in the private club restaurant's full kitchen. In calculating the food inventory, the commissioner may not include television dinners, bags of chips, or similar products, microwavable meals, frozen meals, prepackaged foods, or canned prepared foods;

(4) Uses an age verification system approved by the commissioner for the purpose of verifying that persons under 18 years of age who are in the bar area of a private club restaurant are accompanied by a parent or legal guardian. The licensee may not seat a person in the bar area who is under the age of 18 years and who is not accompanied by a parent or legal guardian, but may allow that person, as a guest, to dine for food and nonalcoholic beverage purposes in the restaurant area of a private club restaurant;

(5) May uncork and serve members and guests up to two bottles of wine that a member purchased from a wine retailer, wine specialty shop, an applicable winery or farm winery when licensed for retail sales, or a licensed wine direct shipper when the purchase is for personal use and, not for resale. The licensee may charge a corkage fee of up to \$10 dollars per bottle. In no event may a member or a group of members and guests exceed two sealed bottles or containers of wine to carry onto the licensed premises for uncorking and serving by the private club restaurant and for personal consumption by the member and guests. A member or guest may cork and reseal any unconsumed wine bottles as provided in §60-8-3(j) of this code and the legislative rules, for carrying unconsumed wine off the licensed premises;

(6) Must have at least two restrooms for members and their guests: *Provided*, That this requirement may be waived by the local health department upon supplying a written waiver of the requirement to the commissioner: *Provided, however*, That the requirement may also be waived for a historic building by written waiver supplied to commissioner of the requirement from the historic association or district with jurisdiction over a historic building: *Provided, further* That in no event shall a private club restaurant have less than one restroom; and

(7) Shall meet and be subject to all other private club requirements.

(i) 'Private manufacturer club' means an applicant for a private club or licensed private club licensee which is also licensed as a distillery, mini-distillery, micro-distillery, winery, farm winery, brewery, or resident brewery that manufacturers liquor, wine, nonintoxicating beer, or nonintoxicating craft beer, which may be sold, served, and furnished to members and guests for

on-premises consumption at the licensee's licensed premises and in the area or areas denoted on the licensee's floorplan, and which meets the criteria set forth in this subsection and which:

(1) Has at least 100 members;

(2) Offers tours, may offer complimentary samples, and may offer space as a conference center or for meetings;

(3) Operates a restaurant and full kitchen with ovens, four-burner ranges, a refrigerator, or freezer, or some combination of a refrigerator and freezer, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 15 hours per week;

(4) Maintains, at any one time, \$500 of fresh food inventory capable of being prepared in the private manufacturer club's full kitchen. In calculating the food inventory, the commissioner may not include television dinners, bags of chips, or similar products, microwavable meals, frozen meals, prepackaged foods, or canned prepared foods;

(5) Owns or leases, controls, operates, and uses acreage amounting to at least one acre which is contiguous bounded or fenced real property that would be listed on the licensee's floorplan and may be used for large events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(6) Lists the entire property from subdivision (5) of this subsection and all adjoining buildings and structures on the private manufacturer club's floorplan that would comprise the licensed premises, which would be authorized for the lawful sale, service, and consumption of alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, and wine throughout the licensed premises, whether these activities were conducted in a building or structure or outdoors while on the private manufacturer club's licensed premises, and as noted on the private manufacturer club's floorplan;

(7) Identifies a person, persons, an entity, or entities who or which has right, title, and ownership or lease interest in the real property, buildings, and structures located on the proposed licensed premises;

(8) Uses an age verification system approved by the commissioner; and

(9) Meets and is subject to all other private club requirements.

~~(f)~~(i) 'Private fair and festival' means an applicant for a private club or a licensed private club meeting the requirements of §60-7-8a of this code for a temporary event, and the criteria set forth in this subsection which:

(1) Has at least 100 members;

(2) Has been sponsored, endorsed, or approved, in writing, by the governing body (or its duly elected or appointed officers) of either the municipality or of the county ~~wherein~~ in which the festival, fair, or other event is to be conducted;

(3) ~~Shall prepare, provide, or engage~~ Prepares, provides, or engages a food ~~caterer~~ vendor to provide adequate freshly prepared food or meals to serve its stated members and guests who

will be attending the temporary festival, fair, or other event, and further shall provide any documentation or agreements of such to the commissioner prior to approval;

(4) ~~Shall~~ Does not use third-party entities or individuals to purchase, sell, furnish, or serve alcoholic liquors (~~liquor and wine~~), nonintoxicating beer, or nonintoxicating craft beer;

(5) ~~Shall provide~~ Provides adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the festival, fair, or other event;

(6) ~~Shall provide~~ Provides a floorplan for the proposed premises with a defined and bounded area to safely account for the ingress and egress of stated members and guests who will be attending the festival, fair, or other event; ~~and~~

(7) ~~Utilizes~~ Uses an age verification system approved by the commissioner; and

(8) Meets and is subject to all other private club requirements.

~~(g)~~(k) 'Private hotel' means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least 2,000 members;

(2) Offers short-term, daily rate accommodations or lodging for members and their guests amounting to at least 30 separate bedrooms, and also offers a conference center for meetings;

(3) Operates a restaurant and full kitchen with ovens, four-burner ranges, walk-in freezers, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 20 hours per week;

(4) Maintains, at any one time, \$2,500 of fresh food inventory capable of being prepared in the private hotel's full kitchen, and in calculating the food inventory the commissioner may not include microwavable, frozen, or canned foods;

(5) Owns or leases, controls, operates, and uses acreage amounting to more than one acre but fewer than three acres, which are contiguous acres of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for hotel and conferences and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

~~(6) Lists in the application referenced in subdivision (5) of this subsection the entire property and all adjoining buildings and structures~~ Lists the entire property from subdivision (5) of this subsection and all adjoining buildings and structures on the private hotel's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private hotel's licensed premises and as noted on the private hotel's floorplan;

(7) Has an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property buildings and structures located on the proposed licensed premises; ~~and~~

(8) ~~Utilizes~~ Uses an age verification system approved by the commissioner; and

(9) Meets and is subject to all other private club requirements.

~~(h)~~(l) 'Private resort hotel' means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least 5,000 members;

(2) Offers short-term, daily rate accommodations or lodging for members and their guests amounting to at least 50 separate bedrooms;

(3) Operates a restaurant and full kitchen with ovens, six-burner ranges, walk-in freezers, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 25 hours per week;

(4) Maintains, at any one time, \$5,000 of fresh food inventory capable of being prepared in the private resort hotel's full kitchen, and in calculating the food inventory the commissioner may not include microwavable, frozen, or canned foods;

(5) Owns or leases, controls, operates, and uses acreage amounting to at least 10 contiguous acres of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for destination, resort, and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(6) Lists the entire property from subdivision (5) of this subsection and all adjoining buildings and structures on the private resort hotel's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private resort hotel's licensed premises and as noted on the private resort hotel's floorplan;

(7) Has an identified person, ~~or~~ persons, or entity that has right, title, and ownership or lease interest in the real property, buildings, and structures located on the proposed licensed premises;

(8) ~~Utilizes~~ Uses an age verification system approved by the commissioner; ~~and~~

(9) Meets and is subject to all other private club requirements; and

~~(9)~~(10) May have a separately licensed resident brewer with a brewpub license inner-connected via a walkway, doorway, or entryway, all as determined and approved by the commissioner, for limited access during permitted hours of operation for tours and complimentary samples at the resident brewery.

~~(i)~~(m) 'Private golf club' means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least 100 members;

(2) Maintains at least one 18-hole golf course with separate and distinct golf playing holes, not reusing nine golf playing holes to comprise the 18 golf playing holes, and a clubhouse;

(3) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and serves freshly prepared food at least 15 hours per week;

(4) Owns or leases, controls, operates, and uses acreage amounting to at least 80 contiguous acres of bounded or fenced real property which would be listed on the private golf club's floorplan and could be used for golfing events and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(5) Lists the entire property from subdivision (4) of this subsection and all adjoining buildings and structures on the private golf club's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private golf club's licensed premises and as noted on the private golf club's floorplan;

(6) Has an identified person, ~~or~~ persons, or entity that has right, title, and ownership interest in the real property, buildings, and structures located on the proposed licensed premises; ~~and~~

(7) ~~Utilizes~~ Uses an age verification system approved by the commissioner; and

(8) Meets and is subject to all other private club requirements.

(j)(n) 'Private nine-hole golf course' means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least 50 members;

(2) Maintains at least one nine-hole golf course with separate and distinct golf playing holes;

(3) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and serves freshly prepared food at least 15 hours per week;

(4) Owns or leases, controls, operates, and uses acreage amounting to at least 30 contiguous acres of bounded or fenced real property which would be listed on the private nine-hole golf course's floorplan and could be used for golfing events and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(5) Lists the entire property from subdivision (4) of this subsection and all adjoining buildings and structures on the private nine-hole golf course's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private nine-hole golf course's licensed premises and as noted on the private nine-hole golf course's floorplan;

(6) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises; ~~and~~

(7) ~~Utilizes~~ Uses an age verification system approved by the commissioner; and

(8) Meets and is subject to all other private club requirements.

(o) 'Private tennis club' means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least 100 members;

(2) Maintains at least four separate and distinct tennis courts, either indoor or outdoor, and a clubhouse or similar facility;

(3) Has a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and is capable of serving freshly prepared food;

(4) Owns or leases, controls, operates, and uses acreage amounting to at least two contiguous acres of bounded or fenced real property which would be listed on the private tennis club's floorplan and could be used for tennis events and large events such as weddings, reunions, conferences, tournaments, meetings, and sporting or recreational events;

(5) Lists the entire property from subdivision (4) of this subsection and all adjoining buildings and structures on the private tennis club's floorplan that would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private tennis club's licensed premises and as noted on the private tennis club's floorplan;

(6) Has identified a person, persons, an entity, or entities who or which has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(7) Meets and is subject to all other private club requirements; and

(8) Uses an age verification system approved by the commissioner.

(p) 'Private professional sports stadium' means an applicant for a private club or licensed private club licensee that is only open for professional sporting events when such events are affiliated with or sponsored by a professional sporting association, reserved weddings, reunions, conferences, meetings, or other special events and does not maintain daily or regular operating hours as a bar or restaurant. The licensee may not sell alcoholic liquors when conducting or hosting non-professional sporting events, and further the applicant shall:

(1) Have at least 1000 members;

(2) Maintain an open air or closed air stadium venue primarily used for sporting events, such as football, baseball, soccer, auto racing, or other professional sports, and also weddings, reunions, conferences, meetings, or other events where parties must reserve the stadium venue in advance of the event;

(3) Operate a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and capable of serving freshly prepared food, or meals to serve its stated members, guests, and patrons who will be attending the event at the private professional sports stadium;

(4) Own or lease, control, operate, and use acreage amounting to at least 3 contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the professional sports stadium's floorplan and could be used for contracted for professional sporting events, group-type weddings, reunions, conferences, meetings, or other events;

(5) List the entire property from subdivision (4) of this subsection and all adjoining buildings and structures on the private professional sports stadium's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private professional sports stadium's licensed premises and as noted on the private professional sports stadium's floorplan;

(6) Have an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(7) Meet and be subject to all other private club requirements; and

(8) Use an age verification system approved by the commissioner.

(g) 'Private farmers market' means an applicant for a private club or licensed private club licensee that operates as an association of bars, restaurants, retailers who sell West Virginia made products among other products, and other stores who open primarily during daytime hours of 6:00 a.m. to 6:00 p.m., but may operate in the day or evenings for special events where the sale of food and alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer may occur for on-premises consumption, such as reserved weddings, reserved dinners, pairing events, tasting events, reunions, conferences, meetings, or other special events and does not maintain daily or regular operating hours as a bar or restaurant, and all business that are members of the association have agreed in writing to be liable and responsible for all sales, service, furnishing, tendering and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer occurring on the entire licensed premises of the private farmer's market, including indoor and outdoor bounded areas, and further the applicant shall:

(1) Have at least 100 members;

(2) Have one or more members operating a private club restaurant and full kitchen with ovens, four-burner ranges, a refrigerator, or freezer (or some combination of the two), and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 15 hours per week;

(3) Have one or more members operating who maintain, at any one time, \$1,000 of fresh food inventory capable of being prepared for events conducted at the private farmers market in the private club restaurant's full kitchen, and in calculating the food inventory the commissioner may not include television dinners, bags of chips or similar products, microwavable meals, frozen meals, prepackaged foods, or canned prepared foods;

(4) Have an association that owns or leases, controls, operates, and uses acreage amounting to more than one acre, which is contiguous acreage of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for large contracted for reserved weddings, reserved dinners, pairing events, tasting events, reunions, conferences, meetings, or other special events;

(5) Have an association that lists in the application for licensure the entire property and all adjoining buildings and structures on the private farmers market's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private farmers market's licensed premises and as noted on the private farmers market's floorplan;

(6) Have an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property buildings and structures located on the proposed licensed premises;

(7) Have at least two separate and unrelated vendors applying for the license and certifying that all vendors in the association have agreed to the liability, responsibility associated with a private farmers market license;

(8) Only use its employees, independent contractors, or volunteers to purchase, sell, furnish, or serve liquor, wine, nonintoxicating beer, or nonintoxicating craft beer;

(9) Provide adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the private farmers market;

(10) Provide a copy of a written agreement between all the vendors of the association that is executed by all vendors stating that each vendor is jointly and severally liable for any violations of this chapter committed during the event;

(11) Provide a security plan indicating all vendor points of service, entrances, and exits in order to verify members, patrons, and guests ages, whether a member, patron, or guest is intoxicated and to provide for the public health and safety of members, patrons, and guests;

(12) Use an age verification system approved by the commissioner; and

(13) Meet and be subject to all other private club requirements.

(r) 'Private wedding venue or barn' means an applicant for a private club or licensed private club licensee that is only open for reserved weddings, reunions, conferences, meetings, or other events and does not maintain daily or regular operating hours, and which:

(1) Has at least 25 members;

(2) Maintains a venue, facility, barn, or pavilion primarily used for weddings, reunions, conferences, meetings, or other events where parties must reserve or contract for the venue, facility, barn, or pavilion in advance of the event;

(3) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and is capable of serving freshly prepared food, or may engage a food caterer to provide adequate freshly prepared food or meals to serve its stated members, guests, and patrons who will be attending the event at the private wedding venue or barn. The applicant or licensee shall provide written documentation including a list of food caterers or written agreements regarding any food catering operations to the commissioner prior to approval of a food catering event;

(4) Owns or leases, controls, operates, and uses acreage amounting to at least two contiguous acres of bounded or fenced real property. The applicant or licensee shall verify that, the property is less than two acres and is remotely located, subject to the commissioner's approval. The bounded or fenced real property may be listed on the private wedding venue's floorplan and may be used for large events such as weddings, reunions, conferences, meetings, or other events;

(5) Lists the entire property from subdivision (4) of this subsection and all adjoining buildings and structures on the private wedding venue or barn's floorplan that would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private wedding venue or barn's licensed premises and as noted on the private wedding venue or barn's floorplan;

(6) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(7) Meets and is subject to all other private club requirements; and

(8) Uses an age verification system approved by the commissioner.

(s) 'Private multi-sport complex' means an applicant for a private club or licensed private club licensee that is open for multiple sports events to be played at the complex facilities, reserved weddings, concerts, reunions, conferences, meetings, or other special events, and which:

(1) Has at least 100 members;

(2) Maintains an open air multi-sport complex primarily for use for sporting events, such as baseball, soccer, basketball, tennis, frisbee, or other sports, but may also conduct weddings, concerts, reunions, conferences, meetings, or other events where parties must reserve the parts of the sports complex in advance of the sporting or other event;

(3) Operates a restaurant and full kitchen with ovens in the licensee's main facility, as determined by the commissioner, on the licensed premises and capable of serving freshly prepared food, or meals to serve its stated members, guests, and patrons who will be attending the event at the private professional sports stadium. A licensee may contract with temporary food vendors or food trucks for food sales only, but not on a permanent basis, in areas of the multi-sport complex not readily accessible by the main facility;

(4) Maintains, at any one time, \$1,000 of fresh food inventory capable of being prepared in the private multi-sport complex's full kitchen. In calculating the food inventory, the commissioner may not include television dinners, bags of chips, or similar products, microwavable meals, frozen meals, prepackaged foods, or canned prepared foods;

(5) Owns or leases, controls, operates, and uses acreage amounting to at least 50 contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the private multi-sport complex's floorplan and could be used for contracted for sporting events, group-type weddings, concerts, reunions, conferences, meetings, or other events;

(6) Lists the entire property from subdivision (5) of this subsection and all adjoining buildings and structures on the private multi-sport complex's floorplan which would comprise the licensed

premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private multi-sport complex's licensed premises and as noted on the private multi-sport complex's floorplan. The licensee may sell alcoholic liquors from a golf cart or food truck owned or leased by the licensee and also operated by the licensee when the golf cart or food truck is located on the private multi-sport complex's licensed premises;

(7) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(8) Meets and is subject to all other private club requirements; and

(9) Uses an age verification system approved by the commissioner.

The Department of Natural Resources, the authority governing any county or municipal park, or any county commission, municipality, other governmental entity, public corporation, or public authority operating any park or airport may lease, as lessor, a building or portion thereof or other limited premises in any such park or airport to any corporation or unincorporated association

for the establishment of a private club pursuant to this article.

§60-7-6. Annual license fee; partial fee; and reactivation fee.

(a) The annual license fee for a license issued under the provisions of this article to a fraternal or veterans' organization or a nonprofit social club ~~shall be~~ is \$750.

(b) The annual license fee for a license issued under the provisions of this article to a private club other than a private club of the type specified in subsection (a) of this section ~~shall be~~ is \$1,000 if the private club bar or restaurant has fewer than 1,000 members; \$1,000 for a private club restaurant to be licensed as a private caterer as defined in §60-7-2 of this code; \$1,500 if the private club is a private wedding venue or barn; \$2,000 if the private club is a private nine-hole golf course, private farmers market, private professional sports stadium, private multi-sport complex, private manufacturer club, or a private tennis club as defined in §60-7-2 of this code; \$2,500 if the private club bar or private club restaurant has 1,000 or more members; \$4,000 if the private club is a private hotel with three or fewer designated areas or a private golf club as defined in §60-7-2 of this code; and further, if the private club is a private resort hotel as defined in §60-7-2 of this code, ~~said~~ the private resort hotel may designate areas within the licensed premises for the lawful sale, service, and consumption of alcoholic liquors as provided for by this article. The annual license fee for a private resort hotel with five or fewer designated areas ~~shall be~~ is \$7,500 and the annual license fee for a private resort hotel with at least six, but no more than 10 designated areas ~~shall be~~ is \$12,500. The annual license fee for a private resort hotel with at least 11, but no more than 15 designated areas shall be \$17,500. The annual license fee for a private resort hotel with no fewer than 15 nor more than 20 designated areas ~~shall be~~ is \$22,500. ~~Provided, That a~~ A private resort hotel ~~having~~ that obtained the license and paid the \$22,500 annual license fee may, upon application to and approval of the commissioner, designate additional areas for a period not to exceed seven days for an additional fee of \$150 per day, per designated area.

(c) The fee for any ~~such~~ license issued following January 1 of any year ~~and to expire that expires on June 30 of such that year shall be~~ is one half of the annual license fee prescribed by subsections (a) and (b) of this section.

(d) A licensee that fails to complete a renewal application and make payment of its annual license fee in renewing its license on or before June 30 of any subsequent year, after initial application, shall be charged an additional \$150 reactivation fee. The fee payment may not be prorated or refunded, and the reactivation fee ~~must~~ shall be paid prior to the processing of any renewal application and payment of the applicable full year annual license fee. A licensee who continues to operate upon the expiration of its license is subject to all fines, penalties, and sanctions available in §60-7-13 and §60-7-13a of this code, all as determined by the commissioner.

(e) ~~All such fees shall be paid by the~~ The commissioner shall pay the fees to the State Treasurer and credited to the General Revenue Fund of the state.

(f) The Legislature finds that the hospitality industry has been particularly damaged by the COVID-19 pandemic and that some assistance is warranted to promote reopening and continued operation of private clubs and restaurants licensed under this article. Accordingly, the fees set forth in subsections (a) and (b) of this section are temporarily modified as follows;

(1) License fees for the license period beginning July 1, 2021, shall be reduced to one-third of the rate set forth in subsections (a) and (b) of this section;

(2) License fees for the license period beginning July 1, 2022, shall be two-thirds of the rate set forth in subsections (a) and (b) of this section; and

(3) License fees for the license period beginning July 1, 2023 and beyond, shall be as set forth in subsections (a) and (b) of this section.

§60-7-8b. One-day charitable rare, antique, or vintage liquor auction; licensee fee and application; license subject to provisions of article; exceptions.

(a) The commissioner may issue a special one-day, license to a licensed private club in partnership with one or more duly organized, federally approved nonprofit corporations, associations, organizations, or entities allowing the nonprofit to conduct a charitable auction of certain sealed bottles of rare, antique, or vintage liquor, as determined by the commissioner, on the private club licensee's licensed premises for off-premises consumption only, when raising money for athletic, charitable, educational, scientific, or religious purposes. A licensed private club may not receive more than 12 licenses under this section per year.

(b) 'Auction or auctioning', for the purposes of this section, means any silent, physical act, or verbal bid auction, where the auction requires in-person bidding at a licensed private club or online internet-based auction bidding, with bidders present at the licensed private club during the nonprofit auction, through a secure internet-based application or website.

(c) Requirements.-

(1) The licensed private club and nonprofit shall jointly complete an application, at least 15 days prior to the event. The application may require, but is not limited to, information relating to the date, time, place, floorplan of the charitable event, and any other information as the commissioner may require. The applicants shall include with the application a written signed and notarized statement that at least 80 percent of the net proceeds from the charitable event will be donated directly to the nonprofit. The commissioner may audit the licensed private club and nonprofit to verify the 80 percent requirement has been met.

(2) The licensed private club and nonprofit must be in good standing with the commissioner, and the applicants must receive the commissioner's approval prior to the charitable event.

(3) The licensed private club and nonprofit shall submit, and the commissioner shall review, the applicants' list of rare, antique, or vintage liquor, and the applicants shall submit documentation showing that the liquor was purchased from a licensed retail outlet in accordance with §60-3A-1 et seq. of this code with all taxes and fees paid. Any rare, antique, or vintage liquor with no documentation or that was not purchased in accordance with §60-3A-1 et seq. of this code, may be approved for auction, if all taxes and fees are paid to the commissioner in accordance with §60-3A-1 et seq. of this code. Any undocumented rare, antique, or vintage liquor approved for charitable auction by the commissioner must be labeled in the interest of public health and safety: 'Purchase and consume at your own risk, as the authenticity or source of manufacture of this bottle has not been verified'.

(4) The private club and nonprofit may not deliver, mail, or ship sealed or unsealed rare, antique, or vintage liquor bottles.

(5) The winning bidder of the auctioned rare, antique, or vintage liquor shall pay and receive the sealed rare, antique, or vintage liquor bottle before the conclusion of the event.

(6) The applicants shall pay a \$150 nonrefundable and nonprorated fee for the license.

(d) Exceptions. –

(1) A nonprofit's charitable auctioning of sealed rare, antique, or vintage liquor bottles, as determined by the commissioner, is permitted on the private club's licensed premises, notwithstanding the bingo, raffle, and lottery provisions of §47-20-10, §47-21-11, and §61-10-1 et seq. of this code, but in compliance with the auction requirements of §19-2c-1 et seq. of this code;

(2) The nonprofit, upon licensure by this section, is permitted a limited, one-time exception of the requirement to be a licensed retail outlet and hold a retail license issued pursuant to §60-3A-1 et seq. of this code to sell liquor; and

(3) The private club, upon licensure by this section, is provided a limited, one-time exception from §60-7-12(a)(1) and §60-6-8(6) of this code, to permit the licensed nonprofit to sell at auction the sealed rare, antique, or vintage liquor bottles for off-premises consumption, to permit the carrying onto, the sale of, and the carrying off of the licensed premises the approved sealed liquor bottles. Any private club or nonprofit licensed pursuant to this code section are subject to all penalties for violations committed under §60-3A-1 et seq. of this code and §60-7-1 et seq. of this code.

§60-7-8c. Special license for a multi-vendor private fair and festival; license fee and application; license subject to provisions of article; exception.

(a) There is hereby created a special license designated Class S3 private multivendor fair and festival license for the retail sale of liquor, wine, nonintoxicating beer, and nonintoxicating craft beer for on-premises consumption at an event where multiple vendors shall share liability and responsibility, and apply for this license. Each vendor may temporarily purchase, sell, furnish, or serve liquor, wine, nonintoxicating beer, and nonintoxicating craft beer as provided in this section.

(b) To be eligible for the license authorized by subsection (a) of this section, the private multivendor fair and festival or other event shall:

(1) Be sponsored, endorsed, or approved by the governing body or its designee of the county or municipality in which the private multivendor fair and festival or other event is located;

(2) Jointly apply to the commissioner for the special license at least 15 days prior to the private fair, festival, or other event;

(3) Pay a nonrefundable nonprorated license fee of \$500 per event that may be divided among all the vendors attending the event;

(4) Be approved by the commissioner to operate the private multivendor fair, festival, or other event;

(5) Be limited to no more than 15 consecutive days;

(6) Have at least two separate and unrelated vendors applying for the license and certifying that at least 100 members will be in attendance;

(7) Freshly prepare and provide food or meals, or engage a food vendor to prepare and provide adequate freshly prepared food or meals to serve its stated members and guests who will be attending the temporary festival, fair, or other event, and provide any written documentation or agreements of the food caterer to the commissioner prior to approval of the license;

(8) Only use its employees, independent contractors, or volunteers to purchase, sell, furnish, or serve liquor, wine, nonintoxicating beer, or nonintoxicating craft beer;

(9) Provide adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the private multi-vendor festival, fair, or other event;

(10) Provide an executed agreement between the vendors and/or food caterers stating that each vendor is jointly and severally liable for any improper acts or conduct committed during the multi-vendor festival or fair event;

(11) Provide a security plan indicating all vendor points of service, entrances, and exits in order to verify members', patrons', and guests' ages, and whether a member, patron, or guest is intoxicated, to provide for the public health and safety of members, patrons, and guests;

(12) Provide a floorplan for the proposed premises with one defined and bounded indoor and/or outdoor area to safely account for the ingress and egress of stated members, patrons, and guests who will be attending the festival, fair, or other event, and the floorplan that would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of liquor, wine, nonintoxicating beer, or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure, or outdoors while on the licensed premises and as noted on the floorplan;

(13) Meet and be subject to all other private club requirements; and

(14) Use an age verification system approved by the commissioner.

(c) Nonintoxicating beer and nonintoxicating craft beer sold, furnished, tendered, or served pursuant to the license created by this section shall be purchased from the licensed distributor that services the area in which the private multi-vendor fair and festival will be held or from a resident brewer acting in a limited capacity as a distributor, in accordance with §11-16-1 et seq. of this code.

(d) Wine sold, furnished, tendered, or served pursuant to the license created by this section shall be purchased from a licensed distributor, winery, or farm winery in accordance with §60-8-1 et seq. of this code.

(e) Liquor sold, furnished, tendered, or served pursuant to the license created by this section shall be purchased from a licensed retail liquor outlet in the market zone or contiguous market zone where the private multi-vendor fair or festival will be held, all in accordance with §60-3A-1 et seq. of this code.

(f) A licensee authorized by this section may use bona fide employees, independent contractors, or volunteers to sell, furnish, tender, or serve the liquor, wine, nonintoxicating beer, or nonintoxicating craft beer; *Provided*, That the licensee shall train all employees, independent contractors, or volunteers to verify legal identification and to verify signs of intoxication.

(g) Licensed representatives of a brewer, resident brewer, beer distributor, wine distributor, wine supplier, winery, farm winery, distillery, mini-distillery, micro-distillery, and liquor brokers may attend a private multi-vendor festival or fair and discuss their respective products but may not engage in the selling, furnishing, tendering, or serving of any liquor, wine, nonintoxicating beer, or nonintoxicating craft beer.

(h) A licensee licensed under this section is subject to all other provisions of this article and the rules and orders of the commissioner: *Provided*, That the commissioner may, by rule or order, allow certain waivers or exceptions with respect to those provisions, rules, or orders as required by the circumstances of each private multi-vendor fair and festival. The commissioner may revoke or suspend immediately any license issued under this section prior to any notice or hearing, notwithstanding §60-7-13a of this code: *Provided, however*, That under no circumstances may the provisions of §60-7-12 of this code be waived or an exception granted with respect thereto.

§60-7-8d. Where private clubs may sell and serve alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer.

(a) With prior approval of the commissioner a private club licensee may sell, serve, and furnish alcoholic liquor and, if also licensed to sell, serve, and furnish nonintoxicating beer or nonintoxicating craft beer to be consumed on premises in a legally demarcated area which may include a temporary private outdoor dining area or temporary private outdoor street dining area. A temporary private outdoor street dining area shall be approved by the municipal government or county commission in which the licensee operates. The commissioner shall develop and make available an application form to facilitate the purposes of this subsection.

(b) The private club licensee shall submit to the commissioner: (1) the municipal or county approval of the private outdoor dining area or private outdoor street dining area; and, (2) a revised floorplan requesting to sell alcoholic liquors, and when licensed for nonintoxicating beer or nonintoxicating craft beer, then nonintoxicating beer or nonintoxicating craft beer, subject to the commissioner's requirements, in an approved and bounded outdoor area. The approved and bounded area need not be adjacent to the licensee's licensed premises, but in close proximity,

for private outdoor street dining or private outdoor dining. For purposes of this subsection, 'close proximity' means an available area within 150 feet of a licensee's licensed premises and under the licensee's control and with right of ingress and egress.

(c) This private outdoor dining or private outdoor street dining may be operated in conjunction with a private wine outdoor dining or private wine outdoor street dining area set forth in §60-8-32a of this code and nonintoxicating beer or nonintoxicating craft beer outdoor dining or outdoor street dining set forth in §11-16-9 of this code.

(d) For purposes of this section, private outdoor dining and private outdoor street dining include dining areas that are:

(1) Outside and not served by an HVAC system for air handling services and use outside air;

(2) Open to the air; and

(3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally approve a partial enclosure with up to three temporary or fixed walls.

Any area where seating is incorporated inside a permanent building with ambient air through HVAC is not considered outdoor dining pursuant to this subsection.

(e) A private club restaurant or a private manufacturer club licensed for craft cocktail growler sales must provide food or a meal along with sealed craft cocktail growler sales as set forth in this article to a patron who is in-person or in-vehicle while picking up food or a meal, and a sealed craft cocktail growler order-to-go, subject to verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

§60-7-8e. Private club restaurant or private manufacturer club licensee's authority to sell craft cocktail growlers.

(a) *Legislative findings.* — The Legislature hereby finds that it is in the public interest to regulate, control, and support the brewing, manufacturing, distribution, sale, consumption, transportation, and storage of liquor and its industry in this state to protect the public health, welfare, and safety of the citizens of this state and promote hospitality and tourism. Therefore, this section authorizes a licensed private club restaurant or private manufacturer club, to have certain abilities to promote the sale of liquor manufactured in this state for the benefit of the citizens of this state, the state's growing distilling industry, and the state's hospitality and tourism industry, all of which are vital components for the state's economy.

(b) *Sales of craft cocktail growlers.* — A licensed private club restaurant or private manufacturer club is authorized under a current and valid license and meets the requirements of this section may offer a craft cocktail growler in the ratio of up to one fluid ounce of liquor to four fluid ounces of nonalcoholic beverages or mixers, not to exceed 128 fluid ounces for the entire beverage in the craft cocktail growler, for retail sale to patrons from their licensed premises in a sealed craft cocktail growler for personal consumption only off of the licensed premises. Prior to the sale, the licensee shall verify in-person, using proper identification, that any patron purchasing the craft cocktail growler is 21 years of age or older and that the patron is not visibly or noticeably intoxicated. There shall be a \$100 non-prorated, non-refundable annual fee to sell craft cocktail growlers.

(c) Retail sales. — Every licensee licensed under this section shall comply with all the provisions of this chapter as applicable to retail sale of liquor at retail liquor outlets, comply with markup specified in §60-3A-17(e)(2) of this code when conducting sealed craft cocktail growler sales, and shall be subject to all applicable requirements and penalties in this article.

(d) Payment of taxes. — Every licensee licensed under this section shall pay all sales taxes required of retail liquor outlets, in addition to any other taxes required, and meet any applicable licensing provisions as required by this chapter and by rule of the commissioner.

(e) Advertising. — Every licensee licensed under this section may only advertise a particular brand or brands of liquor manufactured by a distillery, mini-distillery, or micro-distillery upon written approval from the distillery, mini-distillery, micro-distillery, or an authorized and licensed broker to the licensee. Advertisements may not encourage intemperance or target minors.

(f) Craft cocktail growler defined. — For purposes of this chapter, ‘Craft Cocktail Growler’ means a container or jug that is made of glass, ceramic, metal, plastic, or other material approved by the commissioner, that may be no larger than 128 fluid ounces in size and must be capable of being securely sealed. The growler is utilized by an authorized licensee for purposes of off-premises sales only of liquor and a nonalcoholic mixer or beverage for personal consumption not on a licensed premise. Notwithstanding any other provision of this code to the contrary, a securely sealed craft cocktail growler is not an open container under state and local law. A craft cocktail growler with a broken seal is an open container under state and local law unless it is located in an area of the motor vehicle physically separated from the passenger compartment. A craft cocktail growler is not an original container of liquor, but once sanitized, filled, properly sealed, and sold, all as set forth in this article, is a sealed container.

(h) Craft cocktail growler requirements. — A licensee licensed under this section must prevent patrons from accessing the secure area where the filling of the craft cocktail occurs or to fill a craft cocktail growler. A licensee licensed under this section must sanitize, fill, securely seal, and label any craft cocktail growler prior to its sale. A licensee licensed under this section may refill a craft cocktail growler subject to the requirements of this section. A licensee licensed under this section shall visually inspect any craft cocktail growler before filling or refilling it. A licensee licensed under this section may not fill or refill any craft cocktail growler that appears to be cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container. For purposes of this article, a secure sealing means using a tamper-evident seal, such as: (1) A plastic heat shrink wrap band, strip, or sleeve extending around the cap or lid of craft cocktail growler to form a seal that must be broken when the container is opened; or (2) A screw top cap or lid that breaks apart when the craft cocktail growler is opened.

(i) Craft cocktail growler labeling. — A licensee licensed under this section selling craft cocktail growlers shall affix a conspicuous label on all sold and securely sealed craft cocktail growlers listing the name of the licensee selling the craft cocktail growler, the brand of the liquor in the craft cocktail growler, the type of craft cocktail or name of the craft cocktail, the alcohol content by volume of the liquor in the craft cocktail growler, and the date the craft cocktail growler was filled or refilled, and, all labeling on the craft cocktail growler shall be consistent with all federal labeling and warning requirements.

(j) Craft cocktail growler sanitation. — A licensee licensed under this section shall clean and sanitize all craft cocktail growlers he or she fills or refills in accordance with all state and county health requirements prior to its sealing. In addition, the licensee licensed under this section shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipe lines,

barrel tubes, and any other related equipment used to fill or refill craft cocktail growlers. Failure to comply with this subsection may result in penalties under this article; *Provided* That, if the reuse or refilling of a craft cocktail growler would violate federal law such craft cocktail growler must only be used one-time, for one filling, and be discarded after the one-time use.

(k) *Pre-mixing of craft cocktail.* - A licensee licensed under this section may pre-mix the nonalcoholic beverages or mixers in the advance of a craft cocktail growler purchase and sealing, and add the liquor, as set forth in this section, upon a member or guest's purchase of a craft cocktail growler. A licensee licensed under this section must dispose of any expired premixed nonalcoholic beverages or mixers pursuant to Bureau for Public Health requirements when such premixed nonalcoholic beverages or mixers are no longer fit for human consumption. A licensee authorized under §60-6-8(7) may use a premixed beverage meeting the requirements therein and is also subject to the requirements of this section for a craft cocktail growler.

(l) *Limitations on licensees.* — A licensee licensed under this section shall not sell craft cocktail growlers to other licensees, but only to its members and guests. A licensee licensed under this section must provide food or a meal along with one sealed craft cocktail growler to a patron who is in-person or in-vehicle while picking up food or a meal, and a sealed craft cocktail growler order-to-go, subject to verification that the purchasing person is 21 years of age or older, and not visibly or noticeably intoxicated, and as otherwise specified in this article. A licensee licensed under this section may only sell one sealed craft cocktail growler to a patron who has not been consuming alcoholic liquors or nonintoxicating beer on its licensed premises or one craft cocktail growler per food or meal in the order delivered per §60-7-8f of this code. A licensee licensed under this section shall be subject to the applicable penalties under this article for violations of this article.

(m) *Rules.* — The commissioner, in consultation with the Bureau for Public Health, may to propose legislative rules concerning sanitation for legislative approval, pursuant to §29A-3-1 *et seq.* of this code, to implement the purposes of this section.

§60-7-8f. Private delivery license for a licensed private club restaurant, private manufacturer club, or a third party; requirements; limitations; third party license fee; private cocktail delivery permit; and requirements.

(a) A licensed private club restaurant or private manufacturer club licensed to sell liquor for on-premises consumption may apply for a private delivery license permitting the order, sale, and delivery of liquor and a nonalcoholic mixer or beverage in a sealed craft cocktail growler, when separately licensed for craft cocktail growler sales. The order, sale, and delivery of a sealed craft cocktail growler is permitted for off-premises consumption when completed by the licensee to a person purchasing the craft cocktail growler through a telephone, a mobile ordering application, or web-based software program, authorized by the licensee's license. There is no additional fee for a licensed private club restaurant or private manufacturer club to obtain a private delivery license. The order, sale, and delivery process shall meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for liquor sales or distribution, may apply for a private delivery license for the privilege of ordering and delivery of craft cocktail growlers, from a licensee with a craft cocktail growler license. The order and delivery of a sealed craft cocktail growler is permitted by a third party who obtains a license under this section when a private club restaurant or private manufacturer club sells to a person purchasing the sealed craft cocktail growler through telephone orders, a mobile ordering application, or a web-based software program. The private delivery

license nonprorated, nonrefundable annual fee is \$200 for each third party entity, with no limit on the number of drivers and vehicles.

(c) The private delivery license application shall comply with licensure requirements in this article and shall require any information required by the commissioner: *Provided*, That the license application may not require a third party applicant to furnish information pursuant to §60-7-12 of this code.

(d) *Sale Requirements.* -

(1) The craft cocktail growler purchase shall accompany the purchase of prepared food or a meal and the completion of the sale may be accomplished by the delivery of the prepared food or a meal, and craft cocktail growler by the licensed private club restaurant, private manufacturer club, or third party private delivery licensee;

(2) Any purchasing person shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this chapter for the sale of alcoholic liquors and as set forth in §11-16-1 *et seq.* of the code for nonintoxicating beer or nonintoxicating craft beer.

(3) 'Prepared food or a meal' for this article, means food that has been cooked, grilled, fried, deep-fried, air-fried, smoked, boiled, broiled, twice baked, blanched, sautéed, or in any other manner freshly made and prepared, and does not include pre-packaged food from the manufacturer.

(4) An order, sale, and delivery may consist of multiple sealed craft cocktail growlers for each order of food or meal: *Provided*, That the entire delivery order may not contain any combination of craft cocktail growlers of more than 128 fluid ounces total; and

(5) A third party private delivery licensee shall not have a pecuniary interest in a private club restaurant or private manufacturer club licensee, as set forth in this article. A third party private delivery licensee may only charge a convenience fee for the delivery of any alcohol. The third party private delivery licensee may not collect a percentage of the delivery order for the delivery of alcohol, but may continue to collect a percentage of the delivery order directly related to the prepared food or a meal. The convenience fee charged by the third-party private delivery licensee to the purchasing person shall be no greater than five dollars per delivery order where a craft cocktail growler is ordered by the purchasing person. For any third party licensee also licensed for wine growler delivery as set forth in §60-8-6c of the code, or nonintoxicating beer or nonintoxicating craft beer growler delivery as set forth in §11-16-6d of the code, the total convenience fee of any order, sale, and delivery of a sealed growler, wine growler, or craft cocktail growler shall not exceed five dollars.

(e) *Craft Cocktail Growler Delivery Requirements.* -

(1) Delivery persons employed for the delivery of a sealed craft cocktail growler shall be 21 years of age or older. The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication. The licensee shall submit certification of the training to the commissioner;

(3) The third party delivery licensee or the private club restaurant or private manufacturing club shall hold a private cocktail delivery permit for each vehicle delivering a craft cocktail growler pursuant to subsection (g) of this section: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of licensure.

(4) Prepared food or a meal, and a sealed craft cocktail growler order delivered by a third party private delivery licensee, a private club restaurant, or private manufacturer club may occur in the county or contiguous counties where the licensed private club restaurant or private manufacturer club is located;

(5) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee may only deliver prepared food or a meal, and a sealed craft cocktail growler to addresses located in West Virginia. The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall account for and pay all sales and municipal taxes;

(6) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee may not deliver prepared food or a meal, and a sealed craft cocktail growler to any other licensee;

(7) Deliveries of prepared food or a meal, and a sealed craft cocktail growler are only for personal use, and not for resale; and

(8) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall not deliver and leave the prepared food or a meal, and a sealed craft cocktail growler at any address without verifying a person's age and identification as required by this section.

(f) *Telephone, mobile ordering application, or web-based software requirements.* -

(1) The delivery person may only permit the person who placed the order through a telephone order, a mobile ordering application, or web-based software to accept the prepared food or meal and a craft cocktail growler delivery, subject to age verification upon delivery with the delivery person's visual review and age verification and, as application, a stored scanned image of the purchasing person's legal identification;

(2) Any mobile ordering application or web-based software used shall create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and shall include the delivery driver's name and vehicle information;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and shall include the delivery driver's name and vehicle information;

(4) All records are subject to inspection by the commissioner. The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall retain records

for three years, and may not unreasonably withhold the records from the commissioner's inspection; and

(5) The third party private delivery licensee or the private club restaurant or private manufacturing club shall hold a valid private cocktail delivery permit under subsection (g) of this section for each vehicle used for delivery: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of licensure.

(g) *Private Cocktail Delivery Permit.* -

(1) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall obtain and maintain a retail transportation permit for the delivery of prepared food and a sealed craft cocktail growler, subject to the requirements of this article.

(2) A third party private delivery licensee, a private club restaurant, or private manufacturer club licensee shall provide vehicle and driver information, requested by the commissioner. Upon any change in vehicles or drivers, the licensee shall update the driver and vehicle information with the commissioner within 10 days of the change.

(3) In conjunction with §60-6-12 of this code, a private cocktail delivery permit shall meet the requirements of a transportation permit authorizing the permit holder to transport liquor subject to the requirements of this chapter.

(h) *Enforcement.* -

(1) The third party private delivery licensee, the private club restaurant, or the private manufacturers club licensed by this section are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple licensees, employees, or independent contractors.

(2) Any license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a craft cocktail growler. The licensees in violation are subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, and accepting delivery of orders are considered to be purchasers.

§60-7-12. Certain acts of licensee prohibited; criminal penalties.

(a) It is unlawful for any licensee, or agent, employee, or member thereof, on such licensee's premises to:

(1) Sell, offer for sale, tender, or serve any alcoholic liquors other than by the drink poured from the original package or container, except as authorized in §60-6-8 of this code;

(2) Authorize or permit any disturbance of the peace, obscene, lewd, immoral, or improper entertainment, conduct, or practice, gambling or any slot machine, multiple coin console machine,

multiple coin console slot machine, or device in the nature of a slot machine; however, various games, gaming, and wagering conducted by duly licensed persons of the West Virginia State Lottery Commission, charitable bingo games conducted by a duly licensed charitable or public service organization (or its auxiliaries), pursuant to §47-20-1 *et seq.* of this code, and charitable raffle games conducted by a duly licensed charitable or public service organization (or its auxiliaries), pursuant to §47-21-1 *et seq.* of this code, all of which are permissible on a licensee's licensed premises when operated in accordance with this code, ~~rules, and regulations: *Provided*, That a~~ and rules promulgated thereunder. A private resort hotel holding a license issued pursuant to §60-7-1 *et seq.* of this code, may sell, tender, or dispense nonintoxicating beer, wine, or alcoholic liquors in or on the premises licensed under §29-22A-1 *et seq.* and §29-22C-1 *et seq.*, or §29-25-1 *et seq.* of this code, during hours of operation authorized by §29-22A-1 *et seq.* and §29-22C-1 *et seq.*, or §29-25-1 *et seq.* of this code;

(3) Sell, give away, or permit the sale of, gift to, or the procurement of any nonintoxicating beer, wine, or alcoholic liquors for or to, or permit the consumption of nonintoxicating beer, wine, or alcoholic liquors on the licensee's premises, by any person less than 21 years of age;

(4) Sell, give away, or permit the sale of, gift to, or the procurement of any nonintoxicating beer, wine, or alcoholic liquors, for or to any person known to be ~~deemed~~ considered legally incompetent, or for or to any person who is physically incapacitated due to consumption of nonintoxicating beer, wine or alcoholic liquor or the use of drugs;

(5) Sell, give, or dispense nonintoxicating beer, wine, or alcoholic liquors in or on any licensed premises, or in any rooms directly connected therewith between the hours of 3:00 a.m. and 7:00 ~~6:00~~ 6:00 a.m. on weekdays, ~~or Saturdays, and Sundays, between the hours of 3:00 a.m. and 10:00 a.m. on any Sunday~~ or, between the hours of 3:00 a.m. and 1:00 p.m. in any county upon approval as provided for in §7-1-3ss of this code, on any Sunday; and

(6) Permit the consumption by, or serve to, on the licensed premises any nonintoxicating beer, wine, or alcoholic liquors, covered by this article, to any person who is less than 21 years of age;

(7) With the intent to defraud, alter, change, or misrepresent the quality, quantity, or brand name of any alcoholic liquor;

(8) Sell or offer for sale any alcoholic liquor to any person who is not a duly elected or approved dues-paying member in good standing of ~~said~~ the private club or a guest of ~~such~~ the member;

(9) Sell, offer for sale, give away, facilitate the use of or allow the use of carbon dioxide, cyclopropane, ethylene, helium, or nitrous oxide for purposes of human consumption, except as authorized by the commissioner;

(10)(A) Employ any person who is less than ~~48~~ 16 years of age in a position where the primary responsibility for such employment is to sell, furnish, tender, serve, or give nonintoxicating beer, wine, or alcoholic liquors to any person;

(B) Employ any person who is between ~~the ages of 18~~ 16 years of age and younger than 21 years of age who is not directly supervised by a person aged 21 or over in a position where the primary responsibility for such employment is to sell, furnish, tender, serve or give nonintoxicating beer, wine, or alcoholic liquors to any person; or

(11) Violate any reasonable rule of the commissioner.

(b) It is lawful for any licensee to advertise price and brand in any news media or other means, outside of the licensee's premises.

(c) Any person who violates any of the ~~foregoing~~ provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000, or imprisoned in jail for a period not to exceed one year, or both fined and imprisoned.

ARTICLE 8. SALE OF WINES.

§60-8-2. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:

'Commissioner' or 'commission' means the West Virginia Alcohol Beverage Control Commissioner.

'Distributor' means any person whose principal place of business is within the State of West Virginia who makes purchases from a supplier to sell or distribute wine to retailers, grocery stores, private wine bed and breakfasts, private wine restaurants, private wine spas, private clubs, or wine specialty shops and that sells or distributes nonfortified dessert wine, port, sherry and Madeira wines to wine specialty shops, private wine restaurants, private clubs, or retailers under authority of this article and maintains a warehouse in this state for the distribution of wine. For the purpose of a distributor only, the term 'person' means and includes an individual, firm, trust, partnership, limited partnership, limited liability company, association, or corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee or other persons in active control of the activities of the trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or violations of this article, notwithstanding the liability of trustees in §44D-10-1 *et seq.* of this code.

'Fortified wine' means any wine to which brandy or other alcohol has been added where the alcohol content by volume does not exceed 24 percent, and shall include includes nonfortified dessert wines which are not fortified having an alcohol content by volume of at least fourteen and one-tenths percent and not exceeding sixteen percent where the alcohol content by volume is greater than 17 percent and does not exceed 24 percent.

'Grocery store' means any retail establishment, commonly known as a grocery store, supermarket, delicatessen, caterer, or party supply store, where food, food products, and supplies for the table are sold for consumption off the premises with average monthly sales (exclusive of sales of wine) of not less than \$500 and an average monthly inventory (exclusive of inventory of wine) of not less than ~~\$3,000~~ \$500. The term 'grocery store' ~~shall also include and mean also includes and means~~ a separate and segregated portion of any other retail store which is dedicated solely to the sale of food, food products, and supplies for the table for consumption off the premises with average monthly sales with respect to ~~such the~~ separate or segregated portion (exclusive of sales of wine) of not less than ~~\$3,000~~ \$500 and an average monthly inventory (exclusive of inventory of wine) of not less than ~~\$3,000~~ \$500.

'Hard Cider' means a type of wine that is derived primarily from the fermentation of apples, pears, peaches, honey, or another fruit, or from apple, pear, peach, or another fruit juice concentrate and water; contains no more than 0.64 grams of carbon dioxide per 100 milliliters; contains at least one half of one percent and less than 12 and one half percent alcohol by volume;

and is advertised, labeled, offered for sale, or sold, as hard cider or cider containing alcohol, and not as wine, wine product, or as a substitute for wine.

'Hard Cider Distributor' means any person whose principal place of business is within the State of West Virginia who makes purchases from a supplier to sell or distribute hard cider (but not other types of wine) to retailers, grocery stores, private wine bed and breakfasts, private wine restaurants, private wine spas, private clubs, or wine specialty shops under authority of this code and maintains a warehouse in this state for the distribution of hard cider (but not other types of wine). For the purpose of a hard cider distributor, the term 'person' means and includes an individual, firm, trust, partnership, limited partnership, limited liability company, association, or corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee, or any other person or persons in active control of the activities of the trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or violations of this article, notwithstanding the liability of trustees in §44D-10-1 et seq. of this code.

'Licensee' means the holder of a license granted under the provisions of this article.

'Nonfortified dessert wine' means a wine that is a dessert wine to which brandy or other alcohol has not been added, and which has an alcohol content by volume of at least 14.1 percent and less than or equal to 17 percent.

'Person' means and includes an individual, firm, partnership, limited partnership, limited liability company, association, or corporation.

'Private wine bed and breakfast' means any business with the sole purpose of providing, in a residential or country setting, a hotel, motel, inn, or other such establishment properly zoned as to its municipality or local ordinances, lodging and meals to its customers in the course of their stay at the establishment, which business also: (1) Is a partnership, limited partnership, corporation, unincorporated association, or other business entity which as part of its general business purpose provides meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve wine to its members and their guests when ~~such~~ the sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member and does not admit the general public.

'Private wine restaurant' means a restaurant which: (1) Is a partnership, limited partnership, corporation, unincorporated association, or other business entity which has, as its principal purpose, the business of serving meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve wine to its members and their guests when ~~such~~ the sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member and does not admit the general public. ~~Such~~ Private clubs that meet the private wine restaurant requirements numbered (1), (2), and (3) in this definition shall be considered private wine restaurants: Provided, That, a private wine restaurant shall have at least two restrooms: Provided, however, That the two restroom requirement may be waived by a written waiver provided from a local health department to the commissioner: Provided, further, That a private wine restaurant located in an historic building may also be relieved of the two restroom requirement if a historic association or district with jurisdiction over a historic building provides a written waiver of the requirement to the

commissioner: *And Provided, further,* That in no event shall a private wine restaurant have less than one restroom.

Private wine spa' means any business with the sole purpose of providing commercial facilities devoted especially to health, fitness, weight loss, beauty, therapeutic services, and relaxation, and may ~~be also~~ also be a licensed massage parlor or a salon with licensed beauticians or stylists, which business also: (1) Is a partnership, limited partnership, corporation, unincorporated association, or other business entity which as part of its general business purpose provides meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve up to two glasses of wine to its members and their guests when ~~such~~ the sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member, and does not admit the general public.

'Retailer' means any person licensed to sell wine at retail to the public at his or her established place of business for off-premises consumption and who is licensed to do so under authority of this article.

'Supplier' means any manufacturer, producer, processor, winery, farm winery, national distributor, or other supplier of wine who sells or offers to sell or solicits or negotiates the sale of wine to any licensed West Virginia distributor.

'Table wine' means a wine with an alcohol content by volume between 0.5 percent and 14 percent.

'Tax' includes within its meaning interest, additions to tax, and penalties.

'Taxpayer' means any person liable for any tax, interest, additions to tax, or penalty under the provisions of this article, and any person claiming a refund of tax.

'Varietal wine' means any wine labeled according to the grape variety from which ~~such~~ the wine is made.

'Vintage wine' or 'vintage-dated wine' means wines from which the grapes used to produce ~~such~~ the wine are harvested during a particular year, or wines produced from the grapes of a particular harvest in a particular region of production.

'Wine' means any alcoholic beverage obtained by the natural fermentation of the natural content of grapes, other fruits, or honey or other agricultural products containing sugar ~~and to which no alcohol has been added and shall exclude fortified wine and shall also exclude any product defined as or embraced within the definition of nonintoxicating beer under the provisions of article sixteen, chapter eleven of this code~~ includes table wine, hard cider, nonfortified dessert wine, wine coolers, and other similar wine-based beverages. Fortified wine and any product defined as or contained within the definition of nonintoxicating beer under the provisions of §11-16-1 et seq., of this code are excluded from this definition of wine.

'Wine specialty shop' means a retailer who ~~shall deal~~ deals principally in the sale of table wine, nonfortified dessert wines, wine accessories, and food or foodstuffs normally associated with wine and: (1) Who ~~shall maintain~~ maintains a representative number of ~~such~~ wines for sale in his or her inventory which are designated by label as varietal wine, vintage, generic, and/or according to region of production and the inventory shall contain not less than 15 percent vintage or vintage-

dated wine by actual bottle count; and (2) who, any other provisions of this code to the contrary notwithstanding, may maintain an inventory of port, sherry, and Madeira wines having an alcoholic content of not more than 22 percent alcohol by volume and which have been matured in wooden barrels or casks. All wine available for sale shall be for off-premises consumption except where wine tasting or wine sampling is separately authorized by this code.

§60-8-3. Licenses; fees; general restrictions.

(a) No person may engage in business in the capacity of a winery, farm winery, supplier, distributor, retailer, private wine bed and breakfast, private wine restaurant, private wine spa, or wine specialty shop without first obtaining a license from the commissioner, nor shall a person continue to engage in any activity after his or her license has expired, been suspended, or revoked. No person may be licensed simultaneously as a distributor and a retailer. No person, except for a winery or farm winery, may be licensed simultaneously as a supplier and a retailer. No person may be licensed simultaneously as a supplier and a private wine bed and breakfast, private wine restaurant, or a private wine spa. No person may be licensed simultaneously as a distributor and a private wine bed and breakfast, a private wine restaurant, or a private wine spa. No person may be licensed simultaneously as a retailer and a private wine bed and breakfast, a private wine restaurant, or a private wine spa. Any person who is licensed to engage in any business concerning the manufacture, sale, or distribution of wine may also engage in the manufacture, sale, or distribution of hard cider without obtaining a separate hard cider license.

(b) The commissioner shall collect an annual fee for licenses issued under this article as follows:

(1) One hundred fifty dollars per year for a supplier's license;

(2) Two thousand five hundred dollars per year for a distributor's license and each separate warehouse or other facility from which a distributor sells, transfers, or delivers wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of \$2,500 as provided in this subdivision;

(3) One hundred fifty dollars per year for a retailer's license;

(4) Two hundred fifty dollars per year for a wine specialty shop license, in addition to any other licensing fees paid by a winery or retailer holding a license. Except for the amount of the license fee and the restriction to sales of winery or farm winery wines, a winery, or farm winery acting as a wine specialty shop retailer is subject to all other provisions of this article which are applicable to a wine specialty shop retailer as defined in §60-8-2 of this code;

(5) One hundred fifty dollars per year for a wine tasting license;

(6) One hundred fifty dollars per year for a private wine bed and breakfast license. Each separate bed and breakfast from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of \$150 as provided in this subdivision;

(7) Two hundred fifty dollars per year for a private wine restaurant license. Each separate restaurant from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of \$250 as provided in this subdivision;

(8) One hundred fifty dollars per year for a private wine spa license. Each separate private wine spa from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of \$150 as provided in this subdivision;

(9) One hundred fifty dollars per year for a wine sampling license issued for a wine specialty shop under subsection (n) of this section;

(10) No fee shall be charged for a special one-day license under subsection (p) of this section or for a heritage fair and festival license under subsection (q) of this section;

(11) \$150 per year for a direct shipper's license for a licensee who sells and ships only wine and \$250 per year for a direct shipper's license who ships and sells wine, nonfortified dessert wine, port, sherry, or Madeira wines; ~~and~~

(12) Three hundred fifty dollars per year for a multi-capacity winery or farm winery license which enables the holder to operate as a retailer, wine specialty shop, supplier, and direct shipper without obtaining an individual license for each capacity; and

(13) Two hundred fifty dollars per year for a hard cider distributor's license. Each separate warehouse or other facility from which a distributor sells, transfers, or delivers hard cider shall be separately licensed and there shall be collected with respect to each location the annual license fee of \$250 as provided in this subdivision: *Provided*, That if a licensee is licensed as a nonintoxicating beer or nonintoxicating beer distributor then there is no additional license fee to distribute hard cider.

(c) The license period begins on July 1 of each year and ends on June 30 of the following year and if granted for a less period, the same shall be computed semiannually in proportion to the remainder of the fiscal year.

(d) No retailer may be licensed as a private club as provided by §60-7-1 *et seq.* of this code, except as provided by subsection (k) of this section.

(e) No retailer may be licensed as a Class A retail dealer in nonintoxicating beer as provided by §11-16-1 *et seq.* of this code: *Provided*, That a delicatessen, a caterer, or party supply store which is a grocery store as defined in §60-8-2 of this code and which is licensed as a Class A retail dealer in nonintoxicating beer may be a retailer under this article: *Provided, however*, That any delicatessen, caterer, or party supply store licensed in both capacities ~~must~~ shall maintain average monthly sales exclusive of sales of wine and nonintoxicating beer which exceed the average monthly sales of nonintoxicating beer.

(f) A wine specialty shop under this article may also hold a wine tasting license authorizing the retailer to serve complimentary samples of wine in moderate quantities for tasting. ~~Such~~ The wine specialty shop shall organize a wine taster's club, which has at least 50 duly elected or approved dues-paying members in good standing. ~~Such~~ The club shall meet on the wine specialty shop's premises not more than one time per week and shall either meet at a time when the premises are closed to the general public or ~~shall~~ meet in a separate segregated facility on the premises to which the general public is not admitted. Attendance at tastings shall be limited to duly elected or approved dues-paying members and their guests.

(g) A retailer who has more than one place of retail business shall obtain a license for each separate retail establishment. A retailer's license may be issued only to the proprietor or owner of a bona fide grocery store or wine specialty shop.

(h)(1) The commissioner may issue a license for the retail sale of wine at any festival or fair which is endorsed or sponsored by the governing body of a municipality or a county commission. ~~Such~~ The license shall be issued for a term of no longer than 10 consecutive days and the fee for the license shall be is \$250 regardless of the term of the license. The application for the license shall contain information required by the commissioner and shall be submitted to the commissioner at least 30 days prior to the first day when wine is to be sold at the festival or fair.

(2) Notwithstanding subdivision (1) of this subsection, if the applicant for the festival or fair license is the manufacturer of ~~said~~ the wine, a winery, or a farm winery as defined in §60-1-5a of this code, and the event is located on the premises of a winery or a farm winery, then the license fee is \$50 per festival or fair.

(3) A licensed winery or a farm winery, which has the festival or fair licensee's written authorization and approval from the commissioner, may, in addition to or in conjunction with the festival and fair licensee, exhibit, conduct complimentary tastings, or sell samples not to exceed three, two-fluid ounce, tastings or samples per patron, for consumption on the premises during the operation of a festival or fair only; and may sell wine for off-premises consumption only: *Provided*, That for licensed wineries or farm wineries at a licensed festival or fair the tastings, samples and off-premises sales shall occur under the hours of operation as required in this article, except on Sunday, tastings, samples, and off-premises sales are unlawful between the hours of 2:00 a.m. and ~~4:00~~ 6:00 a.m.

(4) A festival or fair license may be issued to a 'wine club' as defined in this subdivision for a license fee of \$250. The festival or fair committee or the governing body shall designate a person to organize a club under a name which includes the name of the festival or fair and the words 'wine club'. The license shall be issued in the name of the wine club. A licensee ~~may not commence the sale of~~ sell wine as provided in this subdivision until the wine club has at least 50 dues-paying members who have been enrolled, and to whom membership cards have been issued. Thereafter, new members may be enrolled and issued membership cards at any time during the period for which the license is issued. A wine club licensed under the provisions of this subdivision may sell wine only to its members, and in portions not to exceed eight ounces per serving. The sales shall take place on premises or in an area cordoned or segregated so as to be closed to the general public, and the general public shall not be admitted to the premises or area. A wine club licensee under the provisions of this subdivision may serve complimentary samples of wine in moderate quantities for tasting. A wine club may not make wine purchases from a direct shipper where the wine may be consumed on the licensed premises of any Class A private wine retail license or private club. A wine club which violates the provisions of this subdivision is subject to the penalties in this article.

(5) A licensed winery or farm winery approved to participate in a festival or fair under the provisions of this section and the licensee holding the license, or the licensed winery or farm winery approved to attend a licensed festival or fair, is subject to all other provisions of this article and the rules and orders of the commissioner relating to the license: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders as required by the circumstances of each festival or fair ~~may require~~, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions §60-8-27 and §60-8-28 of

this code: *Provided, however*, That under no circumstances shall the provisions of §60-8-20(c) or §60-8-20(d) of this code, be waived nor shall any exception be granted with respect to those subsections.

(6) A license issued under the provisions of this section and the licensee holding the license are not subject to the provisions of subsection (g) of this section.

(7) An unlicensed winery temporarily licensed and meeting the requirements set forth in subsection (q) of this section may conduct the same sampling and sales set forth in subsection (q) of this section at a licensed fair and festival upon approval of the licensee holding the fair and festival license and temporary and limited licensure by the commissioner. An unlicensed winery ~~shall be is~~ subject to the same limits, fees, requirements, restrictions and penalties set forth in subsection (q) of this section: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders as required by the circumstances of each festival or fair. ~~may require, including, without limitation, the right to~~ The commissioner may revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions §60-8-27 and §60-8-28 of this code: *Provided, however*, That under no circumstances shall the provisions of §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception be granted with respect to those subsections.

(i)(1) The commissioner may issue a special license for the retail sale of wine in a professional baseball stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and serve wine, for consumption in a professional baseball stadium. For the purpose of this subsection, 'professional baseball stadium' means a facility constructed primarily for the use of a major or minor league baseball franchisee affiliated with the National Association of Professional Baseball Leagues, Inc., or its successor, and used as a major or minor league baseball park. Any special license issued pursuant to this subsection shall be for a term beginning on the date of issuance and ending on the next following June 30, and its fee is \$250 regardless of the length of the term of the license. The application for the special license shall contain information required by the commissioner and must be submitted to the commissioner at least 30 days prior to the first day when wine is to be sold at the professional baseball stadium. The special license may be issued in the name of the baseball franchisee or the name of the primary food and beverage vendor under contract with the baseball franchisee. These sales must take place within the confines of the professional baseball stadium. The exterior of the area where wine sales may occur ~~must~~ shall be surrounded by a fence or other barrier prohibiting entry except upon the franchisee's express permission, and under the conditions and restrictions established by the franchisee, so that the wine sales area is closed to free and unrestricted entry by the general public.

(2) A license issued under this subsection and the licensee holding the license are subject to all other provisions of this article and the rules and orders of the commissioner relating to the special license: *Provided*, That the commissioner may by rule or order grant certain waivers or exceptions to those rules or orders ~~as required by~~ the circumstances of each professional baseball stadium ~~may require, including, without limitation, the right to~~ The commissioner may revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of this code; ~~and~~ *Provided, however*, That under no circumstances may §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception be granted concerning those subsections.

(3) The commissioner may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement this subsection.

(j) A license to sell wine granted to a private wine bed and breakfast, private wine restaurant, private wine spa, or a private club under the provisions of this article entitles the operator to sell and serve wine, for consumption on the premises of the licensee, when the sale accompanies the serving of food or a meal to its members and their guests in accordance with the provisions of this article: *Provided*, That a licensed private wine bed and breakfast, private wine restaurant, private wine spa, or a private club may permit a person over 21 years of age to purchase wine, consume wine, and recork or reseal, using a tamper resistant cork or seal, up to two separate bottles of unconsumed wine in conjunction with the serving of food or a meal to its members and their guests in accordance with the provisions of this article and in accordance with rules promulgated by the commissioner for the purpose of consumption of ~~said the~~ wine off premises: *Provided, however*, ~~That for this article, food or a meal provided by the private licensee means that the total food purchase, excluding beverage purchases, taxes, gratuity, or other fees is at least \$15:~~ *Provided further*, That a licensed private wine restaurant or a private club may offer for sale, for consumption off the premises, sealed bottles of wine to its customers provided that no more than one bottle is sold per each person over 21 years of age, as verified by the private wine restaurant or private club, for consumption off the premises. ~~Such~~ The licensees ~~are authorized to~~ may keep and maintain on their premises a supply of wine in quantities appropriate for the conduct of operations thereof. Any sale of wine is subject to all restrictions set forth in §60-8-20 of this code. A private wine restaurant may also be licensed as a Class A retail dealer in nonintoxicating beer as provided by §11-16-1 *et seq.* of this code.

(k) With respect to subsections (h), (i), (j), (o), and (p) of this section, the commissioner shall propose rules for promulgation in accordance with §29A-1-1 *et seq.* of this code, including, but not limited to, the form of the applications and the suitability of both the applicant and location of the licensed premises.

(l) The commissioner shall propose rules for promulgation in accordance with the provisions of §29A-1-1 *et seq.* of this code to allow restaurants to serve wine with meals and to sell wine by the bottle for off-premises consumption as provided in subsection (j) of this section. Each licensed restaurant shall be charged an additional \$100 per year fee.

(m) The commissioner shall establish guidelines to permit wines to be sold in all stores licensed for retail sales.

(n) Wineries and farm wineries may advertise off premises as provided in §17-22-7 of this code.

(o) A wine specialty shop under this article may also hold a wine sampling license authorizing the wine specialty shop to conduct special wine sampling events at a licensed wine specialty shop location during regular hours of business. The wine specialty shop may serve up to three complimentary samples of wine, consisting of no more than two fluid ounces each, to any one consumer in one day. Persons serving the complimentary samples ~~must~~ shall be 21 years of age or older and an authorized representative of the licensed wine specialty shop, winery, farm winery, or a representative of a distributor or registered supplier. ~~Distributor and supplier representatives attending wine sampling events must be registered~~ shall register with the commissioner. No licensee, employee, or representative may furnish, give, sell, or serve complimentary samples of wine to any person less than 21 years of age or to a person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs. The wine specialty shop shall notify and secure permission from the commissioner for all wine sampling events ~~one month~~ 30 days prior to the event. Wine sampling events may not exceed six hours per calendar day. Licensees

~~must~~ shall purchase all wines used during these events from a licensed farm winery or a licensed distributor.

(p) The commissioner may issue special one-day licenses to duly organized, nonprofit corporations and associations allowing the sale and serving of wine, and may, if applicable, also allow the charitable auctioning of certain sealed bottles of wine for off-premises consumption only, when raising money for athletic, charitable, educational, or religious purposes. 'Auction or auctioning', for the purposes of this subsection, means any silent, physical act, or verbal bid auction, whether or not ~~such~~ the auction requires in-presence bidding or online Internet-based electronic bidding through a secure application or website, but shall not include any action in violation of §47-20-10, §47-20-11, or §61-10-1 *et seq.* of this code. The license application shall contain information required by the commissioner and shall be submitted to the commissioner at least 30 days prior to the event. Accompanying the license application, the applicant shall submit a signed and notarized statement that at least 80 percent of the net proceeds from the charitable event will be donated directly to the nonprofit corporation or organization. Wines used during these events may be donated by, or purchased from, a licensed retailer, a distributor, winery, or a farm winery. A licensed winery or farm winery which is authorized in writing by a representative of the duly organized, nonprofit corporation ~~and~~ or association which has obtained the one-day license; is in good standing with the state; and obtains the commissioner's approval prior to the one-day license event may, in conjunction with the one-day licensee, exhibit, conduct complimentary tastings, or sell samples not to exceed ~~of~~ three, two-fluid ounce tastings or samples per patron, for consumption on the premises during the operation of the one-day license event; and may sell certain sealed wine bottles manufactured by the licensed winery or farm winery for off-premises consumption: *Provided*, That for a licensed winery or farm winery at a licensed one-day event, the tastings, samples and off-premises sales shall occur under the hours of operation ~~as required in~~ permitted by this article, except on Sunday, tastings, samples, and off-premises sales are unlawful between the hours of 2:00 a.m. and ~~4:00~~ 6:00 a.m., from the one-day licensee's submitted floor plan for the event subject to the requirements in the code and rules. Under no circumstances may the provisions of §60-8-20(c) or §60-8-20(f) of this code be waived nor may any exception be granted with respect to those subsections. ~~No more than six licenses may be issued to any single licensee during any calendar year.~~

(q)(1) In addition to the authorization granted to licensed wineries and farm wineries in subsections (h) and (p) of this section, an unlicensed winery, regardless of its designation in another state, but that is duly licensed in its domicile state, may pay a \$150 nonrefundable and nonprorated fee and submit an application for temporary licensure on a one-day basis for temporary sampling and sale of wine in sealed containers for off-premises consumption at a special one-day license nonprofit event.

(2) The application shall include, but is not limited to, the person or entity's name, address, taxpayer identification number, and location; a copy of its licensure in its domicile state; a signed and notarized verification that it produces 50,000 gallons or less of wine per year; a signed and notarized verification that it is in good standing with its domicile state; copies of its federal certificate of label approvals and certified lab alcohol analysis for the wines it desires to temporarily provide samples and temporarily sell wine in sealed containers for off-premises consumption at a special one-day license for a nonprofit event issued under subsection (p) of this section; and ~~such~~ any other information as the commissioner may reasonably require.

(3) The applicant winery shall include a list of all wines proposed to be temporarily sampled and temporarily sold in sealed containers at a special one-day license for a nonprofit event so that the wines may be reviewed in the interest of public health and safety. Once approved, the

submitted wine list ~~will create~~ creates a temporary wine brand registration for up to two special one-day ~~license~~ licenses for a nonprofit event for no additional fee.

(4) An applicant winery that receives this temporary special one-day license for a nonprofit event ~~will provide~~ shall provide the commissioner a signed and notarized written agreement where the applicant winery agrees acknowledging that the applicant winery understands its responsibility to pay all municipal, local, and sales taxes applicable to the sale of wine in West Virginia.

(5) An application must be submitted per special one-day license for a nonprofit event the applicant winery desires to attend, and the license fee shall cover up to two special one-day license for nonprofit events before an additional fee would be ~~paid~~ is required. In no circumstance would ~~such a the~~ winery be permitted to attend more than four special one-day ~~license for nonprofit events per year~~ licensed events. Any ~~such~~ applicant or unlicensed winery desiring to attend more than four special one-day license for nonprofit events per year or otherwise operate in West Virginia would need to seek appropriate licensure as a winery or a farm winery in this state.

(6) Notwithstanding the provisions of this article and requirements for licensure, wine brand registration, payment of wine liter tax, and the winery's appointment of suppliers and distributors, this temporary special one-day license for a nonprofit event, once granted, permits ~~such a~~ winery to operate in this limited capacity only at the approved specific, special one-day license for a nonprofit event subject to the limitations ~~noted~~ contained in this section.

(7) The applicant winery ~~will need to further~~ shall also apply for and receive a transportation permit ~~in order~~ to legally transport wine in the state per §60-6-12 of this code.

(8) The applicant winery is subject to all applicable violations and/or penalties under this article and the legislative rules that ~~is~~ are not otherwise excepted by this subsection: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders as required by the circumstances of each festival or fair. ~~may require, including, without limitation, the right to~~ The commissioner may revoke or suspend any license issued pursuant to this ~~section~~ article, prior to any notice or hearing.

(r) The commissioner may issue special licenses to heritage fairs and festivals allowing the sale, serving, and sampling of wine from a licensed farm winery. The license application shall contain information required by the commissioner and shall be submitted to the commissioner at least 30 days prior to the event. Wines used during these events may be donated by or purchased from a licensed farm winery. Under no circumstances may the provision of §60-8-20(c) of this code be waived nor may any exception be granted with respect thereto. The commissioner shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to implement the provisions of this subsection.

(s)(1) The commissioner may issue a special license for the retail sale of wine in a college stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and serve wine for consumption in a college stadium. For the purpose of this subsection, 'college stadium' means a facility constructed primarily for the use of a Division I, II, or III college that is a member of the National Collegiate Athletic Association, or its successor, and used as a football, basketball, baseball, soccer, or other Division I, II, or III sports stadium. A special license issued pursuant to this subsection shall be for a term beginning on the date of its issuance and ending on the next following June 30, and its fee is \$250 regardless of the length of the term of the license. The application for the special license shall contain information required by the

commissioner and must be submitted to the commissioner at least 30 days prior to the first day when wine is to be sold. The special license may be issued in the name of the National Collegiate Athletic Association Division I, II, or III college or university or the name of the primary food and beverage vendor under contract with that college or university. ~~These~~ All sales must take place within the confines of the college stadium: *Provided*, That the exterior of the area where wine sales may occur ~~must~~ shall be surrounded by a fence or other barrier prohibiting entry except upon the college or university's express permission, and under the conditions and restrictions established by the college or university, so that the wine sales area is closed to free and unrestricted entry by the general public.

(2) A license issued under this subsection and the licensee are subject to the other requirements of this article and the rules and orders of the commissioner relating to the special license: *Provided*, That the commissioner may by rule or order grant certain waivers or exceptions to those rules or orders as required by the circumstances of each the college stadium. ~~may require, including, without limitation, the right to~~ The commissioner may revoke or immediately suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of this code: *Provided, however*, That §60-8-20(c) or §60-8-20(d) of this code may not be waived, nor shall any exception be granted concerning those subsections.

(3) The commissioner may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement this subsection.

§60-8-4. Liter tax.

There is hereby levied and imposed on all wine sold after July 1, 2007, by suppliers to distributors, and including all wine sold and sent ~~to West Virginia adult residents~~ to persons 21 years of age or older who reside in West Virginia from direct shippers, except wine sold to the commissioner, a tax of twenty-six and four hundred six-thousandths cents per liter. Effective July 1, 2021, hard cider is excepted from this per liter tax and is taxed pursuant to §60-8A-3 of this code.

Before the 16th day of each month thereafter, every supplier, distributor and direct shipper shall make a written report under oath to the Tax Commissioner and the commissioner showing the identity of the ~~purchaser~~ purchasing person, the quantity, label and alcoholic content of wine sold by the supplier to West Virginia distributors or the direct shipper ~~to West Virginia adult residents~~ to persons 21 years of age or older who reside in West Virginia during the preceding month and at the same time shall pay the tax imposed by this article on the wine sold to the distributor or ~~the West Virginia adult residents~~ or to persons 21 years of age or older who reside in West Virginia during the preceding month to the Tax Commissioner.

The reports shall contain other information and be in the form required by the Tax Commissioner ~~may require~~. For purposes of this article, the reports required by this section shall be considered tax returns covered by the provisions of §11-10-1 *et seq.* of this code. Failure to timely file the tax returns within five calendar days of the 16th day of each month ~~will also subject~~ also subjects a supplier, distributor, and direct shipper to penalties under §60-8-18 of this code.

No wine imported, sold, or distributed in this state or sold and shipped to this state by a direct shipper shall be subject to more than one liter tax.

§60-8-6c. Winery and Farm Winery license to sell wine growers and provide complimentary samples prior to purchasing a wine growler.

(a) *Legislative findings.* — The Legislature hereby finds that it is in the public interest to regulate, control, and support the brewing, manufacturing, distribution, sale, consumption, transportation, and storage of wine and its industry in this state to protect the public health, welfare, and safety of the citizens of this state, and promote hospitality and tourism. Therefore, this section authorizes a licensed winery or farm winery with its principal place of business and manufacture located in this state to have certain abilities to promote the sale of wine manufactured in this state for the benefit of the citizens of this state, the state's growing wine industry, and the state's hospitality and tourism industry, all of which are vital components for the state's economy.

(b) *Sales of wine.* — A licensed winery or farm winery with its principal place of business and manufacture located in the State of West Virginia may, when licensed under this section, offer only wine manufactured by the licensed winery or farm winery for retail sale to customers from the winery or farm winery's licensed premises for consumption off of the licensed premises only in the form of original container sealed wine kegs, wine bottles, or wine cans, or also a sealed wine growler for personal consumption, and not for resale. A licensed winery or farm winery may not sell, give, or furnish wine for consumption on the premises of the principal place of business and manufacture located in the State of West Virginia, except for the limited purpose of complimentary samples as permitted in subsection (c) of this section or unless separately licensed as a private wine restaurant or a private manufacturer club.

(c) *Complimentary samples.* — A licensed winery or farm winery with its principal place of business and manufacture located in the State of West Virginia may offer complimentary samples of wine as set forth in §60-4-3b of this code.

(d) *Retail sales.* — Every licensed winery or farm winery under this section shall comply with all the provisions of this article as applicable to wine retailers when conducting wine growler sales and is subject to all applicable requirements and penalties in this article.

(e) *Payment of taxes and fees.* — A winery or farm winery licensed under this section shall pay all taxes and fees required of licensed wine retailers, in addition to any other taxes and fees required, and shall meet applicable licensing provisions as required by this chapter and by rule of the commissioner.

(f) *Advertising.* — A winery or farm winery under this section may advertise a particular brand or brands of wine produced by the licensed winery or farm winery and the price of the wine subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance or target minors.

(g) *Wine Growler defined.* — For purposes of this section and section §60-8-6d of the code, 'wine growler' means a container or jug that is made of glass, ceramic, metal, or other material approved by the commissioner, that may be no larger than 128 fluid ounces in size and is capable of being securely sealed. The growler may be used by an authorized licensee for purposes of off-premises sales only of wine for personal consumption, and not for resale. Notwithstanding any other provision of this code to the contrary, a securely sealed wine growler is not an open container under state and local law. A wine growler with a broken seal is an open container under state and local law unless it is located in an area of the motor vehicle physically separated from the passenger compartment. For purpose of this article, a secure seal means using a tamper evident seal, such as: (1) A plastic heat shrink wrap band, strip, or sleeve extending around the cap or lid of wine growler to form a seal that must be broken when the container is opened; or (2) A screw top cap or lid that breaks apart when the wine growler is opened.

(h) Wine Growler requirements. — A winery or farm winery licensed under this section shall prevent patrons from accessing the secure area where the winery or farm winery fills a wine growler and prevent patrons from filling a wine growler. A licensed winery or farm winery under this section shall sanitize, fill, securely seal, and label any wine growler prior to its sale. A licensed winery or farm winery under this section may refill a wine growler subject to the requirements of this section. A winery or farm winery shall visually inspect any wine growler before filling or refilling it. A winery or farm winery may not fill or refill any wine growler that appears to be cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container.

(i) Wine Growler labeling. — A winery or farm winery licensed under this section selling wine growlers shall affix a conspicuous label on all sold and securely sealed wine growlers listing the name of the licensee selling the wine growler, the brand of the wine in the wine growler, the alcohol content by volume of the wine in the wine growler, and the date the wine growler was filled or refilled. All labeling on the wine growler shall be consistent with all federal labeling and warning requirements.

(j) Wine Growler sanitation. — A licensed winery or farm winery authorized under this section shall clean and sanitize all wine growlers it fills or refills in accordance with all state and county health requirements prior to its filling and sealing. In addition, the licensed winery or farm winery shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipelines, barrel tubes, and any other related equipment used to fill or refill growlers. Failure to comply with this subsection may result in penalties under this article.

(k) Fee. — There is no additional fee for a licensed winery or farm winery authorized under this section to sell wine growlers, but the licensee shall meet all other requirements of this section.

(l) Limitations on licensees. — To be authorized under this section, a licensed winery or farm winery may not produce more than 10,000 gallons of wine per calendar year at the winery or farm winery's principal place of business and manufacture located in the State of West Virginia. A licensed winery or farm winery authorized under this section is subject to the applicable penalties under this article for violations of this section.

(m) Rules. — The commissioner, in consultation with the Bureau for Public Health, may propose legislative rules concerning sanitation for legislative approval, pursuant to §29A-3-1 et seq. of this code, to implement this section.

§60-8-6d. Wine retailer, wine specialty shop, private wine restaurant, private wine bed and breakfast, private wine spa, Class B retail dealer, private club restaurant, private manufacturer club, Class A retail licensee, and Class B retail licensee's authority to sell wine growlers.

(a) Legislative findings. — The Legislature hereby finds that it is in the public interest to regulate, control, and support the brewing, manufacturing, distribution, sale, consumption, transportation, and storage of wine and its industry in this state to protect the public health, welfare, and safety of the citizens of this state and promote hospitality and tourism. Therefore, this section authorizes a licensed wine retailer, wine specialty shop, private wine restaurant, private wine bed and breakfast, private wine spa, private club restaurant, private manufacturer club, Class A retail licensee, or Class B retail licensee to have certain abilities in order to promote the sale of wine manufactured in this state for the benefit of the citizens of this state, the state's growing wine industry, and the state's hospitality and tourism industry, all of which are vital components for the state's economy.

(b) Sales of wine. — A licensed wine retailer, wine specialty shop, private wine restaurant, private wine bed and breakfast, private wine spa, private club restaurant, private manufacturer club, Class A retail licensee, or Class B retail licensee who pays the fee in subsection (h) of this section and meets the requirements of this section may offer wine for retail sale to patrons from the licensed premises in a sealed wine growler for personal consumption off of the licensed premises, and not for resale. Prior to the sale, the licensee shall verify, using proper identification, that any patron purchasing wine is 21 years of age or over and that the patron is not visibly intoxicated. The nonprorated, nonrefundable annual fee to sell wine growlers is \$100.

(c) Retail sales. — Every licensee authorized under this section shall comply with all the provisions of this article as applicable to wine retailers when conducting sales of wine in a wine growler and is subject to all applicable requirements and penalties in this article.

(d) Payment of taxes and fees. — A licensee authorized under this section shall pay all taxes and fees required of licensed wine retailers, in addition to any other taxes and fees required, and meet applicable licensing provisions as required by this chapter and by rule of the commissioner.

(e) Advertising. — A licensee authorized under this section may advertise a particular brand or brands of wine and the price of the wine, subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance or target minors.

(f) Wine Growler defined and requirements. — A licensee authorized under this section shall use the wine growler definition and requirements in §60-8-6c(g) and §60-8-6c(h) of this code.

(g) Wine Growler labeling and sanitation. — A licensee authorized under this section shall label and sanitize wine growlers as set forth in §60-8-6c(i) and §60-8-6c(j) of this code.

(h) Complimentary samples. — A licensee authorized under this section may provide complimentary wine growler samples to a person intending to purchase a wine growler which may be no greater than two fluid ounces per wine growler sample and a wine growler sampling shall not exceed three complimentary two fluid ounce samples per patron per day. A licensee authorized under this section providing complimentary wine samples shall, prior to providing any samples, verify that the patron sampling wine is 21 years of age or older and that the patron is not visibly or noticeably intoxicated.

(i) Limitations on licensees. — A licensee under this section may only sell wine growlers during the hours of operation set forth in this article. Any licensee licensed under this section shall maintain a secure area for the sale and filling of wine in a wine growler. The secure area shall only be accessible by the licensee. Any licensee licensed under this section is subject to the applicable penalties under this article for violations.

(j) Non-applicability of certain statutes. — Notwithstanding any other provision of this article to the contrary, licensees under this section are permitted to break the seal of the original container for the limited purpose of filling a wine growler or providing complimentary wine samples as provided in this section. Any unauthorized sale of wine or any consumption not permitted on the licensee's licensed premises is subject to penalties under this article.

(k) Rules. — The commissioner may propose legislative rules for legislative approval, pursuant to §29A-3-1 et seq. of this code, to implement this section.

§60-8-6e. Private wine delivery license for a licensed Class A wine licensee or a third party; requirements; limitations; third party license fee; private retail transportation permit; and requirements.

(a) A Class A wine licensee who is licensed to sell wine for on-premises consumption may apply for a private wine delivery license permitting the order, sale, and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers, when separately licensed for wine growler sales. The order, sale, and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers is permitted for off-premises consumption when completed by the licensee or the licensee's employees to a person purchasing the wine through a telephone, mobile ordering application, or web-based software program, authorized by the licensee's license. There is no additional fee for a Class A wine licensee to obtain a private wine delivery license. The order, sale, and delivery process must meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for wine sales or distribution, may apply for a private wine delivery license for the privilege of ordering and delivery of wine in the original container of sealed bottles, or cans, or sealed wine growlers, from a licensee with a wine growler license. The order and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers is permitted by a third party licensee when sold by a Class A wine licensee to a person purchasing the wine through telephone orders, mobile ordering application, or web-based software program for off-premises consumption. The private wine delivery license non-prorated, nonrefundable annual fee is \$200 per third party entity, with no limit on the number of drivers and vehicles.

(c) The private wine delivery license application shall comply with licensure requirements in this article and shall contain any information required by the commissioner.

(d) *Sale Requirements.* -

(1) The wine purchase shall accompany the purchase of prepared food or a meal and the completion of the sale may be accomplished by the delivery of prepared food or a meal, and sealed wine by the licensee or third-party licensee.

(2) Any purchasing person shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this article for the sale of wine.

(3) 'Prepared food or a meal' for this article, means food that has been cooked, grilled, fried, deep-fried, air-fried, smoked, boiled, broiled, twice baked, blanched, sautéed, or in any other manner freshly made and prepared, and does not include pre-packaged food from the manufacturer.

(4) An order, sale, and delivery may consist of no more than 384 fluid ounces of wine per delivery order; and

(5) A third-party private wine delivery licensee may not have a pecuniary interest in a Class A wine licensee, as set forth in this article. A third-party private wine delivery licensee may only charge a convenience fee for the delivery of wine as provided in this section. The third-party private wine delivery licensee may not collect a percentage of the delivery order for the delivery of alcohol but may collect a percentage of the delivery order directly related to prepared food or a meal. The convenience fee charged by the third-party private wine delivery licensee to the

purchasing person may be no greater than five dollars per delivery order where wine is ordered by the purchasing person. For any third-party private wine delivery licensee also licensed for nonintoxicating beer or nonintoxicating craft beer growler delivery as set forth in §11-16-6d of the code or craft cocktail growler delivery as set forth in §60-7-8f of the code, the total convenience fee of any order, sale, and delivery of a sealed growler, wine growler, or craft cocktail growler shall not exceed five dollars.

(e) Private Wine Delivery Requirements. -

(1) Delivery persons employed for the delivery of sealed wine shall be 21 years of age or older. The third-party private wine delivery licensee or a Class A wine licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) The third-party private wine delivery licensee or the Class A wine licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication. The third-party private wine delivery licensee shall submit certification of the training to the commissioner;

(3) The third party private wine delivery licensee or Class A wine licensee shall hold a retail transportation permit for each vehicle delivering sealed wine per subsection (g) of this section: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of licensure;

(4) Delivery of food or a meal, and sealed wine orders by a third-party private wine delivery licensee or Class A wine licensee may occur in the county or contiguous counties where the wine licensee is located;

(5) The third-party private wine delivery licensee or Class A wine licensee may only deliver prepared food or a meal and sealed wine to addresses located in West Virginia. The third-party private wine delivery licensee or Class A wine licensee shall account for and pay all sales and municipal taxes;

(6) The third-party private wine delivery licensee or Class A wine licensee may not deliver prepared food or a meal, and sealed wine to any other wine licensees;

(7) Deliveries of food or a meal, and sealed wine are only for personal use, and not for resale; and

(8) The third-party private wine delivery licensee or Class A wine licensee shall not deliver and leave deliveries of prepared food or a meal, and sealed wine any address without verifying a person's age and identification as required by this section.

(f) Telephone, mobile ordering application, or web-based software requirements. -

(1) The delivery person shall only permit the person who placed the order through a telephone order, a mobile ordering application, or web-based software to accept the prepared food or meal, and wine delivery which is subject to age verification upon delivery with the delivery person's visual review and verification and, as applicable, a stored scanned image of the purchasing person's legal identification;

(2) Any mobile ordering application or web-based software used shall create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and shall include the delivery driver's name and vehicle information;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and shall include the delivery driver's name and vehicle information;

(4) All records are subject to inspection by the commissioner, and the third-party private wine delivery licensee and Class A wine licensee shall retain the records for inspection for three years. The third-party private wine delivery licensee or Class A wine licensee may not unreasonably withhold the records from the commissioner's inspection; and

(5) Each vehicle delivering wine shall be issued a private wine retail transportation permit per subsection (g) of this section.

(g) Private Wine Retail Transportation Permit. -

(1) A Class A wine licensee or a third-party private wine delivery licensee shall obtain and maintain a retail transportation permit for the delivery of prepared food and sealed wine.

(2) A Class A wine licensee or a third-party private wine delivery licensee shall provide vehicle and driver information, requested by the commissioner. Upon any change in vehicles or drivers, the licensee shall update the driver and vehicle information with the commissioner within 10 days of the change.

(3) In conjunction with §60-6-12 of this code, a private wine retail transportation permit shall meet the requirements of a transportation permit authorizing the permit holder to transport wine subject to the requirements of this chapter.

(h) Enforcement. -

(1) The licensee or the third-party private wine delivery licensee are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple licensees, employees, or independent contractors.

(2) Any license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a wine bottle, wine can, or wine growler. A person who violates the provisions of this subdivision is subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, and accepting delivery of orders are considered to be purchasers.

§60-8-6f. Private wine delivery license for a licensed Class B wine licensee or a third party; requirements; limitations; third party license fee; private retail transportation permit; and requirements.

(a) A Class B wine licensee who is licensed to sell wine for on-premises consumption may apply for a private wine delivery license permitting the order, sale, and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers, when separately licensed for wine growler sales. The order, sale, and delivery of wine in the original container of sealed bottles, cans, or sealed wine growlers is permitted for off-premises consumption when completed by the licensee or the licensee's employees to a person purchasing the wine through a telephone order, a mobile ordering application, or web-based software program, as authorized by the licensee's license. There is no additional fee for a Class B wine licensee to obtain a private wine delivery license. The order, sale, and delivery process shall meet the requirements of this section, and subject to the penalties of this article.

(b) A third party, not licensed for wine sales or distribution, may apply for a private wine delivery license for the privilege of the ordering and delivery of wine in the original container of sealed bottles, or cans, or sealed wine growlers, from a licensee with a wine growler license. The order and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers is permitted for off-premises consumption by a third party licensee when sold by a Class B wine licensee to a person purchasing the wine through telephone orders, mobile ordering application, or web-based software program. The private wine delivery license non-prorated, nonrefundable annual fee is \$200 per third party entity, with no limit on the number of drivers and vehicles.

(c) The private wine delivery license application shall comply with licensure requirements in this article and shall contain any information required by the commissioner.

(d) Sale Requirements. -

(1) The wine purchase may accompany the purchase of food and the completion of the sale may be accomplished by the delivery of food and sealed wine by the licensee or third-party private wine delivery licensee.

(2) Any purchasing person must be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this article for the sale of wine.

(3) Food, for purposes of this section, means food that has been cooked, microwaved, or that is pre-packaged food from the manufacturer;

(4) An order, sale, or delivery consisting of food and any combination of sealed wine bottles, cans, or growlers shall not be in excess of 384 fluid ounces of wine; and

(5) A third-party private wine delivery licensee shall not have a pecuniary interest in a Class B wine licensee, as set forth in this article. A third-party private wine delivery licensee may only charge a convenience fee for the delivery of wine. The third-party private wine delivery licensee may not collect a percentage of the delivery order for the delivery of alcohol but may collect a percentage of the delivery order directly related to food only. The convenience fee charged by the third-party private wine delivery licensee to the purchasing person shall be no greater than five dollars per delivery order where wine is ordered by the purchasing person. For any third-party

licensee also licensed for nonintoxicating beer or nonintoxicating craft beer delivery as set forth in §11-16-6f of the code, the total convenience fee of any order, sale, and delivery shall not exceed five dollars.

(e) Private Wine Delivery Requirements. -

(1) Delivery persons employed for the delivery of sealed wine shall be 21 years of age or older. The third-party private wine delivery licensee or a Class B wine licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) The third-party private wine delivery licensee or Class B wine licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication and certification. The third-party private wine delivery licensee or Class B wine licensee shall submit certification of the training to the commissioner;

(3) The third party delivery licensee or Class B wine licensee must hold a retail transportation permit for each vehicle delivering sealed wine as required by subsection (g) of this section; Provided, That a delivery driver may retain an electronic copy of his or her permit as proof of licensure;

(4) The third-party private wine delivery licensee or Class B wine licensee may only deliver food and sealed wine orders by a third-party private wine delivery licensee or Class B wine licensee in the county where the wine licensee is located;

(5) The third-party private wine delivery licensee or Class B wine licensee may only deliver food and sealed wine to addresses located in West Virginia with all sales and municipal taxes accounted for and paid;

(6) A third-party private wine delivery licensee or Class B wine licensee may not deliver food and sealed wine to any other wine licensees;

(7) Deliveries of food and sealed wine are only for personal use, and not for resale; and

(8) A third-party private wine delivery licensee or Class B wine licensee shall not deliver and leave food and sealed wine at any address without verifying a person's age and identification as required by this section.

(f) Telephone, mobile ordering application, or web-based software requirements. -

(1) The delivery person shall only permit the person who placed the order through a telephone, a mobile ordering application, or web-based software to accept the food and wine delivery which is subject to age verification upon delivery with the delivery person's visual review and verification and, as applicable, a stored scanned image of the purchasing person's legal identification;

(2) Any mobile ordering application or web-based software used shall create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and shall include the delivery driver's name and vehicle information;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and must include the delivery driver's name and vehicle information;

(4) All records are subject to inspection by the commissioner. The third-party private wine delivery licensee or Class B wine licensee shall retain the records for inspection for three years. The third-party private wine delivery licensee or Class B wine licensee may not unreasonably withhold the records from the commissioner's inspection; and

(5) Each vehicle delivering wine shall be issued a private wine retail transportation permit under subsection (g) of this section.

(g) Private Wine Retail Transportation Permit. -

(1) A Class B wine licensee or third party private wine delivery licensee shall obtain and maintain a retail transportation permit for the delivery of food and wine.

(2) A Class B wine licensee or third party private wine delivery licensee shall provide vehicle and driver information requested by the commissioner. Upon any change in vehicles or drivers, the licensee shall update the driver and vehicle information with the commissioner within 10 days of the change.

(3) In conjunction with §60-6-12 of this code, a private wine retail transportation permit shall meet the requirements of a transportation permit authorizing the permit holder to transport wine subject to the requirements of this chapter.

(h) Enforcement. -

(1) The licensee or third-party private wine delivery licensee are each responsible for any violations committed by their employees or agents under this article, and more than one violation may be issued for a single violation involving multiple licensees, employees, or independent contractors.

(2) Any license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a wine bottle, wine can, or wine growler. A person who violates the provisions of this subdivision is subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, and accepting delivery of orders are considered to be purchasers.

§60-8-18. Revocation, suspension, and other sanctions which may be imposed by the commissioner upon the licensee; procedure for appealing any final order of the commissioner which revokes, suspends, sanctions, or denies the issuance or renewal of any license issued under this article.

(a) The commissioner may on his or her own motion, or shall on the sworn complaint of any person, conduct an investigation to determine if any provisions of this article or any rule

promulgated or any order issued by the commissioner has been violated by any licensee. After investigation, the commissioner may impose penalties and sanctions as set forth ~~below~~ in this section.

(1) If the commissioner finds that the licensee has violated any provision of this article or any rule promulgated or order issued by the commissioner, or if the commissioner finds the existence of any ground on which a license could have been refused, if the licensee were then applying for a license, the commissioner may:

(A) Revoke the licensee's license;

(B) Suspend the licensee's license for a period determined by the commissioner not to exceed 12 months; ~~or~~

(C) Place the licensee on probation for a period not to exceed 12 months; ~~and or~~

(D) Impose a monetary penalty not to exceed \$1,000 for each violation where revocation is not imposed.

(2) If the commissioner finds that a licensee has willfully violated any provision of this article or any rule promulgated or any order issued by the commissioner, the commissioner shall revoke the licensee's license.

~~(b) If a supplier or distributor fails or refuses to keep in effect the bond required by §60-8-29 of this article, the commissioner shall automatically suspend the supplier or distributor's license until the bond required by §60-8-20 of this article is furnished to the commissioner, at which time the commissioner shall vacate the suspension~~

~~(e)~~(b) Whenever the commissioner refuses to issue a license, or suspends or revokes a license, places a licensee on probation, or imposes a monetary penalty, he or she shall enter an order to that effect and cause a copy of the order to be served in person or by certified mail, return receipt requested, on the licensee or applicant.

~~(d)~~(c) An applicant or licensee, as the case may be, adversely affected by the order has a right to a hearing before the commissioner if a written demand for hearing is served upon the commissioner within 10 days following the receipt of the commissioner's order by the applicant or licensee. Timely service of a demand for a hearing upon the commissioner operates to suspend the execution of the order with respect to which a hearing has been demanded, except an order suspending a license under the provisions of §60-8-29 of this code. The person demanding a hearing shall give security for the cost of the hearing in a form and amount as required by the commissioner ~~may reasonably require~~. If the person demanding the hearing does not substantially prevail in the hearing or upon judicial review thereof as provided in subsections ~~(g)~~(f) and ~~(h)~~(g) of this section, then the costs of the hearing shall be assessed against him or her by the commissioner and may be collected by an action at law or other proper remedy.

~~(e)~~(d) Upon receipt of a timely served written demand for a hearing, the commissioner shall immediately set a date for the hearing and notify the person demanding the hearing of the date, time, and place of the hearing, which shall be held within 30 days after receipt of the demand. At the hearing, the commissioner shall hear evidence and thereafter enter an order supporting by findings of facts, affirming, modifying, or vacating the order. Any such order is final unless vacated or modified upon judicial review.

~~(f)~~(e) The hearing and the administrative procedure prior to, during, and following the hearing shall be governed by and in accordance with the provisions of §29A-5-1 *et seq.* of this code.

~~(g)~~(f) Notwithstanding the provisions of §29A-5-4(b) of this code, an applicant or licensee adversely affected by a final order entered following a hearing has the right ~~of~~ to judicial review of the order code in the Circuit Court of Kanawha County or the circuit court in the county where the proposed or licensed premises is located and will or does conduct sales: *Provided*, That in all other respects, ~~such~~ the review shall be conducted in the manner provided in chapter 29A of this code. ~~The applicant or licensee shall file the~~ petition for the review ~~must be filed~~ with the circuit court within 30 days following entry of the final order issued by the commissioner. An applicant or licensee obtaining judicial review is required to pay the costs and fees incident to transcribing, certifying, and transmitting the records pertaining to the matter to circuit court.

~~(h)~~(g) The judgment of the circuit court reviewing the order of the commissioner is final unless reversed, vacated, or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of §29A-6-1 of this code.

~~(i)~~(h) Legal counsel and services for the commissioner in all proceedings in any circuit court and the Supreme Court of Appeals shall be provided by the Attorney General or his or her assistants and in any proceedings in any circuit court by the prosecuting attorney of that county as well, all without additional compensation.

§60-8-20. Unlawful acts generally.

It ~~shall be~~ is unlawful:

(a) For a supplier or distributor to sell or deliver wine purchased or acquired from any source other than a person registered under the provisions of §60-8-6 of this code or for a retailer to sell or deliver wine purchased or acquired from any source other than a licensed distributor or a farm winery as defined in §60-1-5a of this code;

(b) Unless otherwise specifically provided by the provisions of this article, for a licensee under this article to acquire, transport, possess for sale, or sell wine other than in the original package;

(c) For a licensee, his or her servants, agents or employees to sell, furnish or give wine to any person less than 21 years of age, or to a ~~mental~~ mentally incompetent person or person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs: *Provided*, That the provisions of section §60-3A-25a of this code shall apply to sales of wine;

(d) For a licensee to permit a person who is less than 18 years of age to sell, furnish or give wine to any person, except as provided for in subsection (g) of this section;

(e) For a supplier or a distributor to sell or deliver any brand of wine purchased or acquired from any source other than the primary source of supply of the wine which granted the distributor the right to sell the brand at wholesale. For the purposes of this article, 'primary source of supply' means the vintner of the wine, the importer of a foreign wine who imports the wine into the United States, the owner of a wine at the time it becomes a marketable product, the bottler of a wine or an agent specifically authorized by any of the above-enumerated persons to make a sale of the wine to a West Virginia distributor: *Provided*, That no retailer shall sell or deliver wine purchased or acquired from any source other than a distributor or farm winery licensed in this state: *Provided, however*, That nothing herein is considered to prohibit sales of convenience between distributors

licensed in this state wherein one distributor sells, transfers, or delivers to another distributor a particular brand or brands for sale at wholesale, of which brand or brands the other distributor has been authorized by a licensed supplier to distribute. The commissioner shall promulgate legislative rules necessary to carry out the provision of this subsection;

(f) For a person to violate any ~~reasonable~~ rule promulgated by the commissioner under this article;

(g) Nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be considered to prohibit any licensee from employing any person who is at least 18 years of age to serve in any licensee's lawful employment, including the sale ~~or delivery~~ of wine ~~or distribution of wine on behalf of a winery, farm winery, farm entity, supplier, or distributor~~ under the provisions of this article. With the prior approval of the commissioner, a licensee ~~whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores,~~ may employ persons who are less than 18 years of age but at least 16 years of age: *Provided*, That the person's duties may ~~not~~ include the sale ~~or delivery~~ of nonintoxicating beer or wine alcoholic liquors only when directly supervised by a person 21 years of age or older: *Provided, however*, That the authorization to employ persons under ~~the age of 18 years of age~~ shall be clearly indicated on the licensee's license: *Provided, further*, That nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be considered to prohibit any licensee from employing any person who is at least 21 years of age for the ordering and delivery of wine when licensed for the ordering and delivery of wine under the provisions of this article.

§60-8-29. Bond Affidavit of compliance required of distributors and suppliers.

Each applicant for a distributor's license or a supplier's license shall furnish at the time of application ~~a bond with a corporate surety authorized to transact business in this State, payable to the State, and conditioned on the payment of all taxes and fees herein prescribed and on the faithful performance of and compliance with the provisions of this article.~~ an affidavit of compliance with federal and state laws regarding tied house laws, trade practice requirements, and furnishing things of value requirements set forth in the code and the rules. The commissioner shall suspend the licenses of licensed distributors and suppliers upon 10 days written notice by the commissioner, for failing to pay their taxes to the Tax Commissioner or who are not otherwise in good standing with the commissioner and other state agencies. If the licensed distributors and suppliers fail to pay their taxes or otherwise fail to take corrective actions to put the licensed distributors and suppliers in good standing within 30 days from the date of suspension of the licensee's license, then the commissioner shall revoke the licensee's license pursuant to the requirements of this article.

~~The penal sum of the bond for distributors shall be ten thousand dollars and the penal sum of the bond for suppliers shall be \$10,000. Each distributor shall be required to furnish separate bond for each location or separate place of business from which wine is distributed, sold or delivered. Revocation or forfeiture of the bond furnished for any such location may, in the discretion of the commissioner, cause the revocation or forfeiture of all such bonds furnished by the distributor suffering such revocation or forfeiture.~~

§60-8-32a. Where wine may be sold and consumed for on-premises consumption.

(a) With prior approval of the commissioner, a Class A wine licensee may sell, serve, and furnish wine for on premises consumption in a legally demarcated area which may include a temporary private wine outdoor dining area or a temporary private wine outdoor street dining area. A temporary private wine outdoor street area shall be approved by the municipal government or county commission in which the licensee operates. The commissioner shall develop and make available an application form to facilitate the purposes of this subsection.

(b) The Class A wine licensee shall submit to a municipality or county commission for the approval of the private wine outdoor dining area or private wine outdoor street dining area and submit to the municipality or county commission a revised floorplan requesting to sell wine, subject to the commissioner's requirements, in an approved and bounded outdoor area. For private wine outdoor street dining or private wine outdoor dining the approved and bounded outdoor area need not be adjacent to the licensee's licensed premises, but in close proximity and under the licensee's control and with right of ingress and egress. For purposes of this section, 'close proximity', means an available area within 150 feet of the licensee's licensed premises.

(c) This private wine outdoor dining or private wine outdoor street dining may be operated in conjunction with a private outdoor dining or private outdoor street dining area set forth in §60-7-8d of this code, and nonintoxicating beer or nonintoxicating craft beer outdoor dining or outdoor street dining set forth in §11-16-9 of this code.

(d) For purposes of this section, 'private wine outdoor dining and private wine outdoor street dining' include dining areas that are:

(1) Outside and not served by an HVAC system for air handling services and use outside air;

(2) Open to the air; and

(3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally approve a partial enclosure with up to three temporary or fixed walls.

Any areas where seating is incorporated inside a permanent building with ambient air through HVAC is not considered outdoor dining pursuant to this subsection.

(e) Class A licensees licensed for on-premises sales shall provide food or a meal along with sealed wine in the original container or a sealed wine growler sales and service as set forth in this section and in §60-8-3 of this code, to a patron who is in-person or in-vehicle while picking up food and sealed wine in the original containers or sealed wine growlers ordered-to-go, subject to verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

§60-8-34. When retail sales prohibited.

~~It shall be is~~ unlawful for a retailer, farm winery, wine specialty shop retailer, private wine bed and breakfast, private wine restaurant, or private wine spa licensee, his or her servants, agents, or employees to sell or deliver wine between the hours of 2:00 a.m. and ~~4:00~~ 6:00 a.m. or, ~~it shall be is~~ unlawful for a winery, farm winery, private wine bed and breakfast, private wine restaurant, or private wine spa, his or her servants, agents, or employees to sell wine between the hours of 2:00 a.m. and 1:00 p.m. in any county upon approval as provided for in §7-1-3ss of this code, ~~on Sundays,~~ or between the hours of 2:00 a.m. and ~~7:00~~ 6:00 a.m. on weekdays, ~~and Saturdays, and Sundays.~~

ARTICLE 8A. MANUFACTURE AND SALE OF HARD CIDER.**§60-8A-1. Definition of Hard Cider.**

'Hard Cider' means a type of wine that is derived primarily from the fermentation of apples, pears, peaches, honey, or other fruit, or from apple, pear, peach, or other fruit juice concentrate and water; contains no more than 0.64 grams of carbon dioxide per 100 milliliters; contains at least one half of one percent and less than 12 and one half percent alcohol by volume; and is advertised, labeled, offered for sale, or sold, as hard cider or cider containing alcohol, and not as a wine, wine product, or as a substitute for wine.

§60-8A-2. Applicability of other laws and licenses.

(a) Except as stated in this article, all wine licenses and other wine requirements set forth in §60-8-1 et seq., §60-4-3b, and §60-6-2, of this code, shall apply to the manufacture, distribution, or sale of hard cider. Any person or licensee legally authorized to manufacture, distribute, or sell wine may manufacture, distribute, or sell hard cider in the same manner and to the same persons, and subject to the same limitations and conditions, as such license or legal right authorizes him or her to manufacture, distribute, or sell wine. No additional wine license fees shall be charged for the privilege of manufacturing, distributing, or selling hard cider.

(b) Except as stated in this article, all hard cider distributors are bound by all wine distribution requirements set forth in §60-8-1 et seq., §60-4-3b, and §60-6-2, of this code which shall apply to distribution of hard cider. Any person or licensee legally authorized to distribute hard cider may distribute hard cider in the same manner and to the same persons, and subject to the same limitations and conditions, as a license or legal right would authorize him or her to distribute wine. An additional hard cider license fee shall not be charged for the privilege of distributing hard cider.

§60-8A-3. Taxation; reporting; deposits into Agriculture Development Fund; penalties for failure to file returns; application of state tax law; rulemaking authority.

(a) There is hereby levied and imposed on all hard cider sold on and after July 1, 2021, by wineries, farm wineries, and suppliers to distributors, and including all hard cider sold and sent to persons 21 years of age or older who reside in West Virginia from direct shippers, a tax of 22.6 cents per gallon, in like ratio for any partial gallon or other unit of measure: *Provided*, That wineries, farm wineries, and suppliers eligible for federal tax credits in 26 U.S.C. 5041(c)(1) on hard cider are eligible for the credits in this state against the tax on hard cider. In the case of a person who produces not more than 250,000 wine gallons of hard cider during the calendar year, there shall be allowed as a credit against any tax imposed by this section of 5.6 cents per wine gallon on the first 100,000 wine gallons of hard cider which are removed during such year for consumption or sale and which have been produced at qualified facilities in the United States. That credit shall be reduced by one percent for each 1,000 wine gallons of hard cider produced in excess of 150,000 wine gallons of hard cider during the calendar year. For the purposes of this section, the term 'wine gallon' means a United States gallon of liquid measure equivalent to the volume of 231 cubic inches. On lesser quantities, the tax shall be paid proportionately (fractions of less than one-tenth gallon being converted to the nearest one-tenth gallon, and five-hundredths gallon being converted to the next full one-tenth gallon). Hard cider is exempt from the liter tax established under §60-8-4 of this code.

(b) The Tax Commissioner shall deposit, at least quarterly, after deducting the amount of any refunds lawfully paid and any administrative fees authorized by this code, the taxes for the hard

cider, pursuant to this section, in the Agriculture Development Fund established by §19-2-12 of this code.

(c) Before the 16th day of each month thereafter, every winery, farm winery, supplier, distributor, and direct shipper shall make a written report under oath to the Tax Commissioner and the commissioner showing the identity of the purchasing person, the quantity, label, and alcoholic content of hard cider sold by the winery, farm winery, and supplier to West Virginia distributors or the direct shipper to persons 21 years of age or older who reside in West Virginia during the preceding month and at the same time shall pay the tax imposed by this article on the hard cider sold to the distributor or to persons 21 years of age or older who reside in West Virginia during the preceding month to the Tax Commissioner.

The reports shall contain other information and be in the form required by the Tax Commissioner. For purposes of this article, the reports required by this section shall be considered tax returns covered by the provisions of §11-10-1 et seq. of this code. Failure to timely file the tax returns within five calendar days of the 16th day of each month subjects a winery, farm winery, supplier, distributor, and direct shipper to penalties under §60-8-18 of this code.

(d) No hard cider imported, sold, or distributed in this state or sold and shipped to this state by a direct shipper shall be subject to more than one per-gallon tax on hard cider.

(e) Administrative procedures. — Each and every provision of the West Virginia Tax Procedure and Administration Act set forth in § 11-10-1 et seq. of this code, applies to the taxes imposed pursuant to this section, except as otherwise expressly provided in this article, with like effect as if that act were applicable only to the taxes imposed by this section and were set forth in extenso in this article.

(f) Criminal penalties. — Each and every provision of the West Virginia Tax Crimes and Penalties Act set forth in § 11-9-1 et seq. of this code applies to the taxes imposed pursuant to this section with like effect as if that act were applicable only to the taxes imposed pursuant to this article and were set forth in extenso in this article.

(g) The Tax Commissioner may propose legislative rules for legislative approval, pursuant to §29A-3-1 et seq. of this code, to implement this section.

§60-8A-4. Fruit sources; phase in; applications.

(a) On and after July 1, 2021, pursuant to §60-3-25 of this code, any farm winery attempting to manufacture hard cider may apply to the Agriculture Commissioner with a copy to the commissioner showing its inability to obtain 75 percent of the apples, pears, peaches, honey, or other fruits necessary to produce its hard cider from within this state. The Agriculture Commissioner may issue a permit to the applicant to import such fruit, honey, or fruit juice concentrate in an amount determined necessary by the Agriculture Commissioner to allow the farm winery to produce hard cider within the percentage established by §60-1-5a of this code.

(b) The burden of proof is on the applicant to show that apples, pears, peaches, honey, or other fruits, of the type normally used by the licensee are not available from any other source within the State of West Virginia. The commissioner shall not consider an application for a permit under this section unless it is accompanied by written findings by the Agriculture Commissioner in support of the application.

(c) Notwithstanding any provision in §60-3-25 of this code, to the contrary, any permit issued under this section is effective for a period of up to three years: *Provided*, That the applicant files an annual statement of necessity, supported by written findings from the Agriculture Commissioner, with the commissioner. After the five-year permit issued pursuant to this section has expired, the applicant shall submit any subsequent application for a permit pursuant to §60-3-25 of this code.

§60-8A-5. Winery or farm winery licensee's authority to manufacture, sell, and provide complimentary samples; growler sales; advertisements; taxes; fees; rulemaking.

(a) *Sales of hard cider.* — A licensed winery or farm winery with its principal place of business or manufacturing facility located in the State of West Virginia may offer hard cider manufactured by the licensed winery or farm winery for retail sale to customers from the winery's or farm winery's licensed premises for consumption off of the licensed premises only in approved and registered hard cider kegs, bottles, or cans, or also sealed wine growlers for personal consumption and not for resale. A licensed winery or farm winery may not sell, give, or furnish hard cider for consumption on the premises of the principal place of business or manufacturing facility located in the State of West Virginia, except for the limited purpose of complimentary samples as permitted in subsection (b) of this section. 'Wine Growler' has the meaning set forth in §60-8-6c(g) of this code.

(b) *Complimentary samples.* — A licensed winery or farm winery with its principal place of business or manufacturing facility located in the State of West Virginia may offer complimentary samples of hard cider manufactured at the winery's or farm winery's principal place of business or manufacturing facility located in the State of West Virginia. The complimentary samples may be no greater than two fluid ounces per sample per patron, and a sampling shall not exceed six complimentary two-fluid ounce samples per patron per day. A licensed winery or farm winery providing complimentary samples shall provide complimentary food items to the patron consuming the complimentary samples; and prior to any sampling, verify, using proper identification, that the patron sampling is 21 years of age or older and that the patron is not noticeably or visibly intoxicated.

(c) *Retail sales.* — Every licensed winery or farm winery under this section shall comply with all the provisions applicable to wine retailers when conducting sales of hard cider and is subject to all applicable requirements and penalties.

(d) *Payment of taxes and fees.* — A licensed winery or farm winery under this section shall pay all taxes and fees required of licensed wine retailers, in addition to any other taxes and fees required, and meet applicable licensing provisions as required by law and by rule of the commissioner.

(e) *Advertising.* — A licensed winery or farm winery may advertise a particular brand or brands of hard cider produced by the licensed winery or farm winery and the price of the hard cider subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance or target minors.

(f) *Growler requirements.* — A licensed winery or farm winery, if offering wine growler filling services, shall meet the filling, labeling, sanitation, and all other wine growler requirements in §60-8-6c of this code.

(g) Fee. — There is no additional fee for a licensed winery or farm winery authorized under §60-8-6c of this code, to sell wine growlers, if a winery or farm winery only desires to sell hard cider in the wine growler, and no other wine, then the annual nonprorated and nonrefundable license fee is \$50.

§60-8A-6. Rule-making authorization.

The West Virginia Alcoholic Beverage Control Commissioner may propose legislative rules for legislative approval, pursuant to §29A-3-1 et seq. of this code, to implement this article.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY, AND DECENCY.

§61-8-27. Unlawful admission of children to dance house, etc.; penalty.

Any proprietor or any person in charge of a dance house, concert saloon, theater, museum, or similar place of amusement, or other place, where wines or spirituous or malt liquors are sold or given away, or any place of entertainment injurious to health or morals who admits or permits to remain therein any minor under the age of 18 years, unless accompanied by his or her parent or guardian, is guilty of a misdemeanor and, on conviction thereof, shall be punished by a fine not exceeding \$200: *Provided*, That there is exemption from this prohibition for: (a) A private caterer, private club restaurant, private manufacturer club, private fair and festival, private resort hotel, private hotel, private golf club, private nine-hole golf course, private resort hotel, and private golf club private tennis club, private wedding venue or barn, private outdoor dining and private outdoor street dining, private multi-vendor fair and festival license, private farmers market, private professional sports stadium, and a private multi-sports complex licensed pursuant to §60-7-1 et seq. of this code and in compliance with §60-7-2(f)(11), §60-7-2(g)(8), §60-7-2(h)(74), §60-7-2(i)(78), and §60-7-2(j)(7), §60-7-2(k)(8), §60-7-2(l)(8), §60-7-2(m)(7), §60-7-2(n)(7), §60-7-2(o)(8), §60-7-2(p)(8), §60-7-2(q)(12), §60-7-2(r)(8), §60-7-2(s)(9), §60-7-8c(b)(14), §60-7-8d, and §60-8-32a, of this code; or (b) a private club with more than 1,000 members that is in good standing with the Alcohol Beverage Control Commissioner, that has been approved by the Alcohol Beverage Control Commissioner; and which has designated certain seating areas on its licensed premises as nonalcoholic liquor and nonintoxicating beer areas, as noted in the licensee's floorplan; or (c) ~~a private fair and festival that is in compliance with §60-7-2(f)(7) of this code, by utilizing using~~ a mandatory carding or identification program ~~whereby by which~~ all members or guests being served or sold alcoholic liquors, nonintoxicating beer, or nonintoxicating craft beer are asked and ~~must required to~~ provide their proper identification to verify their identity and further that they are of legal drinking age, 21 years of age or older, prior to each sale or service of alcoholic liquors, nonintoxicating beer, or nonintoxicating craft beer.”

And,

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

Com. Sub. for H. B. 2025 – “A Bill to amend and reenact §7-1-3ss of the Code of West Virginia, 1931, as amended, to amend and reenact §11-16-3, §11-16-9, and §11-16-18 of said code; to amend said code by adding thereto four new sections, designated §11-16-6d, §11-16-6e, §11-16-6f and §11-16-11c; to amend said code by adding thereto two new sections, designated §19-2-12 and §19-2-13; to amend and reenact §60-1-5a of said code; to amend said code by adding thereto a new section, designated §60-3A-3b; to amend and reenact §60-4-3a

and §60-4-3b of said code; to amend said code by adding thereto a new section, designated §60-4-3c; to amend and reenact §60-6-8 of said code; to amend and reenact §60-7-2, §60-7-6, and §60-7-12 of said code; to amend said code by adding thereto five new sections, designated §60-7-8b, §60-7-8c, §60-7-8d, §60-7-8e, and §60-7-8f; to amend and reenact §60-8-2, §60-8-3, §60-8-4, §60-8-18, §60-8-20, §60-8-29 and §60-8-34 of said code; to amend said code by adding thereto five new sections, designated §60-8-6c, §60-8-6d, §60-8-6e, §60-8-6f and §60-8-32a; to amend said code by adding thereto a new article, designated §60-8A-1, §60-8A-2, §60-8A-3, §60-8A-4, §60-8A-5, and §60-8A-6; and to amend and reenact §61-8-27 of said code, all relating to nonintoxicating beer, nonintoxicating craft beer, liquor, wine, and hard cider sales in this state; providing for changing the beginning time for nonintoxicating beer, nonintoxicating craft beer, liquor, and wine sales to begin at 6:00 a.m. on all days for on and off premises licensees; authorizing Class A and Class B retailers and third parties to obtain a license to deliver nonintoxicating beer and nonintoxicating craft beer; allowing the sale, ordering, and delivery of nonintoxicating beer and nonintoxicating craft beer by a telephone, mobile ordering application or web-based software program; setting forth sale, delivery and telephone, mobile ordering application or web-based software program requirements; providing for enforcement; exempting certain licensees from an additional licensing fee, and establishing a license fee for third parties, and requiring a nonintoxicating beer retail transportation permit for delivery vehicles; establishing a nonintoxicating beer and nonintoxicating craft beer direct shippers license to allow shipping in state and out of state; providing license requirements, shipping requirements, limitations, and fees; requiring the payment of fees and taxes, the maintenance of records and the preparation of reports; providing for penalties, criminal penalties, and jurisdiction; authorizing Class A and Class B licensees to sell and deliver sealed nonintoxicating beer and nonintoxicating craft beer for consumption off the premises if certain conditions are met; providing certain licensees with the authority to sell, serve, and furnish nonintoxicating beer and nonintoxicating craft beer in approved outdoor dining areas, and outdoor street dining areas if certain requirements are met; defining terms; authorizing in-person or in-vehicle pick up of purchased food or meals and nonintoxicating beer or nonintoxicating craft beer orders-to-go; creating an unlicensed brewer or home brewer temporary special license for providing samples at licensed fairs and festivals, specifying requirements, setting a license fee and requiring a nonintoxicating beer or nonintoxicating craft beer transportation permit; reducing the fee for a nonintoxicating beer or nonintoxicating craft beer floorplan extension; permitting licensees to employ persons 16 years of age in sale and service of liquor, beer, and wine when supervised by an employee who is 21 years of age or older; establishing the Agriculture Development Fund to fund the hard cider development program created to foster the development and growth of the hard cider industry in this state; creating a private liquor delivery license for retail liquor outlets and third parties with sale and delivery requirements; establishing a private liquor bottle delivery permit; authorizing retail liquor outlets to sell sealed bottles of liquor through a window in a drive-up or drive-through; creating a private manufacturer club license for distilleries, mini-distilleries, micro-distilleries, wineries, and farm wineries, setting forth requirements, and providing for a license fee; authorizing distilleries, mini-distilleries, and micro-distilleries to also operate wineries, farm wineries, brewers, and resident brewers; authorizing wineries and farm wineries to operate and be licensed as distilleries, mini-distilleries, micro-distilleries, to operate and be licensed as wineries, farm wineries, brewery, or as resident brewers; removing prohibition against a single person having more than one winery or farm winery license or both a winery and farm winery license; declaring that agricultural use designation is unchanged for building code and property tax classification upon opening any type of distillery or winery; establishing a private direct shippers license to allow distilleries, mini-distilleries and micro-distilleries to ship liquor in state and out of state; providing license requirements, shipping requirements, limitations, and fees; authorizing the ability to pre-mix alcoholic liquors, establishing certain requirements, and creating a permit; creating a private direct shipper license, setting forth requirements and providing for a license fee; creating private caterer

license, a private club bar license, a private club restaurant license, a private manufacturer club license, a private farmers market license, a private multi-sport complex license, a private tennis club license, a private professional sports stadium license, a private wedding venue or barn license, a one-day charitable rare, antique, or vintage liquor auction license for charitable purposes, and a private multi-vendor fair and festival license and setting forth requirements and providing for license fees; reducing license fees for two years due to Covid -19 pandemic; creating private outdoor dining and private outdoor street dining areas as legally demarcated areas that are not a public place where a private club licensee may sell and furnish alcoholic liquors; authorizing and creating craft cocktail growlers and setting forth requirements and limitations, and exempting certain licenses from a license fee; creating a private cocktail delivery license for licensed private club restaurants, private manufacturer clubs and third parties, setting forth requirements, including specific requirements for craft cocktail growlers, specifying limitations, and requiring a private cocktail delivery permit for delivery vehicles; authorizing in-person or in-vehicle pick up of purchased food or a meal and craft cocktail growler orders-to-go; providing for wine definitions to clarify various aspects of wine, including the alcohol by volume percentage for table wine, wine, and fortified wine; removing restriction on number of one-day licenses which may be issued in a single year to a nonprofit to sell and serve wine and requiring applicant to file state regarding gross proceeds; clarifying penalties for failure to meet wine licensure requirements; replacing wine bond requirements that secure the payment of taxes by distributors, suppliers, certain wineries, and certain farm wineries, who are acting as either suppliers or distributors in a limited capacity, with an affidavit of compliance; providing penalties for failure to pay taxes and maintain good standing with the state; authorizing wineries and farm wineries to sell wine growlers and provide samples and establishing requirements and limitations; authorizing certain Class A and Class B licensees to sell sealed wine and wine growlers, and setting forth requirements and limitations; authorizing legislative rules; creating a private wine delivery license for Class A wine licensees and third parties, setting forth requirements and limitations, providing fees for certain licensees; creating a private wine retail transportation permit, setting forth requirements, and requiring no additional fee; creating private wine outdoor dining and private wine outdoor street dining areas as legally demarcated areas that are not a public place where wine may be sold and furnished; authorizing in-person or in-vehicle pick up of purchased food or a meal and wine orders-to-go; defining the term 'hard cider'; providing that there is no separate license required to manufacture and sell hard cider under certain conditions; providing for a hard cider distributor's license and its fee and permitting other current and valid licensees to distribute hard cider without an additional license fee; providing for hard cider exemptions to the wine liter tax; establishing a hard cider gallon tax; providing for the application of West Virginia Tax Procedures and Administration Act and West Virginia Tax Crimes and Penalties Act to the hard cider gallon tax; providing for an internal effective date; providing for a tax credit against the hard cider tax; providing for applicability of other laws; requiring the filing of regular reports to the Tax Commissioner; providing for applications to import products necessary to manufacture hard cider under certain conditions; providing for hard cider sales for consumption on the licensed premises; providing for complimentary samples to be offered; establishing requirements for complimentary samples; permitting the sale of wine growlers; setting forth wine growler requirements, and providing a license fee; and providing additional exceptions to the criminal penalty for the unlawful admission of children to dance house for certain private clubs with approved age verifications systems."

With the further amendment sponsored by Delegate Summers being as follows:

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

“CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3ss. County option election on forbidding nonintoxicating beer, wine, or alcoholic liquors to be sold, given, or dispensed after ~~10:00~~ 6:00 a.m. on Sundays.

~~Beginning July 1, 2019, the~~ The county commission of any county may conduct a county option election on the question of whether the sale or dispensing of nonintoxicating beer, wine, or alcoholic liquors in or on a licensed premises shall be allowed in the county beginning 1:00 p.m. on any Sunday, as provided in §11-16-18, ~~of this code, §60-7-12, of this code, and §60-8-34 of this code,~~ upon approval as provided in this section. The option election on this question may be placed on the ballot in each county at any primary or general election. The county commission of the county shall give notice to the public of the election by publication of the notice as a Class II-0 legal advertisement in compliance with the provisions of ~~§60-59-3~~ §59-3-1 et seq. of this code, and the publication area for publication shall be the county in which the election is to be held. The date of the last publication of the notice shall fall on a date within the period of the 14 consecutive days next preceding the election. On the local option election ballot shall be printed the following: ‘Shall the beginning hour at which nonintoxicating beer, wine, and alcoholic liquor be sold or dispensed for licensed on-premises ~~only~~ in _____ County on Sundays be changed from ~~10:00~~ 6:00 a.m. to 1:00 p.m.’

If approved by the voters this would forbid private clubs and restaurants licensed to sell and dispense nonintoxicating beer, wine, and alcoholic liquor; licensed private wine restaurants, private wine spas, and private wine bed and breakfasts to sell and dispense wine; and licensed Class A retail dealers to sell and dispense nonintoxicating beer for on-premises consumption until 1:00 p.m.

Yes No

(Place a cross mark in the square opposite your choice.)

The ballots shall be counted, returns made and canvassed as in general elections, and the results certified by the commissioners of election to the county commission. The county commission shall, without delay, certify the result of the election. Upon receipt of the results of the election, in the event a majority of the votes are marked ‘Yes’, all applicable licensees shall be forbidden to sell and dispense beer, wine, or alcoholic liquors until 1:00 p.m. on Sundays. In the event a majority of the votes are marked ‘No’, all applicable licensees will continue to be required to comply with existing law.

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-6d. Nonintoxicating beer or nonintoxicating craft beer delivery license for a licensed Class A retail dealer or a third party; requirements; limitations; third party license fee; retail transportation permit; and requirements.

(a) A Class A retail dealer who is licensed to sell nonintoxicating beer or nonintoxicating craft beer may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license permitting the order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer in a sealed

original container of bottles or cans, and sealed growlers, when separately licensed for growler sales. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when completed by the licensee or the licensee's employees to a person purchasing the nonintoxicating beer or nonintoxicating craft beer by telephone, a mobile ordering application, or a web-based software program, as authorized by the licensee's license. There is no additional fee for licensed Class A retail dealers to obtain a nonintoxicating beer or nonintoxicating craft beer delivery license. The order, sale, and delivery process shall meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for nonintoxicating beer or nonintoxicating craft beer sales or distribution, may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license for the privilege and convenience to offer ordering and delivery services of nonintoxicating beer or nonintoxicating craft beer in the sealed original container of bottles or cans, and sealed growlers, from a licensee with a growler license. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when the Class A retail dealer sells to a person purchasing the nonintoxicating beer or nonintoxicating craft beer through telephone orders, a mobile ordering application, or a web-based software program. The annual nonintoxicating beer or nonintoxicating craft beer delivery license fee is \$200 per third party entity, with no limit on the number of drivers and vehicles. The delivery license fee under this subsection may not be prorated nor refunded.

(c) The nonintoxicating beer or nonintoxicating craft beer delivery license application shall comply with licensure requirements in §11-16-8 of this code, and shall require any information set forth in this article and as reasonably required by the commissioner.

(d) *Sale Requirements.* -

(1) The nonintoxicating beer or nonintoxicating craft beer purchase shall accompany the purchase of prepared food or a meal and the completion of the sale may be accomplished by the delivery of the prepared food or meal and nonintoxicating beer or nonintoxicating craft beer by the Class A retail dealer or third party licensee;

(2) Any person purchasing nonintoxicating beer or nonintoxicating craft beer shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this article for the sale of nonintoxicating beer or nonintoxicating craft beer;

(3) 'Prepared food or a meal' shall, for purposes of this article, mean food that has been cooked, grilled, fried, deep-fried, air-fried, smoked, boiled, broiled, twice baked, blanched, sautéed, or in any other manner freshly made and prepared, and does not include pre-packaged food from the manufacturer;

(4) An order, sale, or delivery consisting of multiple meals shall not amount to any combination of bottles, cans, or sealed growlers in excess of 384 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; and

(5) A third party delivery licensee may not have a pecuniary interest in a Class A retail dealer, as set forth in this article, therefore a third party delivery licensee may only charge a convenience fee for the delivery of any nonintoxicating beer or nonintoxicating craft beer. The third party licensee may not collect a percentage of the delivery order for the delivery of alcohol, but may

continue to collect a percentage of the delivery order directly related to the prepared food or a meal. The convenience fee charged by the third party delivery licensee to the person purchasing may not be greater than five dollars per delivery order where nonintoxicating beer or nonintoxicating craft beer are ordered by the purchasing person. For any third party licensee also licensed for wine growler delivery as set forth in §60-8-6c of the code, or craft cocktail growler delivery as set forth in §60-7-8f of the code, the total convenience fee of any order, sale, and delivery of a sealed growler, wine growler, or craft cocktail growler shall not exceed five dollars.

(e) Delivery Requirements. -

(1) Delivery persons employed for the delivery of nonintoxicating beer or nonintoxicating craft beer shall be 21 years of age or older. The licensed Class A retail dealer and the third party delivery licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) A Class A retail dealer or third party delivery licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication and shall submit certification of the training to the commissioner;

(3) The Class A retail dealer or third party delivery licensee shall hold a retail transportation permit for each delivery vehicle delivering sealed nonintoxicating beer or nonintoxicating craft beer pursuant to §11-16-6d(g) of this code: *Provided*, That a delivery driver may retain an electronic copy of his or her permit;

(4) A Class A retail dealer or third party delivery licensee may only deliver prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer orders in the county or contiguous counties where the Class A retail dealer is located;

(5) A Class A retail dealer or third party delivery licensee may only deliver prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer to addresses located in West Virginia. A Class A retail dealer or third party delivery licensee shall pay and account for all sales and municipal taxes;

(6) A Class A retail dealer or third party delivery licensee may not deliver prepared food or a meal, and nonintoxicating beer or nonintoxicating craft beer to any other Class A licensee;

(7) A Class A retail dealer or third party delivery licensee may only deliver prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer for personal use, and not for resale; and

(8) A Class A retail dealer or third party delivery licensee shall not deliver and leave prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer at any address without verifying a person's age and identification as required by this section.

(f) Telephone, mobile ordering application, or web-based software requirements. -

(1) The delivery person may only permit the person who placed the order through a telephone, mobile ordering application, or web-based software to accept the prepared food or a meal, and nonintoxicating beer or nonintoxicating craft beer delivery which is subject to age verification upon delivery with the delivery person's visual review and age verification and, as applicable, a stored scanned image of the purchasing person's legal identification;

(2) Any mobile ordering application or web-based software used shall create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery person for verification, and shall include the delivery driver's name and vehicle information;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's legal identification and details of the sale, accessible by the delivery person for verification, and shall include the delivery driver's name and vehicle information;

(4) All records are subject to inspection by the commissioner. A Class A retail dealer or third party delivery licensee shall retain all records for three years, and may not unreasonably withhold the records from the commissioner's inspection; and

(5) Each vehicle delivering nonintoxicating beer or nonintoxicating craft beer must be issued a retail transportation permit per §11-16-6d(g) of this code.

(g) Retail Transportation Permit. -

(1) A Class A retail dealer or third party delivery licensee shall obtain and maintain a retail transportation permit for the delivery of prepared food and nonintoxicating beer or nonintoxicating craft beer.

(2) A Class A retail dealer or a third party licensee shall apply for a permit and provide vehicle and driver information, as required by the commissioner. Upon any change in vehicles or drivers, the Class A retail dealer or third party delivery licensee shall update the vehicle and driver information with the commissioner within 10 days of the change.

(h) Enforcement. -

(1) A Class A retail dealer or third party delivery licensee are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple Class A retail dealers or licensees, employees, or independent contractors.

(2) A license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the Class A retail dealer or third party delivery licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a growler subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, or accepting delivery of orders are considered to be purchasers.

§11-16-6e. License required for sale and shipment of nonintoxicating beer or nonintoxicating craft beer by a brewer or resident brewer; shipment of limited quantities of nonintoxicating beer or nonintoxicating craft beer; requirements; license fee; and penalties.

(a) Authorization. - Notwithstanding the provisions of this article or any other law to the contrary, any person that is currently licensed and in good standing in its domicile state as a

brewer, resident brewer, other nonintoxicating beer or nonintoxicating craft beer manufacturer, and who also obtains a nonintoxicating beer or nonintoxicating craft beer direct shipper's license from the commissioner, as provided in this article, may sell and ship nonintoxicating beer or nonintoxicating craft beer brewed by the brewer, resident brewer, other nonintoxicating beer or nonintoxicating craft beer manufacturer by mail to a purchasing person who is 21 years of age or older, for personal use, and not for resale. A nonintoxicating beer or nonintoxicating craft beer direct shipper may ship nonintoxicating beer or nonintoxicating craft beer by mail to a purchasing person who is 21 years of age or older who purchases nonintoxicating beer or nonintoxicating craft beer, subject to the requirements of this article, in and throughout West Virginia. A nonintoxicating beer or nonintoxicating craft beer direct shipper may sell and ship nonintoxicating beer or nonintoxicating craft beer out of this state by mail to a purchasing person who is 21 years of age or older subject to the recipient state's or country's requirements, laws, and international laws.

(b) License requirements. – Before sending any shipment of nonintoxicating beer or nonintoxicating craft beer to a purchasing person who is 21 years of age or older, the nonintoxicating beer or nonintoxicating craft beer direct shipper must first:

(1) File a license application with the commissioner with the appropriate background check information, using forms required by the commissioner. Criminal background checks will not be required of applicants licensed in their state of domicile who can provide a certificate of good standing from their state of domicile;

(2) Pay to the commissioner the \$250 non-prorated and nonrefundable annual license fee to ship and sell only nonintoxicating beer or nonintoxicating craft beer;

(3) Obtain a business registration number from the Tax Commissioner;

(4) Register with the office of the Secretary of State;

(5) Provide the commissioner a true copy of its current active license issued in the state of domicile, proving that the nonintoxicating beer or nonintoxicating craft beer direct shipper is licensed in its state of domicile as a brewer, resident brewer, or other nonintoxicating beer or nonintoxicating craft beer manufacturer;

(6) Obtain from the commissioner a nonintoxicating beer or nonintoxicating craft beer direct shipper's license;

(7) Submit to the commissioner a list of all brands and labels of nonintoxicating beer or nonintoxicating craft beer to be shipped to West Virginia and attest that all nonintoxicating beer or nonintoxicating craft beer brands and labels are manufactured by the brewer, resident brewer or other nonintoxicating beer or nonintoxicating craft beer manufacturer seeking licensure and are not counterfeit or adulterated nonintoxicating beer or nonintoxicating craft beer;

(8) Attest that the brewer, resident, brewer or other nonintoxicating beer or nonintoxicating craft beer manufacturer brews less than 25,000 barrels of beer per calendar year and provide documentary evidence along with the attestation.

(9) Meet all other licensing requirements of this chapter and provide any other information that the commissioner may reasonably require.

(c) Shipping Requirements. - All nonintoxicating beer or nonintoxicating craft beer direct shipper licensees shall:

(1) Not ship more than a maximum of two, 24 bottle or can, cases of nonintoxicating beer or nonintoxicating craft beer based on a 12-fluid ounce bottle or can, however no combination of bottles or cans may exceed a total for the two cases of 576 fluid ounces of nonintoxicating beer residing in West Virginia, for such person's personal use and consumption, and not for resale.

(2) Not ship to any licensed brewers, resident brewers, retailers, retail liquor outlets, any type of private club, private caterers, private wine restaurants, private wine spas, private wine bed and breakfasts, wine retailers, wine specialty shops, taverns, or other licensees licensed under this article or chapter 60 of this code;

(3) Ensure that all containers of nonintoxicating beer or nonintoxicating craft beer shipped directly to a purchasing person who is 21 years of age or older are clearly and conspicuously labeled with the words 'CONTAINS ALCOHOL: SIGNATURE OF PERSON 21 OR OLDER REQUIRED FOR DELIVERY';

(4) Not ship nonintoxicating beer or nonintoxicating craft beer that has not been registered with the commissioner, register and pay any registration fees, and prove by documentation that the direct shipper has the rights from the manufacturer to ship the nonintoxicating beer or nonintoxicating craft beer;

(6) Not ship or deliver to:

(A) Any person under the age of 21;

(B) To an intoxicated person; or

(C) To a person physically incapacitated due to the consumption of nonintoxicating beer or nonintoxicating craft beer, wine, or liquor, or the use of drugs;

(7) Obtain a written or electronic signature upon delivery to a person who the nonintoxicating beer or nonintoxicating craft beer direct shipper's carrier verifies in-person is at least 21 years of age or older, and if the carrier is not able to verify the age of the person and obtain that person's signature, then the carrier may not complete the delivery of the nonintoxicating beer or nonintoxicating craft beer shipment;

(8) Utilize a licensed and bonded shipping carrier who has obtained a transportation permit as specified in §60-6-12 of the code;

(9) First deliver any nonintoxicating beer or nonintoxicating craft beer shipment being shipped in and throughout West Virginia to the nonintoxicating beer or nonintoxicating craft beer brand's nearest appointed distributor who has the nonintoxicating beer or nonintoxicating craft beer brand's franchise territory located in the purchasing person's county of residence in West Virginia: *Provided*, That, if no distributor has been appointed for the nonintoxicating beer or nonintoxicating craft beer brand, then the brewer of the brand shall appoint a franchise distributor in the franchise territory where the purchasing person of the nonintoxicating beer or nonintoxicating craft beer resides;

(10) Have the appointed distributor complete any nonintoxicating beer or nonintoxicating craft beer shipment order with an in-person pickup, at the location of appointed distributor's distributorship, to the purchasing person subject to age and identity verification by the appointed distributor: *Provided*, That, the appointed distributor is not a retailer, and therefore cannot charge an additional fee for the in-person pickup for the nonintoxicating beer or nonintoxicating craft beer shipment as this would be considered a part of the service provided under the appointed distributor's franchise agreement.

(d) *Payment of Fees and Taxes.*

(1) Any nonintoxicating beer or nonintoxicating craft beer direct shipper licensee must meet the markup requirements for retail sales set forth in §47-11A-6 of the code.

(2) Further, the nonintoxicating beer or nonintoxicating craft beer direct shipper licensee shall collect and remit all beer barrel tax, state sales tax, and local sales tax on the sale of nonintoxicating beer or nonintoxicating craft beer to the Tax Commissioner at the close of each month and file a monthly return, on a form provided by the Tax Commissioner, reflecting the taxes paid for all sales and shipments to persons residing in West Virginia. No nonintoxicating beer or nonintoxicating craft beer direct shipper shall pay any beer barrel or sales tax more than once.

(3) File monthly returns to the commissioner showing the total of nonintoxicating beer or nonintoxicating craft beer, by type, brand, sold, and shipped into West Virginia for the preceding month;

(4) Permit the Tax Commissioner or commissioner or their designees to perform an audit of the nonintoxicating beer or nonintoxicating craft beer direct shipper's records upon request;

(5) The payment of fees to the commissioner and taxes to the Tax Commissioner may be in addition to fees and taxes levied by the nonintoxicating beer or nonintoxicating craft beer direct shipper's domicile state.

(6) No nonintoxicating beer or nonintoxicating craft beer direct shipper will be required to pay any fees to the commissioner or taxes to the Tax Commissioner more than once.

(e) *Jurisdiction.* - By obtaining a nonintoxicating beer or nonintoxicating craft beer direct shipper licensee the licensee shall be considered to have agreed and consented to the jurisdiction of the commissioner, which is Charleston, West Virginia and the Kanawha County circuit court, concerning enforcement of this chapter and any other related laws or rules.

(f) *Records and reports.* -

(1) Licensed nonintoxicating beer or nonintoxicating craft beer direct shippers must maintain accurate records of all shipments sent to West Virginia.

(2) Provide proof or records to the commissioner, upon request, that all direct shipments of liquor were purchased and delivered to a purchasing person who is 21 years of age or older.

(g) The nonintoxicating beer or nonintoxicating craft beer direct shipper may annually renew its license with the commissioner by application, paying the nonintoxicating beer or nonintoxicating craft beer direct shipper license fee and providing the commissioner with a true copy of a current brewer, resident brewer, or other nonintoxicating beer or nonintoxicating craft

beer manufacturer's license from the nonintoxicating beer or nonintoxicating craft beer direct shipper's domicile state.

(h) The commissioner may promulgate rules to effectuate the purposes of this law.

(i) *Penalties.* –

(1) The commissioner may enforce the requirements of this chapter by administrative proceedings as set forth in §11-16-23 and §11-16-24 of this code to suspend or revoke a nonintoxicating beer or nonintoxicating craft beer direct shipper's license, and the commissioner may accept payment of a penalties as set forth in §11-16-23 and §11-16-24 of this code or an offer in compromise in lieu of suspension, at the commissioner's discretion. Hearings and appeals on such notices may be had in the same manner as in the case of revocations of licenses set forth in §11-16-23 and §11-16-24a of this code.

(2) If any licensee violates the provisions of this article, the commissioner may determine to suspend the privileges of the brewer, resident brewer, or other nonintoxicating beer or nonintoxicating craft beer manufacturer to sell, ship, or deliver nonintoxicating beer or nonintoxicating craft beer to a purchasing person who is 21 years of age or older or to the commissioner, or otherwise engage in the liquor business in this state for a period of one year from the date a notice is mailed to such person by the commissioner of the fact that such person has violated the provisions of this article. During such one-year period, it shall be unlawful for any person within this state to knowingly buy or receive nonintoxicating beer or nonintoxicating craft beer from such licensee or to have any dealings with such licensee with respect thereto.

(k) *Criminal Penalties.* – A shipment of nonintoxicating beer or nonintoxicating craft beer directly to citizens in West Virginia from persons who do not possess a valid nonintoxicating beer or nonintoxicating craft beer direct shipper's license is prohibited. Any person who knowingly makes, participates in, transports, imports, or receives such an unlicensed and unauthorized direct shipment of nonintoxicating beer or nonintoxicating craft beer is guilty of a felony and, shall, upon conviction thereof, be fined in an amount not to exceed \$10,000 per violation. Without limitation on any punishment or remedy, criminal or civil, any person who knowingly makes, participates in, transports, imports, or receives such a direct shipment constitutes an act that is an unfair trade practice.

§11-16-6f. Nonintoxicating beer or nonintoxicating craft beer delivery license for a licensed Class B retail dealer or a third party; requirements; limitations; third party license fee; retail transportation permit; and requirements.

(a) A Class B retail dealer who is licensed to sell nonintoxicating beer or nonintoxicating craft beer may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license permitting the order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer in a sealed original container of bottles or cans, and sealed growlers, when separately licensed for growler sales. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when completed by the licensee or the licensee's employees to a person purchasing the nonintoxicating beer or nonintoxicating craft beer by a telephone, a mobile ordering application, or web-based software program, as authorized by the licensee's license. There is no additional fee for licensed Class B retail dealers to obtain a nonintoxicating beer or nonintoxicating craft beer delivery license. The order, sale, and delivery process shall meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for nonintoxicating beer or nonintoxicating craft beer sales or distribution, may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license for the privilege and convenience to offer ordering and delivery services of nonintoxicating beer or nonintoxicating craft beer in the sealed original container of bottles or cans, and sealed growlers, from a licensee with a growler license. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when the Class B retail dealer sells to a person purchasing the nonintoxicating beer or nonintoxicating craft beer through a telephone order, a mobile ordering application, or web-based software program. The nonintoxicating beer or nonintoxicating craft beer delivery annual license fee is \$200 per third party licensee, with no limit on the number of drivers and vehicles. The delivery license fee under this subsection may not be prorated nor refunded.

(c) The nonintoxicating beer or nonintoxicating craft beer delivery license application shall comply with licensure requirements in §11-16-8 of this code and shall require any information set forth in this article and as reasonably required by the commissioner.

(d) Sale Requirements. -

(1) The nonintoxicating beer or nonintoxicating craft beer purchase shall accompany the purchase of food and the completion of the sale may be accomplished by the delivery of food and nonintoxicating beer or nonintoxicating craft beer by the licensee or third party licensee;

(2) Any person purchasing nonintoxicating beer or nonintoxicating craft beer shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and meet the requirements set forth in this article for the sale of nonintoxicating beer or nonintoxicating craft beer;

(3) Food, for purposes of this section, means food that has been cooked, microwaved, or that is pre-packaged food from the manufacturer;

(4) An order, sale, or delivery consisting of food and any combination of sealed nonintoxicating beer or nonintoxicating craft beer bottles, cans, or growlers shall not be in excess of 384 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; and

(5) A third party delivery licensee shall not have a pecuniary interest in a Class B retail dealer, as set forth in this article. A third party delivery licensee may only charge a convenience fee for the delivery of any nonintoxicating beer or nonintoxicating craft beer. The third party licensee may not collect a percentage of the delivery order for the delivery of nonintoxicating beer or nonintoxicating craft beer, but may continue to collect a percentage of the delivery order directly related to food. The convenience fee charged by the third party delivery licensee to the purchasing person may not be greater than five dollars per delivery order. For any third party licensee also licensed for wine delivery as set forth in §60-8-6f of this code the total convenience fee for any order, sale, and delivery of sealed wine may not exceed five dollars.

(e) Delivery Requirements. -

(1) Delivery persons employed for the delivery of nonintoxicating beer or nonintoxicating craft beer shall be 21 years of age or older. A Class B retail dealer and a third party licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) A Class B retail dealer and a third party licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication and submit the certification of the training to the commissioner;

(3) The Class B retail dealer or third party delivery licensee shall hold a retail transportation permit for each delivery vehicle delivering sealed nonintoxicating beer or nonintoxicating craft beer pursuant to §11-16-6f(g) of this code: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of the licensure;

(4) A Class B retail dealer and a third party licensee may deliver food and sealed nonintoxicating beer or nonintoxicating craft beer orders in the county where the Class B retail dealer is located;

(5) A Class B retail dealer and a third party licensee may only deliver food and sealed nonintoxicating beer or nonintoxicating craft beer to addresses located in West Virginia. A Class B retail dealer and a third party licensee shall pay and account for all sales and municipal taxes;

(6) A Class B retail dealer and a third party licensee may not deliver food and nonintoxicating beer or nonintoxicating craft beer to any other Class B licensee;

(7) Deliveries of food and sealed nonintoxicating beer or nonintoxicating craft beer are only for personal use, and not for resale; and

(8) A Class B retail dealer and a third party licensee shall not deliver and leave food and sealed nonintoxicating beer or nonintoxicating craft beer at any address without verifying a person's age and identification as required by this section.

(f) *Telephone, mobile ordering application, or web-based software requirements.* -

(1) The delivery person may only permit the person who placed the order through a telephone, mobile ordering application, or web-based software to accept the food and nonintoxicating beer or nonintoxicating craft beer delivery. The delivery is subject to age verification upon delivery with the delivery person's visual review and age verification and, as applicable, requires a stored scanned image of the purchasing person's legal identification;

(2) Any mobile ordering application or web-based software used must create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery person for verification, and shall include the delivery driver's name and vehicle information;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's legal identification and details of the sale, accessible by the delivery person for verification, and shall include the delivery driver's name and vehicle information;

(4) All records are subject to inspection by the commissioner. A Class B retail dealer and a third party licensee shall retain all records for three years, and may not unreasonably withhold the records from the commissioner's inspection; and

(5) Each vehicle delivering nonintoxicating beer or nonintoxicating craft beer shall be issued a retail transportation permit in accordance with §11-16-6f(g) of this code.

(g) Retail Transportation Permit. -

(1) A Class B retail dealer and a third party licensee shall obtain and maintain a retail transportation permit for the delivery of food and nonintoxicating beer or nonintoxicating craft beer.

(2) A Class B retail dealer or a third party licensee shall apply for a permit and provide vehicle and driver information, required by the commissioner. Upon any change in vehicles or drivers, Class B retail dealer and a third party licensee shall update the vehicle and driver information with the commissioner within 10 days of the change.

(h) Enforcement. -

(1) The Class B retail dealer and a third party licensee are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple Class B retail dealers or third party licensees, employees, or independent contractors.

(2) A license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the Class B retail dealer or third party licensee, their employees, or independent contractors.

(3) It is a violation for any Class B retail dealer or third party licensee, their employees, or independent contractors to break the seal of a growler subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, or accepting delivery of orders are considered to be purchasers.

§11-16-9. Amount of license tax; Class A and Class B retail dealers; purchase and sale of nonintoxicating beer permitted; distributors; brewers; brewpubs.

(a) All retail dealers, distributors, brewpubs, brewers, and resident brewers of nonintoxicating beer and of nonintoxicating craft beer shall pay an annual fee to maintain an active license as required by this article. The license period begins on July 1 of each year and ends on June 30 of the following year. If the license is granted for a shorter period, then the license fee shall be computed semiannually in proportion to the remainder of the fiscal year: *Provided*, That if a licensee fails to complete a renewal application and make payment of its annual license fee in renewing its license on or before June 30 of any subsequent year, ~~after initial application~~, then an additional \$150 reactivation fee shall be charged and paid by the licensee; the fee may not be prorated or refunded, prior to the processing of any renewal application and applicable full year annual license fee; and furthermore a licensee who continues to operate ~~upon~~ after the expiration of its license is subject to all fines, penalties, and sanctions available in §11-16-23 of this code, all as determined by the commissioner.

(b) The annual license fees are as follows:

(1) Retail dealers shall be divided into two classes: Class A and Class B.

(A) For a Class A retail dealer, the license fee is \$150 for each place of business; the license fee for social, fraternal, or private clubs not operating for profit, and ~~having which have~~ been in continuous operation for two years or more immediately preceding the date of application, is \$150:

Provided, That railroads operating in this state may dispense nonintoxicating beer upon payment of an annual license tax of \$10 for each dining, club, or buffet car in which the beer is dispensed.

Class A licenses issued for railroad dining, club, or buffet cars authorize the licensee to sell nonintoxicating beer at retail for consumption only on the licensed premises where sold. All other ~~Class A licenses authorize the licensee to~~ licensees may sell nonintoxicating beer or nonintoxicating craft beer at retail, as licensed, for consumption on the licensed premises or off the licensed premises. Class A licensees may sell nonintoxicating beer or nonintoxicating craft beer for consumption off the licensed premises when it is in a sealed original container and sold for personal use, and not for resale. Class A licensees shall provide prepared food or meals along with sealed nonintoxicating beer or nonintoxicating craft beer in the original container or in a sealed growler as set forth for sales and service in §11-16-6d of this code, to a purchasing person who is in-person or in-vehicle picking up prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer orders-to-go, subject to verification that the purchasing person is 21 years of age or older, and not visibly or noticeably intoxicated, and as otherwise specified in this article.

(B) For a Class B retail dealer, the license fee, authorizing the sale of both chilled and unchilled beer, is \$150 for each place of business. A Class B license authorizes the licensee to sell nonintoxicating beer at retail in bottles, cans, or other sealed containers only, and only for consumption off the licensed premises. A Class B retailer may sell to a ~~patron~~ purchasing person, for personal use, and not for resale, quantities of draught beer in original containers that are no larger in size than one-half barrel for off-premises consumption.

The Commissioner may only issue a Class B license ~~may be issued only~~ to the proprietor or owner of a grocery store. For the purpose of this article, the term 'grocery store' means any retail establishment commonly known as a grocery store or delicatessen, and caterer or party supply store, where food or food products are sold for consumption off the premises, and includes a separate and segregated portion of any other retail store which is dedicated solely to the sale of food, food products, and supplies for the table for consumption off the premises. Caterers or party supply stores ~~are required to~~ shall purchase the appropriate licenses from the Alcohol Beverage Control Administration.

(C) A Class A retail dealer may contract, purchase, or develop a mobile ordering application or web-based software program to permit the ordering and purchase of nonintoxicating beer or nonintoxicating craft beer, as authorized by the licensee's license. The nonintoxicating beer or nonintoxicating craft beer shall be in a sealed original container or a sealed growler and meet the requirements of §11-16-6d of this code.

(2) For a distributor, the license fee is \$1,000 for each place of business.

(3) For a brewer or a resident brewer with its principal place of business or manufacture located in this state and who produces:

(A) Twelve thousand five hundred barrels or less of nonintoxicating beer or nonintoxicating craft beer, the license fee is \$500 for each place of manufacture;

(B) Twelve thousand five hundred one barrels and up to 25,000 barrels of nonintoxicating beer or nonintoxicating craft beer, the license fee is \$1,000 for each place of manufacture;

(C) More than 25,001 barrels of nonintoxicating beer or nonintoxicating craft beer, the license fee is \$1,500 for each place of manufacture.

(4) For a brewer whose principal place of business or manufacture is not located in this state, the license fee is \$1,500. The brewer is exempt from the requirements set out in subsections (c), (d), and (e) of this section: *Provided*, That a brewer whose principal place of business or manufacture is not located in this state that produces less than 25,000 barrels of nonintoxicating beer or nonintoxicating craft beer may choose to apply, in writing, to the commissioner to be subject to the variable license fees of subdivision (3), subsection (b) of this section and the requirements set out in subsections (c), (d), and (e) of this section subject to investigation and approval by the commissioner as to brewer requirements.

(5) For a brewpub, the license fee is \$500 for each place of manufacture.

(c) As part of the application or renewal application and in order to determine a brewer or resident brewer's license fee pursuant to this section, a brewer or resident brewer shall provide the commissioner, on a form provided by the commissioner, with an estimate of the number of nonintoxicating beer or nonintoxicating craft beer barrels and gallons it ~~will~~ may produce during the year based upon the production capacity of the brewer's or resident brewer's manufacturing facilities and the prior year's production and sales volume of nonintoxicating beer or nonintoxicating craft beer.

(d) On or before July 15 of each year, every brewer, or resident brewer who is granted a license shall file a final report, on a form provided by the commissioner, that is dated as of June 30 of ~~each~~ that year, stating the actual volume of nonintoxicating beer or nonintoxicating craft beer in barrels and gallons produced at its principal place of business and manufacture during the prior year.

(e) If the actual total production of nonintoxicating beer or nonintoxicating craft beer by the brewer or resident brewer exceeded the brewer's or resident brewer's estimate that was filed with the application or renewal application for a brewer's or resident brewer's license for that period, then the brewer or resident brewer shall include a remittance for the balance of the license fee pursuant to this section that would be required for the final, higher level of production.

(f) Any brewer or resident brewer failing to file the reports required in subsections (c) and (d) of this section, and who is not exempt from the reporting requirements, shall, at the discretion of the commissioner, be subject to the penalties set forth in §11-16-23 of this code.

(g) Notwithstanding subsections (a) and (b) of this section, the license fee per event for a nonintoxicating beer floor plan extension is ~~\$50~~ \$400, and the fee may not be prorated or refunded., ~~and must be accompanied with a license~~ A licensee shall submit an application, certification that the event meets certain requirements in the this code and rules, and such any other information as required by the commissioner may reasonably require, at least 15 days prior to the event, all as determined by the commissioner.

(h) Notwithstanding subsections (a) and (b) of this section, a Class A retail dealer, in good standing with the commissioner, may apply, on a form provided by the commissioner, to sell, serve, and furnish nonintoxicating beer or nonintoxicating craft beer for on-premises consumption in an outdoor dining area or outdoor street dining area, as authorized by any municipal government or county commission in the which the licensee operates. The Class A retail dealer shall submit to the municipal government or county commission, for approval, a revised floorplan

and a request to sell and serve nonintoxicating beer or nonintoxicating craft beer, subject to the commissioner's requirements, in an approved outdoor area. For private outdoor street dining, or private outdoor dining, the approved and bounded outdoor area need not be adjacent to the licensee's licensed premises, but in close proximity and under the licensee's control with right of ingress and egress. For purposes of this section, 'close proximity' means an available area within 150 feet of the Class A retail dealer's licensed premises. A Class A retail dealer may operate a nonintoxicating beer or nonintoxicating craft beer outdoor dining or outdoor street dining in conjunction with a temporary private outdoor dining or temporary private outdoor street dining area set forth in §60-7-8d of this code and temporary private wine outdoor dining or temporary private wine outdoor street dining set forth in §60-8-32a of this code.

(i) For purposes of this article, 'nonintoxicating beer or nonintoxicating craft beer outdoor dining and nonintoxicating beer or nonintoxicating craft beer outdoor street dining' includes dining areas that are:

(1) Outside and not served by an HVAC system for air handling services and use outside air;

(2) Open to the air; and

(3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally approve a partial enclosure with up to three temporary or fixed walls.

Any area where seating is incorporated inside a permanent building with ambient air through HVAC is not considered outdoor dining pursuant to this subsection.

§11-16-11c. Unlicensed brewer or unlicensed home brewer temporary license; fees; requirements.

(a) An unlicensed brewer or home brewer may obtain a temporary special license, upon meeting the requirements set forth in this section, to offer its nonintoxicating beer or nonintoxicating craft beer for sampling and sales at a fair and festival licensed under §11-16-11 and §11-16-11b of this code, when granted approval by the fair and festival licensee. The unlicensed brewer or home brewer is exempt from the requirements of registering the brand and using a distributor and a franchise agreement due to the limited nature of this temporary license.

(b) An unlicensed brewer or home brewer is subject to the limits, taxes, fees, requirements, restrictions, and penalties set forth in this article: *Provided*, That the commissioner may, by rule or order, provide for certain waivers or exceptions with respect to the provisions, laws, rules, or orders as required by the circumstances of each festival or fair. The commissioner may revoke or suspend any license issued pursuant to this section prior to any notice or hearing, notwithstanding the provisions §11-16-23 and §11-16-24 of this code: *Provided, however*, That under no circumstances shall the provisions of §11-16-8(a)(1), §11-16-8(a)(2), and §11-16-8(a)(3) of this code, be waived nor shall any exception be granted with respect to those provisions.

(c) A brewer or home brewer, regardless of its designation in its domicile state, that is duly licensed and in good standing in its domicile state, but unlicensed in this state, or an unlicensed brewer or home brewer that is a resident of West Virginia, shall pay a \$150 nonrefundable and non-prorated fee and submit an application for a temporary license on a one-day basis. The temporary special license allows the unlicensed brewer or home brewer to sell nonintoxicating beer or nonintoxicating craft beer to a licensed fair or festival for the sampling and sale of the nonintoxicating beer or nonintoxicating craft beer for on-premises consumption at the licensed

fair or festival. The brewer or home brewer shall pay all taxes due and the appropriate markup on the nonintoxicating beer or nonintoxicating craft beer.

(2) The unlicensed brewer or home brewer temporary license application shall include, but is not limited to, the person or entity's name, address, taxpayer identification number, and location; if the unlicensed brewer or home brewer is from out of state, a copy of its licensure in its domicile state; a signed and notarized verification that it produces 25,000 barrels or less of nonintoxicating beer or nonintoxicating craft beer per year; a signed and notarized verification that it is in good standing with its domicile state; copies of its federal certificate of label approvals and a certified lab alcohol analysis for the nonintoxicating beer or nonintoxicating craft beer it plans to sell to a fair or festival licensed under §11-16-11 and §11-16-11b of this code; and any other information required by the commissioner.

(3) The applicant shall include in its application a list of all nonintoxicating beers or nonintoxicating craft beers it proposes to provide, in sealed containers, to a licensed fair or festival for sampling or sale so that the commissioner may review them in the interest of public health and safety. Once approved, the submitted nonintoxicating beer or nonintoxicating craft beer list creates a temporary nonintoxicating beer or nonintoxicating craft beer brand registration for up to two days at any event licensed under §11-16-11 and §11-16-11b of this code, for no additional fee.

(4) An applicant that receives this temporary license for any event licensed under §11-16-11 and §11-16-11b of this code shall provide a signed and notarized agreement acknowledging that it is the applicant's duty to pay all municipal, local, and sales taxes applicable to the sale of nonintoxicating beer or nonintoxicating craft beer in West Virginia.

(5) The unlicensed brewer or home brewer shall submit an application for each temporary special license sought for an event licensed under §11-16-11 and §11-16-11b of this code, at which the applicant proposes to provide nonintoxicating beer or nonintoxicating craft beer for sampling or sale. The license fee covers up to two separate one-day licenses for the event before an additional fee is required. Any applicant desiring to attend more than four events per year or otherwise operate in West Virginia shall seek appropriate licensure as a brewery or resident brewery in this state.

(6) Notwithstanding the provisions of this article and requirements for licensure, brand registration, franchise requirements, payment of beer barrel tax, and the appointment of a distributor franchise network, this temporary special license for an event licensed under §11-16-11 and §11-16-11b of this code, once granted, permits the licensee to operate in this limited capacity only at the approved specific, events licensed under §11-16-11 and §11-16-11b of this code, subject to the limitations noted in this section.

(7) The applicant shall also apply for and receive a nonintoxicating beer or nonintoxicating craft beer transportation permit in order to legally transport nonintoxicating beer or nonintoxicating craft beer in the state as required by §11-16-10(f) of this code: *Provided*, That the commissioner may not charge or collect an additional fee for a nonintoxicating beer or nonintoxicating craft beer transportation permit to an applicant seeking a temporary special license under this section.

(8) The licensee is subject to all applicable violations and/or penalties under this article and related legislative rules that are not otherwise excepted by this section: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions of this code, rules, or orders required by the circumstances of each festival or fair. The

commissioner may revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions of §11-16-23 and §11-16-24 of this code: *Provided, however,* That under no circumstances shall the provisions of §11-16-8(a)(1), §11-16-8(a)(2), and §11-16-8(a)(3) of this code, be waived nor shall any exception be granted with respect to those provisions.

§11-16-18. Unlawful acts of licensees; criminal penalties.

(a) It is unlawful:

(1) Except as provided for in §7-1-3ss and this chapter of this code, ~~for~~ any licensee, his, her, its, or their servants, agents, or employees to sell, give, or dispense, or any individual to drink or consume, in or on any licensed premises or in any rooms directly connected thereto, nonintoxicating beer ~~or cooler on weekdays between the hours of 2:00 a.m. and 7:00~~ 6:00 a.m., ~~or between the hours of 2:00 a.m. and 10:00 a.m.~~, or a Class A retail dealer to sell nonintoxicating beer for on-premises consumption only between the hours of 2:00 a.m. and ~~4:00 p.m.~~ 6:00 a.m.; ~~in any county upon approval as provided for in §7-1-3ss of this code, on any Sunday, except in private clubs licensed under the provisions of §60-7-1 et seq. of this code, where the hours shall conform with the hours of sale of alcoholic liquors;~~

(2) For any licensee, his, her, its, or their servants, agents, or employees to sell, furnish, or give any nonintoxicating beer, as defined in this article, to any person visibly or noticeably intoxicated or to any person known to be insane or known to be a habitual drunkard;

(3) For any licensee, his, her, its, or their servants, agents, or employees to sell, furnish, or give any nonintoxicating beer as defined in this article to any person who is less than 21 years of age;

(4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer as defined in this article, except for cash and a right of action shall not exist to collect any claims for credit extended contrary to the provisions of this subdivision. Nothing ~~herein~~ contained in this section prohibits a licensee from crediting to a purchasing person the actual price charged for packages or containers returned by the original purchasing person as a credit on any sale, or from refunding to any purchasing person the amount paid or deposited for the containers when title is retained by the vendor: *Provided*, That a distributor may accept an electronic transfer of funds if the transfer of funds is initiated by an irrevocable payment order on the invoiced amount for the nonintoxicating beer. The cost of the electronic fund transfer shall be borne by the retailer and the distributor shall initiate the transfer no later than noon of one business day after the delivery;

(5) For any brewer or distributor to give, furnish, rent, or sell any equipment, fixtures, signs, supplies, or services directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail or to offer any prize, premium, gift, or other similar inducement, except advertising matter, including indoor electronic or mechanical signs, of nominal value up to \$25.00 per stock keeping unit, to either trade or consumer buyers: *Provided*, That a distributor may offer, for sale or rent, tanks of carbonic gas: *Provided, however*, That, in the interest of public health and safety, a distributor may, independently or through a subsidiary or affiliate, furnish, sell, install, or maintain draught line equipment, supplies, and cleaning services to a licensed retailer so long as the furnishing or sale of draught line services may be negotiated at no less than ~~direct~~ actual cost: *Provided further*, That a distributor may furnish, rent, or sell equipment, fixtures, signs, services, or supplies directly or indirectly or through

a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail under the conditions and within the limitations as prescribed ~~herein~~ in this section. Nothing contained in this section prohibits a brewer from sponsoring any professional or amateur athletic event or from providing prizes or awards for participants and winners in any events.

(6) For any brewer or distributor to sponsor any professional or amateur athletic event or provide prizes or awards for participants and winners when a majority of the athletes participating in the event are minors, unless the event is specifically authorized by the commissioner;

(7) For any retail licensee to sell or dispense nonintoxicating beer through draught lines where the draught lines have not been cleaned at least every two weeks in accordance with rules promulgated by the commissioner, and where written records of all cleanings are not maintained and available for inspection;

(8) For any licensee to permit in his or her premises any lewd, immoral, or improper entertainment, conduct, or practice;

(9) For any licensee, except the holder of a license to operate a private club issued under the provisions of §60-7-1 *et seq.* of this code or a holder of a license or a private wine restaurant issued under the provisions of §60-8-1 *et seq.* of this code to possess a federal license, tax receipt, or other permit entitling, authorizing, or allowing the licensee to sell liquor or alcoholic drinks other than nonintoxicating beer;

(10) For any licensee to obstruct the view of the interior of his or her premises by enclosure, lattice, drapes, or any means which would prevent plain view of the patrons occupying the premises. The interior of all licensed premises shall be adequately lighted at all times: *Provided*, That provisions of this subdivision do not apply to the premises of a Class B retailer, the premises of a private club licensed under the provisions of §60-7-1 *et seq.* of this code, or the premises of a private wine restaurant licensed under the provisions of §60-8-1 *et seq.* of this code;

(11) For any licensee to manufacture, import, sell, trade, barter, possess, or acquiesce in the sale, possession, or consumption of any alcoholic liquors on the premises covered by a license or on premises directly or indirectly used in connection with it: *Provided*, That the prohibition contained in this subdivision with respect to the selling or possessing or to the acquiescence in the sale, possession, or consumption of alcoholic liquors is not applicable with respect to the holder of a license to operate a private club issued under the provisions of §60-7-1 *et seq.* of this code, nor shall the prohibition be applicable to a private wine restaurant licensed under the provisions of §60-8-1 *et seq.* of this code insofar as the private wine restaurant is authorized to serve wine;

(12) For any retail licensee to sell or dispense nonintoxicating beer, as defined in this article, purchased or acquired from any source other than a distributor, brewer, or manufacturer licensed under the laws of this state;

(13) For any licensee to permit loud, boisterous, or disorderly conduct of any kind upon his or her premises or to permit the use of loud musical instruments if either or any of the same may disturb the peace and quietude of the community where the business is located: *Provided*, That a licensee may have speaker systems for outside broadcasting as long as the noise levels do not create a public nuisance or violate local noise ordinances;

(14) For any person whose license has been revoked, as provided in this article, to obtain employment with any retailer within the period of one year from the date of the revocation, or for any retailer to knowingly employ that person within the specified time;

(15) For any distributor to sell, possess for sale, transport, or distribute nonintoxicating beer except in the original container;

(16) For any licensee to knowingly permit any act to be done upon the licensed premises, the commission of which constitutes a crime under the laws of this state;

(17) For any Class B retailer to permit the consumption of nonintoxicating beer upon his or her licensed premises;

(18) For any Class A licensee, his, her, its, or their servants, agents, or employees, or for any licensee by or through any servants, agents, or employees, to allow, suffer, or permit any person less than 18 years of age to loiter in or upon any licensed premises; except, however, that the provisions of this subdivision do not apply where a person under the age of 18 years is in or upon the premises in the immediate company of ~~his or her parent or parents~~ a parent or legal guardian, or where and while a person under the age of 18 years is in or upon the premises for the purpose of and actually making a lawful purchase of any items or commodities sold, or for the purchase of and actually receiving any lawful service rendered in the licensed premises, including the consumption of any item of food, drink, or soft drink lawfully prepared and served or sold for consumption on the premises;

(19) For any distributor to sell, offer for sale, distribute, or deliver any nonintoxicating beer outside the territory assigned to any distributor by the brewer or manufacturer of nonintoxicating beer or to sell, offer for sale, distribute, or deliver nonintoxicating beer to any retailer whose principal place of business or licensed premises is within the assigned territory of another distributor of the nonintoxicating beer: *Provided*, That nothing in this section is considered to prohibit sales of convenience between distributors licensed in this state where one distributor sells, transfers, or delivers to another distributor a particular brand or brands for sale at wholesale; and

(20) For any licensee or any agent, servant, or employee of any licensee to knowingly violate any rule lawfully promulgated by the commissioner in accordance with the provisions of chapter 29A of this code.

(b) Any person who violates any provision of this article, including, but not limited to, any provision of this section, or any rule, or order lawfully promulgated by the commissioner, or who makes any false statement concerning any material fact in submitting an application for a license or for a renewal of a license or in any hearing concerning the revocation of a license, or who commits any of the acts in this section declared to be unlawful is guilty of a misdemeanor and, upon conviction thereof, shall be punished for each offense by a fine of not less than \$25, nor more than \$500, or confined in the county or regional jail for not less than 30 days nor more than six months, or by both fine and confinement. Magistrates have concurrent jurisdiction with the circuit court and any other courts having criminal jurisdiction in their county for the trial of all misdemeanors arising under this article.

(c) (1) A Class B licensee that:

(A) Has installed a transaction scan device on its licensed premises; and

(B) Can demonstrate that it requires each employee, servant, or agent to verify the age of any individual to whom nonintoxicating beer or nonintoxicating craft beer is sold, furnished, or given away by the use of the transaction device ~~may not be~~ is not subject to: (i) Any criminal penalties whatsoever, including those set forth in subsection (b) of this section; (ii) any administrative penalties from the commissioner; or (iii) any civil liability whatsoever for the improper sale, furnishing, or giving away of nonintoxicating beer or nonintoxicating craft beer to an individual who is less than 21 years of age by one of his or her employees, servants, or agents. Any agent, servant, or employee who has improperly sold, furnished, or given away nonintoxicating beer to an individual less than 21 years of age is subject to the criminal penalties of subsection (b) of this section. Any agent, servant, or employee who has improperly sold, furnished, or given away nonintoxicating beer to an individual less than 21 years of age is subject to termination from employment, and the employer shall have no civil liability for the termination.

(2) For purposes of this section, a Class B licensee can demonstrate that it requires each employee, servant, or agent to verify the age of any individual to whom nonintoxicating beer is sold by providing evidence: (A) That it has developed a written policy which requires each employee, servant, or agent to verify the age of each individual to whom nonintoxicating beer will be sold, furnished, or given away; (B) that it has communicated this policy to each employee, servant, or agent; and (C) that it monitors the actions of its employees, servants, or agents regarding the sale, furnishing, or giving away of nonintoxicating beer and that it has taken corrective action for any discovered noncompliance with this policy.

(3) 'Transaction scan' means the process by which a person checks, by means of a transaction scan device, the age and identity of the cardholder, and 'transaction scan device' means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information enclosed on the magnetic strip or bar code of a driver's license or other governmental identity card.

(d) Nothing in this article nor any rule of the commissioner shall prevent or be considered to prohibit any licensee from employing any person who is at least 18 years of age to serve in the licensee's lawful employ, including the sale or ~~delivery~~ distribution of nonintoxicating beer as defined in this article. With the prior approval of the commissioner, a licensee whose principal business is the sale of food or consumer goods, or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores, and convenience stores, may employ persons who are less than 18 years of age, but at least 16 years of age: *Provided*, That the person's duties may ~~not~~ include the sale ~~or delivery~~ of nonintoxicating beer or alcoholic liquors only when directly supervised by a person 21 years of age or older: *Provided, however*, That the authorization to employ persons under the age of 18 years shall be clearly indicated on the licensee's license.

CHAPTER 19. AGRICULTURE.

ARTICLE 2. MARKETING AGRICULTURAL PRODUCTS.

§19-2-12. Agriculture Development Fund; administration; purpose; funding.

(a) There is hereby created in the State Treasury a special revenue account to be known as the Agriculture Development Fund. The fund shall be administered by the Department of Agriculture. The fund shall consist of all moneys deposited into the fund pursuant to §60-8A-3 of this code; any moneys that may be designated for deposit in this fund by an act of the Legislature;

any moneys appropriated and designated for the fund by the Legislature; any moneys able to be transferred into the fund by authority of the commissioner from other funds; and gifts, donations, and interest or other returns earned from investment of the fund.

(b) Expenditures from the fund shall be for the purpose of fostering and supporting the development of agricultural sectors, such as hard cider, within the state, and are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 et seq. of this code and upon the fulfillment of the provisions set forth in §11B-2-1 et seq. of this code. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund, but shall remain in the fund and be expended as provided by this section.

§19-2-13. Hard cider development program; purpose; funding.

The commissioner shall establish a program to foster the development and growth of the hard cider industry in the state. The purpose of the program shall be to assist in the development of fruit inputs necessary for the production of hard cider in the state. The program shall be funded using moneys deposited within the Agriculture Development Fund created pursuant to §19-2-12 of this code.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5a. Farm wineries defined.

(a) For the purpose of this chapter 'Farm winery' means an establishment where in any year 50,000 gallons or less of wine, which includes hard cider, and nonfortified dessert wine are manufactured exclusively by natural fermentation from grapes, apples, pears, peaches, other fruits or honey, or other agricultural products containing sugar and where port, sherry, and Madeira wine may also be manufactured, with 25 percent of such raw products being produced by the owner of ~~such~~ the farm winery on the premises of that establishment and no more than 25 percent of such produce originating from any source outside this state. Any port, sherry, or Madeira wine manufactured by a winery or a farm winery ~~must~~ shall not exceed an alcoholic content of 22 percent alcohol by volume and shall be matured in wooden barrels or casks.

(b) Notwithstanding the provisions of subsection (a) of this section, a farm winery may include one off-farm location. The owner of a farm winery may provide to the commissioner evidence, accompanied by written findings by the West Virginia Agriculture Commissioner in support thereof, that the owner has planted on the premises of the farm winery young nonbearing fruit plants. The commissioner may grant permission for one off-farm location when the location produces in an amount equal to that reasonably expected to be produced when the nonbearing fruit plants planted on the farm winery come into full production. The length of time of the permission to use an off-farm location shall be determined by the commissioner after consultation with the Agriculture Commissioner.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-3b. Private liquor delivery license for a retail liquor outlet or a third party; requirements; limitations; third party license fee; private liquor bottle delivery permit; requirements, and curbside in-person and in-vehicle delivery by a retail liquor outlet.

(a) A retail liquor outlet that is licensed to sell liquor for off-premises consumption may apply for a private liquor delivery license permitting the order, sale, and delivery of sealed liquor bottles or cans in the original container. The order, sale, and delivery of sealed liquor bottles or cans in the original container is permitted for off-premises consumption when completed by the licensee to a person purchasing the sealed liquor bottles or cans through a telephone, a mobile ordering application, or a web-based software program, authorized by the licensee's license. There is no additional fee for a licensed retail liquor outlet to obtain a private liquor delivery license. The order, sale, and delivery process shall meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for liquor sales or distribution, may apply for a private liquor delivery license for the privilege of ordering and delivery of sealed liquor bottles or cans, from a licensed retail liquor outlet. The order and delivery of sealed liquor bottles or cans permitted for off-premises consumption by a third party licensee when a retail liquor outlet sells to a person purchasing the sealed liquor bottles or cans through telephone orders, a mobile ordering application, or a web-based software program. The private liquor delivery license non-prorated, nonrefundable annual fee is \$200 per third party entity, with no limit on the number of drivers and vehicles.

(c) The private liquor delivery license application shall comply with licensure requirements in this article and shall provide any information required by the commissioner.

(d) *Sale Requirements.* -

(1) The purchase of sealed liquor bottles or cans in the original container may accompany the purchase of food and the completion of the sale may be accomplished by the delivery of food and sealed liquor bottles or cans in the original container by the licensee or third party licensee;

(2) Any purchasing person shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this chapter for the sale of alcoholic liquors and in §11-16-1 *et seq.* of the code, for nonintoxicating beer or nonintoxicating craft beer.

(3) 'Food', for purposes of this section, means food that has been cooked, microwaved, or that is pre-packaged food from the manufacturer.

(4) An order, sale, and delivery may consist of up to five 750 milliliter sealed liquor bottles for each order; *Provided*, That the entire delivery order may not contain any combination of sealed liquor bottles or cans in the original container, where the combination is more than 128 fluid ounces of liquor total; and

(5) A third party delivery licensee shall not have a pecuniary interest in a retail liquor outlet, as set forth in this article. A third party private liquor delivery licensee may only charge a convenience fee for the delivery of any alcohol. The third party private liquor delivery licensee may not collect a percentage of the liquor delivery order, but may continue to collect a percentage of the delivery order directly related to food. The convenience fee charged by the third-party private liquor delivery licensee to the purchasing person shall be no greater than five dollars per delivery order where a sealed liquor bottle or can in the original container is ordered by the purchasing person. For any third party licensee also licensed for other nonintoxicating beer or nonintoxicating craft beer delivery pursuant to §11-16-1 *et seq.* of this code, wine delivery pursuant to §60-8-1 *et seq.* of this code, or a sealed craft cocktail growler delivery pursuant to

§60-7-1 et seq. of this code, the total convenience fee of any order, sale, and delivery of sealed alcoholic liquor or nonintoxicating beer, or nonintoxicating craft beer shall not exceed five dollars.

(e) Private Liquor Delivery Requirements. -

(1) Delivery persons employed for the delivery of a sealed liquor bottles or cans in the original container shall be 21 years of age or older and a retail liquor outlet and a third-party private liquor delivery licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) A retail liquor outlet and a third-party private liquor delivery licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication. A retail liquor outlet and a third-party private liquor delivery licensee shall submit certification of the training to the commissioner;

(3) The retail liquor outlet or third party private liquor delivery licensee shall hold a private liquor bottle delivery permit for each vehicle delivering a sealed liquor bottle or can in the original container pursuant to subsection (g) of this section: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of licensure;

(4) A retail liquor outlet or third party private liquor delivery licensee shall deliver food and a sealed liquor bottle or can order in the original container in the market zone or contiguous market zone where the licensed retail liquor outlet is located;

(5) A retail liquor outlet or third party private liquor delivery licensee may only deliver food and a sealed liquor bottle or can in the original container to addresses located in West Virginia, The retail liquor outlet or third party private liquor delivery licensee shall pay and account for all sales and municipal taxes;

(6) A retail liquor outlet or third party private liquor delivery licensee may not deliver food and a sealed liquor bottle or can in the original container to any licensee licensed under §11-16-1 et seq. of this code, and under this chapter;

(7) Deliveries of food and a sealed liquor bottle or can in the original container are only for personal use, and not for resale; and

(8) A retail liquor outlet or third party private liquor delivery licensee shall not deliver and leave food and a sealed liquor bottle or can in the original container at any address without verifying a person's age and identification as required by this section.

(f) Telephone, mobile ordering application, or web-based software requirements. -

(1) The delivery person shall only permit the person who placed the order through a telephone order, a mobile ordering applicant, or web-based software to accept the food and a sealed liquor bottle or can in the original container for delivery which is subject to verification upon delivery with the delivery person's visual review and verification and, as applicable, a stored scanned image of the purchasing person's legal identification;

(2) Any mobile ordering application or web-based software used shall create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by

the delivery driver for verification, and shall include the delivery driver's name and vehicle information;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and shall include the delivery driver's name and vehicle information;

(4) All records are subject to inspection by the commissioner. A retail liquor outlet or third party private liquor delivery licensee shall retain records for three years, and shall not unreasonably withhold the records from the commissioner's inspection; and

(5) The retail liquor outlet or third party delivery licensee shall hold a valid private liquor bottle delivery permit required by subsection (g) of this section for each vehicle that may offer delivery.

(g) *Private Liquor Bottle Delivery Permit.* -

(1) A retail liquor outlet or third party delivery licensee shall obtain and maintain a retail transportation permit for the delivery of and a sealed liquor bottle or can in the original container.

(2) A retail liquor outlet or third party private delivery licensee shall provide vehicle and driver information, requested by the commissioner. Upon any change in vehicles or drivers, the licensee shall update the driver and vehicle information with the commissioner within 10 days of the change.

(3) Subject to the requirement of §60-6-12 of this code, a private liquor bottle delivery permit shall meet the requirements of a transportation permit authorizing the permit holder to transport liquor subject to the requirements of this chapter.

(h) *Enforcement.* -

(1) The retail liquor outlet or the licensed third party are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple licensees, employees, or independent contractors.

(2) Any license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a sealed liquor bottle. A person who violates the provisions of this subdivision is subject to the maximum penalties available in this chapter.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, and accepting delivery of orders are considered to be purchasers.

(i) Retail liquor outlets licensed for off-premises sales of sealed liquor bottles and cans in the original container may provide for the sale and curbside in-person or in-vehicle pick-up of sealed liquor bottles or cans in the original container, subject to verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

(j) Retail liquor outlets licensed for off-premises sales of sealed liquor bottles and cans in the original container may provide for the sale and delivery through a drive up or drive through structure, approved by the commissioner, of sealed liquor bottles or cans in the original container, subject to verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

§60-3A-25. Certain acts of retail licensees prohibited; criminal penalties.

(a) It is unlawful for any retail licensee, or agent or employee thereof, on such the retail licensee's premises to:

(1) Sell or offer for sale any liquor other than from the original package or container;

(2) Sell, give away, or permit the sale of, gift of, or the procurement of, any liquor, for or to any person under 21 years of age;

(3) Sell, give away, or permit the sale of, gift of, or the procurement of, any liquor, for or to any person visibly intoxicated;

(4) Sell or offer for sale any liquor other than during the hours permitted for the sale of liquor by retail licensees as provided under this article;

(5) Permit the consumption by any person of any liquor;

(6) With the intent to defraud, alter, change, or misrepresent the quality, quantity, or brand name of any liquor;

(7) Permit any person under 18 years of age to sell, furnish, or give liquor to any other person, except as provided in subsection (c) of this section;

(8) Purchase or otherwise obtain liquor in any manner or from any source other than that specifically authorized in this article; or

(9) Permit any person to break the seal on any package, can or bottle of liquor.

(b) Any person who violates any provision of this article, except section 24 of this article, including, but not limited to, any provision of this section, or any rule promulgated by the board or the commissioner, or who makes any false statement concerning any material fact, or who omits any material fact with intent to deceive, in submitting an application for a retail license or for a renewal of a retail license or in any hearing concerning the suspension or revocation thereof, or who commits any of the acts declared in this article to be unlawful, is guilty of a misdemeanor and, shall, upon conviction thereof, for each offense be fined not less than \$100 or more than \$5,000, or imprisoned in the county jail for not less than 30 days nor more than one year, or both fined and imprisoned. Magistrates have concurrent jurisdiction with the circuit courts for offenses under this article.

(c) Nothing in this article, or any rule of the board or commissioner, prevents or prohibits any retail licensee from employing any person who is at least 18 years of age to serve in any retail licensee's lawful employment at any retail outlet operated by ~~such~~ the retail licensee, or from having ~~such~~ the person sell or deliver liquor or transport liquor on behalf of a manufacturer under the provisions of this article. With the prior approval of the commissioner, a retail licensee may

employ persons at any retail outlet operated by ~~such a~~ retail licensee who are less than 18 years of age but at least 16 years of age, ~~but such the persons' duties shall not~~ may include the sale or delivery of liquor only when directly supervised by a person 21 years of age or older: *Provided*, That the authorization to employ such the persons under the age of 18 years shall be clearly indicated on the retail licensee's license issued to any such retail licensee. *Provided, however*, That nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be considered to prohibit any licensee from employing any person who is at least 21 years of age for the ordering and delivery of liquor when licensed for liquor ordering and delivery under the provisions of this chapter.

ARTICLE 4. LICENSES.

§60-4-3a. Distillery and mini-distillery license to manufacture and sell.

(a) *Sales of liquor.* — An operator of a distillery, mini-distillery, or micro-distillery may offer liquor for retail sale to customers from the distillery, mini-distillery, or micro-distillery for consumption off premises only. Except for complimentary samples offered pursuant to §60-6-1 of this code, ~~customers are prohibited from consuming~~ may not consume any liquor on the premises of the distillery, mini-distillery, or micro-distillery and except for a distillery, mini-distillery, or micro-distillery that obtains a private manufacturer club license set forth in §60-7-1 et seq. of this code, and a Class A retail dealer license set forth in §11-16-1 et seq. of the code: *Provided*, That a licensed distillery, mini-distillery, or micro-distillery may offer complimentary samples of alcoholic liquors as authorized per by this subsection of when alcoholic liquors are manufactured by that licensed distillery, mini-distillery, or micro-distillery for consumption on the licensed premises, only, on Sundays beginning at 10:00 a.m. in any county in which the same has been approved as provided for in §7-1-3pp of this code. Notwithstanding any other provision of law to the contrary, a licensed distillery, mini-distillery, or micro-distillery may sell, furnish, and serve alcoholic liquors when licensed accordingly beginning at 6:00 a.m. unless otherwise determined by the residents of the county pursuant to §7-1-3ss of this code.

(b) *Retail off-premises consumption sales.* — Every licensed distillery, mini-distillery, or micro-distillery shall comply with the provisions of §60-3A-9, §60-3A-11, §60-3A-13, §60-3A-16, §60-3A-17, §60-3A-18, §60-3A-19, §60-3A-22, §60-3A-23, §60-3A-24, §60-3A-25, and §60-3A-26 of this code, and the provisions of §60-3-1 et seq. and §60-4-1 et seq., of this code, applicable to liquor retailers and distillers.

(c) *Payment of taxes and fees.* — The distillery, mini-distillery, or micro-distillery shall pay all taxes and fees required of licensed retailers and meet applicable licensing provisions as required by this chapter and by rule of the commissioner, except for payments of the wholesale markup percentage and the handling fee provided by rule of the commissioner: *Provided*, That all liquor for sale to customers from the distillery, mini-distillery, or micro-distillery for off-premises consumption ~~shall be~~ is subject of a five percent wholesale markup fee and an 80 cents per case bailment fee to be paid to the commissioner: *Provided, however*, That ~~no~~ liquor sold by the distillery, mini-distillery, or micro-distillery shall not be priced less than the price set by the commissioner pursuant §60-3A-17 of this code.

(d) *Payments to market zone retailers.* — Each distillery, mini-distillery, or micro-distillery shall submit to the commissioner two percent of the gross sales price of each retail liquor sale for the value of all sales at the distillery, mini-distillery, or micro-distillery each month. This collection shall be distributed by the commissioner, at least quarterly, to each market zone retailer located in the distillery, mini-distillery, or micro-distillery's market zone, proportionate to each market zone

retailer's annual gross prior years pretax value sales. The maximum amount of market zone payments that a distillery, mini-distillery, or micro-distillery shall ~~be required to~~ submit to the commissioner is \$15,000 per annum.

(e) *Limitations on licensees.* — ~~No~~ A distillery, mini-distillery, or micro-distillery may not sell more than 3,000 gallons of product at the distillery, mini-distillery, or micro-distillery location during the initial two years 24 month period of licensure. The distillery, mini-distillery, or micro-distillery may increase sales at the distillery, mini-distillery, or micro-distillery location by 2,000 gallons following the initial 24 month period of licensure and may increase sales at the distillery, mini-distillery, or micro-distillery location each subsequent 24 month period by 2,000 gallons, not to exceed 10,000 gallons a year of total sales at the distillery, mini-distillery, or micro-distillery location. No licensed mini-distillery may produce more than 50,000 gallons per calendar year at the mini-distillery location. ~~No~~ A licensed micro-distillery may not produce more than 10,000 gallons per calendar year at the micro-distillery location. ~~No~~ The commissioner may issue more than one distillery or mini-distillery license may be issued to a single person or entity and no a person may not hold both a distillery and a mini-distillery license. The owners of a licensed distillery, mini-distillery, or micro-distillery may operate a winery, farm winery, brewery, or as a resident brewer as otherwise specified in the code.

(f) *Building code and tax classification-* Notwithstanding any provision of this code to the contrary, the mere addition of a distillery, mini-distillery, or micro-distillery licensed under this article on a property does not change the nature or use of the property which otherwise qualifies as agricultural use for building code and property tax classification purposes.

§60-4-3b. Winery and farm winery license to manufacture and sell.

(a) An operator of a winery or farm winery may offer wine produced by the winery, farm winery, or a farm entity authorized by §60-1-5c of this code, for retail sale to customers from the winery or farm winery for consumption off the premises only. Customers may consume wine on the premises when an operator of a winery or farm winery offers. Except for free complimentary samples offered pursuant to §60-6-1 of this code, the winery or farm winery is licensed as a private wine restaurant, or the winery or farm winery is licensed as a private manufacturer club. customers Customers are prohibited from consuming may not consume any wine on the licensed premises of the winery, farm winery, or a farm entity authorized by §60-1-5c of this code, unless such the winery, farm winery, or farm entity has obtained a multi-capacity winery or farm winery license: Provided, That under this subsection, a licensed winery or farm winery may offer complimentary samples per this subsection of wine manufactured by that licensed winery or farm winery for consumption on the premises only on Sundays beginning at 40:00 6:00 a.m. in any county in which the same has been approved as provided in §7-1-3ss of this code. Notwithstanding any other provision of law to the contrary, a licensed winery or farm winery may sell, serve, and furnish wine, for on-premises consumption when licensed accordingly, beginning at 6:00 a.m., and for off-premises consumption beginning at 6:00 a.m. on any day of the week, unless otherwise determined by the residents of the county pursuant to §7-1-3ss of this code.

(b) Complimentary samples allowed by the provisions of this section may not exceed two fluid ounces and no more than three ~~such~~ samples may be given to a patron in any one day.

(c) Complimentary samples may be provided only for on-premises consumption.

(d) A winery, farm winery, or farm entity pursuant to §60-1-5c of this code may offer for retail sale from their licensed premises sealed original container bottles of wine for off-premises consumption only.

(e) A winery, farm winery, or farm entity licensed pursuant to §60-1-5c of this code, holding a multicapacity license and a private wine restaurant license may offer wine by the drink or glass in a private wine restaurant located on the property of the winery, farm winery, or farm entity licensed pursuant to §60-1-5c of this code.

(f) Every licensed winery or farm winery shall comply with the provisions of §60-3-1 *et seq.*, §60-4-1 *et seq.*, and §60-8-1 *et seq.* of this code as applicable to wine retailers, wineries, and suppliers when properly licensed in such capacities.

(g) (1) The winery or farm winery shall pay all taxes and fees required of licensed wine retailers and meet applicable licensing provisions as required by this chapter and by rules promulgated by the commissioner.

(2) Each winery or farm winery acting as its own supplier shall submit to the Tax Commissioner the liter tax for all sales at the winery or farm winery each month, as provided in §60-8-1 *et seq.* of this code.

(3) The five percent wine excise tax, levied pursuant to §60-3-9d of this code, or pursuant to §8-13-7 of this code, may not be imposed or collected on purchases of wine in the original sealed package for the purpose of resale in the original sealed package, if the final purchase of ~~such~~ the wine is subject to the excise tax or if the purchase is delivered outside this state.

(4) No liter tax shall be collected on wine sold in the original sealed package for the purpose of resale in the original sealed package if a subsequent sale of ~~such~~ the wine is subject to the liter tax.

(5) This section shall not be interpreted to authorize a purchase for resale exemption in contravention of §11-15-9a of this code.

(h) A winery or farm winery may advertise a particular brand or brands of wine produced by it. ~~and the~~ The price of the wine is subject to federal requirements or restrictions.

(i) A winery or farm winery ~~must~~ shall maintain a separate winery or farm winery supplier, retailer, and direct shipper licenses when acting in one or more of those capacities and ~~must~~ shall pay all associated license fees, unless ~~such~~ the winery or farm winery holds a license issued pursuant to the provisions of §60-8-3(b)(12) of this code. A winery or farm winery, if holding the appropriate licenses or a multi-capacity winery or farm winery license, may act as its own supplier; retailer for off-premises consumption of its wine as specified in §60-6-2 of this code; private wine restaurant; and direct shipper for wine produced by the winery or farm winery. A winery or farm winery that has applied, paid all fees, and met all requirements may obtain a private manufacturer club license subject to the requirements of §60-7-1 et seq. of this code, and a Class A retail dealer license subject to the requirements of §11-16-1 et seq. of the code. All wineries must use a distributor to distribute and sell their wine in the state, except for farm wineries. ~~No more than one winery or farm winery license may be issued to a single person or entity and no person may hold both a winery and a farm winery license~~ Wineries or farm wineries may enter into alternating wine proprietorship agreements pursuant to §60-1-5c of this code.

(j) The owners of a licensed winery or farm winery may operate a distillery, mini-distillery, or micro-distillery, brewery, or as a resident brewer, as otherwise specified in the code.

(j) (k) For purposes of this section, terms will have the same meaning as provided in §8-13-7 of this code.

(l) Building code and tax classification- Notwithstanding any provision of this code to the contrary, the mere addition of a winery or farm winery licensed under this article on a property does not change the nature or use of the property which otherwise qualifies as agricultural use for building code and property tax classification purposes.

§60-4-3c. License required for sale and shipment of liquor by a distillery, mini-distillery or micro-distillery; shipment of limited quantities of liquor permitted by a private direct shipper; requirements; license fee, and penalties.

(a) Authorization. - Except for the commissioner, no person may offer for sale liquor, sell liquor, or offer liquor for shipment in this state, except for a licensed private direct shipper. A distillery, mini-distillery, or micro-distillery, whose licensed premises is located in this state or whose licensed premises is located and licensed out of this state, who desires to engage in the sale and shipment of liquor produced by the distillery, mini-distillery, or micro-distillery on its licensed premises, shall ship directly from the licensee's primary place of distilling by mail, using a mail shipping carrier to a purchasing person who is 21 years of age or older, for personal use, and not for resale under this article. The distillery, mini-distillery, or micro distillery shall obtain a private direct shipper license. Shipments to a purchasing person shall only be to a retail liquor outlet in the market zone in which the purchasing person resides. A private direct shipper may ship liquor subject to the requirements in this chapter in and throughout West Virginia, except for those local option areas designated as 'dry' areas under §60-5-1 et seq. of this code. A private direct shipper may also sell, and ship liquor out of this state directly from its primary place of distilling by mail, using a mail shipping carrier to a purchasing person who is 21 years of age or older subject to the recipient state's or country's requirements, laws, and international laws.

(b) License requirements. – Before sending any shipment of liquor to a purchasing person who is 21 years of age or older, the private direct shipper must first:

(1) File a license application with the commissioner with the appropriate background check information, using forms required by the commissioner. Criminal background checks will not be required of applicants licensed in their state of domicile who can provide a certificate of good standing from their state of domicile;

(2) Pay to the commissioner the \$250 non-prorated and nonrefundable annual license fee to ship and sell only liquor;

(3) Obtain a business registration number from the Tax Commissioner;

(4) Register with the office of the Secretary of State;

(5) Provide the commissioner a true copy of its current active license issued in the state of domicile, proving that the private direct shipper is licensed in its state of domicile as a distillery, is authorized by such state to ship liquor;

(6) Obtain from the commissioner a private direct shipper's license;

(7) Submit to the commissioner a list of all brands of liquor to be shipped to West Virginia and attest that all liquor brands are manufactured by the distillery on its licensed premises seeking licensure and are not counterfeit or adulterated liquor;

(8) Attest that the distillery, mini-distillery, or micro-distillery distills less than 50,000 gallons of liquor each calendar year and provide documentary evidence along with the attestation; and

(9) Meet all other licensing requirements of this chapter and provide any other information that the commissioner may reasonably require.

(c) Shipping Requirements. - All private direct shipper licensees shall:

(1) Not ship more than two bottles of liquor per month to a retail liquor outlet for pickup by a purchasing person who is 21 years of age or older for his or her personal use and consumption, and not for resale. The combined fluid volume of both bottles shall not exceed three liters;

(2) Not ship to any address in an area identified by the commissioner as a 'dry' or local option area where it is unlawful to sell liquor under §60-5-1 et seq. of this code;

(3) Not ship to any licensed suppliers, brokers, distributors, retailers, private clubs, or other licensees licensed under this chapter or §11-16-1 et seq. of this code;

(4) Not ship liquor from overseas or internationally;

(5) Ensure that all containers of liquor shipped to a retail liquor outlet for pickup by a purchasing person who is 21 years of age or older, are clearly and conspicuously labeled with the words 'CONTAINS ALCOHOL: SIGNATURE OF PERSON 21 OR OLDER REQUIRED FOR DELIVERY';

(6) Require a retail liquor outlet to obtain a written or electronic signature upon delivery to a purchasing person who is 21 years of age or older when picking up a sealed liquor delivery order; and

(7) Utilize a licensed and bonded shipping carrier who has obtained a transportation permit as specified in §60-6-12 of the code.

(d) Payment of Fees and Taxes.

(1) Any private direct shipper licensee on all sales of liquor must collect and remit the entire wholesale markup percentage and any handling fees, in full, as set forth in §60-3A-17 of the code and by rule of the commissioner to the commissioner at the close of each month and file a monthly report, on a form provided by the commissioner.

(2) Further, the private direct shipper licensee on all sales of liquor shall collect and remit all state sales tax, municipal tax, and local sales tax to the Tax Commissioner at the close of each month and file a monthly return, on a form provided by the Tax Commissioner, reflecting the taxes paid for all sales and shipments.

(3) The payment of fees to the commissioner and taxes to the Tax Commissioner may be in addition to fees and taxes levied by the private direct shipper's domicile state.

(4) No private direct shipper will be required to pay any fees to the commissioner or taxes to the Tax Commissioner more than once.

(5) A retail liquor outlet which has entered a written agreement with a private direct shipper to accept a liquor shipment under this section may charge an additional fee not less than ten percent fee based on the total price of the liquor shipment, excluding the shipping charges, to a lawful purchaser.

(e) Jurisdiction. - By obtaining a private direct shipper licensee be deemed to have agreed and consented to the jurisdiction of the commissioner, which is Charleston, West Virginia and the Kanawha County circuit court, concerning enforcement of this chapter and any other related laws or rules.

(f) Records and reports. –

(1) Licensed private direct shippers and retail liquor outlets must maintain accurate records of all shipments sent to West Virginia.

(2) Provide proof or records to the commissioner, upon request, that all direct shipments of liquor were purchased and delivered to a purchasing person who is 21 years of age or older.

(g) The private direct shipper may annually renew its license with the commissioner by application, paying the private direct shipper license fee and providing the commissioner with a true copy of a current distillery license from the private direct shipper's domicile state.

(h) The commissioner may promulgate legislative rules to effectuate the purposes of this law.

(i) Penalties. –

(1) The commissioner may enforce the requirements of this chapter by administrative proceedings as set forth in §60-7-13 and §60-7-13a of this code to suspend or revoke a private direct shipper's license or retail liquor outlet's license, and the commissioner may accept payment of a penalties as set forth in §60-7-13 and §60-7-13a of this code or an offer in compromise in lieu of suspension, at the commissioner's discretion. Hearings and appeals on such notices may be had in the same manner as in the case of revocations of licenses set forth in §60-7-13 and §60-7-13a of this code.

(2) If any such distillery violates the provisions of this chapter, the commissioner may determine to suspend the privileges of the distillery to sell, ship, or deliver liquor to a purchasing person who is 21 years of age or older or to the commissioner, or otherwise engage in the liquor business in this state for a period of one year from the date a notice is mailed to such person by the commissioner of the fact that such person has violated the provisions of this article. During such one-year period, it shall be unlawful for any person within this state to buy or receive liquor from such person or to have any dealings with such person with respect thereto.

(k) Criminal Penalties. – A shipment of liquor directly to citizens in West Virginia from persons who do not possess a valid private direct shipper's license is prohibited. Any person who knowingly makes, participates in, transports, imports, or receives such an unlicensed and unauthorized direct shipment is guilty of a felony and, shall, upon conviction thereof, be fined in an amount not to exceed \$10,000 per violation. Without limitation on any punishment or remedy,

criminal or civil, any person who knowingly makes, participates in, transports, imports, or receives such a direct shipment constitutes an act that is an unfair trade practice.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-8. Unlawful sale or possession by licensee.

A licensed person shall not:

(1) Sell, furnish, tender, or serve alcoholic liquors of a kind other than that which ~~such~~ the license or this chapter authorizes him or her to sell;

(2) Sell, furnish, tender, or serve beer to which wine, spirits, or alcohol has been added;

(3) Sell, furnish, tender, or serve wine to which other alcoholic spirits have been added, otherwise than as required in the manufacture ~~thereof~~ of the wine under ~~regulations~~ rules of the commission;

(4) Sell, furnish, tender, or serve alcoholic liquors to a person specified in §60-3-22 of this code;

(5) Sell, furnish, tender, or serve alcoholic liquors except as authorized by ~~his or her~~ its license;

(6) Sell, furnish, tender, or serve alcoholic liquors other than by the drink, poured from the alcoholic liquors' original container: *Provided*, That under certain requirements exceptions to liquor by the drink are as follows:

(A) A private club licensed under §60-7-1 *et seq.* of this code, that is in good standing with the commissioner and has paid a \$1000 on-premises only bottle service fee to the commissioner, may sell or serve liquor by the bottle to two or more persons for consumption on the licensed premises only, and any liquor bottle sold by ~~such a~~ the private club shall be sold at retail for personal use, and not for resale, to a person for not less than 300 percent of the private club's cost, and ~~no such~~ the liquor bottle shall ~~not~~ be removed from the licensed premises by any person or the licensee; and

(B) A Class A licensee licensed under §60-8-1 *et seq.* of this code may sell or serve wine by the bottle to two or more persons for consumption on the licensed premises only, unless ~~such~~ the licensee has obtained a license or privilege authorizing other activity;

(7) Sell, furnish, tender, or serve pre-mixed alcoholic liquor that is not in the original container: *Provided*, That a licensee may sell, furnish, tender, and serve up to 15 recipes of pre-mixed beverages consisting of alcoholic liquors, and nonalcoholic mixer, and ice if in a manner approved by the commissioner and in accord with public health and safety standards:

(A) The licensee shall use approved dispensing and storage equipment which shall be cleaned at the end of the day. Failure to clean the dispensing and storage equipment shall result in the immediate suspension or revocation of the permit;

(B) The licensee shall sanitize and clean the pre-mixing beverage storage equipment after each use or after each batch of the pre-mixed beverage is made;

~~(A) The frozen drink mixing beverage machine is emptied and sanitized daily; and~~

~~(B)~~(C) That The licensee shall maintain a written record reflecting the cleaning and sanitizing of the storage and dispensing equipment ~~frozen drink machine is maintained~~ for inspection by the commissioner and health inspectors;

(D) A violation or violations this subdivision may result in the suspension or revocation of the permit and may result in additional sanctions under this chapter or §11-16-1 et seq. of this code;

(8) Sell, furnish, tender, or serve any alcoholic liquor when forbidden by the provisions of this chapter;

(9) Sell, possess, possess for sale, tender, serve, furnish, or provide any powdered alcohol;

(10) Keep on the premises covered by his or her license alcoholic liquor other than that which he or she is authorized to sell, furnish, tender, or serve by such license or by this chapter.

A person who violates any provision of this section ~~shall be~~ is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined in jail not less than 30 days nor more than one year, or both ~~such fine~~ fined and confined ~~confinement~~ for the first offense. Upon conviction of a second or subsequent offense, the court may ~~in its discretion~~ impose a penalty of ~~confinement~~ imprisonment in a state correctional facility for a period not to exceed three years. A person who violates any provision of this section for the second or any subsequent offense under this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a period not to exceed three years.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-2. Definitions; authorizations; requirements for certain licenses. power to lease building for establishment of private club.

Unless the context in which used clearly requires a different meaning, as used in this article:

(a) 'Applicant' means a private club applying for a license under the provisions of this article.

(b) 'Code' means the official Code of West Virginia, 1931, as amended.

(c) 'Commissioner' means the West Virginia Alcohol Beverage Control Commissioner.

(d) 'Licensee' means the holder of a license to operate a private club granted under this article, which ~~license shall remain~~ remains unexpired, unsuspended, and unrevoked.

(e) 'Private club' means any corporation or unincorporated association which either: (1) Belongs to or is affiliated with a nationally recognized fraternal or veterans' organization which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises to which club are admitted only duly elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests; ~~or~~ (2) is a nonprofit social club, which is operated exclusively for the benefit of its

members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises to which club are admitted only duly elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests; or (3) is organized and operated for legitimate purposes which has at least 100 duly elected or approved dues-paying members in good standing, which owns or leases a building or other premises, including any vessel licensed or approved by any federal agency to carry or accommodate passengers on navigable waters of this state, to which club are admitted only duly elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment and employs a sufficient number of persons for serving meals to members and their guests; or (4) is organized for legitimate purposes and owns or leases a building or other delimited premises in any state, county, or municipal park or at any airport, in which building or premises a club has been established, to which club are admitted only duly elected and approved dues-paying members in good standing and their guests while in the company of a member and to which club the general public is not admitted, and which maintains in connection with the club a suitable kitchen and dining facility and related equipment and employs a sufficient number of persons for serving meals in the club to the members and their guests.

(f) 'Private caterer' means a licensed private club restaurant authorized by the commissioner to cater and serve food and sell and serve alcoholic liquors, or non-intoxicating beer, or non-intoxicating craft beer. A private caterer shall purchase wine sold or served at a catering event from a wine distributor. A private caterer shall purchase nonintoxicating beer and nonintoxicating craft beer sold or served at the catering event from a licensed beer distributor. A private caterer shall purchase liquor from a retail liquor outlet authorized to sell in the market zone, where the catering event is held. The private caterer or the persons or entity holding the catering event shall:

(1) Have at least 10 members and guests attending the catering event;

(2) Have obtained an open container waiver or have otherwise been approved by a municipality or county in which the event is being held;

(3) Operate a private club restaurant on a daily operating basis;

(4) Only use its employees, independent contractors, or volunteers to sell and serve alcoholic liquors who have received certified training in verifying the legal identification, the age of a purchasing person, and the signs of visible, noticeable, and physical intoxication;

(5) Provide to the commissioner, at least 7 days before the event is to take place:

(A) The name and business address of the unlicensed private venue where the private caterer is to provide food and alcohol for a catering event;

(B) The name of the owner or operator of the unlicensed private venue;

(C) A copy of the contract or contracts between the private caterer, the person contracting with the caterer, and the unlicensed private venue;

(D) A floorplan of the unlicensed private venue to comprise the private catering premises, which shall only include spaces in buildings or rooms of an unlicensed private venue where the private caterer has control of the space for a set time period where the space safely accounts for the ingress and egress of the stated members and guests who will be attending the private catering event at the catering premises. The unlicensed private venue's floorplan during the set time period as stated in the contract shall comprise the private caterer's licensed premises, which is authorized for the lawful sale, service, and consumption of alcoholic liquors, nonintoxicating beer and nonintoxicating craft beer, and wine throughout the licensed private catering premises; *Provided*, That the unlicensed private venue shall: (i) Be inside a building or structure, (ii) have other facilities to prepare and serve food and alcohol, (iii) have adequate restrooms, and sufficient building facilities for the number of members and guests expected to attend the private catering event, and (iv) otherwise be in compliance with health, fire, safety, and zoning requirements;

(6) Not hold more than 15 private catering events per calendar year. Upon reaching the 16th event, the unlicensed venue shall obtain its own private club license;

(7) Submit to the commissioner, evidence that any noncontiguous area of an unlicensed venue is within 150 feet of the private caterer's submitted floorplan and may submit a floorplan extension for authorization to permit alcohol and food at an outdoor event;

(8) Meet and be subject to all other private club requirements; and

(9) Use an age verification system approved by the commissioner.

(g) 'Private club bar' means an applicant for a private club or licensed private club licensee that has a primary function for the use of the licensed premises as a bar for the sale and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer when licensed for such sales, while providing a limited food menu for members and guests, and meeting the criteria set forth in this subsection which:

(1) Has at least 100 members;

(2) Operates a bar with a kitchen, including at least: (A) A two-burner hot plate, air fryer, or microwave oven; (B) a sink with hot and cold running water; (C) a 17 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer, which is not used for alcohol cold storage; (D) kitchen utensils and other food consumption apparatus, as determined by the commissioner; and (E) food fit for human consumption available to be served during all hours of operation on the licensed premises;

(3) Maintains, at any one time, \$500 of food inventory capable of being prepared in the private club bar's kitchen. In calculating the food inventory, the commissioner shall include television dinners, bags of chips or similar products, microwavable food or meals, frozen meals, prepackaged foods, or canned prepared foods;

(4) Uses an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 18 who are in the private club bar are accompanied by a parent or legal guardian, and if a person under 18 years of age is not accompanied by a parent or legal guardian that person may not be admitted as a guest; and

(5) Meets and is subject to all other private club requirements.

(h) 'Private club restaurant' means an applicant for a private club or licensed private club licensee that has a primary function of using the licensed premises as a restaurant for serving freshly prepared meals and dining in the restaurant area. The private club restaurant may have a bar area separate from or commingled with the restaurant, seating requirements for members and guests must be met by the restaurant area. The applicant for a private club restaurant license shall meet the criteria set forth in this subsection which:

(1) Has at least 100 members;

(2) Operate a restaurant and full kitchen with at least: (A) Ovens and four-burner ranges; (B) refrigerators or freezers, or some combination of refrigerators and freezers, greater than 50 cubic feet, or a walk-in refrigerator or freezer; (C) other kitchen utensils and apparatus, as determined by the commissioner; and (D) freshly prepared food fit for human consumption available to be served during all hours of operation on the licensed premises;

(3) Maintains, at any one time, \$1,000 of fresh food inventory capable of being prepared in the private club restaurant's full kitchen. In calculating the food inventory, the commissioner may not include television dinners, bags of chips, or similar products, microwavable meals, frozen meals, prepackaged foods, or canned prepared foods;

(4) Uses an age verification system approved by the commissioner for the purpose of verifying that persons under 18 years of age who are in the bar area of a private club restaurant are accompanied by a parent or legal guardian. The licensee may not seat a person in the bar area who is under the age of 18 years and who is not accompanied by a parent or legal guardian, but may allow that person, as a guest, to dine for food and nonalcoholic beverage purposes in the restaurant area of a private club restaurant;

(5) May uncork and serve members and guests up to two bottles of wine that a member purchased from a wine retailer, wine specialty shop, an applicable winery or farm winery when licensed for retail sales, or a licensed wine direct shipper when the purchase is for personal use and, not for resale. The licensee may charge a corkage fee of up to \$10 dollars per bottle. In no event may a member or a group of members and guests exceed two sealed bottles or containers of wine to carry onto the licensed premises for uncorking and serving by the private club restaurant and for personal consumption by the member and guests. A member or guest may cork and reseal any unconsumed wine bottles as provided in §60-8-3(j) of this code and the legislative rules, for carrying unconsumed wine off the licensed premises;

(6) Must have at least two restrooms for members and their guests: *Provided*, That this requirement may be waived by the local health department upon supplying a written waiver of the requirement to the commissioner: *Provided, however*, That the requirement may also be waived for a historic building by written waiver supplied to commissioner of the requirement from the historic association or district with jurisdiction over a historic building: *Provided, further* That in no event shall a private club restaurant have less than one restroom; and

(7) Shall meet and be subject to all other private club requirements.

(i) 'Private manufacturer club' means an applicant for a private club or licensed private club licensee which is also licensed as a distillery, mini-distillery, micro-distillery, winery, farm winery, brewery, or resident brewery that manufacturers liquor, wine, nonintoxicating beer, or nonintoxicating craft beer, which may be sold, served, and furnished to members and guests for

on-premises consumption at the licensee's licensed premises and in the area or areas denoted on the licensee's floorplan, and which meets the criteria set forth in this subsection and which:

(1) Has at least 100 members;

(2) Offers tours, may offer complimentary samples, and may offer space as a conference center or for meetings;

(3) Operates a restaurant and full kitchen with ovens, four-burner ranges, a refrigerator, or freezer, or some combination of a refrigerator and freezer, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 15 hours per week;

(4) Maintains, at any one time, \$500 of fresh food inventory capable of being prepared in the private manufacturer club's full kitchen. In calculating the food inventory, the commissioner may not include television dinners, bags of chips, or similar products, microwavable meals, frozen meals, prepackaged foods, or canned prepared foods;

(5) Owns or leases, controls, operates, and uses acreage amounting to at least one acre which is contiguous bounded or fenced real property that would be listed on the licensee's floorplan and may be used for large events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(6) Lists the entire property from subdivision (5) of this subsection and all adjoining buildings and structures on the private manufacturer club's floorplan that would comprise the licensed premises, which would be authorized for the lawful sale, service, and consumption of alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, and wine throughout the licensed premises, whether these activities were conducted in a building or structure or outdoors while on the private manufacturer club's licensed premises, and as noted on the private manufacturer club's floorplan;

(7) Identifies a person, persons, an entity, or entities who or which has right, title, and ownership or lease interest in the real property, buildings, and structures located on the proposed licensed premises;

(8) Uses an age verification system approved by the commissioner; and

(9) Meets and is subject to all other private club requirements.

~~(f)~~(i) 'Private fair and festival' means an applicant for a private club or a licensed private club meeting the requirements of §60-7-8a of this code for a temporary event, and the criteria set forth in this subsection which:

(1) Has at least 100 members;

(2) Has been sponsored, endorsed, or approved, in writing, by the governing body (or its duly elected or appointed officers) of either the municipality or of the county ~~wherein~~ in which the festival, fair, or other event is to be conducted;

(3) ~~Shall prepare, provide, or engage~~ Prepares, provides, or engages a food ~~eater~~ vendor to provide adequate freshly prepared food or meals to serve its stated members and guests who

will be attending the temporary festival, fair, or other event, and further shall provide any documentation or agreements of such to the commissioner prior to approval;

(4) ~~Shall~~ Does not use third-party entities or individuals to purchase, sell, furnish, or serve alcoholic liquors (~~liquor and wine~~), nonintoxicating beer, or nonintoxicating craft beer;

(5) ~~Shall provide~~ Provides adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the festival, fair, or other event;

(6) ~~Shall provide~~ Provides a floorplan for the proposed premises with a defined and bounded area to safely account for the ingress and egress of stated members and guests who will be attending the festival, fair, or other event; ~~and~~

(7) ~~Utilizes~~ Uses an age verification system approved by the commissioner; and

(8) Meets and is subject to all other private club requirements.

~~(g)~~(k) 'Private hotel' means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least 2,000 members;

(2) Offers short-term, daily rate accommodations or lodging for members and their guests amounting to at least 30 separate bedrooms, and also offers a conference center for meetings;

(3) Operates a restaurant and full kitchen with ovens, four-burner ranges, walk-in freezers, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 20 hours per week;

(4) Maintains, at any one time, \$2,500 of fresh food inventory capable of being prepared in the private hotel's full kitchen, and in calculating the food inventory the commissioner may not include microwavable, frozen, or canned foods;

(5) Owns or leases, controls, operates, and uses acreage amounting to more than one acre but fewer than three acres, which are contiguous acres of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for hotel and conferences and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

~~(6) Lists in the application referenced in subdivision (5) of this subsection the entire property and all adjoining buildings and structures~~ Lists the entire property from subdivision (5) of this subsection and all adjoining buildings and structures on the private hotel's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private hotel's licensed premises and as noted on the private hotel's floorplan;

(7) Has an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property buildings and structures located on the proposed licensed premises; ~~and~~

(8) ~~Utilizes~~ Uses an age verification system approved by the commissioner; and

(9) Meets and is subject to all other private club requirements.

~~(h)~~(l) 'Private resort hotel' means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least 5,000 members;

(2) Offers short-term, daily rate accommodations or lodging for members and their guests amounting to at least 50 separate bedrooms;

(3) Operates a restaurant and full kitchen with ovens, six-burner ranges, walk-in freezers, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 25 hours per week;

(4) Maintains, at any one time, \$5,000 of fresh food inventory capable of being prepared in the private resort hotel's full kitchen, and in calculating the food inventory the commissioner may not include microwavable, frozen, or canned foods;

(5) Owns or leases, controls, operates, and uses acreage amounting to at least 10 contiguous acres of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for destination, resort, and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(6) Lists the entire property from subdivision (5) of this subsection and all adjoining buildings and structures on the private resort hotel's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private resort hotel's licensed premises and as noted on the private resort hotel's floorplan;

(7) Has an identified person, or persons, or entity that has right, title, and ownership or lease interest in the real property, buildings, and structures located on the proposed licensed premises;

(8) ~~Utilizes~~ Uses an age verification system approved by the commissioner; ~~and~~

(9) Meets and is subject to all other private club requirements; and

~~(9)~~(10) May have a separately licensed resident brewer with a brewpub license inner-connected via a walkway, doorway, or entryway, all as determined and approved by the commissioner, for limited access during permitted hours of operation for tours and complimentary samples at the resident brewery.

~~(i)~~(m) 'Private golf club' means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least 100 members;

(2) Maintains at least one 18-hole golf course with separate and distinct golf playing holes, not reusing nine golf playing holes to comprise the 18 golf playing holes, and a clubhouse;

(3) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and serves freshly prepared food at least 15 hours per week;

(4) Owns or leases, controls, operates, and uses acreage amounting to at least 80 contiguous acres of bounded or fenced real property which would be listed on the private golf club's floorplan and could be used for golfing events and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(5) Lists the entire property from subdivision (4) of this subsection and all adjoining buildings and structures on the private golf club's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private golf club's licensed premises and as noted on the private golf club's floorplan;

(6) Has an identified person, ~~or~~ persons, or entity that has right, title, and ownership interest in the real property, buildings, and structures located on the proposed licensed premises; ~~and~~

(7) ~~Utilizes~~ Uses an age verification system approved by the commissioner; and

(8) Meets and is subject to all other private club requirements.

(j)(n) 'Private nine-hole golf course' means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least 50 members;

(2) Maintains at least one nine-hole golf course with separate and distinct golf playing holes;

(3) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and serves freshly prepared food at least 15 hours per week;

(4) Owns or leases, controls, operates, and uses acreage amounting to at least 30 contiguous acres of bounded or fenced real property which would be listed on the private nine-hole golf course's floorplan and could be used for golfing events and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(5) Lists the entire property from subdivision (4) of this subsection and all adjoining buildings and structures on the private nine-hole golf course's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private nine-hole golf course's licensed premises and as noted on the private nine-hole golf course's floorplan;

(6) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises; ~~and~~

(7) ~~Utilizes~~ Uses an age verification system approved by the commissioner; and

(8) Meets and is subject to all other private club requirements.

(o) 'Private tennis club' means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least 100 members;

(2) Maintains at least four separate and distinct tennis courts, either indoor or outdoor, and a clubhouse or similar facility;

(3) Has a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and is capable of serving freshly prepared food;

(4) Owns or leases, controls, operates, and uses acreage amounting to at least two contiguous acres of bounded or fenced real property which would be listed on the private tennis club's floorplan and could be used for tennis events and large events such as weddings, reunions, conferences, tournaments, meetings, and sporting or recreational events;

(5) Lists the entire property from subdivision (4) of this subsection and all adjoining buildings and structures on the private tennis club's floorplan that would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private tennis club's licensed premises and as noted on the private tennis club's floorplan;

(6) Has identified a person, persons, an entity, or entities who or which has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(7) Meets and is subject to all other private club requirements; and

(8) Uses an age verification system approved by the commissioner.

(p) 'Private professional sports stadium' means an applicant for a private club or licensed private club licensee that is only open for professional sporting events when such events are affiliated with or sponsored by a professional sporting association, reserved weddings, reunions, conferences, meetings, or other special events and does not maintain daily or regular operating hours as a bar or restaurant. The licensee may not sell alcoholic liquors when conducting or hosting non-professional sporting events, and further the applicant shall:

(1) Have at least 1000 members;

(2) Maintain an open air or closed air stadium venue primarily used for sporting events, such as football, baseball, soccer, auto racing, or other professional sports, and also weddings, reunions, conferences, meetings, or other events where parties must reserve the stadium venue in advance of the event;

(3) Operate a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and capable of serving freshly prepared food, or meals to serve its stated members, guests, and patrons who will be attending the event at the private professional sports stadium;

(4) Own or lease, control, operate, and use acreage amounting to at least 3 contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the professional sports stadium's floorplan and could be used for contracted for professional sporting events, group-type weddings, reunions, conferences, meetings, or other events;

(5) List the entire property from subdivision (4) of this subsection and all adjoining buildings and structures on the private professional sports stadium's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private professional sports stadium's licensed premises and as noted on the private professional sports stadium's floorplan;

(6) Have an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(7) Meet and be subject to all other private club requirements; and

(8) Use an age verification system approved by the commissioner.

(g) 'Private farmers market' means an applicant for a private club or licensed private club licensee that operates as an association of bars, restaurants, retailers who sell West Virginia made products among other products, and other stores who open primarily during daytime hours of 6:00 a.m. to 6:00 p.m., but may operate in the day or evenings for special events where the sale of food and alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer may occur for on-premises consumption, such as reserved weddings, reserved dinners, pairing events, tasting events, reunions, conferences, meetings, or other special events and does not maintain daily or regular operating hours as a bar or restaurant, and all business that are members of the association have agreed in writing to be liable and responsible for all sales, service, furnishing, tendering and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer occurring on the entire licensed premises of the private farmer's market, including indoor and outdoor bounded areas, and further the applicant shall:

(1) Have at least 100 members;

(2) Have one or more members operating a private club restaurant and full kitchen with ovens, four-burner ranges, a refrigerator, or freezer (or some combination of the two), and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 15 hours per week;

(3) Have one or more members operating who maintain, at any one time, \$1,000 of fresh food inventory capable of being prepared for events conducted at the private farmers market in the private club restaurant's full kitchen, and in calculating the food inventory the commissioner may not include television dinners, bags of chips or similar products, microwavable meals, frozen meals, prepackaged foods, or canned prepared foods;

(4) Have an association that owns or leases, controls, operates, and uses acreage amounting to more than one acre, which is contiguous acreage of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for large contracted for reserved weddings, reserved dinners, pairing events, tasting events, reunions, conferences, meetings, or other special events;

(5) Have an association that lists in the application for licensure the entire property and all adjoining buildings and structures on the private farmers market's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private farmers market's licensed premises and as noted on the private farmers market's floorplan;

(6) Have an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property buildings and structures located on the proposed licensed premises;

(7) Have at least two separate and unrelated vendors applying for the license and certifying that all vendors in the association have agreed to the liability, responsibility associated with a private farmers market license;

(8) Only use its employees, independent contractors, or volunteers to purchase, sell, furnish, or serve liquor, wine, nonintoxicating beer, or nonintoxicating craft beer;

(9) Provide adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the private farmers market;

(10) Provide a copy of a written agreement between all the vendors of the association that is executed by all vendors stating that each vendor is jointly and severally liable for any violations of this chapter committed during the event;

(11) Provide a security plan indicating all vendor points of service, entrances, and exits in order to verify members, patrons, and guests ages, whether a member, patron, or guest is intoxicated and to provide for the public health and safety of members, patrons, and guests;

(12) Use an age verification system approved by the commissioner; and

(13) Meet and be subject to all other private club requirements.

(r) 'Private wedding venue or barn' means an applicant for a private club or licensed private club licensee that is only open for reserved weddings, reunions, conferences, meetings, or other events and does not maintain daily or regular operating hours, and which:

(1) Has at least 25 members;

(2) Maintains a venue, facility, barn, or pavilion primarily used for weddings, reunions, conferences, meetings, or other events where parties must reserve or contract for the venue, facility, barn, or pavilion in advance of the event;

(3) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and is capable of serving freshly prepared food, or may engage a food caterer to provide adequate freshly prepared food or meals to serve its stated members, guests, and patrons who will be attending the event at the private wedding venue or barn. The applicant or licensee shall provide written documentation including a list of food caterers or written agreements regarding any food catering operations to the commissioner prior to approval of a food catering event;

(4) Owns or leases, controls, operates, and uses acreage amounting to at least two contiguous acres of bounded or fenced real property. The applicant or licensee shall verify that, the property is less than two acres and is remotely located, subject to the commissioner's approval. The bounded or fenced real property may be listed on the private wedding venue's floorplan and may be used for large events such as weddings, reunions, conferences, meetings, or other events;

(5) Lists the entire property from subdivision (4) of this subsection and all adjoining buildings and structures on the private wedding venue or barn's floorplan that would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private wedding venue or barn's licensed premises and as noted on the private wedding venue or barn's floorplan;

(6) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(7) Meets and is subject to all other private club requirements; and

(8) Uses an age verification system approved by the commissioner.

(s) 'Private multi-sport complex' means an applicant for a private club or licensed private club licensee that is open for multiple sports events to be played at the complex facilities, reserved weddings, concerts, reunions, conferences, meetings, or other special events, and which:

(1) Has at least 100 members;

(2) Maintains an open air multi-sport complex primarily for use for sporting events, such as baseball, soccer, basketball, tennis, frisbee, or other sports, but may also conduct weddings, concerts, reunions, conferences, meetings, or other events where parties must reserve the parts of the sports complex in advance of the sporting or other event;

(3) Operates a restaurant and full kitchen with ovens in the licensee's main facility, as determined by the commissioner, on the licensed premises and capable of serving freshly prepared food, or meals to serve its stated members, guests, and patrons who will be attending the event at the private professional sports stadium. A licensee may contract with temporary food vendors or food trucks for food sales only, but not on a permanent basis, in areas of the multi-sport complex not readily accessible by the main facility;

(4) Maintains, at any one time, \$1,000 of fresh food inventory capable of being prepared in the private multi-sport complex's full kitchen. In calculating the food inventory, the commissioner may not include television dinners, bags of chips, or similar products, microwavable meals, frozen meals, prepackaged foods, or canned prepared foods;

(5) Owns or leases, controls, operates, and uses acreage amounting to at least 50 contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the private multi-sport complex's floorplan and could be used for contracted for sporting events, group-type weddings, concerts, reunions, conferences, meetings, or other events;

(6) Lists the entire property from subdivision (5) of this subsection and all adjoining buildings and structures on the private multi-sport complex's floorplan which would comprise the licensed

premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private multi-sport complex's licensed premises and as noted on the private multi-sport complex's floorplan. The licensee may sell alcoholic liquors from a golf cart or food truck owned or leased by the licensee and also operated by the licensee when the golf cart or food truck is located on the private multi-sport complex's licensed premises;

(7) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(8) Meets and is subject to all other private club requirements; and

(9) Uses an age verification system approved by the commissioner.

The Department of Natural Resources, the authority governing any county or municipal park, or any county commission, municipality, other governmental entity, public corporation, or public authority operating any park or airport may lease, as lessor, a building or portion thereof or other limited premises in any such park or airport to any corporation or unincorporated association

for the establishment of a private club pursuant to this article.

§60-7-6. Annual license fee; partial fee; and reactivation fee.

(a) The annual license fee for a license issued under the provisions of this article to a fraternal or veterans' organization or a nonprofit social club ~~shall be~~ is \$750.

(b) The annual license fee for a license issued under the provisions of this article to a private club other than a private club of the type specified in subsection (a) of this section ~~shall be~~ is \$1,000 if the private club bar or restaurant has fewer than 1,000 members; \$1,000 for a private club restaurant to be licensed as a private caterer as defined in §60-7-2 of this code; \$1,500 if the private club is a private wedding venue or barn; \$2,000 if the private club is a private nine-hole golf course, private farmers market, private professional sports stadium, private multi-sport complex, private manufacturer club, or a private tennis club as defined in §60-7-2 of this code; \$2,500 if the private club bar or private club restaurant has 1,000 or more members; \$4,000 if the private club is a private hotel with three or fewer designated areas or a private golf club as defined in §60-7-2 of this code; and further, if the private club is a private resort hotel as defined in §60-7-2 of this code, ~~said~~ the private resort hotel may designate areas within the licensed premises for the lawful sale, service, and consumption of alcoholic liquors as provided for by this article. The annual license fee for a private resort hotel with five or fewer designated areas ~~shall be~~ is \$7,500 and the annual license fee for a private resort hotel with at least six, but no more than 10 designated areas ~~shall be~~ is \$12,500. The annual license fee for a private resort hotel with at least 11, but no more than 15 designated areas shall be \$17,500. The annual license fee for a private resort hotel with no fewer than 15 nor more than 20 designated areas ~~shall be~~ is \$22,500. ~~Provided, That a~~ A private resort hotel ~~having~~ that obtained the license and paid the \$22,500 annual license fee may, upon application to and approval of the commissioner, designate additional areas for a period not to exceed seven days for an additional fee of \$150 per day, per designated area.

(c) The fee for any ~~such~~ license issued following January 1 of any year ~~and to expire that expires on June 30 of such that year shall be~~ is one half of the annual license fee prescribed by subsections (a) and (b) of this section.

(d) A licensee that fails to complete a renewal application and make payment of its annual license fee in renewing its license on or before June 30 of any subsequent year, after initial application, shall be charged an additional \$150 reactivation fee. The fee payment may not be prorated or refunded, and the reactivation fee ~~must~~ shall be paid prior to the processing of any renewal application and payment of the applicable full year annual license fee. A licensee who continues to operate upon the expiration of its license is subject to all fines, penalties, and sanctions available in §60-7-13 and §60-7-13a of this code, all as determined by the commissioner.

(e) ~~All such fees shall be paid by the~~ The commissioner shall pay the fees to the State Treasurer and credited to the General Revenue Fund of the state.

(f) The Legislature finds that the hospitality industry has been particularly damaged by the COVID-19 pandemic and that some assistance is warranted to promote reopening and continued operation of private clubs and restaurants licensed under this article. Accordingly, the fees set forth in subsections (a) and (b) of this section are temporarily modified as follows;

(1) License fees for the license period beginning July 1, 2021, shall be reduced to one-third of the rate set forth in subsections (a) and (b) of this section;

(2) License fees for the license period beginning July 1, 2022, shall be two-thirds of the rate set forth in subsections (a) and (b) of this section; and

(3) License fees for the license period beginning July 1, 2023 and beyond, shall be as set forth in subsections (a) and (b) of this section.

§60-7-8b. One-day charitable rare, antique, or vintage liquor auction; licensee fee and application; license subject to provisions of article; exceptions.

(a) The commissioner may issue a special one-day, license to a licensed private club in partnership with one or more duly organized, federally approved nonprofit corporations, associations, organizations, or entities allowing the nonprofit to conduct a charitable auction of certain sealed bottles of rare, antique, or vintage liquor, as determined by the commissioner, on the private club licensee's licensed premises for off-premises consumption only, when raising money for athletic, charitable, educational, scientific, or religious purposes. A licensed private club may not receive more than 12 licenses under this section per year.

(b) 'Auction or auctioning', for the purposes of this section, means any silent, physical act, or verbal bid auction, where the auction requires in-person bidding at a licensed private club or online internet-based auction bidding, with bidders present at the licensed private club during the nonprofit auction, through a secure internet-based application or website.

(c) Requirements.-

(1) The licensed private club and nonprofit shall jointly complete an application, at least 15 days prior to the event. The application may require, but is not limited to, information relating to the date, time, place, floorplan of the charitable event, and any other information as the commissioner may require. The applicants shall include with the application a written signed and notarized statement that at least 80 percent of the net proceeds from the charitable event will be donated directly to the nonprofit. The commissioner may audit the licensed private club and nonprofit to verify the 80 percent requirement has been met.

(2) The licensed private club and nonprofit must be in good standing with the commissioner, and the applicants must receive the commissioner's approval prior to the charitable event.

(3) The licensed private club and nonprofit shall submit, and the commissioner shall review, the applicants' list of rare, antique, or vintage liquor, and the applicants shall submit documentation showing that the liquor was purchased from a licensed retail outlet in accordance with §60-3A-1 et seq. of this code with all taxes and fees paid. Any rare, antique, or vintage liquor with no documentation or that was not purchased in accordance with §60-3A-1 et seq. of this code, may be approved for auction, if all taxes and fees are paid to the commissioner in accordance with §60-3A-1 et seq. of this code. Any undocumented rare, antique, or vintage liquor approved for charitable auction by the commissioner must be labeled in the interest of public health and safety: 'Purchase and consume at your own risk, as the authenticity or source of manufacture of this bottle has not been verified'.

(4) The private club and nonprofit may not deliver, mail, or ship sealed or unsealed rare, antique, or vintage liquor bottles.

(5) The winning bidder of the auctioned rare, antique, or vintage liquor shall pay and receive the sealed rare, antique, or vintage liquor bottle before the conclusion of the event.

(6) The applicants shall pay a \$150 nonrefundable and nonprorated fee for the license.

(d) Exceptions. –

(1) A nonprofit's charitable auctioning of sealed rare, antique, or vintage liquor bottles, as determined by the commissioner, is permitted on the private club's licensed premises, notwithstanding the bingo, raffle, and lottery provisions of §47-20-10, §47-21-11, and §61-10-1 et seq. of this code, but in compliance with the auction requirements of §19-2c-1 et seq. of this code;

(2) The nonprofit, upon licensure by this section, is permitted a limited, one-time exception of the requirement to be a licensed retail outlet and hold a retail license issued pursuant to §60-3A-1 et seq. of this code to sell liquor; and

(3) The private club, upon licensure by this section, is provided a limited, one-time exception from §60-7-12(a)(1) and §60-6-8(6) of this code, to permit the licensed nonprofit to sell at auction the sealed rare, antique, or vintage liquor bottles for off-premises consumption, to permit the carrying onto, the sale of, and the carrying off of the licensed premises the approved sealed liquor bottles. Any private club or nonprofit licensed pursuant to this code section are subject to all penalties for violations committed under §60-3A-1 et seq. of this code and §60-7-1 et seq. of this code.

§60-7-8c. Special license for a multi-vendor private fair and festival; license fee and application; license subject to provisions of article; exception.

(a) There is hereby created a special license designated Class S3 private multivendor fair and festival license for the retail sale of liquor, wine, nonintoxicating beer, and nonintoxicating craft beer for on-premises consumption at an event where multiple vendors shall share liability and responsibility, and apply for this license. Each vendor may temporarily purchase, sell, furnish, or serve liquor, wine, nonintoxicating beer, and nonintoxicating craft beer as provided in this section.

(b) To be eligible for the license authorized by subsection (a) of this section, the private multivendor fair and festival or other event shall:

(1) Be sponsored, endorsed, or approved by the governing body or its designee of the county or municipality in which the private multivendor fair and festival or other event is located;

(2) Jointly apply to the commissioner for the special license at least 15 days prior to the private fair, festival, or other event;

(3) Pay a nonrefundable nonprorated license fee of \$500 per event that may be divided among all the vendors attending the event;

(4) Be approved by the commissioner to operate the private multivendor fair, festival, or other event;

(5) Be limited to no more than 15 consecutive days;

(6) Have at least two separate and unrelated vendors applying for the license and certifying that at least 100 members will be in attendance;

(7) Freshly prepare and provide food or meals, or engage a food vendor to prepare and provide adequate freshly prepared food or meals to serve its stated members and guests who will be attending the temporary festival, fair, or other event, and provide any written documentation or agreements of the food caterer to the commissioner prior to approval of the license;

(8) Only use its employees, independent contractors, or volunteers to purchase, sell, furnish, or serve liquor, wine, nonintoxicating beer, or nonintoxicating craft beer;

(9) Provide adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the private multi-vendor festival, fair, or other event;

(10) Provide an executed agreement between the vendors and/or food caterers stating that each vendor is jointly and severally liable for any improper acts or conduct committed during the multi-vendor festival or fair event;

(11) Provide a security plan indicating all vendor points of service, entrances, and exits in order to verify members', patrons', and guests' ages, and whether a member, patron, or guest is intoxicated, to provide for the public health and safety of members, patrons, and guests;

(12) Provide a floorplan for the proposed premises with one defined and bounded indoor and/or outdoor area to safely account for the ingress and egress of stated members, patrons, and guests who will be attending the festival, fair, or other event, and the floorplan that would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of liquor, wine, nonintoxicating beer, or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure, or outdoors while on the licensed premises and as noted on the floorplan;

(13) Meet and be subject to all other private club requirements; and

(14) Use an age verification system approved by the commissioner.

(c) Nonintoxicating beer and nonintoxicating craft beer sold, furnished, tendered, or served pursuant to the license created by this section shall be purchased from the licensed distributor that services the area in which the private multi-vendor fair and festival will be held or from a resident brewer acting in a limited capacity as a distributor, in accordance with §11-16-1 et seq. of this code.

(d) Wine sold, furnished, tendered, or served pursuant to the license created by this section shall be purchased from a licensed distributor, winery, or farm winery in accordance with §60-8-1 et seq. of this code.

(e) Liquor sold, furnished, tendered, or served pursuant to the license created by this section shall be purchased from a licensed retail liquor outlet in the market zone or contiguous market zone where the private multi-vendor fair or festival will be held, all in accordance with §60-3A-1 et seq. of this code.

(f) A licensee authorized by this section may use bona fide employees, independent contractors, or volunteers to sell, furnish, tender, or serve the liquor, wine, nonintoxicating beer, or nonintoxicating craft beer; *Provided*, That the licensee shall train all employees, independent contractors, or volunteers to verify legal identification and to verify signs of intoxication.

(g) Licensed representatives of a brewer, resident brewer, beer distributor, wine distributor, wine supplier, winery, farm winery, distillery, mini-distillery, micro-distillery, and liquor brokers may attend a private multi-vendor festival or fair and discuss their respective products but may not engage in the selling, furnishing, tendering, or serving of any liquor, wine, nonintoxicating beer, or nonintoxicating craft beer.

(h) A licensee licensed under this section is subject to all other provisions of this article and the rules and orders of the commissioner: *Provided*, That the commissioner may, by rule or order, allow certain waivers or exceptions with respect to those provisions, rules, or orders as required by the circumstances of each private multi-vendor fair and festival. The commissioner may revoke or suspend immediately any license issued under this section prior to any notice or hearing, notwithstanding §60-7-13a of this code: *Provided, however*, That under no circumstances may the provisions of §60-7-12 of this code be waived or an exception granted with respect thereto.

§60-7-8d. Where private clubs may sell and serve alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer.

(a) With prior approval of the commissioner a private club licensee may sell, serve, and furnish alcoholic liquor and, if also licensed to sell, serve, and furnish nonintoxicating beer or nonintoxicating craft beer to be consumed on premises in a legally demarcated area which may include a temporary private outdoor dining area or temporary private outdoor street dining area. A temporary private outdoor street dining area shall be approved by the municipal government or county commission in which the licensee operates. The commissioner shall develop and make available an application form to facilitate the purposes of this subsection.

(b) The private club licensee shall submit to the commissioner: (1) the municipal or county approval of the private outdoor dining area or private outdoor street dining area; and, (2) a revised floorplan requesting to sell alcoholic liquors, and when licensed for nonintoxicating beer or nonintoxicating craft beer, then nonintoxicating beer or nonintoxicating craft beer, subject to the commissioner's requirements, in an approved and bounded outdoor area. The approved and bounded area need not be adjacent to the licensee's licensed premises, but in close proximity,

for private outdoor street dining or private outdoor dining. For purposes of this subsection, 'close proximity' means an available area within 150 feet of a licensee's licensed premises and under the licensee's control and with right of ingress and egress.

(c) This private outdoor dining or private outdoor street dining may be operated in conjunction with a private wine outdoor dining or private wine outdoor street dining area set forth in §60-8-32a of this code and nonintoxicating beer or nonintoxicating craft beer outdoor dining or outdoor street dining set forth in §11-16-9 of this code.

(d) For purposes of this section, private outdoor dining and private outdoor street dining include dining areas that are:

(1) Outside and not served by an HVAC system for air handling services and use outside air;

(2) Open to the air; and

(3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally approve a partial enclosure with up to three temporary or fixed walls.

Any area where seating is incorporated inside a permanent building with ambient air through HVAC is not considered outdoor dining pursuant to this subsection.

(e) A private club restaurant or a private manufacturer club licensed for craft cocktail growler sales must provide food or a meal along with sealed craft cocktail growler sales as set forth in this article to a patron who is in-person or in-vehicle while picking up food or a meal, and a sealed craft cocktail growler order-to-go, subject to verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

§60-7-8e. Private club restaurant or private manufacturer club licensee's authority to sell craft cocktail growlers.

(a) *Legislative findings.* — The Legislature hereby finds that it is in the public interest to regulate, control, and support the brewing, manufacturing, distribution, sale, consumption, transportation, and storage of liquor and its industry in this state to protect the public health, welfare, and safety of the citizens of this state and promote hospitality and tourism. Therefore, this section authorizes a licensed private club restaurant or private manufacturer club, to have certain abilities to promote the sale of liquor manufactured in this state for the benefit of the citizens of this state, the state's growing distilling industry, and the state's hospitality and tourism industry, all of which are vital components for the state's economy.

(b) *Sales of craft cocktail growlers.* — A licensed private club restaurant or private manufacturer club is authorized under a current and valid license and meets the requirements of this section may offer a craft cocktail growler in the ratio of up to one fluid ounce of liquor to four fluid ounces of nonalcoholic beverages or mixers, not to exceed 128 fluid ounces for the entire beverage in the craft cocktail growler, for retail sale to patrons from their licensed premises in a sealed craft cocktail growler for personal consumption only off of the licensed premises. Prior to the sale, the licensee shall verify in-person, using proper identification, that any patron purchasing the craft cocktail growler is 21 years of age or older and that the patron is not visibly or noticeably intoxicated. There shall be a \$100 non-prorated, non-refundable annual fee to sell craft cocktail growlers.

(c) Retail sales. — Every licensee licensed under this section shall comply with all the provisions of this chapter as applicable to retail sale of liquor at retail liquor outlets, comply with markup specified in §60-3A-17(e)(2) of this code when conducting sealed craft cocktail growler sales, and shall be subject to all applicable requirements and penalties in this article.

(d) Payment of taxes. — Every licensee licensed under this section shall pay all sales taxes required of retail liquor outlets, in addition to any other taxes required, and meet any applicable licensing provisions as required by this chapter and by rule of the commissioner.

(e) Advertising. — Every licensee licensed under this section may only advertise a particular brand or brands of liquor manufactured by a distillery, mini-distillery, or micro-distillery upon written approval from the distillery, mini-distillery, micro-distillery, or an authorized and licensed broker to the licensee. Advertisements may not encourage intemperance or target minors.

(f) Craft cocktail growler defined. — For purposes of this chapter, ‘Craft Cocktail Growler’ means a container or jug that is made of glass, ceramic, metal, plastic, or other material approved by the commissioner, that may be no larger than 128 fluid ounces in size and must be capable of being securely sealed. The growler is utilized by an authorized licensee for purposes of off-premises sales only of liquor and a nonalcoholic mixer or beverage for personal consumption not on a licensed premise. Notwithstanding any other provision of this code to the contrary, a securely sealed craft cocktail growler is not an open container under state and local law. A craft cocktail growler with a broken seal is an open container under state and local law unless it is located in an area of the motor vehicle physically separated from the passenger compartment. A craft cocktail growler is not an original container of liquor, but once sanitized, filled, properly sealed, and sold, all as set forth in this article, is a sealed container.

(h) Craft cocktail growler requirements. — A licensee licensed under this section must prevent patrons from accessing the secure area where the filling of the craft cocktail occurs or to fill a craft cocktail growler. A licensee licensed under this section must sanitize, fill, securely seal, and label any craft cocktail growler prior to its sale. A licensee licensed under this section may refill a craft cocktail growler subject to the requirements of this section. A licensee licensed under this section shall visually inspect any craft cocktail growler before filling or refilling it. A licensee licensed under this section may not fill or refill any craft cocktail growler that appears to be cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container. For purposes of this article, a secure sealing means using a tamper-evident seal, such as: (1) A plastic heat shrink wrap band, strip, or sleeve extending around the cap or lid of craft cocktail growler to form a seal that must be broken when the container is opened; or (2) A screw top cap or lid that breaks apart when the craft cocktail growler is opened.

(i) Craft cocktail growler labeling. — A licensee licensed under this section selling craft cocktail growlers shall affix a conspicuous label on all sold and securely sealed craft cocktail growlers listing the name of the licensee selling the craft cocktail growler, the brand of the liquor in the craft cocktail growler, the type of craft cocktail or name of the craft cocktail, the alcohol content by volume of the liquor in the craft cocktail growler, and the date the craft cocktail growler was filled or refilled, and, all labeling on the craft cocktail growler shall be consistent with all federal labeling and warning requirements.

(j) Craft cocktail growler sanitation. — A licensee licensed under this section shall clean and sanitize all craft cocktail growlers he or she fills or refills in accordance with all state and county health requirements prior to its sealing. In addition, the licensee licensed under this section shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipe lines,

barrel tubes, and any other related equipment used to fill or refill craft cocktail growlers. Failure to comply with this subsection may result in penalties under this article; *Provided* That, if the reuse or refilling of a craft cocktail growler would violate federal law such craft cocktail growler must only be used one-time, for one filling, and be discarded after the one-time use.

(k) *Pre-mixing of craft cocktail.* - A licensee licensed under this section may pre-mix the nonalcoholic beverages or mixers in the advance of a craft cocktail growler purchase and sealing, and add the liquor, as set forth in this section, upon a member or guest's purchase of a craft cocktail growler. A licensee licensed under this section must dispose of any expired premixed nonalcoholic beverages or mixers pursuant to Bureau for Public Health requirements when such premixed nonalcoholic beverages or mixers are no longer fit for human consumption. A licensee authorized under §60-6-8(7) may use a premixed beverage meeting the requirements therein and is also subject to the requirements of this section for a craft cocktail growler.

(l) *Limitations on licensees.* — A licensee licensed under this section shall not sell craft cocktail growlers to other licensees, but only to its members and guests. A licensee licensed under this section must provide food or a meal along with one sealed craft cocktail growler to a patron who is in-person or in-vehicle while picking up food or a meal, and a sealed craft cocktail growler order-to-go, subject to verification that the purchasing person is 21 years of age or older, and not visibly or noticeably intoxicated, and as otherwise specified in this article. A licensee licensed under this section may only sell one sealed craft cocktail growler to a patron who has not been consuming alcoholic liquors or nonintoxicating beer on its licensed premises or one craft cocktail growler per food or meal in the order delivered per §60-7-8f of this code. A licensee licensed under this section shall be subject to the applicable penalties under this article for violations of this article.

(m) *Rules.* — The commissioner, in consultation with the Bureau for Public Health, may to propose legislative rules concerning sanitation for legislative approval, pursuant to §29A-3-1 *et seq.* of this code, to implement the purposes of this section.

§60-7-8f. Private delivery license for a licensed private club restaurant, private manufacturer club, or a third party; requirements; limitations; third party license fee; private cocktail delivery permit; and requirements.

(a) A licensed private club restaurant or private manufacturer club licensed to sell liquor for on-premises consumption may apply for a private delivery license permitting the order, sale, and delivery of liquor and a nonalcoholic mixer or beverage in a sealed craft cocktail growler, when separately licensed for craft cocktail growler sales. The order, sale, and delivery of a sealed craft cocktail growler is permitted for off-premises consumption when completed by the licensee to a person purchasing the craft cocktail growler through a telephone, a mobile ordering application, or web-based software program, authorized by the licensee's license. There is no additional fee for a licensed private club restaurant or private manufacturer club to obtain a private delivery license. The order, sale, and delivery process shall meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for liquor sales or distribution, may apply for a private delivery license for the privilege of ordering and delivery of craft cocktail growlers, from a licensee with a craft cocktail growler license. The order and delivery of a sealed craft cocktail growler is permitted by a third party who obtains a license under this section when a private club restaurant or private manufacturer club sells to a person purchasing the sealed craft cocktail growler through telephone orders, a mobile ordering application, or a web-based software program. The private delivery

license nonprorated, nonrefundable annual fee is \$200 for each third party entity, with no limit on the number of drivers and vehicles.

(c) The private delivery license application shall comply with licensure requirements in this article and shall require any information required by the commissioner; *Provided*, That the license application may not require a third party applicant to furnish information pursuant to §60-7-12 of this code.

(d) *Sale Requirements.* -

(1) The craft cocktail growler purchase shall accompany the purchase of prepared food or a meal and the completion of the sale may be accomplished by the delivery of the prepared food or a meal, and craft cocktail growler by the licensed private club restaurant, private manufacturer club, or third party private delivery licensee;

(2) Any purchasing person shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this chapter for the sale of alcoholic liquors and as set forth in §11-16-1 *et seq.* of the code for nonintoxicating beer or nonintoxicating craft beer.

(3) 'Prepared food or a meal' for this article, means food that has been cooked, grilled, fried, deep-fried, air-fried, smoked, boiled, broiled, twice baked, blanched, sautéed, or in any other manner freshly made and prepared, and does not include pre-packaged food from the manufacturer.

(4) An order, sale, and delivery may consist of multiple sealed craft cocktail growlers for each order of food or meal; *Provided*, That the entire delivery order may not contain any combination of craft cocktail growlers of more than 128 fluid ounces total; and

(5) A third party private delivery licensee shall not have a pecuniary interest in a private club restaurant or private manufacturer club licensee, as set forth in this article. A third party private delivery licensee may only charge a convenience fee for the delivery of any alcohol. The third party private delivery licensee may not collect a percentage of the delivery order for the delivery of alcohol, but may continue to collect a percentage of the delivery order directly related to the prepared food or a meal. The convenience fee charged by the third-party private delivery licensee to the purchasing person shall be no greater than five dollars per delivery order where a craft cocktail growler is ordered by the purchasing person. For any third party licensee also licensed for wine growler delivery as set forth in §60-8-6c of the code, or nonintoxicating beer or nonintoxicating craft beer growler delivery as set forth in §11-16-6d of the code, the total convenience fee of any order, sale, and delivery of a sealed growler, wine growler, or craft cocktail growler shall not exceed five dollars.

(e) *Craft Cocktail Growler Delivery Requirements.* -

(1) Delivery persons employed for the delivery of a sealed craft cocktail growler shall be 21 years of age or older. The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication. The licensee shall submit certification of the training to the commissioner;

(3) The third party delivery licensee or the private club restaurant or private manufacturing club shall hold a private cocktail delivery permit for each vehicle delivering a craft cocktail growler pursuant to subsection (g) of this section: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of licensure.

(4) Prepared food or a meal, and a sealed craft cocktail growler order delivered by a third party private delivery licensee, a private club restaurant, or private manufacturer club may occur in the county or contiguous counties where the licensed private club restaurant or private manufacturer club is located;

(5) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee may only deliver prepared food or a meal, and a sealed craft cocktail growler to addresses located in West Virginia. The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall account for and pay all sales and municipal taxes;

(6) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee may not deliver prepared food or a meal, and a sealed craft cocktail growler to any other licensee;

(7) Deliveries of prepared food or a meal, and a sealed craft cocktail growler are only for personal use, and not for resale; and

(8) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall not deliver and leave the prepared food or a meal, and a sealed craft cocktail growler at any address without verifying a person's age and identification as required by this section.

(f) *Telephone, mobile ordering application, or web-based software requirements.* -

(1) The delivery person may only permit the person who placed the order through a telephone order, a mobile ordering application, or web-based software to accept the prepared food or meal and a craft cocktail growler delivery, subject to age verification upon delivery with the delivery person's visual review and age verification and, as application, a stored scanned image of the purchasing person's legal identification;

(2) Any mobile ordering application or web-based software used shall create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and shall include the delivery driver's name and vehicle information;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and shall include the delivery driver's name and vehicle information;

(4) All records are subject to inspection by the commissioner. The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall retain records

for three years, and may not unreasonably withhold the records from the commissioner's inspection; and

(5) The third party private delivery licensee or the private club restaurant or private manufacturing club shall hold a valid private cocktail delivery permit under subsection (g) of this section for each vehicle used for delivery: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of licensure.

(g) *Private Cocktail Delivery Permit.* -

(1) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall obtain and maintain a retail transportation permit for the delivery of prepared food and a sealed craft cocktail growler, subject to the requirements of this article.

(2) A third party private delivery licensee, a private club restaurant, or private manufacturer club licensee shall provide vehicle and driver information, requested by the commissioner. Upon any change in vehicles or drivers, the licensee shall update the driver and vehicle information with the commissioner within 10 days of the change.

(3) In conjunction with §60-6-12 of this code, a private cocktail delivery permit shall meet the requirements of a transportation permit authorizing the permit holder to transport liquor subject to the requirements of this chapter.

(h) *Enforcement.* -

(1) The third party private delivery licensee, the private club restaurant, or the private manufacturers club licensed by this section are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple licensees, employees, or independent contractors.

(2) Any license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a craft cocktail growler. The licensees in violation are subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, and accepting delivery of orders are considered to be purchasers.

§60-7-12. Certain acts of licensee prohibited; criminal penalties.

(a) It is unlawful for any licensee, or agent, employee, or member thereof, on such licensee's premises to:

(1) Sell, offer for sale, tender, or serve any alcoholic liquors other than by the drink poured from the original package or container, except as authorized in §60-6-8 of this code;

(2) Authorize or permit any disturbance of the peace, obscene, lewd, immoral, or improper entertainment, conduct, or practice, gambling or any slot machine, multiple coin console machine,

multiple coin console slot machine, or device in the nature of a slot machine; however, various games, gaming, and wagering conducted by duly licensed persons of the West Virginia State Lottery Commission, charitable bingo games conducted by a duly licensed charitable or public service organization (or its auxiliaries), pursuant to §47-20-1 *et seq.* of this code, and charitable raffle games conducted by a duly licensed charitable or public service organization (or its auxiliaries), pursuant to §47-21-1 *et seq.* of this code, all of which are permissible on a licensee's licensed premises when operated in accordance with this code, ~~rules, and regulations: *Provided*, That a~~ and rules promulgated thereunder. A private resort hotel holding a license issued pursuant to §60-7-1 *et seq.* of this code, may sell, tender, or dispense nonintoxicating beer, wine, or alcoholic liquors in or on the premises licensed under §29-22A-1 *et seq.* and §29-22C-1 *et seq.*, or §29-25-1 *et seq.* of this code, during hours of operation authorized by §29-22A-1 *et seq.* and §29-22C-1 *et seq.*, or §29-25-1 *et seq.* of this code;

(3) Sell, give away, or permit the sale of, gift to, or the procurement of any nonintoxicating beer, wine, or alcoholic liquors for or to, or permit the consumption of nonintoxicating beer, wine, or alcoholic liquors on the licensee's premises, by any person less than 21 years of age;

(4) Sell, give away, or permit the sale of, gift to, or the procurement of any nonintoxicating beer, wine, or alcoholic liquors, for or to any person known to be ~~deemed~~ considered legally incompetent, or for or to any person who is physically incapacitated due to consumption of nonintoxicating beer, wine or alcoholic liquor or the use of drugs;

(5) Sell, give, or dispense nonintoxicating beer, wine, or alcoholic liquors in or on any licensed premises, or in any rooms directly connected therewith between the hours of 3:00 a.m. and 7:00 ~~6:00~~ 6:00 a.m. on weekdays, ~~or Saturdays, and Sundays, between the hours of 3:00 a.m. and 10:00~~ a.m. on any Sunday or, between the hours of 3:00 a.m. and 1:00 p.m. in any county upon approval as provided for in §7-1-3ss of this code, on any Sunday; and

(6) Permit the consumption by, or serve to, on the licensed premises any nonintoxicating beer, wine, or alcoholic liquors, covered by this article, to any person who is less than 21 years of age;

(7) With the intent to defraud, alter, change, or misrepresent the quality, quantity, or brand name of any alcoholic liquor;

(8) Sell or offer for sale any alcoholic liquor to any person who is not a duly elected or approved dues-paying member in good standing of ~~said~~ the private club or a guest of ~~such~~ the member;

(9) Sell, offer for sale, give away, facilitate the use of or allow the use of carbon dioxide, cyclopropane, ethylene, helium, or nitrous oxide for purposes of human consumption, except as authorized by the commissioner;

(10)(A) Employ any person who is less than ~~48~~ 16 years of age in a position where the primary responsibility for such employment is to sell, furnish, tender, serve, or give nonintoxicating beer, wine, or alcoholic liquors to any person;

(B) Employ any person who is between ~~the ages of 18~~ 16 years of age and younger than 21 years of age who is not directly supervised by a person aged 21 or over in a position where the primary responsibility for such employment is to sell, furnish, tender, serve or give nonintoxicating beer, wine, or alcoholic liquors to any person; or

(11) Violate any reasonable rule of the commissioner.

(b) It is lawful for any licensee to advertise price and brand in any news media or other means, outside of the licensee's premises.

(c) Any person who violates any of the ~~foregoing~~ provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000, or imprisoned in jail for a period not to exceed one year, or both fined and imprisoned.

ARTICLE 8. SALE OF WINES.

§60-8-2. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:

'Commissioner' or 'commission' means the West Virginia Alcohol Beverage Control Commissioner.

'Distributor' means any person whose principal place of business is within the State of West Virginia who makes purchases from a supplier to sell or distribute wine to retailers, grocery stores, private wine bed and breakfasts, private wine restaurants, private wine spas, private clubs, or wine specialty shops and that sells or distributes nonfortified dessert wine, port, sherry and Madeira wines to wine specialty shops, private wine restaurants, private clubs, or retailers under authority of this article and maintains a warehouse in this state for the distribution of wine. For the purpose of a distributor only, the term 'person' means and includes an individual, firm, trust, partnership, limited partnership, limited liability company, association, or corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee or other persons in active control of the activities of the trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or violations of this article, notwithstanding the liability of trustees in §44D-10-1 *et seq.* of this code.

'Fortified wine' means any wine to which brandy or other alcohol has been added where the alcohol content by volume does not exceed 24 percent, and shall include includes nonfortified dessert wines which are not fortified having an alcohol content by volume of at least fourteen and one-tenths percent and not exceeding sixteen percent where the alcohol content by volume is greater than 17 percent and does not exceed 24 percent.

'Grocery store' means any retail establishment, commonly known as a grocery store, supermarket, delicatessen, caterer, or party supply store, where food, food products, and supplies for the table are sold for consumption off the premises with average monthly sales (exclusive of sales of wine) of not less than \$500 and an average monthly inventory (exclusive of inventory of wine) of not less than ~~\$3,000~~ \$500. The term 'grocery store' ~~shall also include and mean also includes and means~~ a separate and segregated portion of any other retail store which is dedicated solely to the sale of food, food products, and supplies for the table for consumption off the premises with average monthly sales with respect to ~~such the~~ the separate or segregated portion (exclusive of sales of wine) of not less than ~~\$3,000~~ \$500 and an average monthly inventory (exclusive of inventory of wine) of not less than ~~\$3,000~~ \$500.

'Hard Cider' means a type of wine that is derived primarily from the fermentation of apples, pears, peaches, honey, or another fruit, or from apple, pear, peach, or another fruit juice concentrate and water; contains no more than 0.64 grams of carbon dioxide per 100 milliliters; contains at least one half of one percent and less than 12 and one half percent alcohol by volume;

and is advertised, labeled, offered for sale, or sold, as hard cider or cider containing alcohol, and not as wine, wine product, or as a substitute for wine.

'Hard Cider Distributor' means any person whose principal place of business is within the State of West Virginia who makes purchases from a supplier to sell or distribute hard cider (but not other types of wine) to retailers, grocery stores, private wine bed and breakfasts, private wine restaurants, private wine spas, private clubs, or wine specialty shops under authority of this code and maintains a warehouse in this state for the distribution of hard cider (but not other types of wine). For the purpose of a hard cider distributor, the term 'person' means and includes an individual, firm, trust, partnership, limited partnership, limited liability company, association, or corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee, or any other person or persons in active control of the activities of the trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or violations of this article, notwithstanding the liability of trustees in §44D-10-1 et seq. of this code.

'Licensee' means the holder of a license granted under the provisions of this article.

'Nonfortified dessert wine' means a wine that is a dessert wine to which brandy or other alcohol has not been added, and which has an alcohol content by volume of at least 14.1 percent and less than or equal to 17 percent.

'Person' means and includes an individual, firm, partnership, limited partnership, limited liability company, association, or corporation.

'Private wine bed and breakfast' means any business with the sole purpose of providing, in a residential or country setting, a hotel, motel, inn, or other such establishment properly zoned as to its municipality or local ordinances, lodging and meals to its customers in the course of their stay at the establishment, which business also: (1) Is a partnership, limited partnership, corporation, unincorporated association, or other business entity which as part of its general business purpose provides meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve wine to its members and their guests when ~~such~~ the sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member and does not admit the general public.

'Private wine restaurant' means a restaurant which: (1) Is a partnership, limited partnership, corporation, unincorporated association, or other business entity which has, as its principal purpose, the business of serving meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve wine to its members and their guests when ~~such~~ the sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member and does not admit the general public. ~~Such~~ Private clubs that meet the private wine restaurant requirements numbered (1), (2), and (3) in this definition shall be considered private wine restaurants: Provided, That, a private wine restaurant shall have at least two restrooms: Provided, however, That the two restroom requirement may be waived by a written waiver provided from a local health department to the commissioner: Provided, further, That a private wine restaurant located in an historic building may also be relieved of the two restroom requirement if a historic association or district with jurisdiction over a historic building provides a written waiver of the requirement to the

commissioner: *And Provided, further,* That in no event shall a private wine restaurant have less than one restroom.

'Private wine spa' means any business with the sole purpose of providing commercial facilities devoted especially to health, fitness, weight loss, beauty, therapeutic services, and relaxation, and may ~~be also~~ also be a licensed massage parlor or a salon with licensed beauticians or stylists, which business also: (1) Is a partnership, limited partnership, corporation, unincorporated association, or other business entity which as part of its general business purpose provides meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve up to two glasses of wine to its members and their guests when ~~such~~ the sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member, and does not admit the general public.

'Retailer' means any person licensed to sell wine at retail to the public at his or her established place of business for off-premises consumption and who is licensed to do so under authority of this article.

'Supplier' means any manufacturer, producer, processor, winery, farm winery, national distributor, or other supplier of wine who sells or offers to sell or solicits or negotiates the sale of wine to any licensed West Virginia distributor.

'Table wine' means a wine with an alcohol content by volume between 0.5 percent and 14 percent.

'Tax' includes within its meaning interest, additions to tax, and penalties.

'Taxpayer' means any person liable for any tax, interest, additions to tax, or penalty under the provisions of this article, and any person claiming a refund of tax.

'Varietal wine' means any wine labeled according to the grape variety from which ~~such~~ the wine is made.

'Vintage wine' or 'vintage-dated wine' means wines from which the grapes used to produce ~~such~~ the wine are harvested during a particular year, or wines produced from the grapes of a particular harvest in a particular region of production.

'Wine' means any alcoholic beverage obtained by the natural fermentation of the natural content of grapes, other fruits, or honey or other agricultural products containing sugar ~~and~~ to which no alcohol has been added and ~~shall exclude fortified wine and shall also exclude any product defined as or embraced within the definition of nonintoxicating beer under the provisions of article sixteen, chapter eleven of this code~~ includes table wine, hard cider, nonfortified dessert wine, wine coolers, and other similar wine-based beverages. Fortified wine and any product defined as or contained within the definition of nonintoxicating beer under the provisions of §11-16-1 et seq., of this code are excluded from this definition of wine.

'Wine specialty shop' means a retailer who ~~shall deal~~ deals principally in the sale of table wine, nonfortified dessert wines, wine accessories, and food or foodstuffs normally associated with wine and: (1) Who ~~shall maintain~~ maintains a representative number of ~~such~~ wines for sale in his or her inventory which are designated by label as varietal wine, vintage, generic, and/or according to region of production and the inventory shall contain not less than 15 percent vintage or vintage-

dated wine by actual bottle count; and (2) who, any other provisions of this code to the contrary notwithstanding, may maintain an inventory of port, sherry, and Madeira wines having an alcoholic content of not more than 22 percent alcohol by volume and which have been matured in wooden barrels or casks. All wine available for sale shall be for off-premises consumption except where wine tasting or wine sampling is separately authorized by this code.

§60-8-3. Licenses; fees; general restrictions.

(a) No person may engage in business in the capacity of a winery, farm winery, supplier, distributor, retailer, private wine bed and breakfast, private wine restaurant, private wine spa, or wine specialty shop without first obtaining a license from the commissioner, nor shall a person continue to engage in any activity after his or her license has expired, been suspended, or revoked. No person may be licensed simultaneously as a distributor and a retailer. No person, except for a winery or farm winery, may be licensed simultaneously as a supplier and a retailer. No person may be licensed simultaneously as a supplier and a private wine bed and breakfast, private wine restaurant, or a private wine spa. No person may be licensed simultaneously as a distributor and a private wine bed and breakfast, a private wine restaurant, or a private wine spa. No person may be licensed simultaneously as a retailer and a private wine bed and breakfast, a private wine restaurant, or a private wine spa. Any person who is licensed to engage in any business concerning the manufacture, sale, or distribution of wine may also engage in the manufacture, sale, or distribution of hard cider without obtaining a separate hard cider license.

(b) The commissioner shall collect an annual fee for licenses issued under this article as follows:

(1) One hundred fifty dollars per year for a supplier's license;

(2) Two thousand five hundred dollars per year for a distributor's license and each separate warehouse or other facility from which a distributor sells, transfers, or delivers wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of \$2,500 as provided in this subdivision;

(3) One hundred fifty dollars per year for a retailer's license;

(4) Two hundred fifty dollars per year for a wine specialty shop license, in addition to any other licensing fees paid by a winery or retailer holding a license. Except for the amount of the license fee and the restriction to sales of winery or farm winery wines, a winery, or farm winery acting as a wine specialty shop retailer is subject to all other provisions of this article which are applicable to a wine specialty shop retailer as defined in §60-8-2 of this code;

(5) One hundred fifty dollars per year for a wine tasting license;

(6) One hundred fifty dollars per year for a private wine bed and breakfast license. Each separate bed and breakfast from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of \$150 as provided in this subdivision;

(7) Two hundred fifty dollars per year for a private wine restaurant license. Each separate restaurant from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of \$250 as provided in this subdivision;

(8) One hundred fifty dollars per year for a private wine spa license. Each separate private wine spa from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of \$150 as provided in this subdivision;

(9) One hundred fifty dollars per year for a wine sampling license issued for a wine specialty shop under subsection (n) of this section;

(10) No fee shall be charged for a special one-day license under subsection (p) of this section or for a heritage fair and festival license under subsection (q) of this section;

(11) \$150 per year for a direct shipper's license for a licensee who sells and ships only wine and \$250 per year for a direct shipper's license who ships and sells wine, nonfortified dessert wine, port, sherry, or Madeira wines; ~~and~~

(12) Three hundred fifty dollars per year for a multi-capacity winery or farm winery license which enables the holder to operate as a retailer, wine specialty shop, supplier, and direct shipper without obtaining an individual license for each capacity; and

(13) Two hundred fifty dollars per year for a hard cider distributor's license. Each separate warehouse or other facility from which a distributor sells, transfers, or delivers hard cider shall be separately licensed and there shall be collected with respect to each location the annual license fee of \$250 as provided in this subdivision: *Provided*, That if a licensee is licensed as a nonintoxicating beer or nonintoxicating beer distributor then there is no additional license fee to distribute hard cider.

(c) The license period begins on July 1 of each year and ends on June 30 of the following year and if granted for a less period, the same shall be computed semiannually in proportion to the remainder of the fiscal year.

(d) No retailer may be licensed as a private club as provided by §60-7-1 *et seq.* of this code, except as provided by subsection (k) of this section.

(e) No retailer may be licensed as a Class A retail dealer in nonintoxicating beer as provided by §11-16-1 *et seq.* of this code: *Provided*, That a delicatessen, a caterer, or party supply store which is a grocery store as defined in §60-8-2 of this code and which is licensed as a Class A retail dealer in nonintoxicating beer may be a retailer under this article: *Provided, however*, That any delicatessen, caterer, or party supply store licensed in both capacities ~~must~~ shall maintain average monthly sales exclusive of sales of wine and nonintoxicating beer which exceed the average monthly sales of nonintoxicating beer.

(f) A wine specialty shop under this article may also hold a wine tasting license authorizing the retailer to serve complimentary samples of wine in moderate quantities for tasting. ~~Such~~ The wine specialty shop shall organize a wine taster's club, which has at least 50 duly elected or approved dues-paying members in good standing. ~~Such~~ The club shall meet on the wine specialty shop's premises not more than one time per week and shall either meet at a time when the premises are closed to the general public or ~~shall~~ meet in a separate segregated facility on the premises to which the general public is not admitted. Attendance at tastings shall be limited to duly elected or approved dues-paying members and their guests.

(g) A retailer who has more than one place of retail business shall obtain a license for each separate retail establishment. A retailer's license may be issued only to the proprietor or owner of a bona fide grocery store or wine specialty shop.

(h)(1) The commissioner may issue a license for the retail sale of wine at any festival or fair which is endorsed or sponsored by the governing body of a municipality or a county commission. ~~Such~~ The license shall be issued for a term of no longer than 10 consecutive days and the fee for the license shall be is \$250 regardless of the term of the license. The application for the license shall contain information required by the commissioner and shall be submitted to the commissioner at least 30 days prior to the first day when wine is to be sold at the festival or fair.

(2) Notwithstanding subdivision (1) of this subsection, if the applicant for the festival or fair license is the manufacturer of ~~said~~ the wine, a winery, or a farm winery as defined in §60-1-5a of this code, and the event is located on the premises of a winery or a farm winery, then the license fee is \$50 per festival or fair.

(3) A licensed winery or a farm winery, which has the festival or fair licensee's written authorization and approval from the commissioner, may, in addition to or in conjunction with the festival and fair licensee, exhibit, conduct complimentary tastings, or sell samples not to exceed three, two-fluid ounce, tastings or samples per patron, for consumption on the premises during the operation of a festival or fair only; and may sell wine for off-premises consumption only: *Provided*, That for licensed wineries or farm wineries at a licensed festival or fair the tastings, samples and off-premises sales shall occur under the hours of operation as required in this article, except on Sunday, tastings, samples, and off-premises sales are unlawful between the hours of 2:00 a.m. and ~~4:00~~ 6:00 a.m.

(4) A festival or fair license may be issued to a 'wine club' as defined in this subdivision for a license fee of \$250. The festival or fair committee or the governing body shall designate a person to organize a club under a name which includes the name of the festival or fair and the words 'wine club'. The license shall be issued in the name of the wine club. A licensee ~~may not commence the sale of~~ sell wine as provided in this subdivision until the wine club has at least 50 dues-paying members who have been enrolled, and to whom membership cards have been issued. Thereafter, new members may be enrolled and issued membership cards at any time during the period for which the license is issued. A wine club licensed under the provisions of this subdivision may sell wine only to its members, and in portions not to exceed eight ounces per serving. The sales shall take place on premises or in an area cordoned or segregated so as to be closed to the general public, and the general public shall not be admitted to the premises or area. A wine club licensee under the provisions of this subdivision may serve complimentary samples of wine in moderate quantities for tasting. A wine club may not make wine purchases from a direct shipper where the wine may be consumed on the licensed premises of any Class A private wine retail license or private club. A wine club which violates the provisions of this subdivision is subject to the penalties in this article.

(5) A licensed winery or farm winery approved to participate in a festival or fair under the provisions of this section and the licensee holding the license, or the licensed winery or farm winery approved to attend a licensed festival or fair, is subject to all other provisions of this article and the rules and orders of the commissioner relating to the license: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders as required by the circumstances of each festival or fair ~~may require~~, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions §60-8-27 and §60-8-28 of

this code: *Provided, however,* That under no circumstances shall the provisions of §60-8-20(c) or §60-8-20(d) of this code, be waived nor shall any exception be granted with respect to those subsections.

(6) A license issued under the provisions of this section and the licensee holding the license are not subject to the provisions of subsection (g) of this section.

(7) An unlicensed winery temporarily licensed and meeting the requirements set forth in subsection (q) of this section may conduct the same sampling and sales set forth in subsection (q) of this section at a licensed fair and festival upon approval of the licensee holding the fair and festival license and temporary and limited licensure by the commissioner. An unlicensed winery ~~shall be is~~ subject to the same limits, fees, requirements, restrictions and penalties set forth in subsection (q) of this section: *Provided,* That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders as required by the circumstances of each festival or fair. ~~may require, including, without limitation, the right to~~ The commissioner may revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions §60-8-27 and §60-8-28 of this code: *Provided, however,* That under no circumstances shall the provisions of §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception be granted with respect to those subsections.

(i)(1) The commissioner may issue a special license for the retail sale of wine in a professional baseball stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and serve wine, for consumption in a professional baseball stadium. For the purpose of this subsection, 'professional baseball stadium' means a facility constructed primarily for the use of a major or minor league baseball franchisee affiliated with the National Association of Professional Baseball Leagues, Inc., or its successor, and used as a major or minor league baseball park. Any special license issued pursuant to this subsection shall be for a term beginning on the date of issuance and ending on the next following June 30, and its fee is \$250 regardless of the length of the term of the license. The application for the special license shall contain information required by the commissioner and must be submitted to the commissioner at least 30 days prior to the first day when wine is to be sold at the professional baseball stadium. The special license may be issued in the name of the baseball franchisee or the name of the primary food and beverage vendor under contract with the baseball franchisee. These sales must take place within the confines of the professional baseball stadium. The exterior of the area where wine sales may occur ~~must~~ shall be surrounded by a fence or other barrier prohibiting entry except upon the franchisee's express permission, and under the conditions and restrictions established by the franchisee, so that the wine sales area is closed to free and unrestricted entry by the general public.

(2) A license issued under this subsection and the licensee holding the license are subject to all other provisions of this article and the rules and orders of the commissioner relating to the special license: *Provided,* That the commissioner may by rule or order grant certain waivers or exceptions to those rules or orders ~~as required by~~ the circumstances of each professional baseball stadium ~~may require, including, without limitation, the right to~~ The commissioner may revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of this code; ~~and~~ *Provided, however,* That under no circumstances may §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception be granted concerning those subsections.

(3) The commissioner may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement this subsection.

(j) A license to sell wine granted to a private wine bed and breakfast, private wine restaurant, private wine spa, or a private club under the provisions of this article entitles the operator to sell and serve wine, for consumption on the premises of the licensee, when the sale accompanies the serving of food or a meal to its members and their guests in accordance with the provisions of this article: *Provided*, That a licensed private wine bed and breakfast, private wine restaurant, private wine spa, or a private club may permit a person over 21 years of age to purchase wine, consume wine, and recork or reseal, using a tamper resistant cork or seal, up to two separate bottles of unconsumed wine in conjunction with the serving of food or a meal to its members and their guests in accordance with the provisions of this article and in accordance with rules promulgated by the commissioner for the purpose of consumption of ~~said the~~ wine off premises: *Provided, however*, ~~That for this article, food or a meal provided by the private licensee means that the total food purchase, excluding beverage purchases, taxes, gratuity, or other fees is at least \$15:~~ *Provided further*, That a licensed private wine restaurant or a private club may offer for sale, for consumption off the premises, sealed bottles of wine to its customers provided that no more than one bottle is sold per each person over 21 years of age, as verified by the private wine restaurant or private club, for consumption off the premises. ~~Such~~ The licensees ~~are authorized to~~ may keep and maintain on their premises a supply of wine in quantities appropriate for the conduct of operations thereof. Any sale of wine is subject to all restrictions set forth in §60-8-20 of this code. A private wine restaurant may also be licensed as a Class A retail dealer in nonintoxicating beer as provided by §11-16-1 *et seq.* of this code.

(k) With respect to subsections (h), (i), (j), (o), and (p) of this section, the commissioner shall propose rules for promulgation in accordance with §29A-1-1 *et seq.* of this code, including, but not limited to, the form of the applications and the suitability of both the applicant and location of the licensed premises.

(l) The commissioner shall propose rules for promulgation in accordance with the provisions of §29A-1-1 *et seq.* of this code to allow restaurants to serve wine with meals and to sell wine by the bottle for off-premises consumption as provided in subsection (j) of this section. Each licensed restaurant shall be charged an additional \$100 per year fee.

(m) The commissioner shall establish guidelines to permit wines to be sold in all stores licensed for retail sales.

(n) Wineries and farm wineries may advertise off premises as provided in §17-22-7 of this code.

(o) A wine specialty shop under this article may also hold a wine sampling license authorizing the wine specialty shop to conduct special wine sampling events at a licensed wine specialty shop location during regular hours of business. The wine specialty shop may serve up to three complimentary samples of wine, consisting of no more than two fluid ounces each, to any one consumer in one day. Persons serving the complimentary samples ~~must~~ shall be 21 years of age or older and an authorized representative of the licensed wine specialty shop, winery, farm winery, or a representative of a distributor or registered supplier. ~~Distributor and supplier representatives attending wine sampling events must be registered~~ shall register with the commissioner. No licensee, employee, or representative may furnish, give, sell, or serve complimentary samples of wine to any person less than 21 years of age or to a person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs. The wine specialty shop shall notify and secure permission from the commissioner for all wine sampling events ~~one month~~ 30 days prior to the event. Wine sampling events may not exceed six hours per calendar day. Licensees

~~must~~ shall purchase all wines used during these events from a licensed farm winery or a licensed distributor.

(p) The commissioner may issue special one-day licenses to duly organized, nonprofit corporations and associations allowing the sale and serving of wine, and may, if applicable, also allow the charitable auctioning of certain sealed bottles of wine for off-premises consumption only, when raising money for athletic, charitable, educational, or religious purposes. 'Auction or auctioning', for the purposes of this subsection, means any silent, physical act, or verbal bid auction, whether or not ~~such~~ the auction requires in-presence bidding or online Internet-based electronic bidding through a secure application or website, but shall not include any action in violation of §47-20-10, §47-20-11, or §61-10-1 *et seq.* of this code. The license application shall contain information required by the commissioner and shall be submitted to the commissioner at least 30 days prior to the event. Accompanying the license application, the applicant shall submit a signed and notarized statement that at least 80 percent of the net proceeds from the charitable event will be donated directly to the nonprofit corporation or organization. Wines used during these events may be donated by, or purchased from, a licensed retailer, a distributor, winery, or a farm winery. A licensed winery or farm winery which is authorized in writing by a representative of the duly organized, nonprofit corporation ~~and~~ or association which has obtained the one-day license; is in good standing with the state; and obtains the commissioner's approval prior to the one-day license event may, in conjunction with the one-day licensee, exhibit, conduct complimentary tastings, or sell samples not to exceed ~~of~~ three, two-fluid ounce tastings or samples per patron, for consumption on the premises during the operation of the one-day license event; and may sell certain sealed wine bottles manufactured by the licensed winery or farm winery for off-premises consumption: *Provided*, That for a licensed winery or farm winery at a licensed one-day event, the tastings, samples and off-premises sales shall occur under the hours of operation ~~as required in~~ permitted by this article, except on Sunday, tastings, samples, and off-premises sales are unlawful between the hours of 2:00 a.m. and ~~4:00~~ 6:00 a.m., from the one-day licensee's submitted floor plan for the event subject to the requirements in the code and rules. Under no circumstances may the provisions of §60-8-20(c) or §60-8-20(f) of this code be waived nor may any exception be granted with respect to those subsections. ~~No more than six licenses may be issued to any single licensee during any calendar year.~~

(q)(1) In addition to the authorization granted to licensed wineries and farm wineries in subsections (h) and (p) of this section, an unlicensed winery, regardless of its designation in another state, but that is duly licensed in its domicile state, may pay a \$150 nonrefundable and nonprorated fee and submit an application for temporary licensure on a one-day basis for temporary sampling and sale of wine in sealed containers for off-premises consumption at a special one-day license nonprofit event.

(2) The application shall include, but is not limited to, the person or entity's name, address, taxpayer identification number, and location; a copy of its licensure in its domicile state; a signed and notarized verification that it produces 50,000 gallons or less of wine per year; a signed and notarized verification that it is in good standing with its domicile state; copies of its federal certificate of label approvals and certified lab alcohol analysis for the wines it desires to temporarily provide samples and temporarily sell wine in sealed containers for off-premises consumption at a special one-day license for a nonprofit event issued under subsection (p) of this section; and ~~such~~ any other information as the commissioner may reasonably require.

(3) The applicant winery shall include a list of all wines proposed to be temporarily sampled and temporarily sold in sealed containers at a special one-day license for a nonprofit event so that the wines may be reviewed in the interest of public health and safety. Once approved, the

submitted wine list ~~will create~~ creates a temporary wine brand registration for up to two special one-day ~~license~~ licenses for a nonprofit event for no additional fee.

(4) An applicant winery that receives this temporary special one-day license for a nonprofit event ~~will provide~~ shall provide the commissioner a signed and notarized written agreement where the applicant winery agrees acknowledging that the applicant winery understands its responsibility to pay all municipal, local, and sales taxes applicable to the sale of wine in West Virginia.

(5) An application must be submitted per special one-day license for a nonprofit event the applicant winery desires to attend, and the license fee shall cover up to two special one-day license for nonprofit events before an additional fee would be ~~paid~~ is required. In no circumstance would ~~such a the~~ winery be permitted to attend more than four special one-day ~~license for nonprofit events per year~~ licensed events. Any ~~such~~ applicant or unlicensed winery desiring to attend more than four special one-day license for nonprofit events per year or otherwise operate in West Virginia would need to seek appropriate licensure as a winery or a farm winery in this state.

(6) Notwithstanding the provisions of this article and requirements for licensure, wine brand registration, payment of wine liter tax, and the winery's appointment of suppliers and distributors, this temporary special one-day license for a nonprofit event, once granted, permits ~~such a~~ winery to operate in this limited capacity only at the approved specific, special one-day license for a nonprofit event subject to the limitations ~~noted~~ contained in this section.

(7) The applicant winery ~~will need to further~~ shall also apply for and receive a transportation permit ~~in order~~ to legally transport wine in the state per §60-6-12 of this code.

(8) The applicant winery is subject to all applicable violations and/or penalties under this article and the legislative rules that ~~is are~~ are not otherwise excepted by this subsection: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders ~~as required by the circumstances of each festival or fair. may require, including, without limitation, the right to~~ The commissioner may revoke or suspend any license issued pursuant to this ~~section~~ article, prior to any notice or hearing.

(r) The commissioner may issue special licenses to heritage fairs and festivals allowing the sale, serving, and sampling of wine from a licensed farm winery. The license application shall contain information required by the commissioner and shall be submitted to the commissioner at least 30 days prior to the event. Wines used during these events may be donated by or purchased from a licensed farm winery. Under no circumstances may the provision of §60-8-20(c) of this code be waived nor may any exception be granted with respect thereto. The commissioner shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to implement the provisions of this subsection.

(s)(1) The commissioner may issue a special license for the retail sale of wine in a college stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and serve wine for consumption in a college stadium. For the purpose of this subsection, 'college stadium' means a facility constructed primarily for the use of a Division I, II, or III college that is a member of the National Collegiate Athletic Association, or its successor, and used as a football, basketball, baseball, soccer, or other Division I, II, or III sports stadium. A special license issued pursuant to this subsection shall be for a term beginning on the date of its issuance and ending on the next following June 30, and its fee is \$250 regardless of the length of the term of the license. The application for the special license shall contain information required by the

commissioner and must be submitted to the commissioner at least 30 days prior to the first day when wine is to be sold. The special license may be issued in the name of the National Collegiate Athletic Association Division I, II, or III college or university or the name of the primary food and beverage vendor under contract with that college or university. ~~These~~ All sales must take place within the confines of the college stadium: *Provided*, That the exterior of the area where wine sales may occur ~~must~~ shall be surrounded by a fence or other barrier prohibiting entry except upon the college or university's express permission, and under the conditions and restrictions established by the college or university, so that the wine sales area is closed to free and unrestricted entry by the general public.

(2) A license issued under this subsection and the licensee are subject to the other requirements of this article and the rules and orders of the commissioner relating to the special license: *Provided*, That the commissioner may by rule or order grant certain waivers or exceptions to those rules or orders as required by the circumstances of each the college stadium. ~~may require, including, without limitation, the right to~~ The commissioner may revoke or immediately suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of this code: *Provided, however*, That §60-8-20(c) or §60-8-20(d) of this code may not be waived, nor shall any exception be granted concerning those subsections.

(3) The commissioner may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement this subsection.

§60-8-4. Liter tax.

There is hereby levied and imposed on all wine sold after July 1, 2007, by suppliers to distributors, and including all wine sold and sent ~~to West Virginia adult residents~~ to persons 21 years of age or older who reside in West Virginia from direct shippers, except wine sold to the commissioner, a tax of twenty-six and four hundred six-thousandths cents per liter. Effective July 1, 2021, hard cider is excepted from this per liter tax and is taxed pursuant to §60-8A-3 of this code.

Before the 16th day of each month thereafter, every supplier, distributor and direct shipper shall make a written report under oath to the Tax Commissioner and the commissioner showing the identity of the ~~purchaser~~ purchasing person, the quantity, label and alcoholic content of wine sold by the supplier to West Virginia distributors or the direct shipper ~~to West Virginia adult residents~~ to persons 21 years of age or older who reside in West Virginia during the preceding month and at the same time shall pay the tax imposed by this article on the wine sold to the distributor or ~~the West Virginia adult residents~~ or to persons 21 years of age or older who reside in West Virginia during the preceding month to the Tax Commissioner.

The reports shall contain other information and be in the form required by the Tax Commissioner ~~may require~~. For purposes of this article, the reports required by this section shall be considered tax returns covered by the provisions of §11-10-1 *et seq.* of this code. Failure to timely file the tax returns within five calendar days of the 16th day of each month ~~will also subject~~ also subjects a supplier, distributor, and direct shipper to penalties under §60-8-18 of this code.

No wine imported, sold, or distributed in this state or sold and shipped to this state by a direct shipper shall be subject to more than one liter tax.

§60-8-6c. Winery and Farm Winery license to sell wine growlers and provide complimentary samples prior to purchasing a wine growler.

(a) Legislative findings. — The Legislature hereby finds that it is in the public interest to regulate, control, and support the brewing, manufacturing, distribution, sale, consumption, transportation, and storage of wine and its industry in this state to protect the public health, welfare, and safety of the citizens of this state, and promote hospitality and tourism. Therefore, this section authorizes a licensed winery or farm winery with its principal place of business and manufacture located in this state to have certain abilities to promote the sale of wine manufactured in this state for the benefit of the citizens of this state, the state's growing wine industry, and the state's hospitality and tourism industry, all of which are vital components for the state's economy.

(b) Sales of wine. — A licensed winery or farm winery with its principal place of business and manufacture located in the State of West Virginia may, when licensed under this section, offer only wine manufactured by the licensed winery or farm winery for retail sale to customers from the winery or farm winery's licensed premises for consumption off of the licensed premises only in the form of original container sealed wine kegs, wine bottles, or wine cans, or also a sealed wine growler for personal consumption, and not for resale. A licensed winery or farm winery may not sell, give, or furnish wine for consumption on the premises of the principal place of business and manufacture located in the State of West Virginia, except for the limited purpose of complimentary samples as permitted in subsection (c) of this section or unless separately licensed as a private wine restaurant or a private manufacturer club.

(c) Complimentary samples. — A licensed winery or farm winery with its principal place of business and manufacture located in the State of West Virginia may offer complimentary samples of wine as set forth in §60-4-3b of this code.

(d) Retail sales. — Every licensed winery or farm winery under this section shall comply with all the provisions of this article as applicable to wine retailers when conducting wine growler sales and is subject to all applicable requirements and penalties in this article.

(e) Payment of taxes and fees. — A winery or farm winery licensed under this section shall pay all taxes and fees required of licensed wine retailers, in addition to any other taxes and fees required, and shall meet applicable licensing provisions as required by this chapter and by rule of the commissioner.

(f) Advertising. — A winery or farm winery under this section may advertise a particular brand or brands of wine produced by the licensed winery or farm winery and the price of the wine subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance or target minors.

(g) Wine Growler defined. — For purposes of this section and section §60-8-6d of the code, 'wine growler' means a container or jug that is made of glass, ceramic, metal, or other material approved by the commissioner, that may be no larger than 128 fluid ounces in size and is capable of being securely sealed. The growler may be used by an authorized licensee for purposes of off-premises sales only of wine for personal consumption, and not for resale. Notwithstanding any other provision of this code to the contrary, a securely sealed wine growler is not an open container under state and local law. A wine growler with a broken seal is an open container under state and local law unless it is located in an area of the motor vehicle physically separated from the passenger compartment. For purpose of this article, a secure seal means using a tamper evident seal, such as: (1) A plastic heat shrink wrap band, strip, or sleeve extending around the

cap or lid of wine growler to form a seal that must be broken when the container is opened; or (2) A screw top cap or lid that breaks apart when the wine growler is opened.

(h) *Wine Growler requirements.* — A winery or farm winery licensed under this section shall prevent patrons from accessing the secure area where the winery or farm winery fills a wine growler and prevent patrons from filling a wine growler. A licensed winery or farm winery under this section shall sanitize, fill, securely seal, and label any wine growler prior to its sale. A licensed winery or farm winery under this section may refill a wine growler subject to the requirements of this section. A winery or farm winery shall visually inspect any wine growler before filling or refilling it. A winery or farm winery may not fill or refill any wine growler that appears to be cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container.

(i) *Wine Growler labeling.* — A winery or farm winery licensed under this section selling wine growlers shall affix a conspicuous label on all sold and securely sealed wine growlers listing the name of the licensee selling the wine growler, the brand of the wine in the wine growler, the alcohol content by volume of the wine in the wine growler, and the date the wine growler was filled or refilled. All labeling on the wine growler shall be consistent with all federal labeling and warning requirements.

(j) *Wine Growler sanitation.* — A licensed winery or farm winery authorized under this section shall clean and sanitize all wine growlers it fills or refills in accordance with all state and county health requirements prior to its filling and sealing. In addition, the licensed winery or farm winery shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipelines, barrel tubes, and any other related equipment used to fill or refill growlers. Failure to comply with this subsection may result in penalties under this article.

(k) *Fee.* — There is no additional fee for a licensed winery or farm winery authorized under this section to sell wine growlers, but the licensee shall meet all other requirements of this section.

(l) *Limitations on licensees.* — To be authorized under this section, a licensed winery or farm winery may not produce more than 10,000 gallons of wine per calendar year at the winery or farm winery's principal place of business and manufacture located in the State of West Virginia. A licensed winery or farm winery authorized under this section is subject to the applicable penalties under this article for violations of this section.

(m) *Rules.* — The commissioner, in consultation with the Bureau for Public Health, may propose legislative rules concerning sanitation for legislative approval, pursuant to §29A-3-1 *et seq.* of this code, to implement this section.

§60-8-6d. Wine retailer, wine specialty shop, private wine restaurant, private wine bed and breakfast, private wine spa, Class B retail dealer, private club restaurant, private manufacturer club, Class A retail licensee, and Class B retail licensee's authority to sell wine growlers.

(a) *Legislative findings.* — The Legislature hereby finds that it is in the public interest to regulate, control, and support the brewing, manufacturing, distribution, sale, consumption, transportation, and storage of wine and its industry in this state to protect the public health, welfare, and safety of the citizens of this state and promote hospitality and tourism. Therefore, this section authorizes a licensed wine retailer, wine specialty shop, private wine restaurant, private wine bed and breakfast, private wine spa, private club restaurant, private manufacturer club, Class A retail licensee, or Class B retail licensee to have certain abilities in order to promote

the sale of wine manufactured in this state for the benefit of the citizens of this state, the state's growing wine industry, and the state's hospitality and tourism industry, all of which are vital components for the state's economy.

(b) *Sales of wine.* — A licensed wine retailer, wine specialty shop, private wine restaurant, private wine bed and breakfast, private wine spa, private club restaurant, private manufacturer club, Class A retail licensee, or Class B retail licensee who pays the fee in subsection (h) of this section and meets the requirements of this section may offer wine for retail sale to patrons from the licensed premises in a sealed wine growler for personal consumption off of the licensed premises, and not for resale. Prior to the sale, the licensee shall verify, using proper identification, that any patron purchasing wine is 21 years of age or over and that the patron is not visibly intoxicated. The nonprorated, nonrefundable annual fee to sell wine growlers is \$100.

(c) *Retail sales.* — Every licensee authorized under this section shall comply with all the provisions of this article as applicable to wine retailers when conducting sales of wine in a wine growler and is subject to all applicable requirements and penalties in this article.

(d) *Payment of taxes and fees.* — A licensee authorized under this section shall pay all taxes and fees required of licensed wine retailers, in addition to any other taxes and fees required, and meet applicable licensing provisions as required by this chapter and by rule of the commissioner.

(e) *Advertising.* — A licensee authorized under this section may advertise a particular brand or brands of wine and the price of the wine, subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance or target minors.

(f) *Wine Growler defined and requirements.* — A licensee authorized under this section shall use the wine growler definition and requirements in §60-8-6c(g) and §60-8-6c(h) of this code.

(g) *Wine Growler labeling and sanitation.* — A licensee authorized under this section shall label and sanitize wine growlers as set forth in §60-8-6c(i) and §60-8-6c(j) of this code.

(h) *Complimentary samples.* — A licensee authorized under this section may provide complimentary wine growler samples to a person intending to purchase a wine growler which may be no greater than two fluid ounces per wine growler sample and a wine growler sampling shall not exceed three complimentary two fluid ounce samples per patron per day. A licensee authorized under this section providing complimentary wine samples shall, prior to providing any samples, verify that the patron sampling wine is 21 years of age or older and that the patron is not visibly or noticeably intoxicated.

(i) *Limitations on licensees.* — A licensee under this section may only sell wine growlers during the hours of operation set forth in this article. Any licensee licensed under this section shall maintain a secure area for the sale and filling of wine in a wine growler. The secure area shall only be accessible by the licensee. Any licensee licensed under this section is subject to the applicable penalties under this article for violations.

(j) *Non-applicability of certain statutes.* — Notwithstanding any other provision of this article to the contrary, licensees under this section are permitted to break the seal of the original container for the limited purpose of filling a wine growler or providing complimentary wine samples as provided in this section. Any unauthorized sale of wine or any consumption not permitted on the licensee's licensed premises is subject to penalties under this article.

(k) Rules. — The commissioner may propose legislative rules for legislative approval, pursuant to §29A-3-1 et seq. of this code, to implement this section.

§60-8-6e. Private wine delivery license for a licensed Class A wine licensee or a third party; requirements; limitations; third party license fee; private retail transportation permit; and requirements.

(a) A Class A wine licensee who is licensed to sell wine for on-premises consumption may apply for a private wine delivery license permitting the order, sale, and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers, when separately licensed for wine growler sales. The order, sale, and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers is permitted for off-premises consumption when completed by the licensee or the licensee's employees to a person purchasing the wine through a telephone, mobile ordering application, or web-based software program, authorized by the licensee's license. There is no additional fee for a Class A wine licensee to obtain a private wine delivery license. The order, sale, and delivery process must meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for wine sales or distribution, may apply for a private wine delivery license for the privilege of ordering and delivery of wine in the original container of sealed bottles, or cans, or sealed wine growlers, from a licensee with a wine growler license. The order and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers is permitted by a third party licensee when sold by a Class A wine licensee to a person purchasing the wine through telephone orders, mobile ordering application, or web-based software program for off-premises consumption. The private wine delivery license non-prorated, nonrefundable annual fee is \$200 per third party entity, with no limit on the number of drivers and vehicles.

(c) The private wine delivery license application shall comply with licensure requirements in this article and shall contain any information required by the commissioner.

(d) Sale Requirements. -

(1) The wine purchase shall accompany the purchase of prepared food or a meal and the completion of the sale may be accomplished by the delivery of prepared food or a meal, and sealed wine by the licensee or third-party licensee.

(2) Any purchasing person shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this article for the sale of wine.

(3) 'Prepared food or a meal' for this article, means food that has been cooked, grilled, fried, deep-fried, air-fried, smoked, boiled, broiled, twice baked, blanched, sautéed, or in any other manner freshly made and prepared, and does not include pre-packaged food from the manufacturer.

(4) An order, sale, and delivery may consist of no more than 384 fluid ounces of wine per delivery order; and

(5) A third-party private wine delivery licensee may not have a pecuniary interest in a Class A wine licensee, as set forth in this article. A third-party private wine delivery licensee may only charge a convenience fee for the delivery of wine as provided in this section. The third-party

private wine delivery licensee may not collect a percentage of the delivery order for the delivery of alcohol but may collect a percentage of the delivery order directly related to prepared food or a meal. The convenience fee charged by the third-party private wine delivery licensee to the purchasing person may be no greater than five dollars per delivery order where wine is ordered by the purchasing person. For any third-party private wine delivery licensee also licensed for nonintoxicating beer or nonintoxicating craft beer growler delivery as set forth in §11-16-6d of the code or craft cocktail growler delivery as set forth in §60-7-8f of the code, the total convenience fee of any order, sale, and delivery of a sealed growler, wine growler, or craft cocktail growler shall not exceed five dollars.

(e) Private Wine Delivery Requirements. -

(1) Delivery persons employed for the delivery of sealed wine shall be 21 years of age or older. The third-party private wine delivery licensee or a Class A wine licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) The third-party private wine delivery licensee or the Class A wine licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication. The third-party private wine delivery licensee shall submit certification of the training to the commissioner;

(3) The third party private wine delivery licensee or Class A wine licensee shall hold a retail transportation permit for each vehicle delivering sealed wine per subsection (g) of this section: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of licensure;

(4) Delivery of food or a meal, and sealed wine orders by a third-party private wine delivery licensee or Class A wine licensee may occur in the county or contiguous counties where the wine licensee is located;

(5) The third-party private wine delivery licensee or Class A wine licensee may only deliver prepared food or a meal and sealed wine to addresses located in West Virginia. The third-party private wine delivery licensee or Class A wine licensee shall account for and pay all sales and municipal taxes;

(6) The third-party private wine delivery licensee or Class A wine licensee may not deliver prepared food or a meal, and sealed wine to any other wine licensees;

(7) Deliveries of food or a meal, and sealed wine are only for personal use, and not for resale; and

(8) The third-party private wine delivery licensee or Class A wine licensee shall not deliver and leave deliveries of prepared food or a meal, and sealed wine any address without verifying a person's age and identification as required by this section.

(f) Telephone, mobile ordering application, or web-based software requirements. -

(1) The delivery person shall only permit the person who placed the order through a telephone order, a mobile ordering application, or web-based software to accept the prepared food or meal, and wine delivery which is subject to age verification upon delivery with the delivery person's

visual review and verification and, as applicable, a stored scanned image of the purchasing person's legal identification;

(2) Any mobile ordering application or web-based software used shall create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and shall include the delivery driver's name and vehicle information;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and shall include the delivery driver's name and vehicle information;

(4) All records are subject to inspection by the commissioner, and the third-party private wine delivery licensee and Class A wine licensee shall retain the records for inspection for three years. The third-party private wine delivery licensee or Class A wine licensee may not unreasonably withhold the records from the commissioner's inspection; and

(5) Each vehicle delivering wine shall be issued a private wine retail transportation permit per subsection (g) of this section.

(g) *Private Wine Retail Transportation Permit.* -

(1) A Class A wine licensee or a third-party private wine delivery licensee shall obtain and maintain a retail transportation permit for the delivery of prepared food and sealed wine.

(2) A Class A wine licensee or a third-party private wine delivery licensee shall provide vehicle and driver information, requested by the commissioner. Upon any change in vehicles or drivers, the licensee shall update the driver and vehicle information with the commissioner within 10 days of the change.

(3) In conjunction with §60-6-12 of this code, a private wine retail transportation permit shall meet the requirements of a transportation permit authorizing the permit holder to transport wine subject to the requirements of this chapter.

(h) *Enforcement.* -

(1) The licensee or the third-party private wine delivery licensee are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple licensees, employees, or independent contractors.

(2) Any license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a wine bottle, wine can, or wine growler. A person who violates the provisions of this subdivision is subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, and accepting delivery of orders are considered to be purchasers.

§60-8-6f. Private wine delivery license for a licensed Class B wine licensee or a third party; requirements; limitations; third party license fee; private retail transportation permit; and requirements.

(a) A Class B wine licensee who is licensed to sell wine for on-premises consumption may apply for a private wine delivery license permitting the order, sale, and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers, when separately licensed for wine growler sales. The order, sale, and delivery of wine in the original container of sealed bottles, cans, or sealed wine growlers is permitted for off-premises consumption when completed by the licensee or the licensee's employees to a person purchasing the wine through a telephone order, a mobile ordering application, or web-based software program, as authorized by the licensee's license. There is no additional fee for a Class B wine licensee to obtain a private wine delivery license. The order, sale, and delivery process shall meet the requirements of this section, and subject to the penalties of this article.

(b) A third party, not licensed for wine sales or distribution, may apply for a private wine delivery license for the privilege of the ordering and delivery of wine in the original container of sealed bottles, or cans, or sealed wine growlers, from a licensee with a wine growler license. The order and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers is permitted for off-premises consumption by a third party licensee when sold by a Class B wine licensee to a person purchasing the wine through telephone orders, mobile ordering application, or web-based software program. The private wine delivery license non-prorated, nonrefundable annual fee is \$200 per third party entity, with no limit on the number of drivers and vehicles.

(c) The private wine delivery license application shall comply with licensure requirements in this article and shall contain any information required by the commissioner.

(d) *Sale Requirements.* -

(1) The wine purchase may accompany the purchase of food and the completion of the sale may be accomplished by the delivery of food and sealed wine by the licensee or third-party private wine delivery licensee.

(2) Any purchasing person must be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this article for the sale of wine.

(3) Food, for purposes of this section, means food that has been cooked, microwaved, or that is pre-packaged food from the manufacturer;

(4) An order, sale, or delivery consisting of food and any combination of sealed wine bottles, cans, or growlers shall not be in excess of 384 fluid ounces of wine; and

(5) A third-party private wine delivery licensee shall not have a pecuniary interest in a Class B wine licensee, as set forth in this article. A third-party private wine delivery licensee may only charge a convenience fee for the delivery of wine. The third-party private wine delivery licensee may not collect a percentage of the delivery order for the delivery of alcohol but may collect a percentage of the delivery order directly related to food only. The convenience fee charged by the third-party private wine delivery licensee to the purchasing person shall be no greater than five dollars per delivery order where wine is ordered by the purchasing person. For any third-party

licensee also licensed for nonintoxicating beer or nonintoxicating craft beer delivery as set forth in §11-16-6f of the code, the total convenience fee of any order, sale, and delivery shall not exceed five dollars.

(e) Private Wine Delivery Requirements. -

(1) Delivery persons employed for the delivery of sealed wine shall be 21 years of age or older. The third-party private wine delivery licensee or a Class B wine licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) The third-party private wine delivery licensee or Class B wine licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication and certification. The third-party private wine delivery licensee or Class B wine licensee shall submit certification of the training to the commissioner;

(3) The third party delivery licensee or Class B wine licensee must hold a retail transportation permit for each vehicle delivering sealed wine as required by subsection (g) of this section; Provided, That a delivery driver may retain an electronic copy of his or her permit as proof of licensure;

(4) The third-party private wine delivery licensee or Class B wine licensee may only deliver food and sealed wine orders by a third-party private wine delivery licensee or Class B wine licensee in the county where the wine licensee is located;

(5) The third-party private wine delivery licensee or Class B wine licensee may only deliver food and sealed wine to addresses located in West Virginia with all sales and municipal taxes accounted for and paid;

(6) A third-party private wine delivery licensee or Class B wine licensee may not deliver food and sealed wine to any other wine licensees;

(7) Deliveries of food and sealed wine are only for personal use, and not for resale; and

(8) A third-party private wine delivery licensee or Class B wine licensee shall not deliver and leave food and sealed wine at any address without verifying a person's age and identification as required by this section.

(f) Telephone, mobile ordering application, or web-based software requirements. -

(1) The delivery person shall only permit the person who placed the order through a telephone, a mobile ordering application, or web-based software to accept the food and wine delivery which is subject to age verification upon delivery with the delivery person's visual review and verification and, as applicable, a stored scanned image of the purchasing person's legal identification;

(2) Any mobile ordering application or web-based software used shall create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and shall include the delivery driver's name and vehicle information;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and must include the delivery driver's name and vehicle information;

(4) All records are subject to inspection by the commissioner. The third-party private wine delivery licensee or Class B wine licensee shall retain the records for inspection for three years. The third-party private wine delivery licensee or Class B wine licensee may not unreasonably withhold the records from the commissioner's inspection; and

(5) Each vehicle delivering wine shall be issued a private wine retail transportation permit under subsection (g) of this section.

(g) Private Wine Retail Transportation Permit. -

(1) A Class B wine licensee or third party private wine delivery licensee shall obtain and maintain a retail transportation permit for the delivery of food and wine.

(2) A Class B wine licensee or third party private wine delivery licensee shall provide vehicle and driver information requested by the commissioner. Upon any change in vehicles or drivers, the licensee shall update the driver and vehicle information with the commissioner within 10 days of the change.

(3) In conjunction with §60-6-12 of this code, a private wine retail transportation permit shall meet the requirements of a transportation permit authorizing the permit holder to transport wine subject to the requirements of this chapter.

(h) Enforcement. -

(1) The licensee or third-party private wine delivery licensee are each responsible for any violations committed by their employees or agents under this article, and more than one violation may be issued for a single violation involving multiple licensees, employees, or independent contractors.

(2) Any license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a wine bottle, wine can, or wine growler. A person who violates the provisions of this subdivision is subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, and accepting delivery of orders are considered to be purchasers.

§60-8-18. Revocation, suspension, and other sanctions which may be imposed by the commissioner upon the licensee; procedure for appealing any final order of the commissioner which revokes, suspends, sanctions, or denies the issuance or renewal of any license issued under this article.

(a) The commissioner may on his or her own motion, or shall on the sworn complaint of any person, conduct an investigation to determine if any provisions of this article or any rule

promulgated or any order issued by the commissioner has been violated by any licensee. After investigation, the commissioner may impose penalties and sanctions as set forth ~~below~~ in this section.

(1) If the commissioner finds that the licensee has violated any provision of this article or any rule promulgated or order issued by the commissioner, or if the commissioner finds the existence of any ground on which a license could have been refused, if the licensee were then applying for a license, the commissioner may:

(A) Revoke the licensee's license;

(B) Suspend the licensee's license for a period determined by the commissioner not to exceed 12 months; ~~or~~

(C) Place the licensee on probation for a period not to exceed 12 months; ~~and or~~

(D) Impose a monetary penalty not to exceed \$1,000 for each violation where revocation is not imposed.

(2) If the commissioner finds that a licensee has willfully violated any provision of this article or any rule promulgated or any order issued by the commissioner, the commissioner shall revoke the licensee's license.

~~(b) If a supplier or distributor fails or refuses to keep in effect the bond required by §60-8-29 of this article, the commissioner shall automatically suspend the supplier or distributor's license until the bond required by §60-8-20 of this article is furnished to the commissioner, at which time the commissioner shall vacate the suspension~~

~~(e)~~(b) Whenever the commissioner refuses to issue a license, or suspends or revokes a license, places a licensee on probation, or imposes a monetary penalty, he or she shall enter an order to that effect and cause a copy of the order to be served in person or by certified mail, return receipt requested, on the licensee or applicant.

~~(d)~~(c) An applicant or licensee, as the case may be, adversely affected by the order has a right to a hearing before the commissioner if a written demand for hearing is served upon the commissioner within 10 days following the receipt of the commissioner's order by the applicant or licensee. Timely service of a demand for a hearing upon the commissioner operates to suspend the execution of the order with respect to which a hearing has been demanded, except an order suspending a license under the provisions of §60-8-29 of this code. The person demanding a hearing shall give security for the cost of the hearing in a form and amount as required by the commissioner ~~may reasonably require~~. If the person demanding the hearing does not substantially prevail in the hearing or upon judicial review thereof as provided in subsections ~~(g)~~(f) and ~~(h)~~(g) of this section, then the costs of the hearing shall be assessed against him or her by the commissioner and may be collected by an action at law or other proper remedy.

~~(e)~~(d) Upon receipt of a timely served written demand for a hearing, the commissioner shall immediately set a date for the hearing and notify the person demanding the hearing of the date, time, and place of the hearing, which shall be held within 30 days after receipt of the demand. At the hearing, the commissioner shall hear evidence and thereafter enter an order supporting by findings of facts, affirming, modifying, or vacating the order. Any such order is final unless vacated or modified upon judicial review.

~~(f)~~(e) The hearing and the administrative procedure prior to, during, and following the hearing shall be governed by and in accordance with the provisions of §29A-5-1 *et seq.* of this code.

~~(g)~~(f) Notwithstanding the provisions of §29A-5-4(b) of this code, an applicant or licensee adversely affected by a final order entered following a hearing has the right ~~of~~ to judicial review of the order code in the Circuit Court of Kanawha County or the circuit court in the county where the proposed or licensed premises is located and will or does conduct sales: *Provided*, That in all other respects, ~~such~~ the review shall be conducted in the manner provided in chapter 29A of this code. ~~The applicant or licensee shall file the~~ petition for the review ~~must be filed~~ with the circuit court within 30 days following entry of the final order issued by the commissioner. An applicant or licensee obtaining judicial review is required to pay the costs and fees incident to transcribing, certifying, and transmitting the records pertaining to the matter to circuit court.

~~(h)~~(g) The judgment of the circuit court reviewing the order of the commissioner is final unless reversed, vacated, or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of §29A-6-1 of this code.

~~(i)~~(h) Legal counsel and services for the commissioner in all proceedings in any circuit court and the Supreme Court of Appeals shall be provided by the Attorney General or his or her assistants and in any proceedings in any circuit court by the prosecuting attorney of that county as well, all without additional compensation.

§60-8-20. Unlawful acts generally.

It ~~shall be~~ is unlawful:

(a) For a supplier or distributor to sell or deliver wine purchased or acquired from any source other than a person registered under the provisions of §60-8-6 of this code or for a retailer to sell or deliver wine purchased or acquired from any source other than a licensed distributor or a farm winery as defined in §60-1-5a of this code;

(b) Unless otherwise specifically provided by the provisions of this article, for a licensee under this article to acquire, transport, possess for sale, or sell wine other than in the original package;

(c) For a licensee, his or her servants, agents or employees to sell, furnish or give wine to any person less than 21 years of age, or to a ~~mental~~ mentally incompetent person or person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs: *Provided*, That the provisions of section §60-3A-25a of this code shall apply to sales of wine;

(d) For a licensee to permit a person who is less than 18 years of age to sell, furnish or give wine to any person, except as provided for in subsection (g) of this section;

(e) For a supplier or a distributor to sell or deliver any brand of wine purchased or acquired from any source other than the primary source of supply of the wine which granted the distributor the right to sell the brand at wholesale. For the purposes of this article, 'primary source of supply' means the vintner of the wine, the importer of a foreign wine who imports the wine into the United States, the owner of a wine at the time it becomes a marketable product, the bottler of a wine or an agent specifically authorized by any of the above-enumerated persons to make a sale of the wine to a West Virginia distributor: *Provided*, That no retailer shall sell or deliver wine purchased or acquired from any source other than a distributor or farm winery licensed in this state: *Provided, however*, That nothing herein is considered to prohibit sales of convenience between distributors

licensed in this state wherein one distributor sells, transfers, or delivers to another distributor a particular brand or brands for sale at wholesale, of which brand or brands the other distributor has been authorized by a licensed supplier to distribute. The commissioner shall promulgate legislative rules necessary to carry out the provision of this subsection;

(f) For a person to violate any ~~reasonable~~ rule promulgated by the commissioner under this article;

(g) Nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be considered to prohibit any licensee from employing any person who is at least 18 years of age to serve in any licensee's lawful employment, including the sale ~~or delivery~~ of wine ~~or distribution of wine on behalf of a winery, farm winery, farm entity, supplier, or distributor~~ under the provisions of this article. With the prior approval of the commissioner, a licensee ~~whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores,~~ may employ persons who are less than 18 years of age but at least 16 years of age: *Provided*, That the person's duties may ~~not~~ include the sale ~~or delivery~~ of nonintoxicating beer or wine alcoholic liquors only when directly supervised by a person 21 years of age or older: *Provided, however*, That the authorization to employ persons under ~~the age of 18 years of age~~ shall be clearly indicated on the licensee's license: *Provided, further*, That nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be considered to prohibit any licensee from employing any person who is at least 21 years of age for the ordering and delivery of wine when licensed for the ordering and delivery of wine under the provisions of this article.

§60-8-29. Bond Affidavit of compliance required of distributors and suppliers.

Each applicant for a distributor's license or a supplier's license shall furnish at the time of application ~~a bond with a corporate surety authorized to transact business in this State, payable to the State, and conditioned on the payment of all taxes and fees herein prescribed and on the faithful performance of and compliance with the provisions of this article.~~ an affidavit of compliance with federal and state laws regarding tied house laws, trade practice requirements, and furnishing things of value requirements set forth in the code and the rules. The commissioner shall suspend the licenses of licensed distributors and suppliers upon 10 days written notice by the commissioner, for failing to pay their taxes to the Tax Commissioner or who are not otherwise in good standing with the commissioner and other state agencies. If the licensed distributors and suppliers fail to pay their taxes or otherwise fail to take corrective actions to put the licensed distributors and suppliers in good standing within 30 days from the date of suspension of the licensee's license, then the commissioner shall revoke the licensee's license pursuant to the requirements of this article.

~~The penal sum of the bond for distributors shall be ten thousand dollars and the penal sum of the bond for suppliers shall be \$10,000. Each distributor shall be required to furnish separate bond for each location or separate place of business from which wine is distributed, sold or delivered. Revocation or forfeiture of the bond furnished for any such location may, in the discretion of the commissioner, cause the revocation or forfeiture of all such bonds furnished by the distributor suffering such revocation or forfeiture.~~

§60-8-32a. Where wine may be sold and consumed for on-premises consumption.

(a) With prior approval of the commissioner, a Class A wine licensee may sell, serve, and furnish wine for on premises consumption in a legally demarcated area which may include a temporary private wine outdoor dining area or a temporary private wine outdoor street dining area. A temporary private wine outdoor street area shall be approved by the municipal government or county commission in which the licensee operates. The commissioner shall develop and make available an application form to facilitate the purposes of this subsection.

(b) The Class A wine licensee shall submit to a municipality or county commission for the approval of the private wine outdoor dining area or private wine outdoor street dining area and submit to the municipality or county commission a revised floorplan requesting to sell wine, subject to the commissioner's requirements, in an approved and bounded outdoor area. For private wine outdoor street dining or private wine outdoor dining the approved and bounded outdoor area need not be adjacent to the licensee's licensed premises, but in close proximity and under the licensee's control and with right of ingress and egress. For purposes of this section, 'close proximity,' means an available area within 150 feet of the licensee's licensed premises.

(c) This private wine outdoor dining or private wine outdoor street dining may be operated in conjunction with a private outdoor dining or private outdoor street dining area set forth in §60-7-8d of this code, and nonintoxicating beer or nonintoxicating craft beer outdoor dining or outdoor street dining set forth in §11-16-9 of this code.

(d) For purposes of this section, 'private wine outdoor dining and private wine outdoor street dining' include dining areas that are:

(1) Outside and not served by an HVAC system for air handling services and use outside air;

(2) Open to the air; and

(3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally approve a partial enclosure with up to three temporary or fixed walls.

Any areas where seating is incorporated inside a permanent building with ambient air through HVAC is not considered outdoor dining pursuant to this subsection.

(e) Class A licensees licensed for on-premises sales shall provide food or a meal along with sealed wine in the original container or a sealed wine growler sales and service as set forth in this section and in §60-8-3 of this code, to a patron who is in-person or in-vehicle while picking up food and sealed wine in the original containers or sealed wine growlers ordered-to-go, subject to verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

§60-8-34. When retail sales prohibited.

~~It shall be~~ is unlawful for a retailer, farm winery, wine specialty shop retailer, private wine bed and breakfast, private wine restaurant, or private wine spa licensee, his or her servants, agents, or employees to sell or deliver wine between the hours of 2:00 a.m. and ~~4:00~~ 6:00 a.m. or, ~~it shall be~~ is unlawful for a winery, farm winery, private wine bed and breakfast, private wine restaurant, or private wine spa, his or her servants, agents, or employees to sell wine between the hours of 2:00 a.m. and 1:00 p.m. in any county upon approval as provided for in §7-1-3ss of this code, ~~on Sundays,~~ or between the hours of 2:00 a.m. and ~~7:00~~ 6:00 a.m. on weekdays, ~~and Saturdays,~~ and Sundays.

ARTICLE 8A. MANUFACTURE AND SALE OF HARD CIDER.**§60-8A-1. Definition of Hard Cider.**

'Hard Cider' means a type of wine that is derived primarily from the fermentation of apples, pears, peaches, honey, or other fruit, or from apple, pear, peach, or other fruit juice concentrate and water; contains no more than 0.64 grams of carbon dioxide per 100 milliliters; contains at least one half of one percent and less than 12 and one half percent alcohol by volume; and is advertised, labeled, offered for sale, or sold, as hard cider or cider containing alcohol, and not as a wine, wine product, or as a substitute for wine.

§60-8A-2. Applicability of other laws and licenses.

(a) Except as stated in this article, all wine licenses and other wine requirements set forth in §60-8-1 et seq., §60-4-3b, and §60-6-2, of this code, shall apply to the manufacture, distribution, or sale of hard cider. Any person or licensee legally authorized to manufacture, distribute, or sell wine may manufacture, distribute, or sell hard cider in the same manner and to the same persons, and subject to the same limitations and conditions, as such license or legal right authorizes him or her to manufacture, distribute, or sell wine. No additional wine license fees shall be charged for the privilege of manufacturing, distributing, or selling hard cider.

(b) Except as stated in this article, all hard cider distributors are bound by all wine distribution requirements set forth in §60-8-1 et seq., §60-4-3b, and §60-6-2, of this code which shall apply to distribution of hard cider. Any person or licensee legally authorized to distribute hard cider may distribute hard cider in the same manner and to the same persons, and subject to the same limitations and conditions, as a license or legal right would authorize him or her to distribute wine. An additional hard cider license fee shall not be charged for the privilege of distributing hard cider.

§60-8A-3. Taxation; reporting; deposits into Agriculture Development Fund; penalties for failure to file returns; application of state tax law; rulemaking authority.

(a) There is hereby levied and imposed on all hard cider sold on and after July 1, 2021, by wineries, farm wineries, and suppliers to distributors, and including all hard cider sold and sent to persons 21 years of age or older who reside in West Virginia from direct shippers, a tax of 22.6 cents per gallon, in like ratio for any partial gallon or other unit of measure: *Provided*, That wineries, farm wineries, and suppliers eligible for federal tax credits in 26 U.S.C. 5041(c)(1) on hard cider are eligible for the credits in this state against the tax on hard cider. In the case of a person who produces not more than 250,000 wine gallons of hard cider during the calendar year, there shall be allowed as a credit against any tax imposed by this section of 5.6 cents per wine gallon on the first 100,000 wine gallons of hard cider which are removed during such year for consumption or sale and which have been produced at qualified facilities in the United States. That credit shall be reduced by one percent for each 1,000 wine gallons of hard cider produced in excess of 150,000 wine gallons of hard cider during the calendar year. For the purposes of this section, the term 'wine gallon' means a United States gallon of liquid measure equivalent to the volume of 231 cubic inches. On lesser quantities, the tax shall be paid proportionately (fractions of less than one-tenth gallon being converted to the nearest one-tenth gallon, and five-hundredths gallon being converted to the next full one-tenth gallon). Hard cider is exempt from the liter tax established under §60-8-4 of this code.

(b) The Tax Commissioner shall deposit, at least quarterly, after deducting the amount of any refunds lawfully paid and any administrative fees authorized by this code, the taxes for the hard

cider, pursuant to this section, in the Agriculture Development Fund established by §19-2-12 of this code.

(c) Before the 16th day of each month thereafter, every winery, farm winery, supplier, distributor, and direct shipper shall make a written report under oath to the Tax Commissioner and the commissioner showing the identity of the purchasing person, the quantity, label, and alcoholic content of hard cider sold by the winery, farm winery, and supplier to West Virginia distributors or the direct shipper to persons 21 years of age or older who reside in West Virginia during the preceding month and at the same time shall pay the tax imposed by this article on the hard cider sold to the distributor or to persons 21 years of age or older who reside in West Virginia during the preceding month to the Tax Commissioner.

The reports shall contain other information and be in the form required by the Tax Commissioner. For purposes of this article, the reports required by this section shall be considered tax returns covered by the provisions of §11-10-1 et seq. of this code. Failure to timely file the tax returns within five calendar days of the 16th day of each month subjects a winery, farm winery, supplier, distributor, and direct shipper to penalties under §60-8-18 of this code.

(d) No hard cider imported, sold, or distributed in this state or sold and shipped to this state by a direct shipper shall be subject to more than one per-gallon tax on hard cider.

(e) Administrative procedures. — Each and every provision of the West Virginia Tax Procedure and Administration Act set forth in § 11-10-1 et seq. of this code, applies to the taxes imposed pursuant to this section, except as otherwise expressly provided in this article, with like effect as if that act were applicable only to the taxes imposed by this section and were set forth in extenso in this article.

(f) Criminal penalties. — Each and every provision of the West Virginia Tax Crimes and Penalties Act set forth in § 11-9-1 et seq. of this code applies to the taxes imposed pursuant to this section with like effect as if that act were applicable only to the taxes imposed pursuant to this article and were set forth in extenso in this article.

(g) The Tax Commissioner may propose legislative rules for legislative approval, pursuant to §29A-3-1 et seq. of this code, to implement this section.

§60-8A-4. Fruit sources; phase in; applications.

(a) On and after July 1, 2021, pursuant to §60-3-25 of this code, any farm winery attempting to manufacture hard cider may apply to the Agriculture Commissioner with a copy to the commissioner showing its inability to obtain 75 percent of the apples, pears, peaches, honey, or other fruits necessary to produce its hard cider from within this state. The Agriculture Commissioner may issue a permit to the applicant to import such fruit, honey, or fruit juice concentrate in an amount determined necessary by the Agriculture Commissioner to allow the farm winery to produce hard cider within the percentage established by §60-1-5a of this code.

(b) The burden of proof is on the applicant to show that apples, pears, peaches, honey, or other fruits, of the type normally used by the licensee are not available from any other source within the State of West Virginia. The commissioner shall not consider an application for a permit under this section unless it is accompanied by written findings by the Agriculture Commissioner in support of the application.

(c) Notwithstanding any provision in §60-3-25 of this code, to the contrary, any permit issued under this section is effective for a period of up to three years: *Provided*, That the applicant files an annual statement of necessity, supported by written findings from the Agriculture Commissioner, with the commissioner. After the five-year permit issued pursuant to this section has expired, the applicant shall submit any subsequent application for a permit pursuant to §60-3-25 of this code.

§60-8A-5. Winery or farm winery licensee's authority to manufacture, sell, and provide complimentary samples; growler sales; advertisements; taxes; fees; rulemaking.

(a) *Sales of hard cider.* — A licensed winery or farm winery with its principal place of business or manufacturing facility located in the State of West Virginia may offer hard cider manufactured by the licensed winery or farm winery for retail sale to customers from the winery's or farm winery's licensed premises for consumption off of the licensed premises only in approved and registered hard cider kegs, bottles, or cans, or also sealed wine growlers for personal consumption and not for resale. A licensed winery or farm winery may not sell, give, or furnish hard cider for consumption on the premises of the principal place of business or manufacturing facility located in the State of West Virginia, except for the limited purpose of complimentary samples as permitted in subsection (b) of this section. 'Wine Growler' has the meaning set forth in §60-8-6c(g) of this code.

(b) *Complimentary samples.* — A licensed winery or farm winery with its principal place of business or manufacturing facility located in the State of West Virginia may offer complimentary samples of hard cider manufactured at the winery's or farm winery's principal place of business or manufacturing facility located in the State of West Virginia. The complimentary samples may be no greater than two fluid ounces per sample per patron, and a sampling shall not exceed six complimentary two-fluid ounce samples per patron per day. A licensed winery or farm winery providing complimentary samples shall provide complimentary food items to the patron consuming the complimentary samples; and prior to any sampling, verify, using proper identification, that the patron sampling is 21 years of age or older and that the patron is not noticeably or visibly intoxicated.

(c) *Retail sales.* — Every licensed winery or farm winery under this section shall comply with all the provisions applicable to wine retailers when conducting sales of hard cider and is subject to all applicable requirements and penalties.

(d) *Payment of taxes and fees.* — A licensed winery or farm winery under this section shall pay all taxes and fees required of licensed wine retailers, in addition to any other taxes and fees required, and meet applicable licensing provisions as required by law and by rule of the commissioner.

(e) *Advertising.* — A licensed winery or farm winery may advertise a particular brand or brands of hard cider produced by the licensed winery or farm winery and the price of the hard cider subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance or target minors.

(f) *Growler requirements.* — A licensed winery or farm winery, if offering wine growler filling services, shall meet the filling, labeling, sanitation, and all other wine growler requirements in §60-8-6c of this code.

(g) Fee. — There is no additional fee for a licensed winery or farm winery authorized under §60-8-6c of this code, to sell wine growlers, if a winery or farm winery only desires to sell hard cider in the wine growler, and no other wine, then the annual nonprorated and nonrefundable license fee is \$50.

§60-8A-6. Rule-making authorization.

The West Virginia Alcoholic Beverage Control Commissioner may propose legislative rules for legislative approval, pursuant to §29A-3-1 et seq. of this code, to implement this article.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY, AND DECENCY.

§61-8-27. Unlawful admission of children to dance house, etc.; penalty.

Any proprietor or any person in charge of a dance house, concert saloon, theater, museum, or similar place of amusement, or other place, where wines or spirituous or malt liquors are sold or given away, or any place of entertainment injurious to health or morals who admits or permits to remain therein any minor under the age of 18 years, unless accompanied by his or her parent or guardian, is guilty of a misdemeanor and, on conviction thereof, shall be punished by a fine not exceeding \$200: *Provided*, That there is exemption from this prohibition for: (a) A private caterer, private club restaurant, private manufacturer club, private fair and festival, private resort hotel, private hotel, private golf club, private nine-hole golf course, private resort hotel, and private golf club private tennis club, private wedding venue or barn, private outdoor dining and private outdoor street dining, private multi-vendor fair and festival license, private farmers market, private professional sports stadium, and a private multi-sports complex licensed pursuant to §60-7-1 et seq. of this code and in compliance with §60-7-2(f)(11), §60-7-2(g)(8), §60-7-2(h)(74), §60-7-2(i)(78), and §60-7-2(j)(7), §60-7-2(k)(8), §60-7-2(l)(8), §60-7-2(m)(7), §60-7-2(n)(7), §60-7-2(o)(8), §60-7-2(p)(8), §60-7-2(q)(12), §60-7-2(r)(8), §60-7-2(s)(9), §60-7-8c(b)(14), §60-7-8d, and §60-8-32a, of this code; or (b) a private club with more than 1,000 members that is in good standing with the Alcohol Beverage Control Commissioner, that has been approved by the Alcohol Beverage Control Commissioner; and which has designated certain seating areas on its licensed premises as nonalcoholic liquor and nonintoxicating beer areas, as noted in the licensee's floorplan; or (c) ~~a private fair and festival that is in compliance with §60-7-2(f)(7) of this code, by utilizing using~~ a mandatory carding or identification program ~~whereby by which~~ all members or guests being served or sold alcoholic liquors, nonintoxicating beer, or nonintoxicating craft beer are asked and ~~must required to~~ provide their proper identification to verify their identity and further that they are of legal drinking age, 21 years of age or older, prior to each sale or service of alcoholic liquors, nonintoxicating beer, or nonintoxicating craft beer.”

And,

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

Com. Sub. for H. B. 2025 – “A Bill to amend and reenact §7-1-3ss of the Code of West Virginia, 1931, as amended, to amend and reenact §11-16-9 and §11-16-18 of said code; to amend said code by adding thereto four new sections, designated §11-16-6d, §11-16-6e, §11-16-6f and §11-16-11c; to amend said code by adding thereto two new sections, designated §19-2-12 and §19-2-13; to amend and reenact §60-1-5a of said code; to amend said code by adding

thereto a new section, designated §60-3A-3b; to amend and reenact §60-3A-25 of said code; to amend and reenact §60-4-3a and §60-4-3b of said code; to amend said code by adding thereto a new section, designated §60-4-3c; to amend and reenact §60-6-8 of said code; to amend and reenact §60-7-2, §60-7-6, and §60-7-12 of said code; to amend said code by adding thereto five new sections, designated §60-7-8b, §60-7-8c, §60-7-8d, §60-7-8e, and §60-7-8f; to amend and reenact §60-8-2, §60-8-3, §60-8-4, §60-8-18, §60-8-20, §60-8-29 and §60-8-34 of said code; to amend said code by adding thereto five new sections, designated §60-8-6c, §60-8-6d, §60-8-6e, §60-8-6f and §60-8-32a; to amend said code by adding thereto a new article, designated §60-8A-1, §60-8A-2, §60-8A-3, §60-8A-4, §60-8A-5, and §60-8A-6; and to amend and reenact §61-8-27 of said code, all relating to nonintoxicating beer, nonintoxicating craft beer, liquor, wine, and hard cider sales in this state; providing for changing the time for nonintoxicating beer, nonintoxicating craft beer, liquor, and wine sales to begin at 6:00 a.m. on all days of the week for on and off premises licensees; authorizing Class A and Class B licensed retailers and third parties to obtain a license to deliver nonintoxicating beer and nonintoxicating craft beer; allowing the sale, ordering, and delivery of nonintoxicating beer and nonintoxicating craft beer by a telephone, mobile ordering application or web-based software program; setting forth sale, delivery and telephone, mobile ordering application or web-based software program requirements; providing for enforcement; exempting Class A and Class B licensees from an additional licensing fee, and establishing a license fee for third parties, and requiring a nonintoxicating beer retail transportation permit for delivery vehicles; establishing a nonintoxicating beer and nonintoxicating craft beer direct shippers license to allow shipping in state and out of state; providing license requirements, shipping requirements, limitations, and fees; requiring the payment of fees and taxes, the maintenance of records and the preparation of reports; providing for penalties, criminal penalties, and jurisdiction for direct shipping licensees; authorizing Class A and Class B licensees to sell and deliver sealed nonintoxicating beer and nonintoxicating craft beer for consumption off the premises if certain conditions are met; providing certain licensees with the authority to sell, serve, and furnish nonintoxicating beer and nonintoxicating craft beer in approved outdoor dining areas, and outdoor street dining areas if certain requirements are met; defining terms; authorizing in-person or in-vehicle pick up of purchased food or meals and nonintoxicating beer or nonintoxicating craft beer orders-to-go; creating an unlicensed brewer or home brewer temporary special license for providing samples at licensed fairs and festivals, specifying requirements, setting a license fee and requiring a nonintoxicating beer or nonintoxicating craft beer transportation permit; reducing the fee for a nonintoxicating beer or nonintoxicating craft beer floorplan extension; permitting licensees to employ persons 16 years of age in sale and service of liquor, beer, and wine when supervised by an employee who is 21 years of age or older; establishing the Agriculture Development Fund to fund the hard cider development program created to foster the development and growth of the hard cider industry in this state; creating a private liquor delivery license for retail liquor outlets and third parties with sale and delivery requirements; establishing a private liquor bottle delivery permit; authorizing retail liquor outlets to sell sealed bottles of liquor through a window in a drive-up or drive-through; creating a private manufacturer club license for distilleries, mini-distilleries, micro-distilleries, wineries, and farm wineries, setting forth requirements, and providing for a license fee; authorizing distilleries, mini-distilleries, and micro-distilleries to also operate wineries, farm wineries, brewers, or resident brewers; authorizing wineries and farm wineries to operate and be licensed as distilleries, mini-distilleries, micro-distilleries, to operate and be licensed as wineries, farm wineries, brewery, or as resident brewers; removing prohibition against a single person having more than one winery or farm winery license or both a winery and farm winery license; declaring that agricultural use designation is unchanged for building code and property tax classification upon opening any type of distillery or winery; establishing a private direct shippers license to allow distilleries, mini-distilleries and micro-distilleries to ship liquor in state and out of state; providing license requirements, shipping requirements, limitations, and fees; requiring direct shipping licensees

shipping liquor in this state pay all taxes and fees and maintain certain records; authorizing the ability to pre-mix alcoholic liquors, establishing certain requirements, and creating a permit; creating a private direct shipper license, setting forth requirements and providing for a license fee; creating private caterer license, a private club bar license, a private club restaurant license, a private manufacturer club license, a private farmers market license, a private multi-sport complex license, a private tennis club license, a private professional sports stadium license, a private wedding venue or barn license, a one-day charitable rare, antique, or vintage liquor auction license for charitable purposes, and a private multi-vendor fair and festival license and setting forth requirements and providing for license fees; reducing license fees for two years due to COVID-19 pandemic; creating temporary private outdoor dining and temporary private outdoor street dining areas as legally demarcated areas that are not a public place where a private club licensee may sell and furnish alcoholic liquors; authorizing and creating craft cocktail growlers and setting forth requirements and limitations, and exempting certain licenses from a license fee; creating a private cocktail delivery license for licensed private club restaurants, private manufacturer clubs and third parties, setting forth requirements, including specific requirements for craft cocktail growlers, specifying limitations, and requiring a private craft cocktail delivery permit for delivery vehicles; authorizing in-person or in-vehicle pick up of purchased food or a meal and craft cocktail growler orders-to-go; providing for wine definitions to clarify various aspects of wine, including the alcohol by volume percentage for table wine, wine, and fortified wine; removing restriction on number of one-day licenses which may be issued in a single year to a nonprofit to sell and serve wine for charitable purposes; requiring at least 80 percent of the net proceeds from a one day charitable auction be donated to the nonprofit; clarifying penalties for failure to meet wine licensure requirements; replacing wine bond requirements that secure the payment of taxes by distributors, suppliers, certain wineries, and certain farm wineries, who are acting as either suppliers or distributors in a limited capacity, with an affidavit of compliance; providing penalties for failure to pay taxes and maintain good standing with the state; authorizing wineries and farm wineries to sell wine growlers and provide samples and establishing requirements and limitations; authorizing certain Class A and Class B licensees to sell sealed wine and wine growlers, and setting forth requirements and limitations; authorizing legislative rules; creating a private wine delivery license for Class A and Class B wine licensees and third parties, setting forth requirements and limitations, providing fees for certain licensees; creating a private wine retail transportation permit, setting forth requirements, and requiring no additional fee; creating private wine outdoor dining and private wine outdoor street dining areas as legally demarcated areas that are not a public place where wine may be sold and furnished; authorizing in-person or in-vehicle pick up of purchased food or a meal and wine orders-to-go; defining the term "hard cider"; providing that there is no separate license required to manufacture and sell hard cider under certain conditions; providing for a hard cider distributor's license and its fee and permitting other current and valid licensees to distribute hard cider without an additional license fee; providing for hard cider exemptions to the wine liter tax; establishing a hard cider gallon tax; providing for the application of West Virginia Tax Procedures and Administration Act and West Virginia Tax Crimes and Penalties Act to the hard cider gallon tax; providing for an internal effective date; providing for a tax credit against the hard cider tax; providing for applicability of other laws; requiring the filing of regular reports to the Tax Commissioner; providing for applications to import products necessary to manufacture hard cider under certain conditions; providing for hard cider sales for consumption on the licensed premises; providing for complimentary samples to be offered; establishing requirements for complimentary samples; permitting the sale of wine growlers; setting forth wine growler requirements, and providing a license fee; and providing additional exceptions to the criminal penalty for the unlawful admission of children to dance house for certain private clubs with approved age verifications systems."

During debate on the amendment, Delegate Fast was addressing the House when Delegate Martin arose to a point of order, regarding the content of the Gentleman's remarks pertaining to the bill and not the amendment before the House.

The Speaker replied that the point was not well taken.

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

The yeas and nays having been ordered, they were taken (**Roll No. 632**), and there were—yeas 60, nays 39, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Anderson, Barnhart, Boggs, Brown, Bruce, Burkhammer, Conley, Cooper, Fast, Ferrell, Griffith, Hanna, Haynes, D. Jeffries, J. Jeffries, Jennings, Keaton, D. Kelly, Kessinger, Linville, Longanacre, Mallow, Mandt, Martin, Mazzocchi, Miller, Nestor, J. Pack, L. Pack, Pinson, Rohrbach, Statler, Sypolt, Toney, Wamsley, B. Ward, G. Ward, Worrell and Hanshaw (Mr. Speaker).

Absent and Not Voting: J. Kelly.

So, a majority of the members present not having voted in the affirmative, the motion to concur with further amendment was adopted.

Delegates Martin and Thompson requested to be excused from voting under the provisions of House Rule 49.

The Speaker replied that the Delegates were members of a class of persons possibly to be affected and directed the Members to vote.

During debate, Delegate Fluharty was addressing the House when Delegate Wamsley moved the previous question.

The Speaker ruled that Delegate Wamsley did not have the floor.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 633**), and there were—yeas 72, nays 27, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Barnhart, Boggs, Brown, Bruce, Burkhammer, Conley, Fast, Ferrell, Hanna, D. Jeffries, Jennings, Keaton, D. Kelly, Longanacre, Mallow, Mandt, Mazzocchi, Miller, J. Pack, L. Pack, Pinson, Rohrbach, Toney, B. Ward, G. Ward, Worrell and Hanshaw (Mr. Speaker).

Absent and Not Voting: Kessinger.

So, a majority of the members elect having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2025) passed.

Delegate Steele moved that the bill take effect thirty days from passage.

On this question, the yeas and nays were taken (**Roll No. 634**), and there were—yeas 71, nays 28, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Barnhart, Boggs, Brown, Burkhammer, Conley, Fast, Ferrell, Graves, Hanna, D. Jeffries, Jennings, Keaton, D. Kelly, Longanacre, Mallow, Mandt, Mazzocchi, Miller, J. Pack, L. Pack, Pinson, Rohrbach, Summers, Toney, B. Ward, G. Ward, Worrell and Hanshaw (Mr. Speaker).

Absent and Not Voting: Kessinger.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2025) takes effect May 10, 2021.

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

A message from the Senate, by

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

Com. Sub. for H. B. 2022, Budget Bill, making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the Constitution.

A message from the Senate, by

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

Com. Sub. for H. B. 2747, Transferring the Parole Board to the Office of Administrative Hearings.

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

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

“CHAPTER 15A. DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY.

ARTICLE 9. OFFICE OF ADMINISTRATIVE HEARINGS.

§15A-9-1. Office created; appointment of Chief Hearing Examiner.

(a) The Office of Administrative Hearings is created as a separate operating agency within the department.

(b) The secretary shall appoint a director of the office who serves as the administrative head of the office and as Chief Hearing Examiner.

(c) ~~Prior to appointment, the~~ The Chief Hearing Examiner shall be a citizen of the United States and a resident of this state who is admitted to the practice of law in this state.

(d) The salary of the Chief Hearing Examiner shall be set by the secretary of the department.

(e) In addition to adherence to the code of conduct set forth in §6B-2-5a of this code, the Chief Hearing Examiner during his or her term shall:

~~(1) Devote his or her full time to the duties of the position;~~

~~(2) Not otherwise engage in the active practice of law or be associated with any group or entity which is itself engaged in the active practice of law. This subsection does not prohibit the Chief Hearing Examiner from being a member of a national, state, or local bar association or committee, or of any other similar group or organization, nor does it prohibit the Chief Hearing Examiner from engaging in the practice of law by representing himself, herself, or his or her immediate family in their personal affairs in matters not subject to this article;~~

~~(3)~~ (1) Not engage directly or indirectly in any activity, occupation, or business interfering or inconsistent with his or her duties as Chief Hearing Examiner;

~~(4)~~ (2) Not hold any other appointed public office or any elected public office or any other position of public trust; and

~~(5)~~ (3) Not be a candidate for any elected public office, or serve on or under any committee of, any political party.

(f) The Chief Hearing Examiner serves at the will and pleasure of the secretary.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-12. Parole Board generally.

(a) The West Virginia Parole Board is continued as part of the Division of Corrections and Rehabilitation. The board shall consist of nine members, each of whom shall have been a resident of this state for at least five consecutive years prior to his or her appointment. No more than five of the board members may at any one time belong to the same political party, except as provided in subsection (b) of this section. The board shall be appointed by the Governor, by and with the advice and consent of the Senate and shall serve at the will and pleasure of the Governor.

~~Appointments shall be made in such a manner that each congressional district is represented and so that no more than four and no less than two members of the board reside in any one congressional district.~~

(b) The Governor shall appoint one of the nine members to serve as chairperson at the Governor's will and pleasure. In addition to all other powers, duties, and responsibilities granted and assigned to the chairperson by law and rule, the chairperson has the following powers and duties:

(1) To provide for the management of facilities and personnel of the board;

(2) To supervise the administration and operation of the board;

(3) To delegate the powers and duties of his or her office to the vice chairperson or other members of the board, who shall act under the direction of the chairperson and for whose acts he or she is responsible: *Provided*, That if the position of chairperson becomes vacant by death, resignation, or otherwise, the vice chairperson shall assume all the powers and duties of the chairperson until such time as a new chairperson is appointed pursuant to the provisions of this subsection;

(4) To employ one full-time administrative employee, who shall be a classified exempt employee; and

(5) To exercise all other powers and perform all other duties necessary and proper in carrying out his or her responsibilities as chairperson.

(c) The board, from its membership, shall elect a vice chairperson, at least once every year, to serve as chair in the absence of a chairperson. In the absence of or at the direction of the chairperson, the vice chairperson may exercise the powers and duties of the chairperson. The vice chairperson shall, while performing the duties and responsibilities of the chairperson, have all of the statutorily authorized power and duties of the chairperson.

~~(d) Any person initially appointed to the board on or after July 1, 2012, Members of the board shall have a at least an undergraduate degree from an accredited college or university or at least five years of actual experience in the fields of corrections, law enforcement, sociology, law, education, psychology, social work, or medicine, or a combination thereof, and shall be otherwise competent to perform the duties of his or her office: Provided, That at least three members initially appointed after July 1, 2021, shall have five or more years experience in the fields of mental health, social work, or inmate reentry services. All members currently serving on the board shall continue the terms they are currently serving, unless otherwise removed. The members shall be appointed for overlapping terms of six years. Members are eligible for reappointment. The members of the board shall devote their full time and attention to their board duties.~~

(e) The Governor may, if he or she is informed that a vacancy is imminent, appoint a member to fill the imminent vacancy prior to it becoming vacant: *Provided*, That the new member may be appointed no more than 30 days prior to the vacancy occurring and only for purposes of training. He or she may not assume the powers and duties of the position until the vacancy has actually occurred.

(f) The Governor may appoint no more than five persons to a list of substitute board members. Substitute board members shall meet the qualifications set forth in subsection (d) of this section. The persons on the list shall be used in a rotating fashion. If a full-time board member is unable to serve, a substitute board member may serve in his or her place. These substitute board members shall have the same powers and duties of the fulltime board members while acting as a substitute and shall serve at the will and pleasure of the Governor. These members shall be reimbursed for expenses and paid a per diem rate set by the secretary.

(g) The Division of Corrections and Rehabilitation shall provide administrative and other services to the board as the board requires. Expenses of the board shall be included within the annual budget of the Division of Corrections and Rehabilitation: *Provided*, That the salaries of the members appointed pursuant to subsection (b) of this section are to be included in a separate budget for the Parole Board.

(h) Notwithstanding any provision of this code to the contrary, meetings of the parole board are not subject to the provisions of §6-9A-1 et seq. of this code: *Provided*, That hearings before the parole board shall be open to the public."

And,

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

Com. Sub. for H. B. 2747 – “A Bill to amend and reenact §15A-9-1 of the Code of West Virginia, 1931 as amended, and to amend and reenact §62-12-12 of said code, all relating to offices and officers in the Department of Homeland Security generally; clarifying duties and qualifications of the Chief Hearing Examiner of the Department of Homeland Security; removing language dictating residence requirements of Parole Board members based on congressional districts; clarifying that substitute Parole Board members serve at the will and pleasure of the Governor; directing that a least three board members initially appointed after July 1, 2021, have at least five years experience in social work, mental health, or prisoner reentry; exempting Parole Board meetings from open meeting law and clarifying that parole hearings are open to the public.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 635**), and there were—yeas 73, nays 24, absent and not voting 3, with the nays and the absent and not voting being as follows:

Nays: Barach, Brown, Dean, Diserio, Doyle, Evans, Fleischauer, Fluharty, Garcia, Griffith, Hanna, Hansen, Hornbuckle, J. Jeffries, Lovejoy, McGeehan, Pushkin, Rowe, Skaff, Thompson, Walker, Williams, Young and Zukoff.

Absent and Not Voting: Hamrick, Horst and Householder.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2747) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 3106, To change the hearing requirement for misdemeanors to 10 days.

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

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

“ARTICLE 1C. BAIL.

§62-1C-1a. Pretrial release; types of release; conditions for release; considerations as to conditions of release.

(a) Subject to the provisions of §62-1C-1 of this code, when a person charged with a violation or violations of the criminal laws of this state first appears before a judicial officer:

(1) Except for good cause shown, a judicial officer shall release a person charged with a misdemeanor offense on his or her own recognizance unless that person is charged with:

- (A) A misdemeanor offense of actual violence or threat of violence against a person;
- (B) A misdemeanor offense where the victim was a minor, as defined in §61-8C-1 of this code;
- (C) A misdemeanor offense involving the use of a deadly weapon, as defined in §61-7-2 of this code;
- (D) A misdemeanor offense of the Uniform Controlled Substances Act as set forth in chapter 60A of this code;
- (E) Misdemeanor offenses of sexual abuse;
- (F) A serious misdemeanor traffic offense set forth in §17C-5-1 or §17C-5-2 of this code; or
- (G) A misdemeanor offense involving auto tampering, petit larceny or possession, transfer or receiving of stolen property when alleged value on the property involved exceeds \$250.

(2) For the misdemeanor offenses specified in subsection (a) of this section and all other offenses which carry a penalty of incarceration, the arrested person is entitled to be admitted to bail subject to the least restrictive condition or combination of conditions that the judicial officer determines reasonably necessary to assure that person will appear as required, and which will not jeopardize the safety of the arrested person, victims, witnesses, or other persons in the community or the safety and maintenance of evidence. Further conditions may include that the person charged shall:

- (A) Not violate any criminal law of this state, another state, or the United States;
- (B) Remain in the custody of a person designated by the judicial officer, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is reasonably able to assure the judicial officer that the person will appear as required and will not pose a danger to himself or herself or to the safety of any other person or the community;
- (C) Participate in home incarceration pursuant to §62-11B-1 *et seq.* of this code;
- (D) Participate in an electronic monitoring program if one is available where the person is charged or will reside.
- (E) Maintain employment, or, if unemployed, actively seek employment;
- (F) Avoid all contact with an alleged victim of the alleged offense and with potential witnesses and other persons as directed by the court;
- (G) Refrain from the use or excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in §60A-1-1 *et seq.* of this code without a prescription from a licensed medical practitioner;
- (H) Execute an agreement to forfeit, upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required. The person charged shall provide the court with proof of ownership, the value of the property, and information regarding existing encumbrances of the property as, in the discretion of the judicial officer, is reasonable and necessary collateral to ensure the subsequent appearance of the person as required;

(I) Post a cash bond, or execute a bail bond with solvent sureties who will execute an agreement to forfeit an amount reasonably necessary to assure appearance of the person as required. If other than an approved surety, the surety shall provide the court with information regarding the value of its assets and liabilities and the nature and extent of encumbrances against the surety's property. The surety shall have a net worth of sufficiently unencumbered value to pay the amount of the bail bond; or

(J) Satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of the arrested person, victims, witnesses, other persons in the community, or the safety and maintenance of evidence.

(3) Proper considerations in determining whether to release the arrested person on an unsecured bond, fixing a reasonable amount of bail, or imposing other reasonable conditions of release are:

(A) The ability of the arrested person to give bail;

(B) The nature, number, and gravity of the offenses;

(C) The potential penalty the arrested person faces;

(D) Whether the alleged acts were violent in nature;

(E) The arrested person's prior record of criminal convictions and delinquency adjudications, if any;

(F) The character, health, residence, and reputation of the arrested person;

(G) The character and strength of the evidence which has been presented to the judicial officer:

(H) Whether the arrested person is currently on probation, extended supervision, or parole;

(I) Whether the arrested person is already on bail or subject to other release conditions in other pending cases;

(J) Whether the arrested person has been bound over for trial after a preliminary examination;

(K) Whether the arrested person has in the past forfeited bail or violated a condition of release or was ever a fugitive from justice; and

(L) The policy against unnecessary incarceration of arrested persons pending trial set forth in this section.

(b) In all misdemeanors, cash bail may not exceed three times the maximum fine provided for the offense. If the person is charged with more than one misdemeanor, cash bail may not exceed three times the highest maximum fine of the charged offenses.

(c) Notwithstanding any provisions of this article to the contrary, whenever a person not subject to the provisions of §62-1C-1 of this code remains incarcerated after his or her initial appearance, relating to a misdemeanor, due to the inability to meet the requirements of a secured bond, the a magistrate or judge ~~who set the secured bond~~ shall hold a hearing within ~~72 hours~~ 5

days of setting the initial bail to determine if there is a condition or combination of conditions which can meet the considerations set forth in ~~subdivision (2), subsection (a) of this section~~ §62-1C-1a(a)(2) of this code.

(d) A judicial officer may upon notice and hearing modify the conditions of release at any time by imposing additional or different conditions.

(e) A prosecuting attorney and defense counsel, unless expressly waived by the defendant, shall appear at all hearings in which bail or bond conditions are at issue other than the proceeding at which the conditions of release are initially set.

(f) No judicial officer may recommend the services of a surety who is his or her relative as that term is defined in §6B-1-3 of this code.”

And,

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

Com. Sub. for H. B. 3106 – “A Bill to amend and reenact §62-1C-1a of the Code of West Virginia, 1931, as amended, relating to bail; increasing the time for a secured bond hearing to 5 days; allowing a bond hearing to be held by any magistrate or judge; and clarifying the bond hearing procedure applies only to misdemeanors.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 636**), and there were—yeas 98, nays 2, absent and not voting none, with the nays being as follows:

Nays: Martin and Pritt.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3106) passed.

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

A message from the Senate, by

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

Com. Sub. for S. B. 334, Establishing license application process for needle exchange programs.

Delegate Summers moved that the House of Delegates concur in the following further amendments by the Senate:

On page two, section two, subsection (a), subdivision (9), after the word “statement”, by inserting the words “of support”.

On page three, section three, subsection (b), after subdivision (6) by inserting a new subdivision, designated subdivision (7), to read as follows:

“(7) Proof of West Virginia identification upon dispensing of the needles;”.

And by renumbering the remaining subdivisions.

On page six, section seven, subsection (c), after “2021” by striking out the comma and remainder of the sentence;

And,

On page seven, section ten, after subsection (c), by inserting a new subsection, designated subsection (d), to read as follows:

“(d) Upon passage, any existing provider not offering the full array of harm reduction services as set forth in this section shall cease and desist offering all needle exchange services. Any provider offering the full array of harm reduction services shall have until January 1, 2022, to come into compliance with this section. Any new provider shall have until January 1, 2022, to come into compliance with the provisions of this section.”

And,

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

Com. Sub. for S. B. 334 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-63-1, §16-63-2, §16-63-3, §16-63-4, §16-63-5, §16-63-6, §16-63-7, §16-63-8, §16-63-9, and §16-63-10, all relating to syringe services programs; defining terms; providing license application requirements and process; establishing program requirements; providing procedure for revocation or limitation of the syringe services programs; setting forth administrative due process; providing for administrative and judicial appeal; establishing reporting requirements and renewal provisions; providing for rulemaking; providing criminal immunity in certain circumstances; providing civil immunity in certain circumstances; providing for expungement; providing immunity from professional sanction, detainment, arrest, or prosecution in certain circumstances; providing for administrative penalties and allowing Office of Health Facilities Licensure and Certification to seek injunctive relief; requiring a syringe services program to coordinate with health care providers; requiring that a syringe services program that is closing to post notice and provide transition care plan for individuals; requiring the Bureau of Medical Services to amend the state plan; and providing for effective date.”

Delegate Zukoff asked to amend the motion to offer a tertiary amendment through a rule suspension.

On this question, the yeas and nays were taken (**Roll No. 637**), and there were—yeas 31, nays 69, absent and not voting none, with the yeas being as follows:

Yeas: Barach, Bates, Boggs, Brown, Bruce, Capito, Dean, Diserio, Doyle, Fleischauer, Fluharty, Forsht, Garcia, Griffith, Hansen, Hornbuckle, Kimes, Lovejoy, L. Pack, Paynter, Pethtel, Pritt, Pushkin, Queen, Rowe, Skaff, Thompson, Walker, Williams, Young and Zukoff.

So, two thirds of the members present not having voted in the affirmative, the motion was rejected.

On the question of the motion by Delegate Summers to concur in the Senate amendments, Delegate Martin moved the previous question.

The Speaker put the question of "Shall the previous question be ordered?" and the previous question was ordered.

Delegate Pushkin then asked unanimous consent to address the House, objection being heard. Delegate Pushkin then so moved and again asked unanimous consent to address the House.

Delegate J. Pack then arose to inquire of the Chair regarding Delegate Pushkin being able to speak to the bill if the motion to concur was adopted.

The Speaker replied that the Delegate was correct.

The House then adopted the motion to concur in the Senate amendments.

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 638**), and there were—yeas 67, nays 32, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Anderson, Barach, Barrett, Bates, Boggs, Brown, Diserio, Doyle, Evans, Fleischauer, Fluharty, Garcia, Griffith, Hansen, Hornbuckle, Kimes, Lovejoy, McGeehan, Miller, Pethtel, Pritt, Pushkin, Reed, Rowe, Skaff, Statler, Thompson, Walker, Williams, Worrell, Young and Zukoff.

Absent and Not Voting: Cooper.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 334) passed.

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

A message from the Senate, by

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

Com. Sub. for S. B. 470, Limiting release of certain personal information maintained by state agencies.

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

On page two, section twenty-four, line four, by striking out the words "public defenders, assistant public defenders, and panel attorneys as defined in Chapter 29, Article 21," and inserting in lieu thereof the words "federal and state public defenders, federal and state assistant public defenders,".

On page three, section twenty-four, line fifteen, by striking out the words “public defenders, assistant public defenders, and panel attorneys as defined in Chapter 29, Article 21,” and inserting in lieu thereof the words “federal or state public defender, federal or state assistant public defender,”.

On page three, section twenty-four, line thirty-one, by striking out the words “public defenders, assistant public defenders, and panel attorneys as defined in Chapter 29, Article 21,” and inserting in lieu thereof the words “federal or state public defender, federal or state assistant public defender,”.

On page three, section twenty-four, line thirty-three, by striking out the word “publicly”.

On page four, section twenty-four, line thirty-five, by striking out the words “public defenders, assistant public defenders, and panel attorneys as defined in Chapter 29, Article 21,” and inserting in lieu thereof the words “federal or state public defender, federal or state assistant public defender,”.

On page four, section twenty-four, line thirty-nine, after the word “prosecutor,” by inserting the words “federal or state public defender, federal or state assistant public defender,”.

On page four, section twenty-four, line forty, by striking out the words “public defenders, assistant public defenders, and panel attorneys as defined in Chapter 29, Article 21,” and inserting in lieu thereof the words “federal or state public defender, federal or state assistant public defender,”.

On page four, section twenty-four, line forty-seven, after the word “prosecutor” by inserting the words “federal or state public defender, federal or state assistant public defender,”.

On page four, section twenty-four, line forty-nine, by striking out the word “publicly”.

On page four, section twenty-four, line fifty, by striking out the words “subparagraph (e)” and inserting in lieu thereof the words “subsection (e) of this section”.

On page four, section twenty-four, line fifty-three, after the word “prosecutor” by inserting the words “federal or state public defender, federal or state assistant public defender,”.

On page four, section twenty-four, line fifty-six, by striking out the words “public defenders, assistant public defenders, and panel attorneys as defined in Chapter 29, Article 21,” and inserting in lieu thereof the words “federal or state public defender, federal or state assistant public defender,”.

On page four, section twenty-four, line fifty-six, by striking out the word “publicly”.

On page four, section twenty-four, line fifty-seven, by striking out the words “subparagraph (e)” and inserting in lieu thereof the words “subsection (e) of this section”.

And,

On page five, section twenty-four, line seventy-two, by striking out the words “public defenders, assistant public defenders, and panel attorneys as defined in Chapter 29, Article 21,”

and inserting in lieu thereof the words “federal or state public defender, federal or state assistant public defender.”.

And,

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

Com. Sub. for S. B. 470 – “A Bill to amend and reenact §5A-8-21 and §5A-8-22 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5A-8-24, all relating certain disclosures of certain personal information; clarifying that certain personal information which is maintained by state agencies regarding persons in their capacity as state officers, employees, retirees, or legal dependents thereof is confidential and exempt from disclosure to non-governmental entities as an unreasonable invasion of privacy; protecting confidentiality of the former legal name of certain individuals associated with state agencies; clarifying that certain personal information which is maintained by state executive branch agencies regarding individuals and their dependents is exempted from disclosure as an unreasonable invasion of privacy; creating Daniel’s Law; providing for liberal construction to accomplish certain purposes and public policies; defining terms; prohibiting certain disclosures regarding certain persons in the judicial system; authorizing a civil action against certain private persons and entities; authorizing relief to be granted by the court; providing for certain individuals to request that certain persons or entities refrain from disclosing certain information and that the disclosed information be removed; requiring immediate removal of certain disclosed information; authorizing a civil action for failure to comply with request to refrain from and remove certain disclosed information; providing for misdemeanor crime for willful refusal to remove certain disclosed information and establishing penalties therefor; and clarifying that Daniel’s Law does not prohibit disclosures required by state or federal law.”

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

The yeas and nays having been ordered, they were taken (**Roll No. 639**), and there were—yeas 53, nays 46, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Barach, Barnhart, Bates, Boggs, Booth, Bridges, Brown, Bruce, Conley, Criss, Dean, Diserio, Doyle, Evans, Fast, Fleischauer, Fluharty, Garcia, Griffith, Hansen, Hornbuckle, Horst, J. Kelly, Kimble, Longanacre, Lovejoy, Mandt, McGeehan, Miller, Nestor, Paynter, Pethtel, Pritt, Pushkin, Reynolds, Rohrbach, Rowe, Skaff, Steele, Thompson, Walker, Wamsley, G. Ward, Williams, Young and Zukoff.

Absent and Not Voting: Cooper.

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 640**), and there were—yeas 60, nays 39, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Barach, Barnhart, Bates, Boggs, Booth, Brown, Bruce, Dean, Diserio, Doyle, Evans, Fleischauer, Fluharty, Griffith, Hansen, Holstein, Hornbuckle, Horst, Longanacre, Mandt, Mazzocchi, McGeehan, Miller, Nestor, Paynter, Pethtel, Pushkin, Reynolds, Rowe, Skaff, Steele, Thompson, Toney, Walker, Wamsley, G. Ward, Williams, Young and Zukoff.

Absent and Not Voting: Cooper.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 470) passed.

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

A message from the Senate, by

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

Com. Sub. for S. B. 478, Permitting use of established federal marketplace programs to purchase supplies.

A message from the Senate, by

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

Com. Sub. for S. B. 562, Relating to juvenile competency proceedings.

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

On page one, section seven hundred twelve, subsection (a) by striking out the words "stand trial" and inserting in lieu thereof the word "proceed".

On page three, section seven hundred twelve, by striking out the words "stand trial" and inserting in lieu thereof the word "proceed".

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

"(e) If and when the issue of a juvenile's competency is raised under subsection (a) of this section or, a rebuttable presumption of incompetency exists under subsection (c) of this section, the court shall appoint a guardian ad litem for the juvenile. The Supreme Court of Appeals is requested to establish a training program for persons acting as guardians ad litem in juvenile competency matters."

And,

On page ten, section seven hundred thirty-two, subsection (d) by striking out all of subdivision (1), and inserting in lieu thereof a new subdivision, designated subdivision (1), to read as follows:

"(d) (1) Except as otherwise provided, the court shall make a written determination as to the juvenile's competency based on a preponderance of the evidence within 10 judicial days after completion of the hearing. The applicable burden of proof shall be as set forth in §49-4-727 of this code."

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 641**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Cooper.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 562) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2370, Provide that Public Service Districts cannot charge sewer rates for filling a swimming pool.

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

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

“ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-9b. Exemptions for Swimming Pools.

(a) A public service district shall provide the owner of a privately-owned swimming pool with an exemption from sewer charges for the water required to fill the swimming pool, if the water is not discharged into the sewer system.

(b) In order for the owner of a privately-owned swimming pool to qualify for the exemption, the owner shall provide the dimensions of the swimming pool that is being filled to the public service district within 30 days of filling the swimming pool.

(c) The public service district shall calculate the volume of the swimming pool and allow the owner of the privately-owned swimming pool to use the amount of water necessary to fill the pool without charging the owner for the corresponding sewer charges that would normally be associated for that amount of use.

(d) The public service district may inspect the swimming pool of the owner of a privately-owned swimming pool applying for the exemption to verify the dimensions of the swimming pool submitted by the owner.”

And,

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

Com. Sub. for H. B. 2370 – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-13A-9b, relating to exempting sewer charges

for privately-owned swimming pools; requiring the owner of the swimming pool to provide the dimensions of a pool that is being filled with water; requiring the public service district to calculate the volume of the pool and allow the swimming pool's owner to use that amount of water for filling the pool without being charged for the corresponding sewer charges; and allowing the public service district to inspect the swimming pool in order to verify the dimensions.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 642**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Cooper, Kimble, Queen and Young.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2370) passed.

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

On this question, the yeas and nays were taken (**Roll No. 643**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Cooper, Queen and Young.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2370) takes effect from its passage.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, to take effect from passage, of

H. B. 2500, Create an act for Statewide Uniformity for Auxiliary Container Regulations.

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

On this question, the yeas and nays were taken (**Roll No. 644**), and there were—yeas 90, nays 8, absent and not voting 2, with the nays and the absent and not voting being as follows:

Nays: Bates, Fluharty, Hansen, Paynter, Pushkin, Walker, Young and Zukoff.

Absent and Not Voting: Cooper and Queen.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2500) takes effect from its passage.

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

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

Com. Sub. for H. B. 2671, Relating to financial exploitation of elderly persons, protected persons or incapacitated adults.

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

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

“CHAPTER 55. ACTIONS, SUITS, AND ARBITRATION; JUDICIAL SALE.

ARTICLE 7J. FINANCIAL EXPLOITATION OF AN ELDERLY PERSON, PROTECTED PERSON, OR INCAPACITATED ADULT.

§55-7J-1. Action for financial exploitation of an elderly person, protected person, or incapacitated adult; definitions.

(a) Any elderly person, protected person, or incapacitated adult against whom an act of financial exploitation has been committed may bring an action under this article against any person who has committed an act of financial exploitation against him or her by filing a civil complaint for financial exploitation, a petition for a financial exploitation protective order, or both.

(b) For the purposes of this article:

(1) ‘Incapacitated adult’ has the same meaning as prescribed under §61-2-29 of this code;

(2) ‘Elderly person’ means a person who is 65 years or older;

(3) ‘Financial exploitation’ or ‘financially exploit’ means the intentional misappropriation or misuse of funds or assets or the diminishment of assets due to undue influence of an elderly person, protected person, or incapacitated adult, but may not apply to a transaction or disposition of funds or assets where the defendant made a good-faith effort to assist the elderly person, protected person, or incapacitated adult with the management of his or her money or other things of value; and

(4) ‘Protected person’ means any person who is defined as a ‘protected person’ in §44A-1-4 of this code and who is subject to the protections of §44A-1-1 *et seq.* or §44C-1-1 *et seq.* of this code.

(c) Any person who believes that an elderly person, protected person, or incapacitated adult is suffering financial exploitation due to the intentional misappropriation or misuse of funds or undue influence may bring an action for a protective order pursuant to this section in the magistrate court or circuit court in the county in West Virginia in which the elderly person, protected person, or incapacitated adult resides or the financial exploitation occurred: Provided, ~~That an action for relief brought in the magistrate court of the county of residence of the elderly person, protected person, or incapacitated adult believed to be the victim of financial exploitation~~

order granting a financial exploitation protective order to stay further diminution of the person's assets of an elderly person, protected person, or incapacitated adult shall be temporary in nature.

(d) An action for a financial exploitation protective order brought under this section is commenced by the filing of a verified petition. Temporary relief may be granted without notice to the person alleged to be engaging in financial exploitation and without that person being present; Provided, That notice shall be provided to the person alleged to be engaging in financial exploitation as soon as practicable, and that no final relief may be granted on the petition without a full, adversarial evidentiary hearing on the merits before the court.

(e) If a magistrate court grants the petition for a financial exploitation protective order and issues a temporary financial exploitation protective order, the magistrate court shall immediately transfer the matter to the circuit court of the county in which the petition was filed. Upon receipt of the notice of transfer from the magistrate court, the circuit court shall set the matter for a review hearing within 20 days. Any review hearing shall be a full, adversarial evidentiary hearing on the merits before the court. After a hearing, the circuit court may issue a permanent protective order containing any relief the circuit court determines necessary to protect the alleged victim if the court finds by a preponderance of the evidence that:

(1) The respondent has committed an act against the victim that constitutes financial exploitation; and

(2) There is reasonable cause to believe continued financial exploitation will occur unless relief is granted; or

(3) The respondent consents to entry of the permanent protective order.

(f) An order entered under this section shall state that a violation of the order may result in criminal prosecution under §61-2-29b of this code and state the penalties therefor.

§55-7J-4. Attorneys' fees; court costs and burden of proof; statute of limitations.

(a) The court may award reasonable attorneys' fees and costs to a person that brings an action under this ~~section~~ article and prevails.

(b) The standard of proof in proving that a person committed financial exploitation in an action pursuant to this article is a preponderance of the evidence.

(c) An action under this article shall be brought within two years from the date of the violation or from the date of discovery, whichever is later in time.

§55-7J-5. Action to freeze assets; burden of proof; options the court may exercise.

(a) An elderly person, protected person, or incapacitated adult may bring an action to enjoin the alleged commission of financial exploitation and may petition the court to freeze the assets of the person allegedly committing the financial exploitation in an amount equal to, but not greater than, the alleged value of lost property or assets for purposes of restoring to the victim the value of the lost property or assets. The burden of proof required to freeze the assets of a person allegedly committing financial exploitation shall be a preponderance of the evidence. Upon a finding that the elderly person, protected person, or incapacitated adult has been formally exploited, the court may:

(1) Grant injunctive relief;

(2) Order the violator to place in escrow an amount of money equivalent to the value of the misappropriated assets for distribution to the aggrieved elderly person, protected person, or incapacitated adult;

(3) Order the violator to return to the elderly person, protected person, or incapacitated person any real or personal property which was misappropriated; ~~or~~

(4) Provide for the appointment of a receiver; or

(5) Order any combination or all of the above.

(b) In ~~an~~ any action under §55-7J-1 *et seq.* of this code, the court may void or limit the application of contracts or clauses resulting from the financial exploitation.

(c) In ~~an~~ any civil action brought under this article, upon the filing of the complaint or on the appearance of any defendant, claimant, or other party, or at any later time, the court may require the plaintiff, defendant, claimant, or other party or parties to post security, or additional security, in a sum the court directs to pay all costs, expenses, and disbursements that are awarded against that party or that the party may be directed to pay by any interlocutory order, by the final judgment or after appeal.

(d) An order entered under this section shall state that a violation of the order may result in criminal prosecution under §61-2-29b of this code and state the penalties therefor.

§55-7J-6. Penalty for violation of injunction; retention of jurisdiction.

Any person who violates the terms of an order issued under ~~section five of~~ this article shall be subject to proceeding for contempt of court. The court issuing the injunction may retain jurisdiction if, in its discretion, it determines that to do so is in the best interest of the elderly person, protected person, or incapacitated adult. ~~Whenever~~ If the court determines that an injunction issued under ~~section five of this article~~ §55-7J-5 of this code has been violated, the court may award reasonable costs to the party asserting that a violation has occurred.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-29b. Financial exploitation of an elderly person, protected person, or incapacitated adult; penalties; definitions.

(a) Any person who financially exploits an elderly person, protected person, or an incapacitated adult in the amount of less than \$1,000 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in jail for not more than one year, or both fined and confined.

(b) Any person who financially exploits an elderly person, protected person, or an incapacitated adult in the amount of \$1,000 or more is guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000 and imprisoned in a state correctional facility not less than two nor more than 20 years.

(c) Any person convicted of a violation of this section shall, in addition to any other penalties at law, be subject to an order of restitution.

(d) In determining the value of the money, goods, property, or services referred to in subsection (a) of this section, it shall be permissible to cumulate amounts or values where ~~such~~ the money, goods, property, or services were fraudulently obtained as part of a common scheme or plan.

(e) Financial institutions and their employees, as defined by §31A-2A-1 of this code and as permitted by §31A-2A-4 of this code, others engaged in financially related activities, as defined by §31A-8C-1 of this code, caregivers, relatives, and other concerned persons are permitted to report suspected cases of financial exploitation to state or federal law-enforcement authorities, the county prosecuting attorney, and to the Department of Health and Human Resources, Adult Protective Services Division, or Medicaid Fraud Division, as appropriate. Public officers and employees are required to report suspected cases of financial exploitation to the appropriate entities as stated above. The requisite agencies shall investigate or cause the investigation of the allegations.

(f) When financial exploitation is suspected and to the extent permitted by federal law, financial institutions and their employees or other business entities required by federal law or regulation to file suspicious activity reports and currency transaction reports shall also be permitted to disclose suspicious activity reports or currency transaction reports to the prosecuting attorney of any county in which the transactions underlying the suspicious activity reports or currency transaction reports occurred.

(g) Any person or entity that in good faith reports a suspected case of financial exploitation pursuant to this section is immune from civil liability founded upon making that report.

(h) For the purposes of this section:

(1) 'Incapacitated adult' means a person as defined by §61-2-29 of this code;

(2) 'Elderly person' means a person who is 65 years or older;

(3) 'Financial exploitation' or 'financially exploit' means the intentional misappropriation or misuse of funds or assets of an elderly person, protected person, or incapacitated adult, but shall not apply to a transaction or disposition of funds or assets where the accused made a good-faith effort to assist the elderly person, protected person, or incapacitated adult with the management of his or her money or other things of value; and

(4) 'Protected person' means any person who is defined as a 'protected person' in §44A-1-4 of this code and who is subject to the protections of ~~chapter 44A or 44C~~ §44A-1-1 et seq. or §44C-1-1 et seq. of this code.

(i) Notwithstanding any provision of this code to the contrary, acting as guardian, conservator, trustee, or attorney for, or holding power of attorney for, an elderly person, protected person, or incapacitated adult shall not, standing alone, constitute a defense to a violation of subsection (a) of this section.

(j) Any person who willfully violates a material term of an order entered pursuant to ~~§55-7J-5~~ §55-7J-1 et seq. of this code is guilty of a misdemeanor and, upon conviction thereof, shall:

(1) For the first offense, be fined not more than \$1,000 or confined in jail not more than 90 days, or both fined and confined; and

(2) For a second or subsequent offense, be fined not more than \$2,500 or confined in jail not more than one year, or both fined and confined.”

And,

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

Com. Sub. for H. B. 2671 – “A Bill to amend and reenact §55-7J-1, §55-7J-4, §55-7J-5, and §55-7J-6 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-2-29b of said code, all relating to financial exploitation of elderly persons, protected persons or incapacitated adults; updating terms; clarifying actions by civil complaint, petition for financial exploitation protective order, or both; providing that financial exploitation protective orders are temporary; requiring notice be given to the person alleged to be engaging in financial exploitation as soon as practicable; requiring a full adversarial hearing on the merits before a court before final relief may be granted; including criminal penalties for violation or contempt of protective orders for victims of financial exploitation; and requiring notice of potential criminal penalties in all injunctive or protective orders.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 645**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Cooper.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2671) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 2694, Create the 2nd Amendment Preservation Act.

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

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

“ARTICLE 7B. THE WEST VIRGINIA SECOND AMENDMENT PRESERVATION AND ANTI-FEDERAL COMMANDEERING ACT.

§61-7B-1. Short title.

This article shall be known and may be cited as the West Virginia Second Amendment Preservation and Anti-Federal Commandeering Act.

§61-7B-2. Legislative findings and intent.

The Legislature of the State of West Virginia finds:

(1) The right to keep and bear arms is a fundamental right and freedom enshrined in the federal and state constitutions. The Second Amendment to the Constitution of the United States provides ‘A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed’. Article III, section 22 of the Constitution of the State of West Virginia provides ‘A person has the right to keep and bear arms for the defense of self, family, home and state, and for lawful hunting and recreational use.’;

(2) Article VI, Clause two of the Constitution of the United States provides ‘This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.’;

(3) The Constitution of the State of West Virginia provides ‘[t]he state of West Virginia is, and shall remain, one of the United States of America. The Constitution of the United States of America, and the laws and treaties made in pursuance thereof, shall be the supreme law of the land.’;

(4) The Constitution of the State of West Virginia reserves to the state the exclusive regulation of its own internal government and police;

(5) The Supreme Court of the United States held ‘Congress cannot compel the States to enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent that prohibition by conscripting the States’ officers directly. The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States’ officers, or those of their political subdivisions, to administer or enforce a federal regulatory program. It matters not whether policymaking is involved, and no case-by-case weighing of the burdens or benefits is necessary; such commands are fundamentally incompatible with our constitutional system of dual sovereignty’. Printz v. United States, 521 U.S. 898 (1997);

(6) There is a genuine concern among a significant number of West Virginians that the executive branch of the federal government is poised to improperly infringe on the right to keep and bear arms using executive orders issued by the President of the United States or under acts of the Congress of the United States that violate the liberties guarded by the Second Amendment to the Constitution of United States;

(7) The legislature finds that the increased use of executive orders to effectuate policy goals in lieu of legislation considered by both houses of congress is clearly not what the founders intended and subverts the process of governance;

(8) There is also genuine concern that the reliance on executive orders to effectuate policy goals rather than legislation could cause the commandeering of state and local law-enforcement personnel and resources to attempt to enforce policies regarding firearms which would violate both the United States and West Virginia Constitutions;

(9) On April 8, 2021, in remarks delivered at the White House Rose Garden in Washington, D.C., the President of the United States announced his support of new federal initiatives, some of which, like the proposal for model 'red flag' laws, are an anathema to law-abiding West Virginians, who cherish their natural rights and liberties which are guarded by both the Constitution of the United States and the West Virginia Constitution.

(10) It is the express intent of this article to defend the state from any attempt at federal commandeering of already stressed state and local law-enforcement resources for purposes that violate the constitutional rights of our citizens, while supporting the cooperation between local, state, and federal law enforcement which has proven to be a benefit to all parties; and

(11) It is the further express intent of this bill to protect the rights of the citizens of West Virginia to keep and bear arms which rights are guarded and protected by the Second Amendment to the Constitution of the United States and Article III, Section 22 of the West Virginia Constitution.

(12) It is the further intent of this article to provide for and create a means of challenging, by and through the office of the Attorney General of this state, the constitutionality of enactments by the Congress of the United States which transgress the limits of federal authority established by the Second Amendment to the Constitution of the United States.

§61-7B-3. Definitions.

For purposes of this article, the following words and phrases have the following meaning:

'Commandeering' means taking control of or seizing the assets, personnel, or operations of an agency of this state, or of a political subdivision of this state, or the employees of an agency or political subdivision of this state without the express authority for the control having been formally given by the state or political subdivision of the state.

'Federal commandeering' means commandeering by the government of the United States, or any department, bureau, agency, or commission of the assets, personnel, operations, or employees of an agency of this state, or of a political subdivision.

'Inconsistent federal firearms law, regulation, or rule' means a federal statute, regulation, or rule relating to firearms, firearms accessories, or ammunition that is inconsistent with the laws of the State of West Virginia. Inconsistent federal firearms law also means and includes any federal firearms law which the enactment, enforcement, or execution of which violates the Second Amendment of the Constitution of the United States.

'Inconsistent presidential firearms executive order or action' means an executive order or action issued by the President of the United States relating to the enforcement or execution of an inconsistent federal firearms law.

'Inconsistent with the law of West Virginia' in the context of an inconsistent federal firearms law means a federal firearms law which criminalizes the possession of a firearm, firearm accessory, or ammunition for federal purposes when the possession of that firearm, firearm

accessory or ammunition would not be, and is not, a violation of the law of the State of West Virginia.

'New inconsistent federal firearms law' means an inconsistent federal firearms law that was not in effect prior to January 1, 2021.

'New inconsistent presidential firearms executive order or action' means an inconsistent presidential firearms executive order or action which was not in effect prior to January 1, 2021.

'Red flag law' means a law under which a person may petition for a court to temporarily take away another person's right to possess a firearm which it is otherwise lawful under the law of West Virginia for the respondent to possess.

§61-7B-4. Federal commandeering prohibited.

No agency of this state, political subdivision of this state, or employee of an agency, or political subdivision of this state, acting in his or her official capacity, may be commandeered by the United States government under an executive order or action of the President of the United States or under an act of the Congress of the United States. Federal commandeering of West Virginia law-enforcement for purposes of enforcement of federal firearms laws is prohibited.

§61-7B-5. Prohibitions on police activity.

(a) No police agency, department, or officer of this state may participate in the execution of a federal search warrant when the only property sought to be taken and seized under the warrant is firearms, firearms accessories, or ammunition which is lawful for the person, whose premises are to be searched, to possess under the laws of this state.

(b) No police department, agency or officer of this state may participate in the execution of a federal arrest warrant of a citizen of this state or a person subject to the protections of the state constitution and the laws of West Virginia when the federal arrest warrant charges no crime other than the crime of the possession of firearms, firearm accessories, or ammunition which is lawful for the person who is to be arrested under the warrant to possess under the laws of this state.

(c) No police department, agency, or officer of the state may enforce an order under a red flag law against a citizen of this state or a person subject to the protections of the laws of this state when the person against whom the order is directed has the lawful right under the laws of this state to possess firearms.

(d) No police department, agency, or officer of this state engaged in a traffic stop or in response to a noise complaint may arrest or detain a person who is subject to the protection of the Constitution and laws of this state for the violation of a new inconsistent federal firearms law or inconsistent presidential executive order or action.

§61-7B-6. Prohibition on court action.

No court of this state has authority or jurisdiction to issue an order depriving a citizen of this state of his or her right to possess firearms, firearms accessories, or ammunition under any red flag law.

§61-7B-7. Permitted activities.

Notwithstanding the limitations in sections four and five of this article, this article does not prevent any West Virginia law-enforcement agency from doing any of the following that does not violate any policy of the law-enforcement agency or any local law or policy of the jurisdiction in which the agency is:

(1) Investigating, enforcing, or detaining upon reasonable suspicion of, or arresting for, a violation of law that is detected during law-enforcement activity authorized by law;

(2) Responding to a request from federal law-enforcement authorities for information about a specific person's criminal history, including previous criminal arrests, convictions, address, or similar criminal history information, or where otherwise permitted by state law; or

(3) Conducting enforcement or investigative activities or duties associated with a joint law-enforcement task force, including the sharing of confidential information with other law-enforcement agencies for purposes of task force investigations, as long as the following conditions are met:

(A) The primary purpose of the joint law-enforcement task force is something other than the enforcement of inconsistent federal firearms laws; or

(B) The enforcement or investigative duties are primarily related to a violation of state or federal law unrelated to enforcement of inconsistent federal firearms laws.

§61-7B-8. Attorney General authorized and directed to challenge unconstitutional federal actions related to firearms.

Whenever any federal statute, presidential executive order, agency order, federal law, rule, or regulation is determined by the Attorney General of this state to infringe upon the right to keep and bear arms affirmed under the Second Amendment to the Constitution of the United States, the Attorney General shall commence and prosecute legal challenges to the federal action. In exercising and discharging the duties required by this section, the Attorney General shall pursue all available appeals in the courts of the United States, and he or she may expend the public moneys necessary for these purposes. The Attorney General may solicit the participation in these efforts of attorneys general of the other states of the United States and join actions brought by attorneys general of other states or other persons seeking to protect such rights.

§61-7B-9. Attorney General to publish model policies.

On or before January 1, 2022, and as often thereafter as he or she shall consider necessary, the Attorney General shall publish policies for police departments and agencies of this state, and for the police departments and agencies of the political subdivisions of this state, providing guidance on resistance to federal commandeering and lawful measures which can be taken by the law-enforcement agencies and departments of this state and its political subdivisions to protect the citizens of this state from the consequences of any attempts or efforts at federal commandeering.

§61-7B-10. Law-enforcement immunity.

(a) No head of a law-enforcement agency or law-enforcement officer under his or her command may be required, at the direction of an agency of the federal government, to act in a

law-enforcement capacity to enforce a federal statute, executive order, agency order, rule or regulation determined by the Attorney General to infringe upon rights granted by the Second Amendment of the Constitution of the United States.

(b) No head of a law-enforcement agency or law-enforcement officer may be held liable civilly or criminally, nor shall his or her employment be terminated, nor shall he or she be decertified as a law-enforcement officer, for refusing to enforce a federal statute, executive order, agency order, rule, or regulation determined by the Attorney General of West Virginia to infringe upon the right to keep and bear arms under the Second Amendment to the Constitution of the United States while the constitutionality of the statute, executive order, agency order, rule, or regulation is being challenged judicially pursuant to §61-7B-8 of this code, nor thereafter if the challenge is successful.

(c) Any head of a law-enforcement agency or law-enforcement officer under his or her command who is charged criminally or civilly, or who has had his or her employment terminated, or who has had his or her certification as a law enforcement officer suspended or revoked, for failing or refusing to enforce a federal statute executive order, agency order, rule, or regulation referenced in subsection (a) of this section is entitled to reimbursement of reasonable attorney's fees related to his or her defense."

And,

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

Com. Sub. for H. B. 2694 – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §61-7B-1, §61-7B-2, §61-7B-3, §61-7B-4, §61-7B-5, §61-7B-6, §61-7B-7, §61-7B-8, and §61-7B-9 all relating to creating the ‘West Virginia Second Amendment Preservation Act and Anti-Federal Commandeering Act’; providing a short title; stating legislative findings and intent; defining terms; prohibiting Federal commandeering of any agency of the state or political subdivisions of the state, including West Virginia law-enforcement for purposes of enforcement of federal firearms laws or presidential executive orders; establishing prohibitions on police activities; identifying permitted law-enforcement activities; authorizing the Attorney General to challenge unconstitutional federal actions relating to firearms; requiring the Attorney General to publish model policies; and establishing immunity for law-enforcement.”

With the further title amendment, sponsored by Delegate Capito, amending the title of the bill to read as follows:

Com. Sub. for H. B. 2694 – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §61-7B-1, §61-7B-2, §61-7B-3, §61-7B-4, §61-7B-5, §61-7B-6, §61-7B-7, §61-7B-8, §61-7B-9, and §61-7B-10 all relating to creating the “West Virginia Second Amendment Preservation Act and Anti-Federal Commandeering Act”; providing a short title; stating legislative findings and intent; defining terms; prohibiting Federal commandeering of any agency of the state or political subdivisions of the state, including West Virginia law-enforcement for purposes of enforcement of federal firearms laws or presidential executive orders; establishing prohibitions on police activities; establishing prohibitions on court action; identifying permitted law-enforcement activities; authorizing the Attorney General to challenge unconstitutional federal actions relating to firearms; requiring the Attorney General to publish model policies; and establishing immunity for law-enforcement.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 646**), and there were—yeas 92, nays 7, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Doyle, Fleischauer, Hansen, Pushkin, Rowe, Walker and Williams.

Absent and Not Voting: Cooper.

So, a majority of the members elected having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2694) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 2891, Creating minimum statutory standards for law-enforcement officers.

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

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

“ARTICLE 29. LAW ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-1. Definitions.

For the purposes of this article, unless a different meaning clearly appears in the context:

(1) ‘Approved law-enforcement training academy’ means any training facility which is approved and authorized to conduct law-enforcement training as provided in this article;

(2) ‘Chief executive’ means the Superintendent of the State Police; the chief Natural Resources police officer of the Division of Natural Resources; the sheriff of any West Virginia county; any administrative deputy appointed by the chief Natural Resources police officer of the Division of Natural Resources; or the chief of any West Virginia municipal law-enforcement agency;

(3) ‘County’ means the 55 major political subdivisions of the state;

(4) ‘Exempt rank’ means any noncommissioned or commissioned rank of sergeant or above;

(5) ‘Governor’s Committee on Crime, Delinquency, and Correction’ or ‘Governor’s committee’ means the Governor’s Committee on Crime, Delinquency, and Correction established as a state planning agency pursuant to §15-9-1 of this code;

(6) 'Law-enforcement officer' means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests, and enforce the laws of the state or any county or municipality thereof, other than parking ordinances, and includes those persons employed as campus police officers at state institutions of higher education in accordance with the provisions of §18B-4-5 of this code, persons employed as hospital police officers in accordance with the provisions of §16-5B-19 of this code, and persons employed by the Public Service Commission as motor carrier inspectors and weight-enforcement officers charged with enforcing commercial motor vehicle safety and weight restriction laws, although those institutions and agencies may not be considered law-enforcement agencies. The term also includes those persons employed as county litter control officers charged with enforcing litter laws: *Provided*, That those persons have been trained and certified as law-enforcement officers and that certification is currently active. The term also includes those persons employed as rangers by resort area districts in accordance with the provisions of §7-25-23 of this code, although no resort area district may be considered a law-enforcement agency: *Provided, however*, That the subject rangers shall pay the tuition and costs of training. As used in this article, the term 'law-enforcement officer' does not apply to the chief executive of any West Virginia law-enforcement agency or any watchman or special Natural Resources police officer;

(7) 'Law-enforcement official' means the duly appointed chief administrator of a designated law-enforcement agency or a duly authorized designee;

(8) 'Municipality' means any incorporated town or city whose boundaries lie within the geographic boundaries of the state;

(9) 'Pre-certified law-enforcement officer' means a person employed or offered employment by a West Virginia law-enforcement agency prior to his or her initial certification by the subcommittee. This term does not include a person employed or offered employment by a West Virginia law-enforcement agency whose certification status is inactive, suspended, or has been revoked.

(10) 'Subcommittee' or 'law-enforcement professional standards subcommittee' means the subcommittee of the Governor's Committee on Crime, Delinquency, and Correction created by §30-29-2 of this code; and

~~(40)~~ (11) 'West Virginia law-enforcement agency' means any duly authorized state, county, or municipal organization employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality thereof: *Provided*, That neither the Public Service Commission nor any state institution of higher education nor any hospital nor any resort area district is a law-enforcement agency.

§30-29-14. Minimum standards for hiring of pre-certified law-enforcement officers; disqualification for entry into basic law-enforcement academy or from certification; direct supervision of uncertified officers; maintenance and transfer of records; applicability; limitation on disclosure of records.

(a) Notwithstanding other provisions of law to the contrary, a West Virginia law-enforcement agency may not employ or offer to employ a pre-certified law-enforcement officer until it makes written findings documenting that the person meets the minimum standards contained in this subsection, or adopts a previous employing West Virginia law-enforcement agency's written findings, which shall be made available upon request to the subcommittee: *Provided*, That the hiring West Virginia law-enforcement agency may set higher minimum standards, or the

subcommittee may promulgate legislative rules which establish higher minimum standards or interpret the minimum standards contained this section, as the agency or the subcommittee considers necessary for the employment of law-enforcement officers: *Provided, however,* That nothing in this section shall be construed to limit, abrogate, or modify any existing rule promulgated by the subcommittee. The minimum standards apply only to the hiring of a pre-certified law-enforcement officer and consist of the following:

(1) The person is 18 years of age or older;

(2) The person is a high school graduate or equivalent;

(3) The person has submitted to a psychological assessment and has been recommended for hire as a result;

(4) The person has submitted to and passed a polygraph examination;

(5) The person has not been dishonorably discharged from any branch of the armed forces of the United States or the National Guard;

(6) The person has not been convicted in any civilian or military court of a crime punishable by imprisonment for a term exceeding one year, a crime involving moral turpitude, or a crime of domestic violence, or who has been administratively pardoned for any such crime;

(7) The person has not admitted to committing any criminal acts as set forth in subdivision (6) of this subsection which did not result in a conviction;

(8) The person is not prohibited by state or federal law from shipping, transporting, receiving, or possessing firearms or ammunition;

(9) The person is not addicted to narcotics or other controlled substances; and

(10) The person has consented to a thorough investigation by the hiring West Virginia law-enforcement agency into the person's background and moral character, including, but not limited to, a nationwide criminal background check consisting of inquiries of the National Instant Criminal Background Check System, the West Virginia criminal history record responses and the National Interstate Identification index, the report of which shall be made a part of the written findings required by this section.

(b) Upon review of the written findings of the hiring West Virginia law-enforcement agency and the background investigation, the subcommittee may deny the certification of a law-enforcement officer or, if applicable, deny admission to a basic entry-level training program to a person failing to meet the minimum standards set forth in this section in the discretion of the subcommittee.

(c) A pre-certified law-enforcement officer who is employed by a West Virginia law-enforcement agency must be directly supervised by a certified law-enforcement officer at all times when the pre-certified law-enforcement officer is engaged in law-enforcement duties. For purposes of this section, 'directly supervised' means that the certified law-enforcement officer is physically present with, maintains a close visual and verbal contact with, and provides adequate direction to, the pre-certified law-enforcement officer while he or she is engaged in law-enforcement duties.

(d) The initial hiring West Virginia law-enforcement agency shall maintain the written findings and background investigation required herein, for the duration of the person's term of employment, at a minimum. Each time the person transfers to a different West Virginia law-enforcement agency, copies of the written findings and background investigation shall be transmitted by the West Virginia law-enforcement agency which is the person's most recent employer to the West Virginia law-enforcement agency which is the person's new employer: Provided, That the provisions of this subsection do not apply to the West Virginia State Police.

(e) The provisions of this section apply to any person hired by a West Virginia law-enforcement agency as a pre-certified law-enforcement officer after the effective date of this section.

(f) Written findings and information obtained in the course of any investigation authorized by this section are not public records and are not subject to disclosure under §29B-1-1 et seq. of this code."

And,

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

Com. Sub. for H. B. 2891 – “A Bill to amend and reenact §30-29-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-29-14, all relating to minimum standards for hiring of pre-certified law-enforcement officers; adding ‘pre-certified law-enforcement officer’ as a defined term; prohibiting West Virginia law-enforcement agencies from employing or offering to employ a pre-certified law-enforcement officer without certain findings; requiring a hiring West Virginia law-enforcement agency to make written findings or adopt the written findings of a previous employing West Virginia law-enforcement agency documenting that the pre-certified law-enforcement officer meets certain minimum standards; requiring such written findings to be made available to the Law-Enforcement Professional Standards Subcommittee of the Governor’s Committee on Crime, Delinquency, and Correction; providing ten minimum standards for hiring of a pre-certified law-enforcement officer; requiring report from background investigation to be made part of written findings; authorizing Law-Enforcement Professional Standards Subcommittee to deny certification or deny admission to a basic entry-level training program to a person failing to meet minimum standards; requiring direct supervision of a pre-certified law-enforcement officer by a certified law-enforcement officer while engaged in law-enforcement duties; providing meaning of ‘directly supervised’; providing for recordkeeping; providing for transfer of records between employing West Virginia law-enforcement agencies; providing exception for West Virginia State Police; specifying application of requirements pertaining to minimum standards for hiring of pre-certified law-enforcement officers; and providing exception to disclosure under West Virginia Freedom of Information Act for certain records.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 647**), and there were—yeas 95, nays 4, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Foster, Hanna, Kimble and McGeehan.

Absent and Not Voting: Cooper.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2891) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 2982, Relating to the Second Chances at Life Act of 2021.

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

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

“ARTICLE 2I. WOMEN’S RIGHT TO KNOW ACT.

§16-2I-1. Definitions.

For the purposes of this article, the words or phrases defined in this section have these meanings ascribed to them.

~~(a) ‘Abortion’ means the use or prescription of any instrument, medicine, drug or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth or to remove a dead embryo or fetus.~~

means the same as that term is defined in §16-2F-2 of this code.

~~(b) ‘Attempt to perform an abortion’ means an act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance of an abortion in West Virginia in violation of this article.~~ means the same as that term is defined in §16-2M-2 of this code.

‘Chemical abortion’ means the use or prescription of an abortion-inducing drug dispensed with the intent to cause an abortion.

‘Licensed medical professional’ means the same as that term is defined in §16-2P-1 of this code.

~~(c) ‘Medical emergency’ means any condition which, on the basis of a physician’s good faith clinical judgment in the reasonable medical judgment of the patient’s physician, so complicates the medical condition of a pregnant female as to necessitate the immediate termination of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible physical impairment of a major bodily function., not including psychological or emotional conditions. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the female will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.~~

~~(d) 'Physician' means any medical or osteopathic doctor licensed to practice medicine in this state.~~ means the same as that term is defined in §16-2M-2 of this code.

~~(e) 'Probable gestational age of the embryo or fetus' means what, in the judgment of the physician, will with reasonable probability be the gestational age of the embryo or fetus at the time the abortion is planned to be performed.~~

'Reasonable medical judgement' means the same as that term is defined in §16-2M-2 of this code.

~~(f) 'Stable Internet website' means a website that, to the extent reasonably practicable, is safeguarded from having its content altered other than by the Department of Health and Human Resources.~~

§16-2I-2. Informed consent.

~~No~~ An abortion may not be performed in this state except with the voluntary and informed consent of the female upon whom the abortion is to be performed. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if, and only if:

(a) The female is told the following, by telephone or in person, by the physician or the licensed ~~health care~~ medical professional to whom the responsibility has been delegated by the physician who is to perform the abortion at least 24 hours before the abortion:

(1) The particular medical risks associated with the particular abortion procedure to be employed, including, when medically accurate, the risks of infection, hemorrhage, danger to subsequent pregnancies, and infertility;

(2) The probable gestational age of the embryo or fetus at the time the abortion is to be performed; and

(3) The medical risks associated with carrying her child to term; and

(4) If a chemical abortion involving the two-drug process of mifepristone is initiated and then a prostaglandin such as misoprostol is planned to be used at a later time, the female shall be informed that:

(A) Some suggest that it may be possible to counteract the intended effects of a mifepristone chemical abortion by taking progesterone if the female changes her mind, before taking the second drug, but this process has not been approved by the Food and Drug Administration.

(B) After the first drug involved in the two-drug process is dispensed in a mifepristone chemical abortion, the physician or agent of the physician shall provide written medical discharge instructions to the pregnant female which shall include the statement:

'If you change your mind and decide to try to counteract the intended effects of a mifepristone chemical abortion, if the second pill has not been taken, please consult with your physician.'

(i) You might experience a complete abortion without ever taking misoprostol;

(ii) You might experience a missed abortion, which means the fetus is no longer viable, but the fetus did not leave your body; or

(iii) It is possible that your pregnancy may continue; and

(iv) You should consult with your physician.'

(C) The female shall certify, as part of the informed consent process for any medical procedure, that she has been informed about the above possibilities regarding a chemical abortion.

(D) Notwithstanding any law to the contrary, a physician acting in conformity with the informed consent provisions of this section relating to the possibility of counteracting the intended effects of a chemical abortion, or a physician prescribing a non-Food and Drug Administration approved drug therapy to counteract a chemical abortion is not liable for any loss, damage, physical injury, or death arising from any information provided by the physician related to counteracting the intended effects of a chemical abortion or arising from prescribing a non-Food and Drug Administration approved drug therapy to counteract a chemical abortion.

The information required by this subsection may be provided by telephone without conducting a physical examination or tests of the patient, in which case the information required to be provided may be based on facts supplied by the female to the physician or other licensed health care professional to whom the responsibility has been delegated by the physician and whatever other relevant information is reasonably available to the physician or other licensed health care professional to whom the responsibility has been delegated by the physician. It may not be provided by a tape recording, but must be provided during a consultation in which the physician or licensed health care professional to whom the responsibility has been delegated by the physician is able to ask questions of the female and the female is able to ask questions of the physician or the licensed health care professional to whom the responsibility has been delegated by the physician.

If a physical examination, tests or the availability of other information to the physician or other licensed health care professional to whom the responsibility has been delegated by the physician subsequently indicate, in the medical judgment of the physician or the licensed health care professional to whom the responsibility has been delegated by the physician, a revision of the information previously supplied to the patient, that revised information may be communicated to the patient at any time before the performance of the abortion procedure.

Nothing in this section may be construed to preclude provision of required information in a language understood by the patient through a translator.

(b) The female is informed, by telephone or in person, by the physician who is to perform the abortion, or by an agent of the physician, at least 24 hours before the abortion procedure:

(1) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care through governmental or private entities;

(2) That the father, if his identity can be determined, is liable to assist in the support of her child based upon his ability to pay even in instances in which the father has offered to pay for the abortion;

(3) That she has the right to review the printed materials described in §16-21-3 of this code, that these materials are available on a state-sponsored website and the website address; and

(4) That the female will be presented with a form which she will be required to execute prior to the abortion procedure that is available pursuant to §16-21-3 of this code, and that the form to be presented will inform her of the opportunity to view the ultrasound image and her right to view or decline to view the ultrasound image, if an ultrasound is performed.

The physician or an agent of the physician shall orally inform the female that the materials have been provided by the State of West Virginia and that they describe the embryo or fetus and list agencies and entities which offer alternatives to abortion.

If the female chooses to view the materials other than on the website, then they shall either be provided to her at least 24 hours before the abortion or mailed to her at least 72 hours before the abortion by first class mail in an unmarked envelope.

The information required by this subsection may be provided by a tape recording if provision is made to record or otherwise register specifically whether the female does or does not choose to have the printed materials given or mailed to her.

(c) The form required pursuant to subdivision (b)(4) of this section shall include the following information:

(1) It is a female's decision whether or not to undergo any ultrasound imaging procedure in consultation with her health care provider;

(2) If an ultrasound is performed in conjunction with the performance of an abortion procedure, the female has the right to view or to decline to view the image; and

(3) That the ~~woman~~ female has been previously informed of her opportunity to view the ultrasound image and her right to view or decline to view the ultrasound image. The ~~woman~~ female shall certify her choice on this form prior to the abortion procedure being performed.

The female shall certify in writing, before the abortion, that the information described in subsections (a) and (b) of this section has been provided to her and that she has been informed of her opportunity to review the information referred to in subdivision (b)(3) of this section.

Before performing the abortion procedure, the physician who is to perform the abortion or the physician's agent shall obtain a copy of the executed certification required by the provisions of subsections (b) and (c) of this section.

§16-21-3. Printed information.

(a) Within 90 days of the effective date of this article, the Secretary of the Department of Health and Human Resources shall cause to be published, in English and in each language which is the primary language of ~~2%~~ two percent or more of the state's population, as determined by the most recent decennial census performed by the U.S. census bureau, and shall cause to be available on the website provided for in ~~section four of this article~~ §16-21-4 of this code the following printed materials in such a way as to ensure that the information is easily comprehensible:

(1) Geographically indexed materials designed to inform the reader of public and private agencies and services available to assist a female through pregnancy, upon childbirth and while the child is dependent, including adoption agencies, which shall include a comprehensive list of the agencies available, a description of the services they offer and a description of the manner, including telephone numbers. At the option of the Secretary of Health and Human Resources, a 24-hour-a-day telephone number may be established with the number being published in such a way as to maximize public awareness of its existence which may be called to obtain a list and description of agencies in the locality of the caller and of the services they offer; ~~and~~

(2) Materials designed to inform the female of the probable anatomical and physiological characteristics of the embryo or fetus at two-week gestational increments from the time when a female can be known to be pregnant to full term, including any relevant information on the possibility of the embryo or fetus's survival and pictures or drawings representing the development of an embryo or fetus at two-week gestational increments: *Provided*, That any such pictures or drawings must contain the dimensions of the embryo or fetus and must be realistic and appropriate for the stage of pregnancy depicted. The materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about the embryo or fetus at the various gestational ages. The material shall also contain objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each procedure, the possible detrimental psychological effects of abortion, and the medical risks commonly associated with carrying a child to term; and

(3) Materials designed to inform the female of the range of possibilities regarding the effects and risks of a mifepristone chemical abortion or an attempt to counteract it and information on and assistance with the resources that may be available.

(b) The materials referred to in subsection (a) of this section shall be printed in a typeface large enough to be clearly legible. The website provided for in section four of this article shall be maintained at a minimum resolution of seventy dots per inch. All pictures appearing on the website shall be a minimum of 200 x 300 pixels. All letters on the website shall be a minimum of 11-point font. All information and pictures shall be accessible with an industry standard browser requiring no additional plug-ins.

(c) The materials required under this section shall be available at no cost from the Department of Health and Human Resources upon request and in appropriate numbers to any person, facility, or hospital.”

And,

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

Com Sub. for H. B. 2982 – “A Bill to amend and reenact §16-2I-1, §16-2I-2, and §16-2I-3 of the Code of West Virginia, 1931, as amended, all relating to the informed consent; requiring that information about the process of chemical abortion be provided to a woman when a chemical abortion process is initiated and second drug is contemplated to be used at a later time; defining terms; specifying that the female be informed of the range of possibilities regarding the effects of a mifepristone chemical abortion; specifying that the female shall certify, as part of informed consent, that she has been informed about the possibilities regarding a chemical abortion; providing for liability protection for a physician acting in conformity with the informed consent provisions of this section; providing liability protection to a physician prescribing a non-Food and

Drug Administration approved drug therapy to counteract a chemical abortion; and dictating minimum standards for printed materials.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 648**), and there were—yeas 84, nays 15, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Barach, Diserio, Doyle, Fleischauer, Fluharty, Garcia, Hansen, Hornbuckle, Pethtel, Pushkin, Rowe, Thompson, Walker, Williams and Young.

Absent and Not Voting: Cooper.

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

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

A message from the Senate, by

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

H. B. 2997, Adding a defense to the civil penalty imposed for a result of delivery of fuel to a state other than the destination state printed on the shipping document for fuel.

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

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

“§11-14C-34. Shipping documents; transportation of motor fuel by barge, watercraft, railroad tank car or transport truck; civil penalty.

(a) A person shall not transport in this state any motor fuel by barge, watercraft, railroad tank car or transport vehicle motor fuel loaded at a terminal rack unless the person has a machine-generated shipping document, including applicable multiple copies thereof, for the motor fuel that complies with this section. *Provided*, That in the event a terminal operator or operator of a bulk plant does not have installed on January 1, 2004, an automated machine that will print machine-generated shipping documents, the commissioner may authorize the terminal operator or operator of a bulk plant to issue manually prepared shipping documents: *Provided, however*, That in the event of an extraordinary unforeseen circumstance, including an act of God, that temporarily interferes with the ability to issue an automated machine-generated shipping document, a manually prepared shipping document that contains all of the information required by subsection (b) of this section shall be substituted for the machine-generated shipping document. A terminal operator or operator of a bulk plant shall give a shipping document to the person who operates the barge, watercraft, railroad tank car or transport vehicle into means of conveyance into which motor fuel is loaded at the terminal rack or bulk plant rack.

(b) The shipping document issued by the terminal operator ~~or operator of a bulk plant~~ shall be machine-printed and shall contain the following information and any other information required by the commissioner:

(1) Identification, including address, of the terminal or bulk plant from which the motor fuel was received;

(2) Date the motor fuel was loaded;

(3) Invoiced gallons loaded;

(4) Destination state of the motor fuel as represented by the purchaser of the motor fuel or the purchaser's agent;

(5) In the case of aviation jet fuel, the shipping document shall be marked with the phrase 'Aviation Jet Fuel, Not for On-road Use' or a similar phrase;

(6) In the case of dyed diesel fuel, the shipping document shall be marked with the phrase 'Dyed Diesel Fuel, Nontaxable Use Only, Penalty for Taxable Use' or a similar phrase; and

(7) If the document is issued by a terminal operator, the invoiced gallons loaded and a statement indicating the name of the supplier that is responsible for the tax due on the motor fuel.

(c) A terminal operator or bulk plant operator may rely on the representation made by the purchaser of motor fuel or the purchaser's agent concerning the destination state of the motor fuel. In the event that either the terminal operator, ~~bulk plant operator~~, purchaser or transporter determines prior to the shipment of motor fuel leaving the terminal ~~or bulk plant~~ that the destination state indicated on the shipping document is incorrect, the diversion procedure provided in subdivision (3), subsection (d) of this section shall be used to obtain authorization to deliver the motor fuel to a different state. A purchaser is liable for any tax due as a result of the purchaser's diversion of motor fuel from the represented destination state.

(d) A person to whom a shipping document was issued shall:

(1) Carry the shipping document in the means of conveyance for which it was issued when transporting the motor fuel described;

(2) Show the shipping document upon request to any law-enforcement officer, representative of the commissioner and any other authorized individual when transporting the motor fuel described;

(3) Deliver motor fuel to the destination state printed on the shipping document unless the person:

(A) ~~Notifies the commissioner before transporting the motor fuel into a state other than the printed destination state~~ commissioner's designated entity by the next business day that the person has received instructions after the shipping document was issued to deliver the motor fuel to a different destination state;

(B) Receives from the ~~commissioner~~ commissioner's designated entity, a confirmation number authorizing the diversion; ~~and~~

(C) ~~Writes on Records with~~ the shipping document the change in destination state and the confirmation number for the diversion; and

(4) ~~Gives a copy of the shipping document~~ Provides the confirmation number for the diversion to the person to whom the motor fuel is delivered.

(e) The person to whom motor fuel is delivered by ~~barge, watercraft, railroad tank car or transport vehicle~~ any means of conveyance shall not accept delivery of the motor fuel if the destination state shown on the shipping document for the motor fuel is a state other than West Virginia: *Provided*, That delivery may be accepted if the destination state is other than West Virginia if the document contains a diversion number authorized by the ~~commissioner~~ commissioner's designated entity. The person to whom the motor fuel is delivered shall examine the shipping document to determine that West Virginia is the destination state and shall retain a copy of the shipping document: (1) At the place of business where the motor fuel was delivered for ninety days following the date of delivery; and (2) at the place or another place for at least three years following the date of delivery. The person who accepts delivery of motor fuel in violation of this subsection and any person liable for the tax on the motor fuel pursuant to section five of this article is jointly and severally liable for any tax due on the motor fuel.

(f) Any person who transports motor fuel ~~in a barge, watercraft, railroad tank car or transport vehicle~~ by any means of conveyance without a shipping document or with a false or an incomplete shipping document or delivers motor fuel to a destination state other than the destination state shown on the shipping document, is subject to the following civil penalty.

(1) If the motor fuel is transported in a barge, watercraft, or transport vehicle, the civil penalty shall be payable by the person in whose name the means of conveyance is registered.

(2) If the motor fuel is transported in a railroad tank car, the civil penalty shall be payable by the person responsible for shipping the motor fuel in the railroad tank car.

(3) The amount of the civil penalty for a first violation is \$5,000.

(4) The amount of the civil penalty for each subsequent violation, after notice to correct the shipping document, is \$10,000.

(5) Civil penalties prescribed under this section are assessed, collected, and paid in the same manner as the motor fuel excise tax imposed by this article.

(g) Penalty Defense. - Compliance with the conditions set out in this subsection is a defense to a civil penalty imposed under subsection (f) of this section, resulting from the delivery of motor fuel to a state other than the destination state printed on the shipping document for the motor fuel. The commissioner shall waive a penalty imposed against the person who transported the motor fuel under that subsection, if that person establishes a defense under this subsection. The conditions for the defense are:

(1) The person who transported the motor fuel notified the commissioner's designated entity of the diversion and received a confirmation number for the diversion before the imposition of the penalty; and

(2) Unless the person is a motor fuel transporter, the tax was timely paid on the diverted motor fuel."

And,

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

H. B. 2997 – “A Bill to amend and reenact §11-14C-34 of the Code of West Virginia, as amended, relating to transportation of motor fuel; removing requirement that bulk plants issue shipping documents; requiring shipping documents for motor fuel loaded at a terminal rack; requiring notices to and from the commissioner’s designated agency related to the diversion of motor fuel; and adding a defense to the civil penalty imposed for delivery of motor fuel to a state other than the destination state that is printed on the shipping document for the motor fuel.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 649**), and there were—yeas 96, nays 2, absent and not voting 2, with the nays and the absent and not voting being as follows:

Nays: Fluharty and Thompson.

Absent and Not Voting: Cooper and Householder.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2997) passed.

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

On this question, the yeas and nays were taken (**Roll No. 650**), and there were—yeas 95, nays 2, absent and not voting 3, with the nays and the absent and not voting being as follows:

Nays: Fluharty and Thompson.

Absent and Not Voting: Cooper, Householder and Steele.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2997) takes effect from its passage.

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

A message from the Senate, by

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

Com. Sub. for S. B. 485, Relating to use or presentation of firearm during commission of felony.

In the absence of objection, the bill was moved to the foot of Messages from the Senate.

A message from the Senate, by

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

Com. Sub. for S. B. 636, Requiring certain history and civics courses be taught in schools.

Delegate Summers moved that the House of Delegates recede.

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

The yeas and nays having been ordered, they were taken (**Roll No. 651**), and there were—yeas 58, nays 37, absent and not voting 5, with the nays and the absent and not voting being as follows:

Nays: Anderson, Barach, Bates, Boggs, Brown, Dean, Diserio, Doyle, Evans, Fleischauer, Fluharty, Garcia, Griffith, Hamrick, Hansen, Hornbuckle, J. Kelly, Linville, Lovejoy, Martin, Miller, L. Pack, Paynter, Pethtel, Pritt, Pushkin, Reed, Rohrbach, Rowe, Skaff, Thompson, Walker, G. Ward, Williams, Young, Zatezalo and Zukoff.

Absent and Not Voting: Barrett, Capito, Conley, Cooper and Riley.

So, a majority of the members present having voted in the affirmative, the motion to recede prevailed the House receded from its position.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 652**), and there were—yeas 64, nays 33, absent and not voting 3, with the nays and the absent and not voting being as follows:

Nays: Barach, Bates, Boggs, Booth, Brown, Burkhammer, Diserio, Doyle, Evans, Fleischauer, Fluharty, Garcia, Griffith, Hamrick, Hanna, Hansen, Higginbotham, Hornbuckle, Lovejoy, Miller, L. Pack, Pethtel, Pushkin, Rowe, Skaff, Statler, Thompson, Walker, Wamsley, Williams, Young, Zatezalo and Zukoff.

Absent and Not Voting: Capito, Cooper and Foster.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 636) passed.

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

A message from the Senate, by

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

S. J. R. 4, Incorporation of Churches or Religious Denominations Amendment.

On motion of Delegate Kessinger, the House receded from its amendment of the resolution.

On the adoption of the resolution, the yeas and nays were taken (**Roll No. 653**), and there were—yeas 95, nays 4, absent and not voting 1, with the yeas, nays, and absent and not voting being as follows:

Yeas: Anderson, Barach, Barnhart, Barrett, Bates, Boggs, Booth, Bridges, Brown, Bruce, Burkhammer, Capito, Clark, Conley, Criss, Dean, Diserio, Ellington, Espinosa, Evans, Fast, Ferrell, Fluharty, Forsht, Foster, Garcia, Gearheart, Graves, Hamrick, Hanna, Hansen, Hardy, Haynes, Higginbotham, Holstein, Hornbuckle, Horst, Hott, Householder, Howell, D. Jeffries, J. Jeffries, Jennings, Keaton, D. Kelly, J. Kelly, Kessinger, Kimble, Kimes, Linville, Longanacre, Lovejoy, Mallow, Mandt, Martin, Maynard, Mazzocchi, McGeehan, Miller, Nestor, J. Pack, L.

Pack, Paynter, Pethel, Phillips, Pinson, Pritt, Queen, Reed, Reynolds, Riley, Rohrbach, Rowan, Rowe, Skaff, Smith, Statler, Steele, Storch, Summers, Sypolt, Thompson, Toney, Tully, Walker, Wamsley, B. Ward, G. Ward, Westfall, Williams, Worrell, Young, Zatezalo, Zukoff and Hanshaw (Mr. Speaker).

Nays: Doyle, Fleischauer, Griffith and Pushkin.

Absent and Not Voting: Cooper.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the resolution (S. J. R. 4) adopted, as follows:

S. J. R. 4 – “Proposing an amendment to the Constitution of the State of West Virginia, amending section 47, article VI thereof, relating to authorizing the incorporation of religious denominations; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.”

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

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in the year 2022, which proposed amendment is that section 47, article VI thereof, be amended to read as follows:

Article VI. The Legislature.

§47. Incorporation of religious denominations permitted.

Provisions may be made by general laws for securing the title to church property, and for the sale and transfer thereof, so that it shall be held, used, or transferred for the purposes of such church or religious denomination. Provisions may also be made by general laws for the incorporation of churches or religious denominations.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the Code of West Virginia, 1931, as amended, such amendment is hereby numbered “Amendment No. 1” and designated as the “Incorporation of Churches or Religious Denominations Amendment” and the purpose of the proposed amendment is summarized as follows: “To authorize the incorporation of churches or religious denominations.”

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

A message from the Senate, by

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

Com. Sub. for H. B. 2195, Relating to motor vehicle crash reports.

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

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

“ARTICLE 4. ACCIDENTS.

§17C-4-7. Reports of crashes.

(a) Every law-enforcement officer who, in the regular course of duty, investigates a motor vehicle crash occurring on the public streets or highways of this state resulting in bodily injury to, or death of, any person or total property damage to an apparent extent of \$1,000 or more shall, either at the time of and at the scene of the crash or thereafter by interviewing participants or witnesses, within 24 hours after completing such investigation, prepare a report of such crash either electronically or in writing.

(b) Within 24 hours of a motor vehicle crash, the investigating law-enforcement officer shall provide the owner, operator, and insurance information upon request for all the involved parties to each of the other involved parties, and to each party’s respective insurance agents. This information shall be made available, at no cost, whether or not the accident report has been completed.

~~(b)~~ (c) The investigating law-enforcement officer shall submit the report electronically or in writing within 24 hours after completing the investigation to the Division of Highways in the form and manner approved by the Commissioner of the Division of Highways, the Superintendent of the West Virginia State Police, and the Commissioner of the Division of Motor Vehicles. The Division of Highways shall supply electronic or paper copies of ~~such~~ the form to police departments, sheriffs, and other appropriate law-enforcement agencies.

~~(c)~~ (d) In the event that the investigating law-enforcement officer cannot complete the investigation within 10 days of the crash, he or she shall submit a preliminary report of the crash to the Division of Highways on the 10th day after the crash and submit the final report within 24 hours of completion of the investigation pursuant to subsection ~~(b)~~(c) of this section.”

And,

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

Com. Sub. for H. B. 2195 – “A Bill to amend and reenact §17C-4-7 of the Code of West Virginia, 1931, as amended, relating to motor vehicle crash reports; requiring the investigating law-enforcement officer, within 24 hours of a motor vehicle crash, to provide the owner, operator, and insurance information for all the involved parties with each of the other involved parties and to each party’s respective insurance agents; and, information shall be provided without cost.”

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

The question being on the passage of the bill, the yeas and nays were taken **(Roll No. 654)**, and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Cooper.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2195) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 2688, Allow county political parties to have building funds in a similar manner that state parties are allowed.

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

Com. Sub. for H. B. 2688 – “A Bill to amend and reenact §3-8-2c of the Code of West Virginia, 1931, as amended, relating to party headquarters committees; defining terms; authorizing a county executive committee of a political party to establish a party headquarters committee for a certain exclusive purpose relating to county executive committee headquarters; and imposing \$1 million cap on receipt of contributions or making expenditures for a certain purpose relating to county executive committee headquarters.”

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 655**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: J. Pack.

Absent and Not Voting: Cooper.

So, a majority of the members elect having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2688) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

H. B. 3107, Declaring that Post Traumatic Stress Disorder diagnosed by a licensed psychiatrist is a compensable occupational disease for first responders.

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

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

“ARTICLE 4. DISABILITY AND DEATH BENEFITS.**§23-4-1f. Certain psychiatric injuries and diseases not compensable; definitions; legislative findings; terms; report required.**

~~For~~ (a) Except as provided by this section, for the purposes of this chapter, no alleged injury or disease shall may be recognized as a compensable injury or disease which was solely caused by nonphysical means and which did not result in any physical injury or disease to the person claiming benefits. ~~It~~ Except as otherwise provided in this section, it is the purpose of this section to clarify that so-called mental-mental claims are not compensable under this chapter.

(b) For the purposes of this section:

(1) ‘First responder’ means a law enforcement officer, firefighter, emergency medical technician, paramedic, and emergency dispatcher;

(2) ‘Post-traumatic stress disorder’ means a disorder that meets the diagnostic criteria for post-traumatic stress disorder specified by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, fifth edition, or a later edition as adopted by rule of the insurance commissioner; and

(3) ‘Licensed mental health provider’ means a psychiatrist, psychologist, licensed professional counselor, licensed marriage and family therapist, or licensed social worker who is qualified to treat post-traumatic stress disorder.

(4) ‘Employer’ means any entity that controls, consistent with the provisions of West Virginia law relating to an employment relationship, the paid or volunteer employment of a first responder eligible for benefits under this section.

(c) The Legislature finds that post-traumatic stress disorder is a unique medical condition. Although it may manifest itself as a psychiatric condition that would be otherwise precluded from workers’ compensation coverage, post-traumatic stress disorder is an occupational hazard for first responders, similar to members of the military serving in combat. The Legislature further finds that because first responders are required to expose themselves to traumatic events during the course of their employment and thus are at a recognized higher risk of developing post-traumatic stress disorder, and because of the severe nature and debilitating effects of post-traumatic stress disorder, it is the moral obligation of the state to permit coverage to this class of individuals for their work-related disease.

(d)(1) Post-traumatic stress disorder suffered by a first responder may be recognized as a compensable occupational disease under §23-4-1(f) of this code when:

(A) The Employer has elected to provide coverage for post-traumatic stress disorder as an occupational disease; and

(B) A diagnosis has been made by a licensed psychiatrist that the first responder suffered from post-traumatic stress disorder due to exposure to an event or events that occurred in the course of and resulting from the first responder’s paid or volunteer covered employment: *Provided*, That the provisions of this section shall apply only to a post-traumatic stress disorder diagnosis made on or after July 1, 2021, or the first day of the employer’s next workers’

compensation insurance policy or self-insurance program term for which post-traumatic stress disorder coverage has been purchased or elected, whichever is later.

(2) While the diagnosis must be made by a licensed psychiatrist, mental health treatment consistent for a post-traumatic stress disorder diagnosis may be offered by a licensed mental health provider other than the diagnosing psychiatrist.

(3) A diagnosis of post-traumatic stress disorder under this section shall not include consideration of any layoff, termination, disciplinary action, or any similar personnel-related action taken in good faith by an employer.

(4) Benefits for a post-traumatic stress disorder diagnosis made under this section are contingent upon the employer electing to provide coverage for post-traumatic stress disorder from its workers' compensation insurance carrier or to provide for it through its self-insurance program, whichever is applicable.

(5) The receipt of benefits is contingent on a claim being made within three years from and after a licensed psychiatrist has made the claimant aware of a post-traumatic stress disorder diagnosis in accordance with this section.

(e) Any employer that elects to offer coverage to first responders for post-traumatic stress disorder under this section shall report post-traumatic stress disorder claims data to the Offices of the Insurance Commissioner directly or via the employer's private workers' compensation insurance carrier, whichever is applicable, beginning July 1, 2021, or from the first day of the employer's next workers' compensation insurance policy or self-insurance program term, which provides such elective coverage, whichever is later.

(f) The Offices of the Insurance Commissioner shall report annually on claims data related to post-traumatic stress disorder claims for first responders to the Joint Committee on Volunteer Fire Department and Emergency Medical Services beginning January 1, 2022.

(g) The amendments made to this section during the 2021 regular session of the Legislature to recognize post-traumatic stress disorder as a compensable injury subject to the provisions of this section shall expire on July 1, 2026, unless extended by the Legislature.”

And,

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

H. B. 3107 – “A Bill to amend and reenact §23-4-1f of the Code of West Virginia, 1931, as amended, relating to workers' compensation benefits; defining terms; recognizing post-traumatic stress disorder as an occupational disease when specified circumstances are satisfied; noting that treatment can be conducted by other licensed mental health professionals once the initial diagnosis has been made by a psychiatrist; providing a diagnosis of post-traumatic stress disorder shall not include consideration of any layoff, termination, disciplinary action, or any similar personnel-related action taken in good faith; providing receipt of benefits is contingent on a claim being made within three years from and after a licensed psychiatrist has made the claimant aware of a post-traumatic stress disorder diagnosis; requiring reporting; and providing for a sunset date for the amendments made to this section.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 656**), and there were—yeas 97, nays 1, absent and not voting 2, with the nays and the absent and not voting being as follows:

Nays: Kimes.

Absent and Not Voting: Cooper and Householder.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3107) passed.

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

On this question, the yeas and nays were taken (**Roll No. 657**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Cooper, Householder and McGeehan.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3107) takes effect from its passage.

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

A message from the Senate, by

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

H. B. 2776, Creating the Air Ambulance Patient Protection Act.

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

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

“ARTICLE 11B. WEST VIRGINIA AIR AMBULANCE PATIENT PROTECTION ACT.

§33-11B-1. Air ambulance membership products as insurance.

(a) An air ambulance service provider or any affiliated entity who solicits air ambulance membership subscriptions, accepts membership applications, or charges membership fees, is deemed to be engaged in the business of insurance to the extent that it contracts, promises, guarantees, or in any other way portends to pay, reimburse, or indemnify the copayments, deductibles, or other cost-sharing amounts of a patient relating to the air ambulance transport as determined or set by the patient’s health insurance provider, health care provider, or other third parties, or any post-service payment of costs to third parties relating to the transport.

(b) An air ambulance membership agreement or subscription for air ambulance services under subsection (a) of this section is insurance and may be considered secondary insurance coverage or a supplement to any insurance coverage, and shall be subject to regulation by the commissioner pursuant to the provisions of this chapter.

(c) To the extent that activity falls within the business of insurance as described in subsection (a) of this section, no person or entity, whether directly or indirectly through an affiliated entity, agreement with a third party, or otherwise, may solicit or sell air ambulance membership agreements or subscriptions, accept membership applications, or charge membership fees except as authorized by a valid license issued by the commissioner pursuant to the provisions of this chapter.

(d) The commissioner may promulgate rules in accordance with §29A-3-1 et seq. of this code to effectuate the provisions of this section.

(e) If any provision of this section is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions of this section, and to this end the provisions of this section are declared to be severable.”

And,

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

H. B. 2776 – “A Bill to amend and reenact the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-11B-1, relating to the creation of the West Virginia Air Ambulance Patient Protection Act; declaring that an air ambulance service provider or affiliated entity who solicits air ambulance membership subscriptions, accepts membership applications, or charges membership fees, is engaged in the business of insurance to the extent that it promises to pay, reimburse, or indemnify the copayments, deductibles, cost-sharing amounts, or post-service payments of a patient related to air ambulance transport as set by the patient’s health insurance provider, health care provider, or other third parties; providing that air ambulance membership agreements or subscriptions declared to be the business of insurance shall be regulated by the commissioner; requiring a valid license issued by the commissioner to solicit or sell air ambulance membership agreements or subscriptions; providing for rulemaking by the commissioner; and providing for severability.”

Delegates Fast and Tully requested to be excused from voting under the provisions of House Rule 49.

The Speaker replied that the Delegates were members of a class of persons possibly to be affected and directed the Members to vote.

Delegate Pritt moved the previous question.

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

The yeas and nays having been ordered, they were taken (**Roll No. 658**), and there were—yeas 65, nays 33, absent and not voting 2, with the nays and the absent and not voting being as follows:

Nays: Anderson, Barach, Bates, Boggs, Brown, Bruce, Capito, Diserio, Doyle, Evans, Fast, Fleischauer, Fluharty, Garcia, Griffith, Hansen, Hornbuckle, Jennings, J. Kelly, Lovejoy, J. Pack, Pethtel, Pushkin, Rowe, Skaff, Thompson, Tully, Walker, Williams, Worrell, Young, Zukoff and Hanshaw (Mr. Speaker).

Absent and Not Voting: Cooper and Steele.

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 659**), and there were—yeas 69, nays 29, absent and not voting 2, with the nays and the absent and not voting being as follows:

Nays: Brown, Bruce, Conley, Dean, Doyle, Evans, Fast, Ferrell, Haynes, Holstein, J. Jeffries, Jennings, Kessinger, Kimble, Kimes, Linville, Mazzocchi, McGeehan, Nestor, Paynter, Phillips, Pritt, Reynolds, Sypolt, Thompson, Toney, Tully, B. Ward and G. Ward.

Absent and Not Voting: Cooper and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2776) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect July 1, 2022, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2933, Anti-Discrimination Against Israel Act.

Delegate Kessinger moved the House concur in the following amendment of the bill by the Senate:

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

“CHAPTER 5A. DEPARTMENT OF ADMINISTRATION

ARTICLE 3. PURCHASING DIVISION.

§5A-3-63. Prohibition on contracting with companies that boycott Israel.

(a) The Legislature finds that:

(1) The State of Israel is one of the United States’ closest allies and international trading partners; and

(2) In recent years, the State of Israel and Israeli-owned businesses have been the target of boycotts that attempt to isolate Israel within the international community have served as a vehicle for spreading anti-Semitism and advocating for the elimination of the Jewish State of Israel.

(3) The State of West Virginia has an economic and a humanitarian obligation to denounce and reject the Boycott, Divestment, and Sanctions Movement against Israel, and to prevent the state or any of its instrumentalities from contracting with companies that engage in the movement;

(b) Definitions. – For the purposes of this section:

(1) 'Boycott of Israel' means engaging in actions that are intended to penalize, inflict economic harm on, or otherwise limit commercial relations with the State of Israel or companies based in the State of Israel or in territories controlled by the State of Israel.

(2) 'Company' means a corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, organization, association, or any other business entity that has 10 or more employees and operates to earn a profit: *Provided*, That the term does not include a sole proprietorship.

(3) 'Public entity' means the state of West Virginia, or any political subdivision thereof, and all spending units of state government including those otherwise excluded from applicability under §5A-3-1 of this code.

(c) Effective July 1, 2022, a public entity may not enter into a contract with a company for goods or services valued at \$100,000 or more unless the contract includes a written certification that the company is not currently engaged in, and will not for the duration of the contract, engage in a boycott of Israel.

(d) Any contract that violates the requirements of this section shall be void as against public policy.

(e) The Director of the Purchasing Division is authorized to promulgate legislative rules, including emergency rules, to implement the provisions of this section."

And,

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

Com. Sub. for H. B. 2933 – "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5A-3-62, relating to prohibiting the state from contracting with companies that boycott Israel; establishing findings of the Legislature; defining terms; forbidding the state of West Virginia, any political subdivision thereof and spending units of state government from entering into contracts with companies that boycott Israel; setting an effective date; providing that contracts that violate new requirements will be void; and providing for rulemaking."

Delegate Mandt moved the previous question.

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

The yeas and nays having been ordered, they were taken (**Roll No. 660**), and there were— yeas 51, nays 47, absent and not voting 2, with the nays and the absent and not voting being as follows:

Nays: Anderson, Barach, Bates, Boggs, Bridges, Brown, Bruce, Capito, Dean, Diserio, Doyle, Evans, Fast, Ferrell, Fleischauer, Fluharty, Foster, Garcia, Graves, Hansen, Hornbuckle, J. Jeffries, D. Kelly, J. Kelly, Linville, Lovejoy, Maynard, Mazzocchi, McGeehan, J. Pack, Pethtel, Pushkin, Reynolds, Rowe, Skaff, Statler, Sypolt, Thompson, Toney, Tully, Walker, Williams, Worrell, Young, Zatezalo, Zukoff and Hanshaw (Mr. Speaker).

Absent and Not Voting: Cooper and Pritt.

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

The House then concurred in the Senate amendments.

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 661**), and there were—yeas 97, nays 1, absent and not voting 2, with the nays and the absent and not voting being as follows:

Nays: Fleischauer.

Absent and Not Voting: Cooper and Pritt.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2933) passed.

Delegate Kessinger moved that the bill take effect July 1, 2022.

On this question, the yeas and nays were taken (**Roll No. 662**), and there were—yeas 97, nays 2, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Doyle and Fleischauer.

Absent and Not Voting: Cooper.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2933) takes effect July 1, 2022.

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

A message from the Senate, by

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

Com. Sub. for S. B. 660, Providing for cooperation between law-enforcement agencies and military authorities.

Delegate Kessinger moved the House recede from its amendments.

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

The yeas and nays having been ordered, they were taken (**Roll No. 663**), and there were—yeas 93, nays 7, absent and not voting none, with the nays being as follows:

Nays: Bridges, Bruce, Doyle, Longanacre, McGeehan, Pritt and Toney.

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 664**), and there were—yeas 97, nays 3, absent and not voting none, with the nays being as follows:

Nays: McGeehan, Pritt and Toney.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 660) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 2363, Relating to “Best Interests of the Child Protection Act of 2021”.

Delegate Summers moved that the House refuse to recede.

Delegate J. Pack moved the previous question.

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

The yeas and nays having been ordered, they were taken (**Roll No. 665**), and there were—yeas 72, nays 24, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Barach, Bates, Boggs, Brown, Diserio, Doyle, Evans, Fleischauer, Fluharty, Garcia, Griffith, Hansen, Hornbuckle, Lovejoy, Pethtel, Pushkin, Rowe, Skaff, Thompson, Tully, Walker, Williams, Worrell and Young.

Absent and Not Voting: Bridges, Hardy, Householder and Linville.

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

The question being on the motion to refuse to recede, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 666**), and there were—yeas 90, nays 9, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Boggs, Doyle, Evans, Fleischauer, Hornbuckle, Pushkin, Rowe, Thompson and Walker.

Absent and Not Voting: Hardy.

So, a majority of the members present having voted in the affirmative, the motion to refuse to recede prevailed.

Delegate Summers moved to amend the title of the bill as follows:

Com. Sub. for H. B. 2363 – “A Bill to amend the Code of West Virginia, 1931, as amended by adding thereto five new sections, designated §48-1-239a, §48-1-239b, §48-1-241a, §48-1-241b, and §48-9-105; to amend and reenact §48-1-220, §48-1-239, §48-9-102, §48-9-203, §48-9-204, §48-9-206, §48-9-207, §48-9-209, §48-9-301, §48-9-403, §48-9-601, §48-9-603 of said

code, all relating to domestic relations and child custody allocation; providing definitions; amending definitions; clarifying the authority of parents to make emergency and non-elective healthcare decisions; requiring the court to consider parenting functions in determining best interests of the child; adding meaningful contact between a child and his or her siblings, including half-siblings, as an objective of the best interests of the child; providing for venue of custody actions outside of divorce proceedings; requiring the court to consider parenting functions in temporary parenting plans and allocation of custody; adding a preference time allocated to the parent resulting in the child being under the care of that parent is preferred to the parent resulting in time allocated to the parent resulting in the child being under the care of a third party as an objective in allocation determinations; adding an objective for reasonable access to the child by telephone or other electronic contact as an objective in allocation determinations; requiring that, in the absence of agreement of the parents, a final allocation determination must be made pursuant to hearing which cannot be conducted exclusively by presentation of evidence by proffer; adding neglect and abandonment as criteria that may overcome presumption that joint decision-making responsibility is in the best interests of the child; clarifying criteria of interference with the other parent's relationship with the child; providing notice requirements during a court-ordered investigation; requires that a hearing cannot take place until after the investigation report is provided to the parties and completion of any requested discovery; allowing for continuance of a hearing following an investigation; providing a mechanism for the adjudication of requests for relocation of a parent with a child; providing circumstances for which relocation of a parent constitutes a substantial change in the circumstances of the child; requiring the relocating parent to file a verified petition for the court for modification of the parenting plan; identifying consequences of failure to comply with the requirements of this section; requiring a copy of the petition to be served on the other parent and all other persons allocated custodial time with the child; establishing requirements for the petition for modification of the parenting plan; requiring a hearing to be held on the petition at least 30 days in advance of the proposed date of relocation; providing for an expedited hearing; authorizing the court to revise the parenting plan; authorizing the court to allocate costs between the parties; establishing the burden of proof for the relocating parent; defines when a relocation is for a legitimate purpose; establishing a move with a legitimate purpose is unreasonable unless the relocating parent proves that the purpose is not substantially achievable without moving and that moving to a location that is substantially less disruptive of the other parent's relationship to the child is not feasible; requiring the court to consider the best interests of the child when modifying the parenting plan; requiring the court to minimize impairment to a parent-child relationship caused by a parent's relocation through alternative arrangements; setting forth the opportunity for parties to file a modified parenting plan signed by all parties; conditionally requiring an initial permanent parenting plan to be established before a relocation is considered; requiring interviewing or questioning of the child to be conducted in accordance with Rule 17 of the Rules of Practice and Procedure for Family Court; providing for parental access to a child's vital records; requiring notice to the other party if the child is a victim of a crime unless the other party is the perpetrator; providing an effective date; and providing that existing orders remain in effect unless modified by a court of competent jurisdiction."

Delegate Steele moved the previous question.

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

The yeas and nays having been ordered, they were taken (**Roll No. 667**), and there were— yeas 79, nays 20, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Barach, Boggs, Brown, Diserio, Doyle, Fleischauer, Fluharty, Garcia, Hansen, Hornbuckle, Lovejoy, Pethtel, Pushkin, Rowe, Skaff, Thompson, Walker, Williams, Worrell and Young.

Absent and Not Voting: Hardy.

So, a majority of the members present having voted in the affirmative, the previous question was ordered.

The House then adopted the title amendment.

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

A message from the Senate, by

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

H. B. 3089, Make utility workers essential employees during a state of emergency.

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

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

“ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.

§15-5-2. Definitions.

As used in this article:

‘Board’ means the West Virginia Disaster Recovery Board created by this article;

‘Code’ means the Code of West Virginia, 1931, as amended;

‘Community facilities’ means a specific work, or improvement within this state or a specific item of equipment or tangible personal property owned or operated by any political subdivision or nonprofit corporation and used within this state to provide any essential service to the general public;

‘Critical infrastructure’ includes any systems and assets, whether physical or virtual, so vital to the state that the incapacity or destruction of such systems and assets would have a debilitating impact on security, state economic security, state public health or safety, or any combination of those matters.

‘Disaster’ means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or terrorist or man-made cause, including weapons of mass destruction, fire, flood, earthquake, wind, snow, storm, chemical or oil spill or other water or soil contamination, epidemic, air contamination, blight, drought, infestation or other public calamity requiring emergency action;

'Disaster recovery activities' means activities undertaken prior to, during or following a disaster to provide, or to participate in the provision of, critical infrastructure, emergency services, temporary housing, residential housing, essential business activities, and community facilities;

'Emergency services' means the preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to protect, respond, and recover, to prevent, detect, deter, and mitigate, to minimize and repair injury and damage resulting from disasters or other event caused by flooding, terrorism, enemy attack, sabotage, or other natural or other man-made causes. These functions include, without limitation, critical infrastructure services, firefighting services, police services, medical and health services, communications, emergency telecommunications, radiological, chemical, and other special weapons defense, evacuation of persons from stricken areas, emergency welfare services, emergency transportation, existing or properly assigned functions of plant protection, temporary restoration of public utility services and other functions related to the health, safety, and welfare of the citizens of this state, together with all other activities necessary or incidental to the preparation for and carrying out of these functions. Disaster includes the imminent threat of disaster as well as its occurrence and any power or authority exercisable on account of a disaster that may be exercised during the period when there is an imminent threat;

'Essential business activities' means a specific work or improvement within this state or a specific item of equipment or tangible personal property used within this state by any person to provide any essential goods or ~~service~~ critical infrastructure services determined by the authority to be necessary for continued operations during a disaster, state of emergency, or state of preparedness, and for recovery from a disaster;

'Essential workers' means employees or contractors that fall under the definition of essential business activities during a disaster, state of emergency, or state of preparedness.

'Local organization for emergency services' means an organization created in accordance with the provisions of this article by state or local authority to perform local emergency services function;

'Mobile support unit' means an organization for emergency services created in accordance with the provisions of this article by state or local authority to be dispatched by the Governor to supplement local organizations for emergency services in a stricken area;

'Person' means any individual, corporation, voluntary organization or entity, partnership, firm, or other association, organization, or entity organized or existing under the laws of this or any other state or country;

'Political subdivision' means any county or municipal corporation in this state;

'Recovery fund' means the West Virginia Disaster Recovery Trust Fund created by this article;

'Residential housing' means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations, including the acquisition, construction or rehabilitation of land, buildings and improvements thereto, for residential housing, including, but not limited to, facilities for temporary housing and emergency housing, and any other nonhousing facilities that are incidental or appurtenant thereto;

'Secretary' means the Secretary of the West Virginia Department of Military Affairs and Public Safety; and

'Temporary housing' means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations, including the acquisition, construction or rehabilitation of land, buildings and improvements thereto, for temporary residential shelters or housing for victims of a disaster and such other nonhousing facilities that are incidental or appurtenant thereto.

§15-5-30. State of emergency; state of preparedness; essential workers.

(a) During a state of emergency or state of preparedness, set forth by the Governor, employees of public utilities, cable television operators, telecommunications carriers, and publicly or privately owned water and sewer systems shall be considered essential workers to ensure that these services can continue to operate or be restored.

(b) Contractors, vendors, and suppliers of public utilities, cable television operators, telecommunications carriers, and publicly or privately owned water and sewer systems of the state shall be considered essential workers to aid the utilities and telecommunications services in continuation of services to its customers.

(c) The provisions of subsections (a) and (b) of this section apply only and specifically for the purpose of ensuring that public utilities, cable television operators, telecommunications carriers, and publicly or privately owned water and sewer systems can continue to operate or be restored and may not be construed or interpreted in any way to have any relevance or meaning beyond this specific purpose."

And,

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

H. B. 3089 – "A Bill to amend and reenact §15-5-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §15-5-30, all relating to homeland security and emergency management; defining terms; and providing that employees of public utilities, cable television operators, telecommunications carriers, and publicly or privately owned water and sewer systems shall be considered essential workers to ensure that these services can continue to operate or be restored during a state of emergency or state of preparedness."

On the motion to concur in the Senate amendments, Delegate Capito moved the previous question.

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

The yeas and nays having been ordered, they were taken (**Roll No. 668**), and there were— yeas 79, nays 21, absent and not voting none, with the nays being as follows:

Nays: Bates, Boggs, Brown, Diserio, Doyle, Evans, Fleischauer, Fluharty, Garcia, Hansen, Hornbuckle, Lovejoy, Pethel, Pushkin, Rowe, Skaff, Thompson, Walker, Williams, Worrell and Young.

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

The House then concurred in the amendment of the bill by the Senate.

The question being on the passage of the bill, as amended by the Senate, Delegate Pinson moved the previous question.

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

The yeas and nays having been ordered, they were taken (**Roll No. 669**), and there were—yeas 89, nays 11, absent and not voting none, with the nays being as follows:

Nays: Doyle, Fleischauer, Fluharty, Hansen, Pethtel, Pushkin, Rowe, Skaff, Walker, Williams and Worrell.

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 670**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members elect having voted in the affirmative, the Speaker declared the bill (H. B. 3089) passed.

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

Messages from the Senate

A message from the Senate, by

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

Com. Sub. for S. B. 419, Redefining “firearm” to match federal code.

A message from the Senate, by

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

Com. Sub. for S. B. 458, Relating to possession of firearms by individuals during state of emergency.

A message from the Senate, by

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

Com. Sub. for S. B. 534, Permitting Economic Development Authority to make working capital loans from revolving loan fund capitalized with federal grant funds.

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the title amendment of the House of Delegates and the passage, as amended, to take effect July 1, 2021, of

Com. Sub. for S. B. 613, Adding classification and base salaries of certain civilian employees of State Police Forensic Laboratory.

A message from the Senate, by
The Clerk of the Senate, announced concurrence in the title amendment of the House of Delegates and the passage, as amended, of

Com. Sub. for S. B. 671, Appointing Director of Office of Emergency Medical Services.

A message from the Senate, by
The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, to take effect from passage, of

Com. Sub. for S. B. 695, Providing procedures for decreasing or increasing corporate limits by annexation.

A message from the Senate, by
The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, of

S. B. 714, Relating to physician assistant practice act.

A message from the Senate, by
The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, to take effect July 1, 2021, of

Com. Sub. for S. B. 34, Creating exemption to state sales and use tax for rental and leasing of equipment.

A message from the Senate, by
The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, of

Com. Sub. for S. B. 318, Relating generally to public notice of unclaimed property held by State Treasurer.

A message from the Senate, by
The Clerk of the Senate, announced concurrence in the title amendment of the House of Delegates and the passage, as amended, to take effect from passage, of

Com. Sub. for S. B. 398, Limiting eligibility of certain employers to participate in PEIA plans.

A message from the Senate, by
The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, to take effect July 1, 2021, of

S. B. 532, Limiting claims for state tax credits and rebates.

A message from the Senate, by
The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, of

Com. Sub. for S. B. 478, Permitting use of established federal marketplace programs to purchase supplies.

Committee Reports

In accordance with House Rule 68, the Joint Committee on Enrolled Bills, filed the following reports with the Clerk:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled and, on the dates listed, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

April 10, 2021

H. B. 2253, Relating to forgery and other crimes concerning lottery tickets,

H. B. 2958, Relating to repealing outdated sections of state code,

H. B. 3045, Relating to firefighter disability claims,

And,

H. B. 3081, Updating the West Virginia Business Corporations Act.

April 13, 2021

S. B. 335, Relating to WV Invests Grant Program for students at accredited community and technical college,

Com. Sub. for S. B. 375, Relating to county boards of education policies for open enrollment,

Com. Sub. for S. B. 387, Relating to drug screening of applicants for cash assistance,

Com. Sub. for S. B. 392, Creating penalty for impersonating law-enforcement officer or official,

Com. Sub. for S. B. 439, Allowing use or nonuse of safety belt as admissible evidence in civil actions,

Com. Sub. for S. B. 483, Allowing oaths be taken before any person authorized to administer oaths,

Com. Sub. for S. B. 460, Relating to Deputy Sheriff Retirement System Act,

Com. Sub. for S. B. 466, Relating generally to appraisal management companies,

Com. Sub. for S. B. 479, Relating to WV veterans service decoration and WV Service Cross,

Com. Sub. for S. B. 483, Allowing oaths be taken before any person authorized to administer oaths,

S. B. 486, Relating to powers and duties of Chief Technology Officer,

S. B. 488, Relating to distributing hotel occupancy tax to convention and visitor's bureaus,

S. B. 494, Authorizing transfer of moneys from Insurance Commission Fund to Workers' Compensation Old Fund,

S. B. 496, Relating to punishment for second or third degree felony,

S. B. 521, Extending licensure renewal term of certain private investigators, security guards, and associated firms,

S. B. 529, Correcting improper citation relating to DMV registration,

S. B. 577, Exempting certain fire departments from licensure requirements for providing rapid response services,

Com. Sub. for S. B. 626, Updating regulation for purchase of automobile catalytic converters,

Com. Sub. for S. B. 634, Requiring training of certain officers for persons with autism spectrum disorder,

S. B. 651, Allowing county boards of education to publish financial statements on website,

Com. Sub. for S. B. 668, Creating Psychology Interjurisdictional Compact,

Com. Sub. for S. B. 673, Relating to venue for bringing civil action or arbitration proceedings under construction contracts,

S. B. 680, Allowing State Superintendent of Schools define classroom teachers certified in special education,

S. B. 713, Relating generally to inmate good time,

And,

S. B. 717, Supplemental appropriation from General Revenue to WV Community and Technical College Education, Control Account.

April 14, 2021

Com. Sub. for H. B. 2022, Budget Bill, making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the Constitution,

H. B. 2028, Exempting veterinarians from the requirements of controlled substance monitoring,

Com. Sub. for H. B. 2093, Relating to exemptions for the United States Department of Veterans Affairs Medical Foster Homes,

H. B. 2366, Requiring agencies who have approved a proposed rule that affects fees or other special revenues to provide to the committee a fiscal note,

H. B. 2500, Create an act for Statewide Uniformity for Auxiliary Container Regulations,

Com. Sub. for H. B. 2529, Prohibiting West Virginia institutions of higher education from discriminating against graduates of private, nonpublic or home schools by requiring them to submit to alternative testing,

Com. Sub. for H. B. 2722, Prohibiting the use of class B fire-fighting foam for testing purposes if the foam contains a certain class of fluorinated organic chemicals,

Com. Sub. for H. B. 2758, Requiring the Insurance Commissioner to regulate professional bondsmen,

H. B. 2768, Supplementing, amending and increasing an existing item of appropriation from the State Road Fund, to the Department of Transportation, Division of Highways,

Com. Sub. for H. B. 2769, Supplementing, amending and increasing items of existing appropriation from the State Road Fund to the Department of Transportation, Division of Motor Vehicles,

Com. Sub. for H. B. 2785, Relating to public school enrollment for students from out of state,

H. B. 2790, Supplementing, amending, decreasing, and increasing items of existing appropriation to Division of Highways,

H. B. 2791, Relating to enrollment and costs of homeschooled or private school students at vocational schools,

Com. Sub. for H. B. 2823, Exempting buildings or structures utilized exclusively for agricultural purposes from the provisions of the State Building Code,

Com. Sub. for H. B. 2877, Expand direct health care agreements beyond primary care to include more medical care services,

H. B. 2829, Providing for the amortization of annual funding deficiencies for municipal police or firefighter pension and relief funds,

H. B. 2830, Relating generally to sex trafficking,

H. B. 2888, Relating to when contentions can be revived based on forensic scientific evidence that was not available at time of conviction,

H. B. 2895, Supplementing and amending the appropriations of public moneys to the Department of Veterans' Assistance,

H. B. 2900, Expiring funds to the balance of the Department of Education – State Board of Education – School Building Authority – School Construction Fund,

H. B. 2906, Relating to the School Building Authority's allocation of money,

H. B. 2918, Relating to Family Drug Treatment Court,

H. B. 2957, Relating to the repeal of outdated code sections,

H. B. 2969, To clarify the procedures for the sale and operation of a municipally owned toll bridge by a private toll transportation facility,

H. B. 3175, Relating to removing certain felonies than can prohibit vehicle salespersons from receiving a license,

H. B. 3191, Requiring employers to send certain notifications when retirants are hired as temporary, part-time employees,

Com. Sub. for H. B. 3254, Authorizing members of development authorities to accept federally authorized reimbursement for services which the members rendered on a voluntary basis,

H. B. 3286, Making a supplementary appropriation to the Division of Human Services – Child Care and Development,

H. B. 3287, Making a supplementary appropriation to the Department of Homeland Security,

H. B. 3288, Supplementing and amending appropriations by decreasing and increasing existing items of appropriation in the DHHR,

H. B. 3289, Supplementary appropriation to the Department of Commerce, Geological and Economic Survey,

H. B. 3291, Making a supplementary appropriation to the Department of Homeland Security, Division of Administrative Services,

H. B. 3294, Relating to unemployment insurance,

Com. Sub. for H. B. 3295, Making a supplemental appropriation to Division of Human Services and Division of Health Central Office,

Com. Sub. for H. B. 3297, Making a supplemental appropriation to the Department of Veterans' Assistance - Veterans Home,

H. B. 3298, Making a supplemental appropriation to Dept. of Commerce, Dept. of Education, Senior Services and Civil Contingent Fund,

H. B. 3313, Making supplemental appropriation to the Division of Motor Vehicles,

H. B. 3314, Making supplemental appropriation to West Virginia State Police,

H. B. 3315, Making supplemental appropriation to Division of Environmental Protection - Oil and Gas Reclamation Fund,

H. B. 3316, Supplemental appropriation to the Department of Education, State Board of Education,

S. B. 294, Relating generally to savings and investment programs offered by state,

Com. Sub. for S. B. 297, Relating generally to modernizing Board of Treasury Investments,

S. B. 307, Relating generally to in-state tuition rates for certain persons,

Com. Sub. for S. B. 343, Authorizing DMV to process online driver's license or identification card change of address,

Com. Sub. for S. B. 361, Extending supervision for conviction of soliciting minor and using obscene matter with intent to seduce minor,

S. B. 376, Removing obsolete provisions regarding DOH standards for studded tires and chains,

S. B. 397, Relating to health care provider tax.

Com. Sub. for S. B. 401, Relating to WV Consumer Credit and Protection Act,

And,

Com. Sub. for S. B. 434, Requiring training for law-enforcement officers responsible for investigating crimes of sexual assault.

April 15, 2021

Com. Sub. for S. B. 334, Establishing license application process for needle exchange programs.

April 16, 2021

H. B. 2029, Relating to teacher preparation clinical experience programs,

Com. Sub. for H. B. 2763, Creating WV Cyber Incident Reporting,

Com. Sub. for H. B. 2765, Relating to allowing emergency management and operations' vehicles operated by airports to use red flashing warning lights,

H. B. 3129, Relating to the Consumer Price Index rate increase,

H. B. 3130, Relating to elimination of sunset provisions concerning towing rates,

Com. Sub. for S. B. 34, Creating exemption to state sales and use tax for rental and leasing of equipment,

Com. Sub. for S. B. 263, Permitting online raffles to benefit charitable and public service organizations,

Com. Sub. for S. B. 318, Relating generally to public notice of unclaimed property held by State Treasurer,

Com. Sub. for S. B. 344, Relating to credit for qualified rehabilitated buildings investment,

S. B. 359, Informing landowners when fencing that may contain livestock is damaged due to accident,

Com. Sub. for S. B. 368, Authorizing DEP to develop Reclamation of Abandoned and Dilapidated Properties Program,

Com. Sub. for S. B. 398, Limiting eligibility of certain employers to participate in PEIA plans,

Com. Sub. for S. B. 419, Redefining 'firearm' to match federal code,

Com. Sub. for S. B. 458, Relating to possession of firearms by individuals during state of emergency,

Com. Sub. for S. B. 464, Requiring composting of organic materials and commercial composting products comply with WV Fertilizer Law,

Com. Sub. for S. B. 470, Limiting release of certain personal information maintained by state agencies,

Com. Sub. for S. B. 478, Permitting use of established federal marketplace programs to purchase supplies,

Com. Sub. for S. B. 492, Establishing program for bonding to reclaim abandoned wind and solar generation facilities,

Com. Sub. for S. B. 502, Providing lifetime hunting, fishing, and trapping license to residents, adopted, and foster children under 15,

S. B. 532, Limiting claims for state tax credits and rebates,

Com. Sub. for S. B. 534, Permitting Economic Development Authority to make working capital loans from revolving loan fund capitalized with federal grant funds,

S. B. 537, Relating generally to kidnapping,

Com. Sub. for S. B. 542, Relating generally to public electric utilities and facilities fuel supply for existing coal-fired plants,

Com. Sub. for S. B. 613, Adding classification and base salaries of certain civilian employees of State Police Forensic Laboratory,

Com. Sub. for S. B. 636, Requiring certain history and civics courses be taught in schools,

Com. Sub. for S. B. 641, Allowing counties to use severance tax proceeds for litter cleanup programs,

Com. Sub. for S. B. 642, Requiring legal advertisements by State Auditor be posted to central website,

Com. Sub. for S. B. 655, Eliminating sunset and legislative audit provisions for certain PSC rules,

Com. Sub. for S. B. 658, Requiring sheriff's departments to participate and utilize Handle With Care Program for trauma-inflicted children,

Com. Sub. for S. B. 660, Providing for cooperation between law-enforcement agencies and military authorities,

S. B. 661, Permitting retailers to assume sales or use tax assessed on tangible personal property,

Com. Sub. for S. B. 671, Appointing Director of Office of Emergency Medical Services,

S. B. 674, Clarifying that unpaid restitution does not preclude person from obtaining driver's license,

Com. Sub. for S. B. 684, Adding Curator of Division of Arts, Culture, and History as ex officio voting member to Library Commission,

Com. Sub. for S. B. 695, Providing procedures for decreasing or increasing corporate limits by annexation,

S. B. 714, Relating to physician assistant practice act,

And,

S. B. 718, Relating generally to Coal Severance Tax Rebate.

April 20, 2021

Com. Sub. for S. B. 562, Relating to juvenile competency proceedings,

Com. Sub. for S. B. 657, Relating to free expression on state institution of higher education campuses,

Com. Sub. for S. B. 677, Relating generally to miners' safety, health, and training standards,

And,

Com. Sub. for S. B. 702, Relating to involuntary hospitalization, competency, and criminal responsibility of persons charged or convicted of certain crimes.

April 21, 2021

Com. Sub. for H. B. 2368, Mylissa Smith's Law, creating patient visitation privileges,

Com. Sub. for H. B. 2370, Provide that Public Service Districts cannot charge sewer rates for filling a swimming pool,

H. B. 3107, Declaring that Post Traumatic Stress Disorder diagnosed by a licensed psychiatrist is a compensable occupational disease for first responders,

H. B. 3304, Authorizing the Division of Corrections and Rehabilitation to establish a Reentry and Transitional Housing Program,

And,

H. B. 3308, Relating to increasing number of limited video lottery terminals.

April 22, 2019

Com. Sub. for H. B. 2002, Relating to Broadband,

Com. Sub. for H. B. 2005, Relating to health care costs,

Com. Sub. for H. B. 2025, Provide liquor, wine, and beer licensees with some new concepts developed during the State of Emergency utilizing new technology to provide greater freedom to operate in a safe and responsible manner,

Com. Sub. for H. B. 2145, Relating to student aide class titles,

Com. Sub. for H. B. 2195, Relating to motor vehicle crash reports,

Com. Sub. for H. B. 2221, Relating to the establishment of an insurance innovation process,

Com. Sub. for H. B. 2266, Relating to expanding certain insurance coverages for pregnant women,

Com. Sub. for H. B. 2267, Establishing an optional bus operator in residence program for school districts,

Com. Sub. for H. B. 2363, Relating to “Best Interests of the Child Protection Act of 2021”,

Com. Sub. for H. B. 2427, Authorizing the Department of Health and Human Resources to promulgate legislative rules,

Com. Sub. for H. B. 2507, Remove the limitations on advertising and promotional activities by limited video lottery retailers,

Com. Sub. for H. B. 2573, Relating generally to the transparency and accountability of state grants to reduce waste, fraud, and abuse,

Com. Sub. for H. B. 2581, Providing for the valuation of natural resources property and an alternate method of appeal of proposed valuation of natural resources property,

Com. Sub. for H. B. 2633, Creating the 2021 Farm Bill,

Com. Sub. for H. B. 2667, To create a cost saving program for state buildings regarding energy efficiency,

Com. Sub. for H. B. 2671, Relating to financial exploitation of elderly persons, protected persons or incapacitated adults,

Com. Sub. for H. B. 2688, Allow county political parties to have building funds in a similar manner that state parties are allowed,

Com. Sub. for H. B. 2694, Create the 2nd Amendment Preservation Act,

Com. Sub. for H. B. 2720, Creating a Merit-Based Personnel System within DOT,

H. B. 2730, Relating to persons filing federal bankruptcy petition to exempt certain property of the estate,

Com. Sub. for H. B. 2747, Transferring the Parole Board to the Office of Administrative Hearings,

Com. Sub. for H. B. 2760, Relating to economic development incentive tax credits,

Com. Sub. for H. B. 2773, Permitting DNR to issue up to 100 permits for boats greater than 10 horsepower on Upper Mud River Lake,

H. B. 2776, Creating the Air Ambulance Patient Protection Act,

Com. Sub. for H. B. 2794, To extend the Neighborhood Investment Program Act to July 1, 2026,

Com. Sub. for H. B. 2834, Adding the Curator of the West Virginia Division of Arts, Culture and History as an ex officio voting member of the commission,

Com. Sub. for H. B. 2842, Preventing cities from banning utility companies in city limits,

H. B. 2874, Extend the current veteran's business fee waivers to active duty military members and spouses,

Com. Sub. for H. B. 2884, To make changes to the FOIA law to protect public utility customer databases from disclosure, with exceptions,

Com. Sub. for H. B. 2890, To clarify the regulatory authority of the Public Service Commission of West Virginia over luxury limousine services,

Com. Sub. for H. B. 2891, Creating minimum statutory standards for law-enforcement officers,

H. B. 2914, To remove certain ex officio, voting members from the Archives and History Commission and update formatting,

H. B. 2915, Relating to public records management and preservation,

Com. Sub. for H. B. 2916, Creating the Semiquincentennial Commission for the celebration of the 250th anniversary of the founding of the United States of America,

Com. Sub. for H. B. 2927, Adding Caregiving expenses to campaign finance expense,

Com. Sub. for H. B. 2933, Anti-Discrimination Against Israel Act,

Com. Sub. for H. B. 2953, To clarify that counties can hire fire fighters as paid staff and to modify the existing procedures to include a procedure of public hearing to commission a vote,

Com. Sub. for H. B. 2962, Relating generally to dental practice,

Com. Sub. for H. B. 2982, Relating to the Second Chances at Life Act of 2021,

H. B. 2997, Adding a defense to the civil penalty imposed for a result of delivery of fuel to a state other than the destination state printed on the shipping document for fuel,

Com. Sub. for H. B. 3002, Update road abandonment process,

H. B. 3078, Relating to powers and duties of the parole board,

H. B. 3089, Make utility workers essential employees during a state of emergency,

Com. Sub. for H. B. 3106, To change the hearing requirement for misdemeanors to 10 days,

H. B. 3132, Relating to motor carrier inspectors,

H. B. 3133, Relating to motor carrier rates,

H. B. 3177, Removing expired, outdated, inoperative and antiquated provisions and report requirements in education,

Com. Sub. for H. B. 3215, Amending the requirements to become an elected prosecutor,

Com. Sub. for H. B. 3266, Providing for termination of extracurricular contact upon retirement,

Com. Sub. for H. B. 3293, Relating to single-sex participation in interscholastic athletic events,

H. B. 3299, Authorizing Higher Education Rules,

H. B. 3301, Relating generally to property tax increment financing districts,

H. B. 3310, Relating to the jurisdiction of the Public Service Commission,

And,

H. B. 3311, Relating to the cost of medical records.

Messages from the Executive

Subsequent to the adjournment of the session, communications were received from His Excellency, the Governor, advising that on April 9, 2021, he approved **Com. Sub. for H. B. 2024**, **Com. Sub. for H. B. 2026** and **Com. Sub. for H. B. 2260**; on April 13, 2021, he approved **S. B. 693**; on April 15, 2021, he approved **Com. Sub. for H. B. 2022**, **Com. Sub. for H. B. 2094**, **H. B. 2253**, **Com. Sub. for H. B. 2400**, **Com. Sub. for H. B. 2495**, **H. B. 2768**, **Com. Sub. for H. B. 2769**, **H. B. 2790**, **H. B. 2791**, **H. B. 2808**, **H. B. 2852**, **H. B. 2895**, **H. B. 2898**, **H. B. 2900**, **H. B. 2941**, **H. B. 3286**, **H. B. 3287**, **H. B. 3288**, **H. B. 3289**, **H. B. 3291**, **Com. Sub. for H. B. 3295**, **Com. Sub. for H. B. 3297**, **H. B. 3298**, **H. B. 3313**, **H. B. 3314**, **H. B. 3315**, **H. B. 3316**, **S. B. 78**, **Com. Sub. for S. B. 80**, **Com. Sub. for S. B. 81**, **S. B. 89**, **Com. Sub. for S. B. 334**, **Com. Sub. for S. B. 335**, **Com. Sub. for S. B. 346**, **S. B. 374**, **Com. Sub. for S. B. 377**, **Com. Sub. for S. B. 389**, **Com. Sub. for S. B. 421**, **Com. Sub. for S. B. 429**, **S. B. 437**, **S. B. 463**, **S. B. 486**, **Com. Sub. for S. B. 514**, **Com. Sub. for S. B. 518**, **S. B. 521**, **S. B. 529**, **Com. Sub. for S. B. 587**, **S. B. 644** and **S. B. 717**; on April 19, 2021, he approved **H. B. 2028**, **Com. Sub. for H. B. 2093**, **H.**

B. 2366, H. B. 2500, Com. Sub. for H. B. 2877, H. B. 2888, Com. Sub. for S. B. 375, Com. Sub. for S. B. 392, Com. Sub. for S. B. 439, Com. Sub. for S. B. 472, Com. Sub. for S. B. 479, Com. Sub. for S. B. 483, S. B. 496, S. B. 577, Com. Sub. for S. B. 626, Com. Sub. for S. B. 634, S. B. 651, S. B. 680, S. B. 713; on April 21, 2021, he approved Com. Sub. for H. B. 2529, Com. Sub. for H. B. 2722, Com. Sub. for H. B. 2765, Com. Sub. for H. B. 2785, Com. Sub. for H. B. 2823, H. B. 2829, H. B. 2830, H. B. 2958, H. B. 3107, H. B. 3129, H. B. 3130, H. B. 3175, H. B. 3191, Com. Sub. for H. B. 3254, Com. Sub. for S. B. 344, S. B. 359, Com. Sub. for S. B. 361, S. B. 397, Com. Sub. for S. B. 398, Com. Sub. for S. B. 458, Com. Sub. for S. B. 466, S. B. 488, S. B. 532, Com. Sub. for S. B. 668 and S. B. 714; on April 26, 2021, he approved H. B. 2029, Com. Sub. for H. B. 2195, Com. Sub. for H. B. 2221, Com. Sub. for H. B. 2370, Com. Sub. for H. B. 2507, Com. Sub. for H. B. 2573, Com. Sub. for H. B. 2688, Com. Sub. for H. B. 2720, H. B. 2730, Com. Sub. for H. B. 2758, Com. Sub. for H. B. 2763, Com. Sub. for H. B. 2773, Com. Sub. for H. B. 2794, Com. Sub. for H. B. 2834, Com. Sub. for H. B. 2842, Com. Sub. for H. B. 2884, Com. Sub. for H. B. 2890, H. B. 2906, H. B. 2914, H. B. 2915, Com. Sub. for H. B. 2916, H. B. 2918, Com. Sub. for H. B. 2933, Com. Sub. for H. B. 2953, H. B. 2957, H. B. 3010, H. B. 3045, H. B. 3081, H. B. 3089, Com. Sub. for H. B. 3106, H. B. 3132, H. B. 3133, H. B. 3177, Com. Sub. for H. B. 3215, Com. Sub. for H. B. 3266, H. B. 3299, H. B. 3301, H. B. 3304, H. B. 3308, H. B. 3311, Com. Sub. for S. B. 297, S. B. 307, Com. Sub. for S. B. 343, S. B. 376, Com. Sub. for S. B. 387, Com. Sub. for S. B. 401, Com. Sub. for S. B. 419, Com. Sub. for S. B. 434, Com. Sub. for S. B. 460, Com. Sub. for S. B. 464, Com. Sub. for S. B. 478, Com. Sub. for S. B. 492, S. B. 494, Com. Sub. for S. B. 502, Com. Sub. for S. B. 534, S. B. 537, Com. Sub. for S. B. 613, Com. Sub. for S. B. 636, Com. Sub. for S. B. 641, Com. Sub. for S. B. 642, Com. Sub. for S. B. 657, Com. Sub. for S. B. 658, Com. Sub. for S. B. 660, S. B. 661, Com. Sub. for S. B. 671, Com. Sub. for S. B. 673, S. B. 674 and Com. Sub. for S. B. 684; on April 27, 2021, he approved Com. Sub. for H. B. 2267, Com. Sub. for H. B. 2694 and H. B. 2997; on April 28, 2021, he approved Com. Sub. for H. B. 2002, Com. Sub. for H. B. 2005, Com. Sub. for H. B. 2025, Com. Sub. for H. B. 2145, Com. Sub. for H. B. 2266, Com. Sub. for H. B. 2363, Com. Sub. for H. B. 2368, Com. Sub. for H. B. 2427, Com. Sub. for H. B. 2581, Com. Sub. for H. B. 2633, Com. Sub. for H. B. 2667, Com. Sub. for H. B. 2671, Com. Sub. for H. B. 2747, Com. Sub. for H. B. 2760, H. B. 2776, H. B. 2874, Com. Sub. for H. B. 2891, Com. Sub. for H. B. 2927, Com. Sub. for H. B. 2962, H. B. 2969, Com. Sub. for H. B. 2982, Com. Sub. for H. B. 3002, H. B. 3078, Com. Sub. for H. B. 3293, H. B. 3294, Com. Sub. for S. B. 34, , Com. Sub. for S. B. 263, Com. Sub. for S. B. 294, Com. Sub. for S. B. 318, Com. Sub. for S. B. 368, Com. Sub. for S. B. 470, Com. Sub. for S. B. 542, Com. Sub. for S. B. 562, Com. Sub. for S. B. 655, Com. Sub. for S. B. 677, Com. Sub. for S. B. 695, Com. Sub. for S. B. 702 and S. B. 718.

The following bill became law without the signature of the Governor:

H. B. 3310, Relating to the jurisdiction of the Public Service Commission.

Miscellaneous Business

The House of Delegates met on Friday, April 9, 2021 for **Remarks by Members**, which had been scheduled for ten minutes after the floor session, in accordance with House Rule 65. The Honorable Jason Barrett, the Delegate from the Sixty-First Delegate District, called the House to order and presided while members proceeded to make remarks. At 8:11 p.m., Remarks by Members was adjourned.

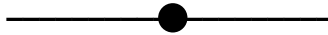
Pursuant to House Rule 132, consent was obtained to print the following in the Appendix to the Journal:

- Delegate Evans regarding the motion to recede from the House amendment to Com. Sub. for S. B. 542

Delegate Horst noted to the Clerk that he was absent when the vote was taken on the passage of Com. Sub. for H. B. 2747, and had he been present, he would have voted "Yea" thereon.

Delegate Kimble noted to the Clerk that she was absent when the vote was taken on Roll Call No. 642, and had she been present, she would have voted "Yea" thereon.

On motion of Delegate Summers, the House of Delegates adjourned *sine die* at 12:01 a.m. on April 11, 2021.



We hereby certify that the forgoing record of the proceedings of the House of Delegates, First Regular Session, 2021, is the Official Journal of the House of Delegates for said session.

Roger Hanshaw
Speaker of the House of Delegates

Stephen J. Harrison
Clerk of the House of Delegates

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