

WEST VIRGINIA LEGISLATURE

# SENATE JOURNAL

EIGHTY-FIFTH LEGISLATURE  
REGULAR SESSION, 2022  
FIFTY-NINTH DAY

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Charleston, West Virginia, Friday, March 11, 2022

The Senate met at 11:03 a.m.

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

Prayer was offered by the Honorable Charles H. Clements, a senator from the second district.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Tom Takubo, a senator from the seventeenth district.

Pending the reading of the Journal of Thursday, March 10, 2022,

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

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

At the request of Senator Plymale, and by unanimous consent, the remarks by Senator Baldwin regarding an earlier introduction of Courtney and Abigail Frame, the daughter and granddaughter of the Honorable Robert D. Beach, a senator from the thirteenth district, were ordered extended in the Journal as follows:

SENATOR BALDWIN: Thank you very much, Mr. President.

I just want to follow up on the introduction that was made before. The Senator from Mon's daughter and granddaughter are here today and I've got a message for the Senator from Mon from the rest of this family:

Dad:

Thank you for everything you have done during your 20 years in the West Virginia Legislature. You have shown dedication and perseverance during difficult times, but you have never lost sight of what is best for West Virginia and its' citizens. You continued fighting, even against all odds. We are especially proud of your work and your legislation for teachers and nurses, seeing as how two of us are teachers and one a nurse.

But more importantly, we thank you for being such a good Dad to us and our brothers, Sam and Bob, and a fun Bob-Bob to your six (almost seven!) grandchildren. Your family comes first and we love very much.

We wish you happiness and success in your future adventures.

We love you with all of our hearts.

Love, Jennifer, Melanie and Courtney

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The Senate proceeded to the third order of business.

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

**Eng. Com. Sub. for Senate Bill 25**, Updating provisions of Medical Professional Liability Act.

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

**Eng. Com. Sub. for Senate Bill 245**, Revising wage payment and collection.

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

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

On page 2, section 3, line 39, by inserting a new subsection (c) to read as follows:

"(c) An employer who chooses to compensate its employees using payroll cards pursuant to the provisions of subsection (b)(3) of this section must also give employees the option of being paid by electronic transfer under the provisions of subsection (b)(4) of this section.";

And,

Renumbering the remaining subsections accordingly.

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

Engrossed Committee Substitute for Senate Bill 245, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Boley, Clements, Grady, Hamilton, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—26.

The nays were: Baldwin, Beach, Brown, Caputo, Geffert, Lindsay, and Stollings—7.

Absent: Woelfel—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 245) passed with its title.

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

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

**Eng. Com. Sub. for Senate Bill 443**, Including police and firefighter as electors of trustees for certain pension funds.

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

**Eng. Com. Sub. for Senate Bill 476**, Relating to imposition of minimum severance tax on coal.

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

**Eng. Senate Bill 478**, Relating to Neighborhood Investment Program.

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

**Eng. Com. Sub. for Senate Bill 487**, Relating to Revenue Shortfall Reserve Fund and Revenue Shortfall Reserve Fund – Part B.

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

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

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

## **ARTICLE 2. STATE BUDGET OFFICE.**

### **§11B-2-20. Reduction of appropriations; powers of Governor; Revenue Shortfall Reserve Fund and permissible expenditures therefrom.**

(a) Notwithstanding any provision of this section, the Governor may reduce appropriations according to any of the methods set forth in sections twenty-one and twenty-two of this article. The Governor may, in lieu of imposing a reduction in appropriations, request an appropriation by the Legislature from the Revenue Shortfall Reserve Fund established in this section.

(b) The Revenue Shortfall Reserve Fund is continued within the State Treasury. The Revenue Shortfall Reserve Fund shall be funded continuously and on a revolving basis in accordance with this subsection up to an aggregate amount not to exceed thirteen percent of the total appropriations from the State Fund, General Revenue, for the fiscal year just ended. The Revenue Shortfall Reserve Fund shall be funded as set forth in this subsection from surplus revenues, if any, in the State Fund, General Revenue, as the surplus revenues may accrue from time to time.

Within sixty days of the end of each fiscal year, the secretary shall cause to be deposited into the Revenue Shortfall Reserve Fund such amount of the first fifty percent of all surplus revenues, if any, determined to have accrued during the fiscal year just ended, as may be necessary to bring the balance of the Revenue Shortfall Reserve Fund to ~~thirteen~~ eight percent of the total appropriations from the State Fund, General Revenue, for the fiscal year just ended. If at the end of any fiscal year the Revenue Shortfall Reserve Fund is funded at an amount equal to or exceeding ~~thirteen~~ eight percent of the state's General Revenue Fund budget for the fiscal year just ended, then there shall be no further deposit by the secretary under the provisions of this section of any surplus revenues as set forth in this subsection until that time the Revenue Shortfall Reserve Fund balance is less than ~~thirteen~~ eight percent of the total appropriations from the State Fund, General Revenue. On or before January 1, 2023, and each year thereafter, the secretary shall recommend in writing to the Governor and the Joint Committee on Government and Finance whether the percentage of the state's General Revenue Fund budget set forth in this paragraph should be adjusted by subsequent enactment of the Legislature and the reasons therefor.

(c) Not earlier than November 1 of each calendar year, if the state's fiscal circumstances are such as to otherwise trigger the authority of the Governor to reduce appropriations under this section or section twenty-one or twenty-two of this article, then in that event the Governor may notify the presiding officers of both houses of the Legislature in writing of his or her intention to convene the Legislature pursuant to section nineteen, article VI of the Constitution of West Virginia for the purpose of requesting the introduction of a supplementary appropriation bill or to request a supplementary appropriation bill at the next preceding regular session of the Legislature to draw money from the surplus Revenue Shortfall Reserve Fund to meet any anticipated revenue shortfall. If the Legislature fails to enact a supplementary appropriation from the Revenue Shortfall Reserve Fund during any special legislative session called for the purposes set forth in this section or during the next preceding regular session of the Legislature, then the Governor may proceed with a reduction of appropriations pursuant to sections twenty-one and twenty-two of this article. Should any amount drawn from the Revenue Shortfall Reserve Fund pursuant to an appropriation made by the Legislature prove insufficient to address any anticipated shortfall, then the Governor may also proceed with a reduction of appropriations pursuant to sections twenty-one and twenty-two of this article.

(d) Upon the creation of the fund, the Legislature is authorized and may make an appropriation from the Revenue Shortfall Reserve Fund for revenue shortfalls, for emergency revenue needs caused by acts of God or natural disasters or for other fiscal needs as determined solely by the Legislature.

(e) Prior to October 31 in any fiscal year in which revenues are inadequate to make timely payments of the state's obligations, the Governor may, by executive order, after first notifying the presiding officers of both houses of the Legislature in writing, borrow funds from the Revenue Shortfall Reserve Fund: *Provided*, That for the fiscal year 2014, pursuant to this subsection and subject to all other conditions, requirements and limitations set forth in this section, the Governor may borrow funds from the Revenue Shortfall Reserve Fund prior to the first day of April. The amount of funds borrowed under this subsection shall not exceed one and one-half percent of the general revenue estimate for the fiscal year in which the funds are to be borrowed, or the amount the Governor determines is necessary to make timely payment of the state's obligations, whichever is less. Any funds borrowed pursuant to this subsection shall be repaid, without interest, and redeposited to the credit of the Revenue Shortfall Reserve Fund within ninety days of their withdrawal.

(f) The Revenue Shortfall Reserve Fund – Part B is continued within the State Treasury. The Revenue Shortfall Reserve Fund – Part B shall consist of moneys transferred from the West Virginia Tobacco Settlement Medical Trust Fund pursuant to the provisions of section two, article eleven-a, chapter four of this code, repayments made of the loan from the West Virginia Tobacco Settlement Medical Trust Fund to the Physician's Mutual Insurance Company pursuant to the provisions of article twenty-f, chapter thirty-three of this code and all interest and other return earned on the moneys in the Revenue Shortfall Reserve Fund – Part B. Moneys in the Revenue Shortfall Reserve Fund – Part B may be expended solely for the purposes set forth in subsection (d) of this section, subject to the following conditions:

(1) No moneys in the Revenue Shortfall Reserve Fund – Part B nor any interest or other return earned thereon may be expended for any purpose unless all moneys in the Revenue Shortfall Reserve Fund described in subsection (b) of this section have first been expended, except that the interest or other return earned on moneys in the Revenue Shortfall Reserve Fund – Part B may be expended as provided in subdivision (2) of this subsection;

(2) Notwithstanding any other provision of this section to the contrary, the Legislature may appropriate any interest and other return earned thereon that may accrue on the moneys in the Revenue Shortfall Reserve Fund – Part B after June 30, 2025, for expenditure for the purposes set forth in section three, article eleven-a, chapter four of this code; and

(3) Any appropriation made from Revenue Shortfall Reserve Fund – Part B shall be made only in instances of revenue shortfalls or fiscal emergencies of an extraordinary nature.

(g) Subject to the conditions upon expenditures from the Revenue Shortfall Reserve Fund – Part B prescribed in subsection (f) of this section, in appropriating moneys pursuant to the provisions of this section, the Legislature may in any fiscal year appropriate from the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B a total amount up to, but not exceeding, ten percent of the total appropriations from the State Fund, General Revenue, for the fiscal year just ended.

(h) (1) Of the moneys in the Revenue Shortfall Reserve Fund, \$100 million, or such greater amount as may be certified as necessary by the Director of the Budget Office for the purposes of subsection (e) of this section, shall be made available to the West Virginia Board of Treasury Investments for management and investment of the moneys in accordance with the provisions of article six-c, chapter twelve of this code. All other moneys in the Revenue Shortfall Reserve Fund shall be made available to the West Virginia Investment Management Board for management and investment of the moneys in accordance with the provisions of article six, chapter twelve of this code. Any balance of the Revenue Shortfall Reserve Fund, including accrued interest and other return earned thereon at the end of any fiscal year, does not revert to the General Fund but shall remain in the Revenue Shortfall Reserve Fund for the purposes set forth in this section.

(2) All of the moneys in the Revenue Shortfall Reserve Fund – Part B shall be made available to the West Virginia Investment Management Board for management and investment of the moneys in accordance with the provisions of article six, chapter twelve of this code. Any balance of the Revenue Shortfall Reserve Fund – Part B, including accrued interest and other return earned thereon at the end of any fiscal year, shall not revert to the General Fund but shall remain in the Revenue Shortfall Reserve Fund – Part B for the purposes set forth in this section.;

And,

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

**Eng. Com. Sub. for Senate Bill 487**—A Bill to amend and reenact §11B-2-20 of the Code of West Virginia, 1931, as amended, relating to decreasing the threshold below which the secretary of the department of revenue is to annually deposit up to the first fifty percent of all surplus revenues, if any, determined to have accrued during the fiscal year just ended; and requiring the secretary to provide certain annual reports to the Governor and the Joint Committee on Government and Finance.

On motion of Senator Tarr, the following amendments to the House of Delegates amendments to the bill (Eng. Com. Sub. for S. B. 487) were reported by the Clerk, considered simultaneously, and adopted:

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

## **ARTICLE 2. STATE BUDGET OFFICE.**

### **§11B-2-20. Reduction of appropriations; powers of Governor; Revenue Shortfall Reserve Fund and permissible expenditures therefrom.**

(a) Notwithstanding any provision of this section, the Governor may reduce appropriations according to any of the methods set forth in sections twenty-one and twenty-two of this article. The Governor may, in lieu of imposing a reduction in appropriations, request an appropriation by the Legislature from the Revenue Shortfall Reserve Fund established in this section.

(b) The Revenue Shortfall Reserve Fund is continued within the State Treasury. The Revenue Shortfall Reserve Fund shall be funded continuously and on a revolving basis in accordance with this subsection up to an aggregate amount not to exceed thirteen percent of the total appropriations from the State Fund, General Revenue, for the fiscal year just ended. The Revenue Shortfall Reserve Fund shall be funded as set forth in this subsection from surplus revenues, if any, in the State Fund, General Revenue, as the surplus revenues may accrue from time to time.

Within sixty days of the end of each fiscal year, the secretary shall cause to be deposited into the Revenue Shortfall Reserve Fund such amount of the first fifty percent of all surplus revenues, if any, determined to have accrued during the fiscal year just ended, as may be necessary to bring the combined balance of the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B to ~~thirteen~~ twenty percent of the total appropriations from the State Fund, General Revenue, for the fiscal year just ended. If at the end of any fiscal year the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B ~~is~~ are funded at an a combined amount equal to or exceeding ~~thirteen~~ twenty percent of the state's General Revenue Fund budget for the fiscal year just ended, then there shall be no further deposit by the secretary under the provisions of this section of any surplus revenues as set forth in this subsection until ~~that the~~ the time that the combined balances of the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B ~~balance~~ is less than ~~thirteen~~ twenty percent of the total appropriations from the State Fund, General Revenue.

(c) Not earlier than November 1 of each calendar year, if the state's fiscal circumstances are such as to otherwise trigger the authority of the Governor to reduce appropriations under this section or section twenty-one or twenty-two of this article, then in that event the Governor may notify the presiding officers of both houses of the Legislature in writing of his or her intention to convene the Legislature pursuant to section nineteen, article VI of the Constitution of West

Virginia for the purpose of requesting the introduction of a supplementary appropriation bill or to request a supplementary appropriation bill at the next preceding regular session of the Legislature to draw money from the surplus Revenue Shortfall Reserve Fund to meet any anticipated revenue shortfall. If the Legislature fails to enact a supplementary appropriation from the Revenue Shortfall Reserve Fund during any special legislative session called for the purposes set forth in this section or during the next preceding regular session of the Legislature, then the Governor may proceed with a reduction of appropriations pursuant to sections twenty-one and twenty-two of this article. Should any amount drawn from the Revenue Shortfall Reserve Fund pursuant to an appropriation made by the Legislature prove insufficient to address any anticipated shortfall, then the Governor may also proceed with a reduction of appropriations pursuant to sections twenty-one and twenty-two of this article.

(d) Upon the creation of the fund, the Legislature is authorized and may make an appropriation from the Revenue Shortfall Reserve Fund for revenue shortfalls, for emergency revenue needs caused by acts of God or natural disasters or for other fiscal needs as determined solely by the Legislature.

(e) Prior to October 31 in any fiscal year in which revenues are inadequate to make timely payments of the state's obligations, the Governor may, by executive order, after first notifying the presiding officers of both houses of the Legislature in writing, borrow funds from the Revenue Shortfall Reserve Fund: *Provided*, That for the fiscal year 2014, pursuant to this subsection and subject to all other conditions, requirements and limitations set forth in this section, the Governor may borrow funds from the Revenue Shortfall Reserve Fund prior to the first day of April. The amount of funds borrowed under this subsection shall not exceed one and one-half percent of the general revenue estimate for the fiscal year in which the funds are to be borrowed, or the amount the Governor determines is necessary to make timely payment of the state's obligations, whichever is less. Any funds borrowed pursuant to this subsection shall be repaid, without interest, and redeposited to the credit of the Revenue Shortfall Reserve Fund within ninety days of their withdrawal.

(f) The Revenue Shortfall Reserve Fund – Part B is continued within the State Treasury. The Revenue Shortfall Reserve Fund – Part B shall consist of moneys transferred from the West Virginia Tobacco Settlement Medical Trust Fund pursuant to the provisions of section two, article eleven-a, chapter four of this code, repayments made of the loan from the West Virginia Tobacco Settlement Medical Trust Fund to the Physician's Mutual Insurance Company pursuant to the provisions of article twenty-f, chapter thirty-three of this code and all interest and other return earned on the moneys in the Revenue Shortfall Reserve Fund – Part B. Moneys in the Revenue Shortfall Reserve Fund – Part B may be expended solely for the purposes set forth in subsection (d) of this section, subject to the following conditions:

(1) No moneys in the Revenue Shortfall Reserve Fund – Part B nor any interest or other return earned thereon may be expended for any purpose unless all moneys in the Revenue Shortfall Reserve Fund described in subsection (b) of this section have first been expended, except that the interest or other return earned on moneys in the Revenue Shortfall Reserve Fund – Part B may be expended as provided in subdivision (2) of this subsection;

(2) Notwithstanding any other provision of this section to the contrary, the Legislature may appropriate any interest and other return earned thereon that may accrue on the moneys in the Revenue Shortfall Reserve Fund – Part B after June 30, 2025, for expenditure for the purposes set forth in section three, article eleven-a, chapter four of this code; and

(3) Any appropriation made from Revenue Shortfall Reserve Fund – Part B shall be made only in instances of revenue shortfalls or fiscal emergencies of an extraordinary nature.

(g) Subject to the conditions upon expenditures from the Revenue Shortfall Reserve Fund – Part B prescribed in subsection (f) of this section, in appropriating moneys pursuant to the provisions of this section, the Legislature may in any fiscal year appropriate from the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B a total amount up to, but not exceeding, ten percent of the total appropriations from the State Fund, General Revenue, for the fiscal year just ended.

(h) (1) Of the moneys in the Revenue Shortfall Reserve Fund, \$100 million, or such greater amount as may be certified as necessary by the Director of the Budget Office for the purposes of subsection (e) of this section, shall be made available to the West Virginia Board of Treasury Investments for management and investment of the moneys in accordance with the provisions of article six-c, chapter twelve of this code. All other moneys in the Revenue Shortfall Reserve Fund shall be made available to the West Virginia Investment Management Board for management and investment of the moneys in accordance with the provisions of article six, chapter twelve of this code. Any balance of the Revenue Shortfall Reserve Fund, including accrued interest and other return earned thereon at the end of any fiscal year, does not revert to the General Fund but shall remain in the Revenue Shortfall Reserve Fund for the purposes set forth in this section.

(2) All of the moneys in the Revenue Shortfall Reserve Fund – Part B shall be made available to the West Virginia Investment Management Board for management and investment of the moneys in accordance with the provisions of article six, chapter twelve of this code. Any balance of the Revenue Shortfall Reserve Fund – Part B, including accrued interest and other return earned thereon at the end of any fiscal year, shall not revert to the General Fund but shall remain in the Revenue Shortfall Reserve Fund – Part B for the purposes set forth in this section.;

And,

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

**Eng. Com Sub. for Senate Bill 487**—A Bill to amend and reenact §11B-2-20 of the Code of West Virginia, 1931, as amended, relating to the threshold which the secretary of the department of revenue is to annually deposit up to the first fifty percent of all surplus revenues, if any, determined to have accrued during the fiscal year just ended; raising the percentage of the threshold; and combining the totals of the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B Revenue for calculation of threshold.

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

Engrossed Committee Substitute for Senate Bill 487, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—33.

The nays were: None.



Absent: Woelfel—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 487) passed with its Senate amended title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Woelfel—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 487) takes effect from passage.

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

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

**Eng. Senate Bill 492**, Relating to electronic collection of tolls.

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

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

On page 2, section 11, line 26, by striking the word "shall" and inserting in lieu thereof the word "may";

And,

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

**Eng. Senate Bill 492**—A Bill to amend and reenact §17-16A-11 of the Code of West Virginia, 1931, as amended, relating to the electronic collection of tolls; and providing that nonrenewal of vehicle registration provisions may become effective whenever a reciprocal enforcement agreement is entered into by the West Virginia Parkways Authority, the Commissioner of Motor Vehicles, and any state sharing a common border with this state.

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

Engrossed Senate Bill 492, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—32.

The nays were: Martin—1.

Absent: Woelfel—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 492) passed with its House of Delegates amended title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—32.

The nays were: Martin—1.

Absent: Woelfel—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 492) takes effect from passage.

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

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

**Eng. Com. Sub. for Senate Bill 528**, Supplementing and amending appropriations to DHHR, Consolidated Medical Services Fund.

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

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

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

That the total appropriation for the fiscal year ending June 30, 2022, to fund 0525, fiscal year 2022, organization 0506, be supplemented and amended by adding a new item of appropriation as follows:

## **TITLE II – APPROPRIATIONS.**

### **Section 1. Appropriations from general revenue.**

#### **DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

## 58 – Consolidated Medical Services Fund

(WV Code Chapter 16)

Fund 0525 FY 2022 Org 0506

	<b>General</b>
	<b>Revenue</b>
	<b>Fund</b>
	<b>Appropriation</b>
6a Institutional Facilities and Operations – Surplus (R)	63200      \$15,625,000

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

Engrossed Committee Substitute for Senate Bill 528, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Woelfel—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 528) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Woelfel—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 528) takes effect from passage.

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

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

**Eng. Senate Bill 546**, Expanding uses of fees paid by students at higher education institutions.

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

**Eng. Senate Bill 570**, Establishing training for law-enforcement in handling individuals with Alzheimer's and dementias.

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

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

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

#### **ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.**

##### **§30-29-5a. Criminal justice training regarding individuals with autism spectrum disorders; Alzheimer's and dementia.**

(a) The Law-Enforcement ~~Special~~ Professional Standards Subcommittee ~~may~~ shall establish within the basic training curriculum, a course for law-enforcement training programs for the training of law-enforcement officers and correction officers in appropriate interactions with individuals with autism spectrum disorders, Alzheimer's and related dementias and ~~may~~ shall develop guidelines for law enforcement response to individuals on the autism spectrum, experience Alzheimer's and related dementias who are victims or witnesses to a crime, or suspected or convicted of a crime.

(b) The course of instruction and the guidelines relating to autism spectrum disorders shall be developed and delivered by the West Virginia Autism Training Center, located at Marshall University. This course of instruction may stress positive responses to such individuals, de-escalate potentially dangerous situations, provide an understanding of the different manner in which such individuals process sensory stimuli and language, social communication, and language difficulties likely to affect interaction, and appropriate methods of interrogation. Training instructors shall always include adults with autism spectrum disorders and/or a parent or primary caretaker of an individual diagnosed with autism spectrum disorder.

(c) The training course of instruction relating to Alzheimer's and dementia shall consist of two hours and be based on evidence-informed research into the identification of persons with Alzheimer's and other dementias, risks such as wandering or elder abuse, and the best practices for law-enforcement officers interacting with such persons. The training course of instruction may be delivered by any qualified entity, organization, or person approved by the Law-Enforcement Professional Standards Subcommittee.

(c) (d) As used in this section:

(1) "Agency" means the ability to make independent decisions and act in one's own best interests;

(2) "Alzheimer's" means a medical condition diagnosis of the most common type of dementia which is a gradually progressive type of brain disorder that causes problems with memory, thinking, and behavior.

(2) (3) "Autism spectrum disorder" means a developmental disability characterized by persistent and significant deficits in social communication, social interaction, communication, and behavior, and may include the diagnosis of pervasive developmental disorder, not otherwise specified, autistic disorder, and Asperger's Syndrome as defined in the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association;

(4) Related "dementias" means a major neurocognitive disorder resulting in the loss of cognitive functioning, thinking, remembering, and reasoning to such an extent that it interferes with a person's daily life and activities, including, but not limited to, inability to control emotions, and change of personalities.

(3) (5) "Law-enforcement officer" means any officer of any West Virginia law-enforcement agency, or any state institution of higher education as defined in §30-29-1(6) of this code; and

(4) (6) "Training instructors" means professional experts, autistic adults, and/or the family member or primary caregiver of an autistic individual who deliver instruction and information.

(d) (e) The autism spectrum disorder course of basic training for law-enforcement officers and correction officers may include at least three hours of instruction in the procedures and techniques described in this subsection:

(1) The nature and manifestation of autism spectrum disorders;

(2) Appropriate techniques for interviewing or interrogating an individual on the autism spectrum, including techniques to ensure the legality of statements made, and techniques to protect the rights of the interviewee;

(3) Techniques for locating an individual on the autism spectrum who runs away and is in danger, and returning the individual while causing as little stress as possible to the individual;

(4) Techniques for recognizing an autistic individual's agency while identifying potential abusive or coercive situations;

(5) Techniques for de-escalating a potentially dangerous situation to maximize the safety of both the law-enforcement officer or correction officer and the autistic individual;

(6) Techniques for differentiating between an individual on the autism spectrum from an individual who is belligerent, uncooperative, or otherwise displaying traits similar to the characteristics of an autistic individual;

(7) Procedures to identify and address challenges related to the safety and well-being of autistic individuals in a correctional facility; and

(8) The impact of interaction with law-enforcement officers or correction officers on autistic individuals.

(f) The Alzheimer's and related dementias course of basic training for law-enforcement officers and correction officers may include at least two hours of instruction in the procedures and techniques described in this subsection:

(1) Dementia, psychiatric, and behavioral symptoms;

(2) Communication issues, including how to communicate respectfully and effectively with the individual who has dementia in order to determine the most appropriate response and effective communication techniques to enhance collaboration with caregivers;

(3) Techniques for understanding and approaching behavioral symptoms and identify alternatives to physical restraints;

(4) Identifying and reporting incidents of abuse, neglect, and exploitation to Adult Protective Services (APS) at West Virginia Department of Health and Human Services;

(5) Techniques for de-escalating a potentially dangerous situation to maximize the safety of both the law-enforcement officer or correction officer and the individual with Alzheimer's or related dementias;

(6) Protocols for contacting caregivers when a person with dementia is found wandering or during emergency or crisis situations;

(7) Local caregiving resources that are available for people living with dementia; and

(8) The impact of interaction with law-enforcement officers or correction officers on Alzheimer's and dementia individuals.

(e) (g) All law-enforcement recruits may receive the course of basic training for law-enforcement officers, established in this section, as part of their required certification process. The course of basic training for law-enforcement officers may be taught as part of the "crisis intervention and conflict resolution" and "people with special needs" components of the training.

(f) (h) All correction officer recruits may receive the course of basic training for correction officers, established in this section, as part of their required certification process.

(g) (i) The Commissioner of the Division of Corrections and Rehabilitation periodically may include within the in-service training curriculum a course of instruction on individuals with autism spectrum disorder, Alzheimer's, and related dementias, consistent with this section.

(h) (j) The Law-Enforcement Professional Standards Subcommittee periodically may include within its in-service training curriculum, a course of instruction on individuals with autism spectrum disorder, Alzheimer's, and related dementias, consistent with this section.

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

Engrossed Senate Bill 570, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 570) passed with its title.

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

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

**Eng. Com. Sub. for Senate Bill 571**, Declaring certain claims to be moral obligations of state.

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

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

On page 1, section 1, following the enacting clause, by striking the section heading in its entirety and inserting in lieu thereof the following:

**"§1. Finding and declaring certain claims against the Legislature, Joint Committee on Government and Finance; Department of Environmental Protection; Department of Environmental Protection, Office of Special Reclamation; Department of Health & Human Resources; Department of Homeland Security, Division of Corrections and Rehabilitation; Department of Transportation, Division of Highways; Department of Transportation, Division of Motor Vehicles; Department of Veterans Affairs; and West Virginia Parole Board to be moral obligations of the state and directing payment thereof.";** and

On page 6, section 1, line 89, by striking "Christie" and inserting in lieu thereof "Cristie"; and

On page 10, section 1, line 182, following "Sandra", by striking "McCalister" and inserting in lieu thereof "McAlister".

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

Engrossed Committee Substitute for Senate Bill 571, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 571) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 571) takes effect from passage.

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

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

**Eng. Com. Sub. for Senate Bill 584**, Relating to WV Infrastructure and Jobs Development Council.

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

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

On page 4, section 10, line 68, following the word "assistance" by inserting "to defray the expenses of the preapplication process";

On page 4, section 17c, line 5, following the word "balances" by striking the words "for each congressional district";

And,

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

**Eng. Com. Sub. for Senate Bill 584**—A Bill to amend and reenact §31-15A-10 and §31-15A-17c of the Code of West Virginia, 1931, as amended, all relating generally to the West Virginia Infrastructure and Jobs Development Council; modifying when available funds may be converted to grants; removing congressional district limitations; increasing the cap on annual spending for assistance with the pre-application process to project sponsors; increasing the amount that may be transferred annually to the critical needs and failing systems sub account; and increasing the cap relating to providing extensions to a water or wastewater facility from \$1 million to \$2 million provided overages not to exceed 10 percent of the total project cost are paid by certain persons.



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

Engrossed Committee Substitute for Senate Bill 584, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 584) passed with its House of Delegates amended title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 584) takes effect from passage.

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

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

**Eng. Com. Sub. for Senate Bill 585**, Creating administrative medicine license for physicians not practicing clinical medicine.

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

**Eng. Senate Bill 624**, Making supplementary appropriation to DHHR, Division of Health, Laboratory Services.

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

**Eng. Com. Sub. for Senate Bill 625**, Making supplementary appropriation to DHHR, Division of Health, Vital Statistics Account.

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

**Eng. Senate Bill 633**, Supplementing and amending appropriations to DHHR, Consolidated Medical Services Fund.

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

**Eng. Senate Bill 634**, Making supplementary appropriation to DHHR, Division of Health – Hospital Services Revenue Account Special Fund Capital Improvement, Renovation and Operations.

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

**Eng. Com. Sub. for Senate Bill 641**, Requiring Consolidated Public Retirement Board to set contributions to Deputy Sheriff's Retirement System.

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

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

On page 1, section 7, line 11, following the word "set" by striking "actuarily" and inserting in lieu thereof "actuarially";

On page 2, section 7, line 21, following "retirement" by inserting "system";

On page 2, section 7, line 29, following "set" by striking "actuarily" and inserting in lieu thereof "actuarially";

And,

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

**Eng. Com. Sub. for Senate Bill 641**—A Bill to amend and reenact §7-14D-7 of the Code of West Virginia, 1931, as amended, relating to the deputy sheriff retirement system; allowing the Consolidated Public Retirement Board to set employer contribution levels; requiring the level to be set actuarially; and providing an effective date.

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

Engrossed Committee Substitute for Senate Bill 641, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 641) passed with its House of Delegates amended title.

Senator Takubo moved that the bill take effect July 1, 2023.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 641) takes effect July 1, 2023.

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

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

**Eng. Com. Sub. for Senate Bill 643**, Removing residency requirement of members appointed to county airport authority.

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

**Eng. Com. Sub. for Senate Bill 698**, Relating to number and selection of members for Governor's Veterans Council.

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

**Eng. Senate Bill 715**, Decreasing and increasing existing items of appropriations from State Fund, General Revenue.

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

**Eng. Senate Bill 716**, Supplemental appropriation to DOE, WV BOE, Strategic Staff Development.

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

**Eng. Senate Bill 717**, Supplemental appropriation to Miscellaneous Boards and Commissions, Board of Medicine, Medical Licensing Board.

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

**Eng. Senate Bill 718**, Supplemental appropriation to Department of Administration, Travel Management, Aviation Fund.

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

**Eng. Senate Bill 719**, Supplemental appropriation to DHS, Fire Commission, Fire Marshal Fees.

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

**Eng. Senate Bill 720**, Supplementing and amending appropriations to Executive, Governor's Office, Civil Contingent Fund.

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

**Eng. Senate Bill 722**, Expiring funds to DEP, Division of Environmental Protection, Reclamation of Abandoned and Dilapidated Property Program Fund.

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

**Eng. Senate Bill 723**, Making supplementary appropriation to Department of Agriculture, WV Spay Neuter Assistance Fund.

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

**Eng. Senate Bill 724**, Making supplementary appropriation to DHS, Division of Corrections and Rehabilitation, Regional Jail and Correctional Facility Authority.

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

**Eng. Senate Bill 725**, Supplementing and amending appropriations to DHS, WV State Police.

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

**Eng. House Bill 2817**, Donated Drug Repository Program.

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

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

On page 1, subdivision (1), after the word, "wholesaler," by inserting the words, "drug manufacturer,";

And,

On page 1, subdivision (6), after the word, "repackager" by inserting the words, "or manufacturer".

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

Engrossed House Bill 2817, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 2817) passed with its Senate amended title.

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

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

**Eng. Com. Sub. for House Bill 4113**, Public Health definitions and powers of secretary and commissioner.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended with its Senate amended title, to take effect from passage, of

**Eng. Com. Sub. for House Bill 4257**, Require visitation immediately following a procedure in a health care facility.

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

**Eng. Com. Sub. for House Bill 4479**, Establishing the Coalfield Communities Grant Facilitation Commission.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amended title, passage as amended, of

**Eng. House Bill 4604**, Relating to abolishing the Workforce Development Initiative Program Advisory Council.

The Senate proceeded to the seventh order of business.

**Senate Concurrent Resolution 61**, Requesting Joint Committee on Government and Finance study how public libraries are funded and supported.

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

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

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

**Senate Concurrent Resolution 62**, Requesting Joint Legislative Oversight Commission on State Water Resources study and evaluate quality of water services in WV.

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

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

**Senate Concurrent Resolution 63**, Requesting Committee on Government Organization study potential economic benefits and regulatory challenges associated with certain outdoor recreational opportunities.

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

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

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

**Senate Concurrent Resolution 64**, Requesting Joint Committee on Government and Finance study effectiveness of Local School Improvement Councils.

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

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

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

**Senate Concurrent Resolution 65**, Requesting Joint Committee on Government and Finance study WV Consumer Credit and Protection Act.

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

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

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

**Senate Resolution 52**, Highlighting West Virginia's once-in-a-lifetime opportunity to strengthen national security and energy independence and supply world energy markets.

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

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

**Senate Resolution 55**, Congratulating Bridgeport High School baseball team for winning 2021 Class AAA state championship.

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

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

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

The roll being taken, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of those present and voting having voted in the affirmative, the President declared the resolution (S. R. 55) adopted.

Thereafter, at the request of Senator Caputo, and by unanimous consent, the remarks by Senator Romano regarding the adoption of Senate Resolution 55 were ordered printed in the Appendix to the Journal.

**Senate Resolution 56**, Recognizing James Monroe High School Mavericks Youth Leadership Association students for their participation in Harvard University Model United Nations Conference.

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

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

**Senate Resolution 57**, Congratulating Point Pleasant High School Black Knights wrestling team for winning 2022 Class AA state championship.

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

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

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

The roll being taken, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of those present and voting having voted in the affirmative, the President declared the resolution (S. R. 57) adopted.

Thereafter, at the request of Senator Tarr, and by unanimous consent, the remarks by Senator Grady regarding the adoption of Senate Resolution 57 were ordered printed in the Appendix to the Journal.

The Senate proceeded to the eighth order of business.

**Eng. Senate Bill 731**, Making supplementary appropriation to Department of Tourism, Tourism Workforce Development Fund.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 731) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.



So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 731) takes effect from passage.

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

**Eng. Senate Bill 732**, Making supplementary appropriation to Hospital Finance Authority, Hospital Finance Authority Fund.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 732) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 732) takes effect from passage.

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

**Eng. Senate Bill 733**, Supplementing and amending appropriation to Executive, Governor's Office.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 733) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 733) takes effect from passage.

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

At the request of Senator Plymale, unanimous consent being granted, Senator Plymale addressed the Senate regarding the induction of Thomas Plymale, brother of the Honorable Robert H. Plymale, a senator from the fifth district, into the West Virginia Soccer Association Hall of Fame.

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

On motion of Senator Takubo, at 11:57 a.m., the Senate recessed until 1 p.m. today.

The Senate reconvened at 1:05 p.m. and, without objection, returned to the third order of business.

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

**Eng. Senate Bill 172**, Increasing compensation of elected county officials.

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

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

On page three, section four, line sixty-six, by striking out "2021" and inserting in lieu thereof "2022";

On page five, section four, line one hundred ten, by striking out "2021" and inserting in lieu thereof "2022";

On page one, following the article heading, inserting the following:

**"§7-7-1. Legislative findings and purpose.**

(a) The Legislature finds that it has, since January 1, ~~2007~~ 2015, consistently and annually imposed upon the county commissioners, sheriffs, county and circuit clerks, assessors and prosecuting attorneys in each county new and additional duties by the enactment of new provisions and amendments to this code. The new and additional duties imposed upon the aforesaid county officials by these enactments are such that they would justify the increases in compensation as provided in section four of this article, without violating the provisions of section thirty-eight, article VI of the Constitution of West Virginia.

(b) The Legislature further finds that there are, from time to time, additional duties imposed upon all county officials through the acts of the Congress of the United States and that such acts constitute new and additional duties for county officials and, as such, justify the increases in compensation as provided by section four of this article, without violating the provisions of section thirty-eight, article VI of the Constitution of West Virginia.

(c) The Legislature further finds that there is a direct correlation between the total assessed property valuations of a county on which the salary levels of the county commissioners, sheriffs, county and circuit clerks, assessors and prosecuting attorneys are based, and the new and additional duties that each of these officials is required to perform as they serve the best interests of their respective counties. Inasmuch as the reappraisal of the property valuations in each county has now been accomplished, the Legislature finds that a change in classification of counties by virtue of increased property valuations will occur on an infrequent basis. However, it is the further finding of the Legislature that when such change in classification of counties does occur, that new and additional programs, economic developments, requirements of public safety and the need for new services provided by county officials all increase, that the same constitute new and additional duties for county officials as their respective counties reach greater heights of economic development, as exemplified by the substantial increases in property valuations and, as such, justify the increases in compensation provided in section four of this article, without violating the provisions of section thirty-eight, article VI of the Constitution of West Virginia.

(d) The Legislature further finds and declares that the amendments enacted to this article are intended to modify the provisions of this article so as to cause the same to be in full compliance with the provisions of the Constitution of West Virginia and to be in full compliance with the decisions of the Supreme Court of Appeals of West Virginia.";

On page two, section four, line thirty-two, following the words "is effective", by striking out "July 1, 2014" and inserting in lieu thereof a parentheses, a blank line, and a parentheses;

And,

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

**Eng. Senate Bill 172**—A Bill to amend and reenact §7-7-1 and §7-7-4 of the Code of West Virginia, 1931, as amended, all relating to increasing the compensation of elected county officials.

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

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

Senator Romano requested a ruling from the Chair as to whether he should be excused from voting under Rule 43 of the Rules of the Senate, as he is a potential candidate for county commissioner.

The Chair replied that Senator Romano should be excused from voting on any matter pertaining to the bill and, without objection, Senator Romano was excused from voting on any matter pertaining to the bill.

On the passage of the bill, the yeas were: Azinger, Baldwin, Boley, Brown, Caputo, Clements, Geffert, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: None.

Absent: Beach and Grady—2.

Excused from voting: Romano—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 172) passed with its House of Delegates amended title.

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

The Senate again proceeded to the eighth order of business, the next bill coming up in numerical sequence being

**Eng. Com. Sub. for House Bill 2733**, Relating to the establishment of a Combat Action Badge and Combat Action Ribbon special registration plates.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2733) passed.

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

**Eng. Com. Sub. for House Bill 2733**—A Bill to amend and reenact §17A-3-14 of the Code of West Virginia, 1931, as amended, relating to authorizing special registration plates and establishing fees.

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

**Eng. Com. Sub. for House Bill 2838**, Authorize the ordering of restitution to the state for reimbursement of costs incurred for misuse of public funds, and to create the State Auditor's Public Integrity and Fraud Fund for use of said funds.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2838) passed with its title.

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

**Eng. House Bill 3082**, Stabilizing funding sources for the DEP Division of Air Quality.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3082) passed with its title.

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

**Eng. Com. Sub. for House Bill 3231**, Public Utilities not required to pay interest on security deposits.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 3231) passed with its title.

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

**Eng. Com. Sub. for House Bill 4008**, Relating to Higher Education Policy Commission funding formula.

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

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

**Eng. Com. Sub. for House Bill 4020**, Relating to reorganizing the Department of Health and Human Resources.

On third reading, coming up in regular order, with the unreported Finance committee amendment pending, and with the right having been granted on March 9, 2022, for further amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Takubo, and by unanimous consent, further consideration of the bill was deferred until the conclusion of bills on today's third reading calendar, following consideration of Engrossed Committee Substitute for House Bill 4008, already placed in that position.

**Eng. Com. Sub. for House Bill 4021**, Relating to the Medical Student Loan Program.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4021) passed with its title.

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

**Eng. Com. Sub. for House Bill 4059**, Clarifying that new Department of Health and Human Resources' Deputy Commissioners are exempt from civil service.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Boley, Brown, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale,

Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: Caputo—1.

Absent: Beach—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4059) passed.

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

**Eng. Com. Sub. for House Bill 4059**—A Bill to amend and reenact §29-6-4 of the Code of West Virginia, 1931, as amended, relating to exemptions from classified service; clarifying that all new Department of Health and Human Resources' Deputy Commissioners are policy-making positions exempt from civil service; and exempting persons employed as attorneys from the civil service.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Boley, Brown, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: Caputo—1.

Absent: Beach—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4059) takes effect from passage.

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

**Eng. Com. Sub. for House Bill 4087**, Allowing variance in state fire code for certain buildings used solely for emergency equipment storage.

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

At the request of Senator Takubo, and by unanimous consent, further consideration of the bill was deferred until the conclusion of bills on today's third reading calendar, following consideration of Engrossed Committee Substitute for House Bill 4020, already placed in that position.

**Eng. Com. Sub. for House Bill 4098**, Relating to Geothermal Energy Development.

On third reading, coming up in regular order, with the unreported committee amendments pending, and with the right having been granted on yesterday, Thursday, March 10, 2022, for further amendments to be received on third reading, was read a third time.

At the request of Senator Smith, as chair of the Committee on Energy, Industry, and Mining, and by unanimous consent, the unreported Energy, Industry, and Mining committee amendment to the bill was withdrawn.

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

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

### **ARTICLE 33. GEOTHERMAL ENERGY DEVELOPMENT.**

#### **§22-33-1. Short title.**

This article shall be known and cited as the Geothermal Resources Act.

#### **§22-33-2. Legislative findings; declaration of policy.**

(a) The Legislature finds that:

(1) A geothermal resource is a reservoir inside the Earth from which heat can be extracted economically compared to other conventional sources of energy and used for generating electric power or any other suitable industrial, commercial, agricultural, residential, or domestic application in the future;

(2) Geothermal resources vary widely from one location to another depending on the temperature and depth of the resource;

(3) There are no existing laws in this state that allow for the safe and efficient development of a regulatory program for geothermal resources; and

(4) The secretary should have broad authority to develop a regulatory program for geothermal resources to meet the economic needs of the state and to protect the public interest.

(b) The Legislature declares that the establishment of a new regulatory program to address the exploration, development, and production of geothermal resources in this state is in the public interest and should be done in a manner that protects the environment and our economy for current and future generations.

(c) The Legislature declares that in view of the urgent need for prompt decision of matters submitted to the secretary under this article, all actions which the secretary is required to take pursuant to this article shall be taken as quickly as possible consistent with adequate consideration of the issues involved.

#### **§22-33-3. Applicability; exceptions.**

The provisions of this article shall apply to geothermal resources at temperatures and volumetric flow rates established by the secretary by legislative rule: *Provided*, That this article shall not apply to geothermal heating and cooling heat pump systems for private residential dwellings and farm buildings.

#### **§22-33-4. Ownership of geothermal resources.**



(a) Ownership of any geothermal resource is vested in the owner of the surface property overlying the geothermal resource unless severance of the geothermal resource is clear and unambiguous in an instrument conveying ownership of the geothermal resource.

(b) No mineral or water estate shall be construed to include any geothermal resource unless clearly and unambiguously included in an instrument reserving or conveying the geothermal resource.

(c) Nothing in this article shall divest any person or the state of any right, title, or interest they might have in any geothermal resource.

(d) Nothing in this article may be construed as vesting in the secretary the jurisdiction to adjudicate property rights disputes.

#### **§22-33-5. Definitions.**

As used in this article:

(a) "Correlative right" means the right of each geothermal owner in a geothermal system to produce without waste his or her just and equitable share of the geothermal resource in the geothermal system.

(b) "Geothermal energy" means the usable energy that is produced or that can be produced from a geothermal resource.

(c) "Geothermal resource" means the natural heat of the earth and the energy, in whatever form, that is present in, associated with, or created by, or that may be extracted from, such natural heat, as determined by the secretary by legislative rule.

(d) "Geothermal system" means any aquifer, pool, reservoir, or other geologic formation containing geothermal resources.

(e) "Secretary" means the Secretary of the Department of Environmental Protection or his or her designee as provided in article one of this chapter.

#### **§22-33-6. Geothermal resources permit required.**

It is unlawful for any person to commence any work relating to the exploration, development, or production of geothermal resources without first obtaining a well permit from the secretary pursuant to this article.

#### **§22-33-7. Jurisdiction of the secretary; powers and duties; geothermal resources regulatory program.**

(a) The secretary is vested with jurisdiction over all aspects of this article and has the exclusive authority to perform all acts necessary to implement this article.

(b) The secretary shall develop a regulatory program for the exploration, development, and production of geothermal resources in this state. The regulatory program promulgated by the secretary shall include, but not be limited to, the following:

(1) Application for a permit on a form prescribed by the secretary and containing any information the secretary considers is necessary to issue a decision on the permit application;

(2) A procedure for reviewing a permit application and issuance of decision to grant or deny a permit;

(3) A procedure allowing the public to comment on a permit application prior to issuance of a decision by the secretary;

(4) A permit term not to exceed five years;

(5) A procedure to renew or modify permits on forms prescribed by the secretary and containing any information the secretary considers is necessary to issue a decision on the renewal or modification;

(6) Fees for permit applications and for permit renewals and modifications;

(7) A procedure to suspend or revoke permits;

(8) Standards for developing, drilling, and reclaiming well sites;

(9) Guidelines for the safe disposal of spent geothermal fluids and other unusable or contaminated fluids generated in the production of geothermal resources;

(10) Standards to ensure protection of all water resources of this state; and

(11) Inspections and investigations to ensure compliance with any provision in this article or rule or permit or order issued by the secretary.

#### **§22-33-8. Civil penalties.**

Any person who knowingly violates any provision of this article or rule promulgated hereunder or order or permit issued pursuant to this article is a liable for a civil penalty of not less than \$100 nor more than \$500 for each violation.

#### **§22-33-9. Administrative orders; injunctive relief.**

(a) When the secretary determines, on the basis of any information, that a person is in violation of any requirement of this article or rule promulgated thereunder, the secretary may issue an order stating with reasonable specificity the nature of the violation and requiring compliance within a reasonable specified time period, or the secretary may commence a civil action in the circuit court of the county in which the violation occurred or in the circuit court of Kanawha County for appropriate relief, including a temporary or permanent injunction. The secretary or the Environmental Quality Board may stay any order issued by the secretary until the order is reviewed by the Environmental Quality Board.

(b) In addition to the powers and authority granted to the secretary by this chapter to enter into consent agreements, settlements, and otherwise enforce this chapter, the secretary shall propose a rule for legislative approval to establish a mechanism for the administrative resolution of violations set forth in this article through consent order or agreement as an alternative to instituting a civil action.

**§22-33-10. Appeal to Environmental Quality Board.**

Any person aggrieved or adversely affected by an action, decision, or order of the secretary made and entered in accordance with the provisions of this article may appeal to the Environmental Quality Board pursuant to the provisions of §22B-1-1 et seq. of this code.

**§22-33-11. Judicial review.**

Any person or the secretary aggrieved or affected by a final order of the Environmental Quality Board is entitled to judicial review thereof pursuant to the provisions of §29B-1-9 of this code.

**§22-33-12. Rulemaking.**

The secretary shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code to implement and carry out the provisions of this article.

On motion of Senator Karnes, the following amendment to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 4098) was reported by the Clerk:

On page 2, section 3, line 4, after the word "buildings" by inserting the words "and any geothermal system regulated pursuant to section 10 of the Bureau of Public Health legislative rule for Water Well Design Standards, 64 CSR 46 or any horizontal system with a depth of less than 30 feet".

Following discussion,

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

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

Engrossed Committee Substitute for House Bill 4098, as just amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4098) passed.

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

**Eng. Com. Sub. for House Bill 4098**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §22-33-1, §22-33-2, §22-33-3, §22-33-4,

§22-33-5, §22-33-6, §22-33-7, §22-33-8, §22-33-9, §22-33-10, §22-33-11, and §22-33-12, all relating to geothermal energy development; providing for a short title; providing for certain legislative findings and declaration of policy; providing for applicability of geothermal resources regulatory program and exceptions; providing for ownership of geothermal resources; defining terms; requiring a permit; establishing the jurisdiction of the secretary of the Department of Environmental Protection to regulate the geothermal resources regulatory program; providing for powers and duties of the secretary and minimum requirements of the regulatory program; providing for civil penalties; providing for administrative orders and injunctive relief; providing for administrative and judicial review of decisions and orders issued pursuant to the provisions of the program; and directing the secretary to propose a legislative rule to implement the geothermal resources regulatory program.

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

**Eng. House Bill 4110**, Relating to staffing levels at multi-county vocational centers.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Boley, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—30.

The nays were: Brown, Caputo, and Romano—3.

Absent: Beach—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4110) passed with its title.

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

**Eng. Com. Sub. for House Bill 4112**, Provide consumers a choice for pharmacy services.

On third reading, coming up in regular order, with the unreported Health and Human Resources committee amendment pending, and with the right having been granted on yesterday, Thursday, March 10, 2022, for further amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Takubo, and by unanimous consent, further consideration of the bill was deferred until the conclusion of bills on today's third reading calendar, following consideration of Engrossed Committee Substitute for House Bill 4087, already placed in that position.

**Eng. Com. Sub. for House Bill 4285**, Relating to real estate appraiser licensing board requirements.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Phillips, Plymale,

Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: Nelson—1.

Absent: Beach and Weld—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4285) passed.

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

**Eng. Com. Sub. for House Bill 4285**—A Bill to amend and reenact §30-38-10, §30-38-11, and §30-38-17 of the Code of West Virginia, 1931, as amended, all relating to real estate appraiser licensing board requirements; prohibiting board members from participating in any decision regarding disciplinary action concerning real estate appraiser activity in which member has participated, testified, been engaged to testify, or otherwise has conflict of interest; requiring board provide applicants written statement when applicant's request for license is denied; requiring board send written statement within 15 calendar days of its decision to deny an applicant's license or renewal request; setting forth content and mailing requirements for board's written statement; requiring board offer guidance on certain issues relating to nonconformity with Uniform Standards of Professional Appraisal Practice when submitted to the board; providing 60 days for applicant to cure any nonconformity to appraisal practice standards; revising process for adoption of uniform standards of appraisal practice; and making other technical modifications.

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

**Eng. House Bill 4288**, Relating to expanding the practice of auricular acudetox to professions approved by the acupuncturist board.

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

At the request of Senator Maynard, and by unanimous consent, further consideration of the bill was deferred until the conclusion of bills on today's third reading calendar, following consideration of Engrossed Committee Substitute for House Bill 4112, already placed in that position.

**Eng. Com. Sub. for House Bill 4336**, Providing for the valuation of natural resources property.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4336) passed with its title.

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

**Eng. House Bill 4355**, Relating to the disclosure by state institutions of higher education of certain information regarding textbooks and digital courseware and certain charges assessed for those items.

On third reading, coming up in regular order, with the unreported Education committee amendment pending, and with the right having been granted on yesterday, Thursday, March 10, 2022, for further amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Takubo, and by unanimous consent, further consideration of the bill was deferred until the conclusion of bills on today's third reading calendar, following consideration of Engrossed House Bill 4288, already placed in that position.

**Eng. Com. Sub. for House Bill 4373**, To exclude fentanyl test strips from the definition of drug paraphernalia.

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

On the passage of the bill, the yeas were: Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: Azinger—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4373) passed.

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

**Eng. Com. Sub. for House Bill 4373**—A Bill to amend and reenact §47-19-3 of the Code of West Virginia, 1931, as amended; and to amend §60A-4-403a of said code, all relating to excluding fentanyl test strips from the definition of drug paraphernalia; and specifying that possession, sale, or purchase of fentanyl test strips are not prohibited under Chapter 60A of this code.

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

**Eng. Com. Sub. for House Bill 4389**, Relating to repealing school innovation zones provisions superseded by Innovation in Education Act.

On third reading, coming up in regular order, with the right having been granted on yesterday, Thursday, March 10, 2022, for amendments to be received on third reading, was read a third time.

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

On page one, after the enacting clause, by inserting the following:

## **ARTICLE 2. STATE BOARD OF EDUCATION.**

### **§18-2-25e. Athletic eligibility of transfer students.**

(a) The West Virginia Secondary School Activities Commission shall modify its rule, prior to the 2022-2023 school year, to allow students to transfer schools and retain athletic eligibility one time during a student's four years of secondary school, inclusive of grades nine through 12. The West Virginia Secondary School Activities Commission may promulgate an emergency rule, if necessary, to modify its rule prior to the 2022-2023 school year.

(b) The State Board of Education, in its review and approval of the West Virginia Secondary School Activities Commission's rule described in this section, shall ensure that the rule modification achieves the intent of this section to not require a student to undergo one year of athletic ineligibility if the student transfers secondary schools during or after the student's ninth grade year.

(c) Nothing in this section is intended to limit or restrict a student transferring more than one time for the following reasons:

(1) A student transferring back to the student's residential district and participating in athletics as currently permitted by the West Virginia Secondary School Activities Commission's rules;

(2) The West Virginia Secondary School Activities Commission's ability to make eligibility determinations on a case-by-case basis when warranted by a student's circumstances in accordance with the West Virginia Secondary School Activities Commission's rules; or

(3) For any other reason permitted under the rules of the West Virginia Secondary School Athletics Commission.

Engrossed Committee Substitute for House Bill 4389, as just amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Boley, Brown, Clements, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: Baldwin, Caputo, and Geffert—3.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4389) passed.

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

**Eng. Com. Sub. for House Bill 4389**—A Bill to repeal §18-5B-1, §18-5B-2, §18-5B-3, §18-5B-4, §18-5B-5, §18-5B-6, §18-5B-7, §18-5B-8, §18-5B-9, §18-5B-11, §18-5B-12, §18-5B-13 and §18-5B-14 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §18-2-25e; to amend and reenact §18-5B-10 of said code; and to amend and reenact §18-5E-3 of said code, all relating to education generally; allowing students to transfer schools and retain their athletic eligibility one time during a student's four years of secondary school; requiring West Virginia Secondary School Activities Commission to modify its rule; authorizing emergency rule; requiring State Board of Education to ensure rule does not require student to undergo one year of athletic ineligibility upon transfer after ninth grade; clarifying effect on multiple transfers for certain reasons; repealing school innovation zones provisions superseded by Innovation in Education Act; updating exceptions to statutes granted to schools to reflect changes in underlying circumstances; updating provisions related to granted exceptions to accommodate exceptions which may be granted to innovation in education schools and school systems; and clarifying process for state board and legislative oversight commission on education accountability to approve and recommend exceptions to statutes.

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

**Eng. House Bill 4419**, Allowing candidate committees and campaign committees to make contributions to affiliated state party executive committees.

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

Pending discussion,

The question being "Shall Engrossed House Bill 4419 pass?"

On the passage of the bill, the yeas were: Azinger, Boley, Clements, Grady, Hamilton, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Rucker, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—23.

The nays were: Baldwin, Beach, Brown, Caputo, Geffert, Jeffries, Lindsay, Plymale, Romano, Stollings, and Woelfel—11.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4419) passed.

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

**Eng. House Bill 4419**—A Bill to amend and reenact §3-8-5c, §3-8-9b, and §3-8-10 of the Code of West Virginia, 1931, as amended, all relating to allowing candidate committees and campaign committees to make contributions to affiliated state party executive committees; excepting candidate committees and caucus campaign committees from making certain contributions; authorizing candidate committees and caucus campaign committees to make



certain contributions up to \$75,000; eliminating coordinated expenditure limit for a state political party committee or a caucus campaign committee; eliminating limit for excess contributions to be contributed by a candidate to a state party executive committee or state party legislative caucus committee; and making amendments effective on November 9, 2022.

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

**Eng. House Bill 4433**, Providing that retirement benefits are not subject to execution.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4433) passed with its title.

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

**Eng. Com. Sub. for House Bill 4488**, Relating to coal mining and changing fees for permitting actions.

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

Pending discussion,

The question being "Shall Engrossed Committee Substitute for House Bill 4488 pass?"

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4488) passed with its title.

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

**Eng. Com. Sub. for House Bill 4492**, Creating the Division of Multimodal Transportation.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4492) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4492) takes effect from passage.

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

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

On motion of Senator Takubo, at 1:52 p.m., the Senate recessed until 2:15 p.m. today.

The Senate reconvened at 2:34 p.m. and resumed business under the second order.

The Senate again proceeded to the eighth order of business, the next bill coming up in numerical sequence being

**Eng. House Bill 4496**, Allowing interest and earnings on federal COVID-19 relief moneys to be retained in the funds or accounts where those moneys are invested.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4496) passed with its title.

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

**Eng. Com. Sub. for House Bill 4497**, Extending the regional jail per diem through July 1, 2023.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4497) passed with its title.

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

**Eng. Com. Sub. for House Bill 4511**, To make numerous amendments to modernize and increase efficiencies in the administration of the West Virginia Unclaimed Property Act.

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

At the request of Senator Takubo, and by unanimous consent, further consideration of the bill was deferred until the conclusion of bills on today's third reading calendar, following consideration of Engrossed House Bill 4355, already placed in that position.

**Eng. Com. Sub. for House Bill 4559**, Providing for legislative rulemaking relating to the disposition of unidentified and unclaimed remains in the possession of the Chief Medical Examiner.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4559) passed with its title.

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

**Eng. Com. Sub. for House Bill 4563**, Provide for a license plate for auto mechanics.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4563) passed.

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

**Eng. Com. Sub. for House Bill 4563**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17A-6-15a, relating to authorizing auto mechanics to make application for access to the Division of Motor Vehicles' electronic temporary plate issuance system in order to access temporary plates to be used to operate or move a vehicle upon the highways and streets of this state solely for the purposes of diagnosing mechanical or functional problems of a vehicle or testing a vehicle being repaired or serviced; setting forth application, renewal, and plate fees; requiring the Commissioner of the Division of Motor Vehicles to determine whether applicants are qualified; requiring the display of proof of insurance upon any vehicles bearing a temporary registration plate; setting forth definitions; and authorizing the Commissioner of the Division of Motor Vehicles to terminate an auto mechanic's access to the electronic temporary plate issuance system upon a finding that an auto mechanic's use of that system is in violation of law.

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

**Eng. Com. Sub. for House Bill 4565**, To exempt temporary employees and employees of the Higher Education Policy Commission from automatic enrollment into the state's 457 (b) plan.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4565) passed with its title.

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

**Eng. House Bill 4566**, Creating the Economic Enhancement Grant Fund.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4566) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4566) takes effect from passage.

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

**Eng. House Bill 4568**, To allow phased rehabilitations of certified historic structures.

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

Pending discussion,

The question being "Shall Engrossed House Bill 4568 pass?"

Senator Plymale requested a ruling from the Chair as to whether he should be excused from voting under Rule 43 of the Rules of the Senate, as he is president of the Keith-Albee Performing Arts Center which could be eligible for the bill's funds.

The Chair replied that Senator Plymale should be excused from voting on any matter pertaining to the bill and, without objection, Senator Plymale was excused from voting on any matter pertaining to the bill.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: None.

Excused from voting: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4568) passed with its title.

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

**Eng. Com. Sub. for House Bill 4608**, To require the State Fire Commission to propose minimum standards for persons to be certified as probationary status volunteer firefighters.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4608) passed with its title.

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

**Eng. Com. Sub. for House Bill 4629**, Relating to procedures for certain actions against the state.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4629) passed.

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

**Eng. Com. Sub. for House Bill 4629**—A Bill to amend and reenact §55-17-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §55-17-3a, all relating to actions against the State of West Virginia; providing for expiration of notice of intent to institute an action where an action has not been instituted within the prescribed time period; requiring complaining party or parties to provide a new notice; requiring new notices to be accompanied by the required fee payable to the attorney general or chief officer of the state agency; providing that applicable statute of limitations is not tolled during second or subsequent notices; prohibiting a court from issuing a writ of mandamus, a writ of prohibition or an injunction against the Legislature under the separation of powers provision of the state constitution; prohibiting the naming of the Legislature or its presiding officers in any action challenging the constitutionality of a statute under the separation of powers provision of the state constitution; requiring dismissal of such actions or dismissal of the improperly joined parties; and providing for retrospective and retroactive application of prohibitions to all actions pending at the time of the enactment of this bill.

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

**Eng. Com. Sub. for House Bill 4634**, Relating to occupational licensing or other authorization to practice.

On third reading, coming up in regular order, with the right having been granted on yesterday, Thursday, March 10, 2022, for amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Takubo, and by unanimous consent, further consideration of the bill was deferred until the conclusion of bills on today's third reading calendar, following consideration of Engrossed Committee Substitute for House Bill 4511, already placed in that position.

**Eng. Com. Sub. for House Bill 4636**, Clarifying when business and occupation taxes owed to a city or municipality are considered to be remitted on time.

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

At the request of Senator Takubo, and by unanimous consent, further consideration of the bill was deferred until the conclusion of bills on today's third reading calendar, following consideration of Engrossed Committee Substitute for House Bill 4634, already placed in that position.

**Eng. Com. Sub. for House Bill 4662**, Relating to licensure of Head Start facilities in this state.

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

At the request of Senator Takubo, and by unanimous consent, further consideration of the bill was deferred until the conclusion of bills on today's third reading calendar, following consideration of Engrossed Committee Substitute for House Bill 4636, already placed in that position.

**Eng. House Bill 4743**, Relating to security and surveillance requirements of medical cannabis organization facilities.

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

On the passage of the bill, the yeas were: the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Lindsay, Maroney, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: Karnes and Martin—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4743) passed with its title.

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

**Eng. Com. Sub. for House Bill 4787**, Creating the Highly Automated Motor Vehicle Act.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4787) passed.

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

**Eng. Com. Sub. for House Bill 4787**—A Bill to amend the Code of West Virginia Code, 1931, as amended, by adding thereto a new chapter, designated §17H-1-1, §17H-1-2, §17H-1-3, §17H-1-4, §17H-1-5, §17H-1-6, §17H-1-7, §17H-1-8, §17H-1-9, §17H-1-10, §17H-1-11, §17H-1-12, §17H-1-13, §17H-1-14, and §17H-1-15, all relating to establishing the Fully Autonomous Vehicle Act; defining terms; providing for construction of the act; providing requirements for the operation of fully autonomous vehicles without a human driver and with a human driver; providing for the operation of on-demand autonomous vehicle networks; providing for the operation of fully autonomous commercial and motor vehicle carriers; providing for the platooning of fully autonomous vehicles; providing for licensing, titling, registration, and insurance requirements of fully autonomous vehicles; providing for control and regulation of fully autonomous vehicles; providing for equipment standards for fully autonomous vehicles; and providing duties following a crash involving fully autonomous vehicles.



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

**Eng. Com. Sub. for House Bill 4826**, Relating to e-sports.

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

On the passage of the bill, the yeas were: Beach, Boley, Brown, Caputo, Clements, Geffert, Hamilton, Jeffries, Lindsay, Maroney, Maynard, Nelson, Phillips, Plymale, Romano, Rucker, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—27.

The nays were: Azinger, Baldwin, Grady, Karnes, Martin, Roberts, and Smith—7.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4826) passed with its title.

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

**Eng. House Bill 4829**, Modifying definitions of certain school cafeteria personnel.

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

At the request of Senator Takubo, and by unanimous consent, further consideration of the bill was deferred until the conclusion of bills on today's third reading calendar, following consideration of Engrossed House Bill 4662, already placed in that position.

**Eng. House Bill 4848**, Relating to nonintoxicating beer, wine and liquor licenses.

On third reading, coming up in regular order, with the unreported Judiciary committee amendment pending, and with the right having been granted on yesterday, Thursday, March 10, 2022, for further amendments to be received on third reading, was read a third time.

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

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

## **CHAPTER 11. TAXATION.**

### **ARTICLE 16. NONINTOXICATING BEER.**

#### **§11-16-5a. Off-premises sales not required to be bagged.**

A licensee who is licensed for off-premises sales of nonintoxicating beer or nonintoxicating craft beer is not required to place nonintoxicating beer or nonintoxicating craft beer, in a bag.

**§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~~ \$20 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 and delivery shall be subject to legal identification verification;

(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 and delivery shall be subject to legal identification verification ;

(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.

**§11-16-6f. 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~~ \$20 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~~. \$20.

(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 and delivery shall be subject to legal identification verification ;

(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 and delivery shall be subject to legal identification verification;

(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.

**§11-16-8. Form of application for license; fee and bond; refusal of license.**

(a) A license may be issued by the commissioner to any person who submits an application, accompanied by a license fee and, where required, a bond, and states under oath:

(1) The name and residence of the applicant, the duration of ~~such~~ the residency, and that the applicant is 21 years of age. If the applicant is a firm, association, partnership, limited partnership, limited liability company, or corporation, the application shall include the residence of the members or officers. If a person, firm, partnership, limited partnership, limited liability company, association, corporation, or trust applies for a license as a distributor, the person, or in the case of a firm, partnership, limited partnership, limited liability company, association or trust, the members, officers, trustees, or other persons in active control of the activities of the limited liability company, association, or trust relating to the license, shall include the residency for these persons on the application. All applicants and licensees ~~must~~ shall include a manager on the applicant's license application, or a licensee's renewal application, who ~~must~~ shall meet all other requirements of licensure. ~~including, but not limited to, The applicant shall be a United States citizenship or naturalization citizen or a naturalized citizen, passing pass a background investigation, being be at least 21 years of age, being be a suitable person, being be of good morals and character of good moral character, and meet~~ other requirements, all as set forth in this article and the rules promulgated thereunder, all in the interest of protecting public health and safety and being a suitable applicant or licensee. In order to maintain licensure, a licensee shall notify the commissioner immediately of a change in managers. If the applicant is a trust or has a trust as an owner, the trustees, or other persons in active control of the activities of the trust relating to the license, shall provide a certification of trust as described in §44D-10-1013 of this code. This certification of trust shall include the excerpts described in §44D-10-1013(e) of this code and shall further state, under oath, the names, addresses, Social Security numbers, and birth dates of the beneficiaries of the trust and certify that the trustee and beneficiaries are 21 years of age or older. If a beneficiary is not 21 years of age, the certification of trust ~~must~~ shall state that the beneficiary's interest in the trust is represented by a trustee, parent, or legal guardian who is 21 years of age and who will direct all actions on behalf of the beneficiary related to the trust with respect to the distributor until the beneficiary is 21 years of age. Any beneficiary who is not 21 years of age or older shall have his or her trustee, parent, or legal guardian include in the certification of trust and state under oath his or her name, address, Social Security number, and birth date;

(2) The place of birth of the applicant, that he or she is a citizen of the United States and of good moral character and, if a naturalized citizen, when and where naturalized. If the applicant is a corporation organized or authorized to do business under the laws of the state, the application ~~must~~ shall state when and where incorporated, the name and address of each officer, and that each officer is a citizen of the United States and a person of good moral character. If the applicant is a firm, association, limited liability company, partnership, limited partnership, trust, or has a trust as an owner, the application shall provide the place of birth of each member of the firm, association, limited liability company, partnership or limited partnership and of the trustees, beneficiaries, or other persons in active control of the activities of the trust relating to the license and that each member or trustee, beneficiary, or other persons in active control of the activities of the trust relating to the license is a citizen of the United States, and if a naturalized citizen, when and where naturalized, each of whom ~~must~~ shall qualify and sign the application;

(3) The particular place for which the license is desired and a detailed description thereof;

(4) The name of the owner of the building and, if the owner is not the applicant, that the applicant is the actual and bona fide lessee of the premises;



(5) That the ~~place~~ premises or building in which is ~~proposed~~ the applicant proposes to do business conforms to all applicable laws of health, fire, and zoning regulations and is a safe and proper place or building; not within ~~300~~ 200 feet of a school or church measured from front door to front door, along the street or streets. This requirement does not apply to a Class B license or to a place occupied by a beer licensee so long as it is continuously so occupied. The prohibition ~~against locating a proposed business in a place or building within 300 feet of a school~~ does not apply to a college, ~~or~~ university, or church that has notified the commissioner, in writing, that it has no objection to the location of a proposed business in a place or building within ~~300~~ 200 feet of the college, ~~or~~ university, or church;

(6) That the applicant is not incarcerated and has not during the five years preceding the date of ~~said~~ the application been convicted of a felony;

(7) That the applicant is the only person in any manner pecuniarily interested in the business ~~so asked~~ to be licensed and that no other person is in any manner pecuniarily interested during the continuance of the license; and

(8) That the applicant has not during five years preceding the date of the application had a nonintoxicating beer license revoked.

(b) In the case of an applicant that is a trust or has a trust as an owner, a distributor license may be issued only upon submission by the trustees or other persons in active control of the activities of the trust relating to the distributor license of a true and correct copy of the written trust instrument to the commissioner for his or her review. Notwithstanding any provision of law to the contrary, the copy of the written trust instrument submitted to the commissioner pursuant to this section is confidential and is not a public record and is not available for release pursuant to the West Virginia Freedom of Information Act codified in §29B-1-1 *et seq.* of this code.

(c) The provisions and requirements of subsection (a) of this section are mandatory prerequisites for the issuance of a license and, if any applicant fails to qualify, the commissioner shall refuse to issue the license ~~shall be refused~~. In addition to the information furnished in any application, the commissioner may make ~~such~~ any additional and independent investigation of each applicant, manager, and of the place to be occupied as necessary or advisable and, for this reason, all applications, with license fee and bond, ~~must~~ shall be submitted with all true and correct information. For the purpose of conducting ~~such~~ the independent investigation, the commissioner may withhold the granting or refusal to grant the license for a 30-day period or until the applicant has completed the conditions set forth in this section. If it appears that the applicant and manager meet the requirements in the code and the rules, including, but not limited to, being a suitable person of ~~good reputation and morals~~ good moral character; having made no false statements or material misrepresentations; involving no hidden ownership; and having no persons with an undisclosed pecuniary interest contained in the application; and if there are no other omissions or failures by the applicant to complete the application, as determined by the commissioner, the commissioner shall issue a license authorizing the applicant to sell nonintoxicating beer or nonintoxicating craft beer.

(d) The commissioner may refuse a license to any applicant under the provisions of this article if the commissioner is of the opinion:

(1) That the applicant or manager is not a suitable person to be licensed;

(2) That the place to be occupied by the applicant is not a suitable place; or is within ~~300~~200 feet of any school or church measured from front door to front door along the street or streets. This requirement does not apply to a Class B licensee or to a place now occupied by a beer licensee so long as it is continuously so occupied. The prohibition ~~against locating any such place within 300 feet of a school~~ does not apply to a college, ~~or university, or church~~ that has notified the commissioner, in writing, that it has no objection to the location of any such place within ~~300~~200 feet;

(3) That the manager, owner, employee, or person is in a contractual relationship to provide goods or services to the applicant is an active employee of the commissioner; or

(4) That the license should not be issued for reason of conduct declared to be unlawful by this article.

## CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

### ARTICLE 1. GENERAL PROVISIONS.

#### **§60-1-3a. Off-premises sales not required to be bagged.**

Alcoholic liquors in this state are not required to be placed in a bag by a licensee who is licensed for off-premises sales of alcoholic liquors.

### ARTICLE 3. SALES BY COMMISSIONER.

#### **§60-3-26. Sale of certain liquors prohibited.**

(a) Upon the effective date of this section, the commissioner is hereby directed to divest the state of all stocks of alcoholic liquors in the commissioner's possession manufactured in the Russian Federation, or by any person or entity located therein, and to cease purchasing such products during the time this section is in effect.

(b) The commissioner, at the direction of the Governor, is hereby authorized to auction to the highest bidder or sell at a public event all stocks of alcohol liquors in the commissioner's possession which were either manufactured in the Russian Federation or by a person or entity located therein.

(c) The state's proceeds from the sale authorized by subsection (b) of this section shall be paid to a licensed, recognized charitable organization or organizations engaged in assisting the people of Ukraine.

(d) The provisions of this section shall expire three years from the effective date of the section or until the Governor lifts the ban established in subsection (a) of this section.

### ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

#### **§60-3A-3a. Liquor sampling.**

(a) Notwithstanding any provision of this code to the contrary, a Class A retail licensee may, ~~with the written approval of the commissioner,~~ conduct a liquor sampling event on a designated sampling day.

(b) At least five business days prior to the liquor sampling, the Class A retail licensee shall submit a written proposal to the commissioner ~~requesting to~~ informing the Commissioner that the Class A licensee will hold a liquor sampling event, including:

- (1) The day of the event;
- (2) The location of the event;
- (3) The times for the event; and
- (4) The specific brand and flavor of the West Virginia product to be sampled.

(c) Upon approval by the commissioner, a Class A retail licensee may serve a complimentary liquor sample of the approved brand and flavor of the West Virginia product that is purchased by the Class A retail licensee from the commissioner.

(d) The complimentary liquor samples on any sampling day shall not exceed:

(1) One separate and individual sample serving per customer verified to be 21 years of age or older; and

(2) One ounce in total volume.

(e) Servers at the liquor sampling event shall:

(1) Be employees of the Class A retail licensee; and

(2) Be at least 21 years of age or older; ~~and~~

~~(3) Have specific knowledge of the West Virginia product being sampled to convey to the customer.~~

(f) All servers at the liquor sampling event shall verify the age of the customer sampling liquor by requiring and reviewing proper forms of identification. Servers at the liquor sampling event may not serve any person who is:

(1) Under the age of 21 years;

(2) Intoxicated.

(g) A liquor sampling event shall:

(1) Occur only inside the Class A retail licensee's licensed premises; and

(2) Cease on or before 9:00 p.m. on any approved sampling day.

(h) Any liquor bottle used for sampling must be from the inventory of the licensee, and clearly and conspicuously labeled "SAMPLE, NOT FOR RESALE". If the seal is broken on any liquor bottle or if any liquor bottle is opened, then that liquor bottle must be removed from the licensed premises immediately following the event.

(i) Violations of this section are subject to the civil and criminal penalties set forth in sections twenty-four, twenty-five-a, twenty-six and twenty-seven of this article;

~~(j) To implement the provisions of this section, the commissioner may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code or propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code.~~

**§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~~ \$20 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~~. \$20.

(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 ~~application 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~~ and delivery shall be subject to legal identification verification;

(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~~ and delivery shall be subject to legal identification verification;

(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-8. Retail license application requirements; retail licensee qualifications.**

(a) Prior to or simultaneously with the submission of a bid for a retail license or the payment of a purchase option for a Class A retail license, each applicant shall file an application with the commissioner, stating under oath, the following:

(1) If the applicant is an individual, his or her name and residence address;

(2) If the applicant is other than an individual, the name and business address of the applicant; the state of its incorporation or organization; the names and residence addresses of each executive officer and other principal officer, partner, or member of the entity; a copy of the entity's charter or other agreement under which the entity operates; the names and residence addresses of any person owning, directly or indirectly, at least 20 percent of the outstanding stock, partnership, or other interests in the applicant; and all applicants and licensees must list a manager on the applicant's license application, or a licensee's renewal application, and further that the manager shall meet all other requirements of licensure, including, but not limited to, United States citizenship or naturalization, passing a background investigation, being at least 21 years of age, being a suitable person, being of good morals and character, and other requirements, all as set forth in the code and the legislative rules, in order for the manager to be able to meet and conduct any regulatory matters, including, but not limited to, licensure or enforcement matters related to the applicant or licensee all in the interest of protecting public health and safety and being a suitable applicant or licensee. In order to maintain active licensure, any change by a licensee in any manager listed on an application must be made immediately to the commissioner, in order to verify that the new manager meets licensure requirements;

(3) That the applicant and manager have ~~never~~ not been convicted in this state or any other state of any felony or other crime involving moral turpitude or convicted of any felony in this or any other state court or any federal court for a violation of any state or federal liquor law, and if

the applicant is other than an individual, that none of its executive officers, other principal officers, partners, or members, or any person owning, directly or indirectly, at least 20 percent of the outstanding stock, partnership, or other interests in the applicant, has been convicted; and

(4) That the applicant and the manager, each is a United States citizen of good moral character and, if a naturalized citizen, when and where naturalized; and, if a corporation organized and authorized to do business under the laws of this state, when and where incorporated, with the name and address of each officer; that each officer is a citizen of the United States and a person of good moral character; and if a firm, association, partnership, or limited partnership, that each member is a citizen of the United States and, if a naturalized citizen, when and where naturalized, each of whom must sign the application.

(b) An applicant and manager shall provide the commissioner any additional information requested by the commissioner including, but not limited to, authorization to conduct a criminal background and credit records check.

(c) Whenever a change occurs in any information provided to the commissioner, the change shall immediately be reported to the commissioner in the same manner as originally provided.

(d) The commissioner shall disqualify each bid submitted by an applicant under §60-3A-10 of this code and no applicant shall be issued or eligible to hold a retail license under this article, if:

(1) The applicant has been convicted in this state of any felony or other crime involving ~~moral turpitude~~ fraud, dishonesty, or deceit or convicted of any felony in this or any other state court or any federal court for a violation of any state or federal liquor law; or

(2) Any executive officer or other principal officer, partner, or member of the applicant, or any person owning, directly or indirectly, at least twenty percent of the outstanding stock, partnership, or other interests in the applicant, has been convicted in this state of any felony or other crime involving ~~moral turpitude~~ fraud, dishonesty, or deceit or convicted of any felony in this or any other state court or any federal court for a violation of any state or federal liquor law.

(e) The commissioner shall not issue a retail license to an applicant which does not hold a license issued pursuant to federal law to sell liquor at wholesale.

### **ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.**

#### **§60-3A-17. Wholesale prices set by commissioner; retail licensees to purchase liquor from state; transportation and storage; method of payment.**

(a) The commissioner shall fix wholesale prices for the sale of liquor, other than wine, to retail licensees. The commissioner shall sell liquor, other than wine, to retail licensees according to a uniform pricing schedule. The commissioner shall obtain, if possible, upon request, any liquor requested by a retail licensee and those permitted to manufacture and sell liquor pursuant to ~~section three, article four of this chapter~~ §60-4-3 of this code.

(b) Wholesale prices shall be established in order to yield a net profit for the General Revenue Fund of not less than \$6,500,000 annually on an annual volume of business equal to the average for the past three years. The net revenue derived from the sale of alcoholic liquors shall be deposited into the General Revenue Fund in the manner provided in ~~section seventeen, article three of this chapter~~ §60-3-17 of this code.



(c) Notwithstanding any provision of this code to the contrary, the commissioner shall specify the maximum wholesale markup percentage which may be applied to the prices paid by the commissioner for all liquor, other than wine, in order to determine the prices at which all liquor, other than wine, will be sold to retail licensees. A retail licensee shall purchase all liquor, other than wine, for resale in this state only from the commissioner, and the provisions of ~~sections twelve and thirteen, article six of this chapter~~ §60-6-12 and §60-6-13 of this code shall not apply to the transportation of the liquor: *Provided*, That a retail licensee shall purchase wine from a wine distributor who is duly licensed under ~~article eight of this chapter~~ §60-8-1 et seq. of this code. All liquor, other than wine, purchased by retail licensees shall be stored in the state at the retail outlet or outlets operated by the retail licensee: *Provided, however*, That the commissioner, in his or her discretion, may upon written request permit a retail licensee to store liquor at a site other than the retail outlet or outlets.

(d) The sale of liquor by the commissioner to retail licensees shall be paid by electronic funds transfer which shall be initiated by the commissioner on the business day following the retail licensees order or by money order, certified check, or cashier's check which shall be received by the commissioner at least 24 hours prior to the shipping of the alcoholic liquors: *Provided*, That if a retail licensee posts with the commissioner an irrevocable letter of credit or bond with surety acceptable to the commissioner from a financial institution acceptable to the commissioner guaranteeing payment of checks, then the commissioner may accept the retail licensee's checks in an amount up to the amount of the letter of credit.

(e) (1) A retail licensee may not sell liquor to persons licensed under the provisions of ~~article seven of this chapter~~ §60-7-1 et seq. of this code at less than ~~one hundred ten percent~~ 112.5 percent of the retail licensee's cost as defined in §47-11A-6 of this code.

(2) A retail licensee may not sell liquor to the general public at less than ~~one hundred ten percent~~ 110 percent of the retail licensee's cost as defined in §47-11A-6 of this code.

#### **ARTICLE 4. LICENSES.**

##### **§60-4-22. Wholesale representatives' licenses.**

(a) A person, firm or corporation may not be or act or serve as an agent, broker or salesman selling or offering to sell or soliciting or negotiating the sale of alcoholic liquor to the commission or to any distributor licensed pursuant to article eight of this chapter without first obtaining a license so to do in accordance with the provisions of this section. Only salaried employees of distilleries, manufacturers, producers or processors of alcoholic liquor may be licensed hereunder and no person may be licensed hereunder who sells or offers to sell alcoholic liquor to the commission or any distributor on a fee or commission basis. The commission shall be the licensing authority and may grant to persons of good moral character the license herein provided and may refuse to grant such license to any person (1) convicted of a felony, within ten years prior to his or her application for such license (2) convicted of a crime involving fraud, dishonesty, or deceit or (3) convicted of a felony violation of a state or federal liquor law; refuse to grant, suspend or revoke licenses. Licenses shall be on an annual basis for the period from July 1, until June 30 next following. New and renewal licenses shall be granted only upon verified application to the commission presented on forms provided by the commission. Any person representing more than one producer, manufacturer or distributor of alcoholic liquors shall file a separate application and shall obtain a separate license for each such representation. The annual license fee shall be \$100. The fee for any license granted for the remainder of any license year between January 1, and June 30 of the same calendar year shall be \$50.

~~No person who is the father, mother, son, daughter, brother, sister, uncle, aunt, nephew or niece of a member of the commission or of any elected or appointed state official, county official or municipal official, or who is the spouse of any such person so related to a member of the commission or to any elected or appointive state official, county official or municipal official, may be granted a license. No member of the Legislature or the spouse of any such member may be granted a license. Nor may any member or officer of any political party executive committee of this state or the spouse of any such member or officer be granted a license.~~

(b) In addition to all other information which the commission may require to be supplied on the license application forms, each applicant shall be required to state his or her name and his or her residence address and the name and business address of the producer, manufacturer or distributor he or she represents; the name and address of each additional producer, manufacturer or distributor of alcoholic liquors he or she represents; the monetary total of all alcoholic liquor sales, if any, made by him or her to the commission or to any distributor licensed pursuant to article eight of this chapter during the fiscal year preceding the license year for which he or she is seeking a license; the monetary total of the gross income received by him or her on such sales, if any, during such fiscal year; whether he or she has, during such fiscal year, made or given, voluntarily or on request, any gift, contribution of money or property to any member or employee of the commission or of any distributor licensed pursuant to article eight of this chapter or to or for the benefit of any political party committee or campaign fund; and his or her relationship, if any, by blood or marriage, to any member of the commission or to any elected or appointive state official, county official or municipal official. All such applications shall be verified by oath of the applicant and shall be prepared and filed in duplicate. All such applications and a current list of all licensees hereunder shall be matters of public record and shall be available to public inspection at the commission's offices at the State Capitol. Every licensee who ceases to be an agent, broker or salesman, as herein contemplated, shall so advise the commission in writing and such person's name shall be immediately removed from the license list and his or her license shall be canceled and terminated.

(c) All persons licensed under this section shall be authorized representatives of the wineries, farm wineries, distilleries, mini-distilleries, manufacturers, producers or processors of alcoholic liquor they represent. A licensed person may not share, divide or split his or her salary with any person other than his or her wife or some legal dependent, nor may he or she make any contribution to any political party campaign fund in this state.

(d) All licensees shall be subject to all other provisions of this chapter and to the lawful rules promulgated by the commission. Licenses may be refused, suspended or revoked by the commission for cause, including any of the applicable grounds of revocation specified in section nineteen of this article. Provisions of this article relating to notice, hearing and appeals shall, to the extent applicable, govern procedures on suspension and revocation of licenses hereunder.

(e) Any person, firm or corporation violating any provision of this section, including knowingly making of any false statement in a verified application for a license shall be guilty of a misdemeanor offense and shall, upon conviction thereof, be fined not exceeding \$1,000 or imprisoned in jail not exceeding twelve months, or be subject to both such fine and imprisonment in the discretion of the court.

**§60-4-23. License to operate a facility where exotic entertainment is offered; definitions; restrictions, regulations and prohibitions; prohibitions against minors; application, renewal, license fee, restrictions on transfer; effective date; legislative rules; unlawful acts and penalties imposed.**

[Repealed.]

## ARTICLE 6. MISCELLANEOUS PROVISIONS.

### §60-6-24. Requirement for posting informational sign.

~~Each store or outlet controlled or operated by the state Alcohol Beverage Control Commission, and any store, supermarket, club, restaurant, or~~ Any licensee licensed under this chapter to sell alcoholic liquors, including liquor, wine, hard cider, other facility selling alcoholic beverages or nonintoxicating beer or nonintoxicating craft beer for either on-premise on-premises or off-premise off-premises consumption, shall post in an open and prominent place within ~~such~~ the establishment, a blood-alcohol chart containing information showing the estimated percent of alcohol in the blood by the number of drinks in relation to body weight and time of consumption, as follows:

FORM OMITTED

FORM OMITTED

~~The size of display and location of said blood alcohol chart shall be prescribed by the commissioner, by rule and regulation as provided in the chart available on the commissioner's website. Enforcement of the posting provisions of this section shall be carried out by the West Virginia nonintoxicating beer commissioner commissioner in establishments which are for all licensees required to post such the notice, but are not subject to the supervision of the West Virginia Alcohol Beverage Control Commissioner~~

## ARTICLE 7. LICENSES TO PRIVATE CLUBS.

### §60-7-2. Definitions; authorizations; requirements for certain licenses.

Unless the context in which used clearly requires a different meaning, as used in this article:

~~(a)~~ (1) "Applicant" means a private club applying for a license under the provisions of this article.

~~(b)~~ (2) "Code" means the official Code of West Virginia, 1931, as amended.

~~(c)~~ (3) "Commissioner" means the West Virginia Alcohol Beverage Control Commissioner.

~~(d)~~ (4) "Licensee" means the holder of a license to operate a private club granted under this article, which remains unexpired, unsuspended, and unrevoked.

~~(e)~~ (5) "Private club" means any corporation or unincorporated association which either: ~~(4)~~ (A) Belongs to or is affiliated with a nationally recognized fraternal or veterans' organization which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises to which club are admitted only duly- elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which 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;

~~(2)~~ (B) Is a nonprofit social club, which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises to which club are admitted only duly-elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which 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;

~~(3)~~ (C) Is organized and operated for legitimate purposes which has at least 100 duly- elected or approved dues-paying members in good standing, which owns or leases a building or other premises, including any vessel licensed or approved by any federal agency to carry or accommodate passengers on navigable waters of this state, to which club are admitted only duly-elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment and employs a sufficient number of persons for serving meals to members and their guests; or

~~(4)~~ (D) Is organized for legitimate purposes and owns or leases a building or other delimited premises in any state, county, or municipal park, or at any airport, in which building or premises a club has been established, to which club are admitted only duly-elected and approved dues-paying members in good standing and their guests while in the company of a member and to which 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.

(6) "Private bakery" means an applicant for a private club or licensed private club license that has a primary function of operating a food preparation business that produces baked goods, including brownies, cookies, cupcakes, confections, muffins, breads, cakes, wedding cakes, and other baked goods. The applicant or licensee desires to sell baked goods infused with liquor, wine, or nonintoxicating beer or nonintoxicating craft beer, either: (A) In the icing, syrup, drizzle, or some other topping; (B) as an infusion where the alcohol is not processed or cooked out of the baked goods; or (C) the alcohol can be added by the purchaser from an infusion packet containing alcohol no greater than 10 milliliters. This applicant or licensee may not sell liquor, wine, or nonintoxicating beer or nonintoxicating craft beer for on or off-premises consumption. This applicant or licensee may sell the baked goods with alcohol added as authorized for on and off-premises consumption. Further, the applicant or licensee shall meet the criteria set forth in this subdivision which:

(i) Has at least 50 members;

(ii) Operates a kitchen that produces baked goods, as specified in this subdivision, including at least: (I) A baking oven and a four-burner range or hot plate; (II) a sink with hot and cold running water; (III) a 17 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold storage; (IV) baking utensils and pans, kitchen utensils, and other food consumption apparatus as determined by the commissioner; and (V) food fit for human consumption available to be served during all hours of operation on the licensed premises;

(iii) Maintains, at any one time, \$750 of food inventory capable of being prepared in the private bakery's kitchen. In calculating the food inventory, the commissioner shall include television dinners, bags of chips or similar products, microwavable food or meals, frozen meals, pre-packaged foods, baking items such as flour, sugar, icing, and other confectionary items, or canned prepared foods;

(iv) 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

(v) Meet and be subject to all other private club requirements.

(7) "Private cigar shop" means an applicant for a private club or licensed private club licensee that has a primary function of operating a cigar shop for sales of premium cigars for consumption on or off the licensed premises. Where permitted by law, indoor on-premises cigar consumption is permitted with a limited food menu, which may be met by utilizing a private caterer, for members and guests while the private club applicant or licensee is selling and serving liquor, wine, or nonintoxicating beer or nonintoxicating craft beer for on-premises consumption. Further, the applicant or licensee shall meet the criteria set forth in this subdivision which:

(A) Has at least 50 members;

(B) Operates a cigar shop and bar with a kitchen, including at least: (i) A two-burner hot plate, air fryer, or microwave oven; (ii) a sink with hot and cold running water; (iii) a 17 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold storage; (iv) kitchen utensils and other food consumption apparatus as determined by the commissioner; and (v) food fit for human consumption available to be served during all hours of operation on the licensed premises;

(C) Maintains, at any one time, \$500 of food inventory capable of being prepared in the private club bar's kitchen or has on hand at least \$150 in food provided by a private caterer. In calculating the food inventory, the commissioner shall include television dinners, bags of chips or similar products, microwavable food or meals, frozen meals, pre-packaged foods, or canned prepared foods;

(D) 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

(E) Meets and is subject to all other private club requirements.

~~(7)~~ ~~(8)~~ "Private caterer" means a licensed private club restaurant, private hotel, or private resort hotel authorized by the commissioner to cater and serve food and sell and serve alcoholic liquors, or non-intoxicating beer or non-intoxicating craft beer. A private caterer shall purchase wine sold or served at a catering event from a wine distributor. A private caterer shall purchase nonintoxicating beer and nonintoxicating craft beer sold or served at the catering event from a licensed beer distributor. A private caterer shall purchase liquor from a retail liquor outlet authorized to sell in the market zone, where the catering event is held. The private caterer or the persons or entity holding the catering event shall:

~~(1)~~ ~~(A)~~ Have at least 10 members and guests attending the catering event;

~~(2)~~ ~~(B)~~ Have obtained an open container waiver or have otherwise been approved by a municipality or county in which the event is being held;

~~(3)~~ ~~(C)~~ Operate a private club restaurant on a daily operating basis;

~~(4)~~ ~~(D)~~ 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)~~ ~~(E)~~ Provide to the commissioner, at least 7 seven days before the event is to take place:

~~(A)~~ ~~(i)~~ The name and business address of the unlicensed private venue where the private caterer is to provide food and alcohol for a catering event;

~~(B)~~ ~~(ii)~~ The name of the owner or operator of the unlicensed private venue;

~~(C)~~ ~~(iii)~~ A copy of the contract or contracts between the private caterer, the person contracting with the caterer, and the unlicensed private venue;

~~(D)~~ ~~(iv)~~ A floorplan of the unlicensed private venue to comprise the private catering premises, which shall only include spaces in buildings or rooms of an unlicensed private venue where the private caterer has control of the space for a set time period 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)~~ ~~(I)~~ Be inside a building or structure, ~~(ii)~~ ~~(II)~~ have other facilities to prepare and serve food and alcohol, ~~(iii)~~ ~~(III)~~ have adequate restrooms and sufficient building facilities for the number of members and guests expected to attend the private catering event, and ~~(iv)~~ ~~(IV)~~ otherwise be in compliance with health, fire, safety, and zoning requirements;

~~(6)~~ ~~(F)~~ Not hold more than 15 private catering events per calendar year. Upon reaching the 16th event, the unlicensed venue shall obtain its own private club license;

~~(7)~~ ~~(G)~~ Submit to the commissioner, evidence that any noncontiguous area of an unlicensed venue is within 150 feet of the private caterer's submitted floorplan and may submit a floorplan extension for authorization to permit alcohol and food at an outdoor event;

~~(8)~~ (H) Meet and be subject to all other private club requirements; and

~~(9)~~ (I) Use an age verification system approved by the commissioner.

~~(9)~~ (9) "Private club bar" means an applicant for a private club or licensed private club licensee that has a primary function for the use of the licensed premises as a bar for the sale and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer when licensed for ~~such~~ those sales, while providing a limited food menu for members and guests, and meeting the criteria set forth in this ~~subsection~~ subdivision which:

~~(1)~~ (A) Has at least 100 members;

~~(2)~~ (B) Operates a bar with a kitchen, including at least: ~~(A)~~ (i) A two-burner hot plate, air fryer, or microwave oven; ~~(B)~~ (ii) a sink with hot and cold running water; ~~(C)~~ (iii) a 17 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold storage; ~~(D)~~ (iv) kitchen utensils and other food consumption apparatus as determined by the commissioner; and ~~(E)~~ (v) food fit for human consumption available to be served during all hours of operation on the licensed premises;

~~(3)~~ (C) 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)~~ (D) Uses an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 18 who are in the private club bar are accompanied by a parent or legal guardian, 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)~~ (E) Meets and is subject to all other private club requirements.

(10) "Private food truck" means an applicant for a private club, licensed private club licensee, or licensed private manufacturer's club licensee that has a primary function of operating a food preparation business using an industrial truck, van, or trailer to prepare food and meals for sale at various locations within the state while utilizing a propane or electric generator powered kitchen. The private food truck applicant shall obtain county or municipal approval to operate for food and liquor, wine, and nonintoxicating beer or nonintoxicating craft beer sales and service, while providing a food menu for members and guests. The private food truck applicant shall meet the criteria set forth in this subdivision which:

(A) Has at least 10 members;

(B) Operates with a kitchen, including at least: (i) A two-burner hot plate, air fryer, or microwave oven; (ii) a sink with hot and cold running water; (iii) at least a 10 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold storage; and (iv) plastic or metal kitchen utensils and other food consumption apparatus as determined by the commissioner;

(C) Maintains, at any one time, \$500 of food inventory that is fit for human consumption and capable of being prepared and served from the private food truck's kitchen during all hours of operation;

(D) Shall be sponsored, endorsed, or approved by the governing body or its designee of the county or municipality in which the private food truck is to be located and operate, and further each location shall have a bounded and defined area and set hours for private food truck operations, sales, and consumption of alcohol that are not greater than a private club's hours of operation;

(E) Provides the commissioner with a list of all locations, including a main business location, where the private food truck operates, and is approved for sales pursuant to subsection (D) of this section, and immediately update the commissioner when new locations are approved by a county or municipality;

(F) Requires all nonintoxicating beer and nonintoxicating craft beer sold, furnished, tendered, or served pursuant to the license created by this section to be purchased from the licensed distributor where the private food truck has its home location or from a resident brewer acting in a limited capacity as a distributor, all in accordance with §11-16-1 *et seq.* of this code.

(G) Requires wine or hard cider sold, furnished, tendered, or served pursuant to the license created by this section to be purchased from a licensed distributor, winery, or farm winery in accordance with §60-8-1 *et seq.* of this code.

(H) Requires liquor sold, furnished, tendered, or served pursuant to the license created by this section shall be purchased from a licensed retail liquor outlet in the market zone or contiguous market zone where the private food truck has its main business location, all in accordance with §60-3A-1 *et seq.* of this code.

(I) A licensee authorized by this section shall utilize bona fide employees to sell, furnish, tender, or serve the nonintoxicating beer or nonintoxicating craft beer, wine, or liquor.

(J) A brewer, resident brewer, winery, farm winery, distillery, mini-distillery, or micro-distillery may obtain a private food truck license;

(K) Licensed representatives of a brewer, resident brewer, beer distributor, wine distributor, wine supplier, winery, farm winery, distillery, mini-distillery, micro-distillery, and liquor broker representatives may attend a location where a private food truck is located and discuss their respective products but may not engage in the selling, furnishing, tendering, or serving of any nonintoxicating beer or nonintoxicating craft beer, wine, or liquor.

(L) 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;

(M) Obtains all permits required by §60-6-12 of this code; and

(N) Meets and is subject to all other applicable private club requirements.

(h) (11) "Private club restaurant" means an applicant for a private club or licensed private club licensee that has a primary function of using the licensed premises as a restaurant for serving freshly prepared meals and dining in the restaurant area. The private club restaurant may have a bar area separate from or commingled with the restaurant, seating requirements for members



and guests ~~must shall~~ be met by the restaurant area. The applicant for a private club restaurant license which: ~~shall meet the criteria set forth in this subsection which:~~

(1) ~~(A)~~ (A) Has at least 100 members;

~~(2) (B)~~ (B) Operate a restaurant and full kitchen with at least: ~~(A) (i)~~ Ovens and four-burner ranges; ~~(B) (ii)~~ refrigerators or freezers, or some combination of refrigerators and freezers greater than 50 cubic feet, or a walk-in refrigerator or freezer; ~~(C) (iii)~~ other kitchen utensils and apparatus as determined by the commissioner; and ~~(D) (iv)~~ (iv) freshly prepared food fit for human consumption available to be served during all hours of operation on the licensed premises;

~~(3) (C)~~ (C) 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, pre-packaged foods, or canned prepared foods;

~~(4) (D)~~ (D) Uses an age verification system approved by the commissioner for the purpose of verifying that persons under 18 years of age who are in the bar area of a private club restaurant are accompanied by a parent or legal guardian. The licensee may not seat a person in the bar area who is under the age of 18 years and who is not accompanied by a parent or legal guardian, but may allow that person, as a guest, to dine for food and nonalcoholic beverage purposes in the restaurant area of a private club restaurant:

~~(5) (E)~~ (E) May uncork and serve members and guests up to two bottles of wine that a member purchased from a wine retailer, wine specialty shop, an applicable winery or farm winery when licensed for retail sales, or a licensed wine direct shipper when the purchase is for personal use and, not for resale. The licensee may charge a corkage fee of up to \$10 dollars per bottle. In no event may a member or a group of members and guests exceed two sealed bottles or containers of wine to carry onto the licensed premises for uncorking and serving by the private club restaurant and for personal consumption by the member and guests. A member or guest may cork and reseal any unconsumed wine bottles as provided in §60-8-3(j) of this code and the legislative rules for carrying unconsumed wine off the licensed premises;

~~(6) (F) Must have Has~~ Has at least two restrooms for members and their guests: *Provided*, That this requirement may be waived by the local health department upon supplying a written waiver of the requirement to the commissioner: *Provided, however*, That the requirement may also be waived for a historic building by written waiver supplied to commissioner of the requirement from the historic association or district with jurisdiction over a historic building: *Provided, further* That in no event ~~shall may~~ a private club restaurant have less than one restroom; and

~~(7) (G) Shall meet and be~~ Meets and is subject to all other private club requirements.

~~(i) (12)~~ (12) "Private manufacturer club" means an applicant for a private club or licensed private club licensee which is also licensed as a distillery, mini-distillery, micro-distillery, winery, farm winery, brewery, or resident brewery that manufacturers liquor, wine, nonintoxicating beer or nonintoxicating craft beer, which may be sold, served, and furnished to members and guests for on-premises consumption at the licensee's licensed premises and in the area or areas denoted on the licensee's floorplan, and which: ~~meets the criteria set forth in this subsection and which:~~

(1) ~~(A)~~ (A) Has at least 100 members;

(2) (B) Offers tours, may offer complimentary samples, and may offer space as a conference center or for meetings;

(3) (C) Operates a restaurant and full kitchen with ovens, four-burner ranges, a refrigerator, or freezer, or some combination of a refrigerator and freezer, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 15 hours per week;

(4) (D) 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, pre-packaged foods, or canned prepared foods;

(5) (E) 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) (F) Lists the entire property from ~~subdivision (5)~~ paragraph (E) of this ~~subsection~~ subdivision and all adjoining buildings and structures on the private manufacturer club's floorplan that would comprise the licensed premises, which would be authorized for the lawful sale, service, and consumption of alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, and wine throughout the licensed premises, whether these activities were conducted in a building or structure or outdoors while on the private manufacturer club's licensed premises, and as noted on the private manufacturer club's floorplan;

(7) (G) 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) (H) Uses an age verification system approved by the commissioner; and

(9) (I) Meets and is subject to all other private club requirements.

(j) (13) "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~~ subdivision which:

(1) (A) Has at least 100 members;

(2) (B) Has been sponsored, endorsed, or approved, in writing, by the governing body (or its duly elected or appointed officers) of either the municipality or of the county in which the festival, fair, or other event is to be conducted;

(3) (C) Prepares, provides, or engages a food vendor to provide adequate freshly prepared food or meals to serve its stated members and guests who will be attending the temporary festival, fair, or other event, and further shall provide any documentation or agreements ~~of such~~ to the commissioner prior to approval;

(4) (D) Does not use third-party entities or individuals to purchase, sell, furnish, or serve alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer;

~~(5)~~ (E) Provides adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the festival, fair, or other event;

~~(6)~~ (F) Provides a floorplan for the proposed premises with a defined and bounded area to safely account for the ingress and egress of stated members and guests who will be attending the festival, fair, or other event;

~~(7)~~ (G) Uses an age verification system approved by the commissioner; and

~~(8)~~ (H) Meets and is subject to all other private club requirements.

~~(k)~~ (14) "Private hotel" means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

~~(1)~~ (A) Has at least 2,000 members;

~~(2)~~ (B) Offers short-term, daily rate accommodations or lodging for members and their guests amounting to at least 30 separate bedrooms, and also offers a conference center for meetings;

~~(3)~~ (C) Operates a restaurant and full kitchen with ovens, four-burner ranges, walk-in freezers, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 20 hours per week;

~~(4)~~ (D) 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)~~ (E) Owns or leases, controls, operates, and uses acreage amounting to more than one acre but fewer than three acres, which are contiguous acres of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for hotel and conferences and large contracted-for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

~~(6)~~ (F) Lists the entire property from ~~subdivision (5)~~ paragraph (E) of this ~~subsection~~ subdivision and all adjoining buildings and structures on the private hotel's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors 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)~~ (G) Has an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property buildings and structures located on the proposed licensed premises;

~~(8)~~ (H) Uses an age verification system approved by the commissioner; ~~and~~

~~(9)~~ (I) Meets and is subject to all other private club requirements; and

(J) May provide members and guests who are verified by proper form of identification to be 21 years of age or older to have secure access via key or key card to an in-room mini-bar in their rented short-term accommodation; the mini-bar may be a small refrigerator not in excess of 1.6 cubic feet for the sale of nonintoxicating beer or nonintoxicating craft beer, wine, hard cider, and

liquor sold from the original sealed container, and the refrigerator may contain: (i) Any combination of 12 fluid ounce cans or bottles not exceeding 72 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; (ii) any combination of cans or bottles of wine or hard cider not exceeding 750 ml of wine or hard cider; (iii) liquor in bottles sized from 50 ml, 100 ml, and 200 ml, with any combination of those liquor bottles not exceeding 750 ml; and (iv) any combination of canned or packaged food valued at least \$50. All markups, fees, and taxes shall be charged on the sale of nonintoxicating beer, nonintoxicating craft beer, wine, and liquor. All nonintoxicating beer or nonintoxicating craft beer available for sale shall be purchased from the licensed distributor in the area where licensed. All wine or hard cider available for sale shall be purchased from a licensed wine distributor or authorized farm winery. All liquor available for sale shall be purchased from the licensed retail liquor outlet in the market zone of the licensed premises. The mini-bar shall be checked daily and replenished as needed to benefit the member and guest.

~~(1)~~ (15) "Private resort hotel" means an applicant for a private club or licensed private club licensee which: meeting the criteria set forth in this subsection which:

~~(1)~~ (A) Has at least 5,000 members;

~~(2)~~ (B) Offers short term, daily rate accommodations or lodging for members and their guests amounting to at least 50 separate bedrooms;

~~(3)~~ (C) Operates a restaurant and full kitchen with ovens, six-burner ranges, walk-in freezers, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 25 hours per week;

~~(4)~~ (D) 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)~~ (E) Owns or leases, controls, operates, and uses acreage amounting to at least 10 contiguous acres of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for destination, resort, and large contracted-for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

~~(6)~~ (F) Lists the entire property from ~~subdivision (5)~~ paragraph (E) of this subsection ~~subdivision~~ and all adjoining buildings and structures on the private resort hotel's floorplan ~~which would comprise comprising~~ the licensed premises, ~~which~~ would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private resort hotel's licensed premises; ~~and as noted on the private resort hotel's floorplan;~~

~~(7)~~ (G) Has an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property, buildings, and structures located on the proposed licensed premises;

~~(8)~~ (H) Uses an age verification system approved by the commissioner;

~~(9)~~ (I) Meets and is subject to all other private club requirements; ~~and~~

~~(10)~~ (J) May have a separately licensed resident brewer with a brewpub license inner-connected via a walkway, doorway, or entryway, all as determined and approved by the

commissioner, for limited access during permitted hours of operation for tours and complimentary samples at the resident brewery; and

(K) May provide members and guests who are verified by proper form of identification to be 21 years of age or older to have access via key or key card to an in-room mini-bar in their rented short-term accommodation. The mini-bar may be a small refrigerator not in excess of 3.2 cubic feet for the sale of nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, and liquor sold from the original sealed container, and the refrigerator may contain: (i) Any combination of 12 fluid ounce cans or bottles not exceeding 144 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; (ii) any combination of cans or bottles of wine or hard cider not exceeding one and a half liters of wine or hard cider; (iii) liquor in bottles sized from 50 ml, 100 ml, 200 ml, and 375 ml with any combination of such liquor bottles not exceeding one and a half liters; and (iv) any combination of canned or packaged food valued at least \$100. All markups, fees, and taxes shall be charged on the sale of nonintoxicating beer, nonintoxicating craft beer, wine, and liquor. All nonintoxicating beer or nonintoxicating craft beer available for sale shall be purchased from the licensed distributor in the area where licensed. All wine or hard cider available for sale shall be purchased from a licensed wine distributor or authorized farm winery. All liquor available for sale shall be purchased from the licensed retail liquor outlet in the market zone of the licensed premises. The mini-bar shall be checked daily and replenished as needed to benefit the member and guest.

~~(m)~~ (16) "Private golf club" means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this ~~subsection~~ subdivision which:

~~(1)~~ (A) Has at least 100 members;

~~(2)~~ (B) Maintains at least one 18-hole golf course with separate and distinct golf playing holes, not reusing nine golf playing holes to comprise the 18 golf playing holes, and a clubhouse;

~~(3)~~ (C) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and serves freshly prepared food at least 15 hours per week;

~~(4)~~ (D) Owns or leases, controls, operates, and uses acreage amounting to at least 80 contiguous acres of bounded or fenced real property which would be listed on the private golf club's floorplan and could be used for golfing events and large contracted-for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

~~(5)~~ (E) Lists the entire property from ~~subdivision (4) paragraph D~~ paragraph D of this subsection and all adjoining buildings and structures on the private golf club's floorplan ~~which would comprise comprising~~ the licensed premises, ~~which~~ would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private golf club's licensed premises; ~~and as noted on the private golf club's floorplan;~~

~~(6)~~ (F) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property, buildings, and structures located on the proposed licensed premises;

~~(7)~~ (G) Uses an age verification system approved by the commissioner; and

~~(8)~~ (H) Meets and is subject to all other private club requirements.

~~(n)~~ (17) "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~~ subdivision which:

(1) (A) Has at least 50 members;

(2) (B) Maintains at least one nine-hole golf course with separate and distinct golf playing holes;

(3) (C) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and serves freshly prepared food at least 15 hours per week;

(4) (D) Owns or leases, controls, operates, and uses acreage amounting to at least 30 contiguous acres of bounded or fenced real property which would be listed on the private nine-hole golf course's floorplan and could be used for golfing events and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(5) (E) Lists the entire property from ~~subdivision (4) paragraph (D)~~ subdivision and all adjoining buildings and structures on the private nine-hole golf course's floorplan ~~which would comprise~~ comprising the licensed premises, ~~which~~ would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private nine-hole golf course's licensed premises; ~~and as noted on the private nine-hole golf course's floorplan;~~

(6) (F) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(7) (G) Uses an age verification system approved by the commissioner; and

(8) (H) Meets and is subject to all other private club requirements.

~~(o)~~ (18) "Private tennis club" means an applicant for a private club or licensed private club licensee ~~meeting the criteria set forth in this subsection~~ subdivision which:

(1) (A) Has at least 100 members;

(2) (B) Maintains at least four separate and distinct tennis courts, either indoor or outdoor, and a clubhouse or similar facility;

(3) (C) 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) (D) Owns or leases, controls, operates, and uses acreage amounting to at least two contiguous acres of bounded or fenced real property which would be listed on the private tennis club's floorplan and could be used for tennis events and large events such as weddings, reunions, conferences, tournaments, meetings, and sporting or recreational events;

(5) (E) Lists the entire property from ~~subdivision (4) paragraph (D)~~ subdivision and all adjoining buildings and structures on the private tennis club's floorplan ~~that would comprise~~ comprising the licensed premises, ~~which~~ would be authorized for the lawful sales,

service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private tennis club's licensed premises; ~~and as noted on the private tennis club's floorplan;~~

~~(6)~~ (F) Has identified a person, persons, an entity, or entities who or which has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

~~(7)~~ (G) Meets and is subject to all other private club requirements; and

~~(8)~~ (H) Uses an age verification system approved by the commissioner.

(19) "Private college sports stadium" means an applicant for a private club or licensed private club licensee that operates a college or university stadium or coliseum for Division I, II, or III and involves a college public or private or university that is a member of the National Collegiate Athletic Association, or its successor, and uses the facility for football, basketball, baseball, soccer, or other Division I, II, or III sports, reserved weddings, reunions, conferences, meetings, or other special events and does not maintain daily or regular operating hours as a bar or restaurant. The licensee may sell alcoholic liquors when conducting or temporarily hosting non-collegiate sporting events. This license may be issued in the name of the National Collegiate Athletic Association Division I, II, or III college or university or the name of the primary food and beverage vendor under contract with that college or university. All alcohol sales shall take place within the confines of the college stadium: *Provided*, That any outside area approved for alcohol sales shall be surrounded by a fence or other barrier prohibiting entry except upon the college or university's express permission, and under the conditions and restrictions established by the college or university, so that the alcohol sales area is closed in order to prevent entry and access by the general public. Further the applicant shall:

(A) Have at least 1,000 members;

(B) Maintain an open-air or closed-air stadium or coliseum venue primarily used for sporting events, such as football, basketball, baseball, soccer, or other Division I, II, or III sports, and also weddings, reunions, conferences, meetings, or other events where parties shall reserve the college stadium venue in advance of the event;

(C) Operate a restaurant and full kitchen with ovens and equipment that is equivalent or greater than a private club restaurant, as determined by the commissioner, on the licensed premises 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 college sports stadium;

(D) Own or lease, control, operate, and use acreage amounting to at least two contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the private college stadium's floorplan and could be used for contracted-for temporary non-collegiate sporting events, group-type weddings, reunions, conferences, meetings, or other events;

(E) List the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private college sports stadium's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private

college sports stadium's licensed premises and as noted on the private college sports stadium's floorplan;

(F) Have an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(G) Meet and be subject to all other private club requirements; and

(H) Use an age verification system approved by the commissioner.

~~(p)~~ (20) "Private professional sports stadium" means an applicant for a private club or licensed private club licensee that is only open for professional sporting events when ~~such~~ the events are affiliated with or sponsored by a professional sporting association, reserved weddings, reunions, conferences, meetings, or other special events and does not maintain daily or regular operating hours as a bar or restaurant. The licensee may not sell alcoholic liquors when conducting or hosting non-professional sporting events, and further the applicant shall:

~~(1)~~ (A) Have at least 1,000 members;

~~(2)~~ (B) 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)~~ (C) 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)~~ (D) Own or lease, control, operate, and use acreage amounting to at least three contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the professional sports stadium's floorplan and could be used for contracted- for professional sporting events, group-type weddings, reunions, conferences, meetings, or other events;

~~(5)~~ (E) List the entire property from ~~subdivision (4) paragraph (D) of this subsection~~ subdivision and all adjoining buildings and structures on the private professional sports stadium's floorplan ~~which would comprise~~ comprising the licensed premises, ~~which would~~ and 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)~~ (F) Have an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

~~(7)~~ (G) Meet and be subject to all other private club requirements; and

~~(8)~~ (H) Use an age verification system approved by the commissioner.



~~(c)~~ (21) "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~~ businesses 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)~~ (A) Have at least 100 members;

~~(2)~~ (B) Have one or more members operating a private club restaurant and full kitchen with ovens, four-burner ranges, a refrigerator or freezer or some combination of a refrigerator and freezer, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 15 hours per week;

~~(3)~~ (C) 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, pre-packaged foods, or canned prepared foods;

~~(4)~~ (D) Have an association that owns or leases, controls, operates, and uses acreage amounting to more than one acre, which is contiguous acreage of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for large contracted-for reserved weddings, reserved dinners, pairing events, tasting events, reunions, conferences, meetings, or other special events;

~~(5)~~ (E) Have an association that lists in the application for licensure the entire property and all adjoining buildings and structures on the private farmers market's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private farmers market's licensed premises and as noted on the private farmers market's floorplan;

~~(6)~~ (F) Have an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property buildings and structures located on the proposed licensed premises;

~~(7)~~ (G) Have at least two separate and unrelated vendors applying for the license and certifying that all vendors in the association have agreed to the liability responsibility associated with a private farmers market license;

~~(8)~~ (H) Only use its employees, independent contractors, or volunteers to purchase, sell, furnish, or serve liquor, wine, nonintoxicating beer or nonintoxicating craft beer;

(9) (I) Provide adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the private farmers market;

(10) (J) Provide a copy of a written agreement between all the vendors of the association that is executed by all vendors stating that each vendor is jointly and severally liable for any violations of this chapter committed during the event;

(11) (K) Provide a security plan indicating all vendor points of service, entrances, and exits in order to verify members, patrons, and guests ages, to verify whether a member, patron, or guest is intoxicated and to provide for the public health and safety of members, patrons, and guests;

(12) (L) Use an age verification system approved by the commissioner; and

(13) (M) Meet and be subject to all other private club requirements.

(+) (22) "Private wedding venue or barn" means an applicant for a private club or licensed private club licensee that is only open for reserved weddings, reunions, conferences, meetings, or other events and does not maintain daily or regular operating hours, and which:

(1) (A) Has at least 25 members;

(2) (B) 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) (C) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises ~~and that~~ 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) (D) 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 not less than two acres and is remotely located, subject to the commissioner's approval. The bounded or fenced real property may be listed on the private wedding venue's floorplan and may be used for large events such as weddings, reunions, conferences, meetings, or other events;

(5) (E) Lists the entire property from ~~subdivision (4) paragraph (D) of this subsection~~ subdivision and all adjoining buildings and structures on the private wedding venue or barn's floorplan that would comprise the licensed premises, ~~which and~~ 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) (F) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(7) (G) Meets and is subject to all other private club requirements; and

~~(8)~~ (H) Uses an age verification system approved by the commissioner.

~~(6)~~ (23) "Private multi-sport complex" means an applicant for a private club or licensed private club licensee that is open for multiple sports events to be played at the complex facilities, reserved weddings, concerts, reunions, conferences, meetings, or other special events, and which:

~~(1)~~ (A) Has at least 100 members;

~~(2)~~ (B) Maintains an open-air multi-sport complex primarily for use for sporting events, such as baseball, soccer, basketball, tennis, frisbee, or other sports, but may also conduct weddings, concerts, reunions, conferences, meetings, or other events where parties must reserve the parts of the sports complex in advance of the sporting or other event;

~~(3)~~ (C) 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~~ multi-sport complex. A licensee may contract with temporary food vendors or food trucks for food sales only, but not on a permanent basis, in areas of the multi-sport complex not readily accessible by the main facility;

~~(4)~~ (D) 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)~~ (E) Owns or leases, controls, operates, and uses acreage amounting to at least 50 contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the private multi-sport complex's floorplan and could be used for contracted-for sporting events, group-type weddings, concerts, reunions, conferences, meetings, or other events;

~~(6)~~ (F) Lists the entire property from ~~subdivision (5)~~ paragraph (E) of this subsection subdivision and all adjoining buildings and structures on the private multi-sport complex's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private multi-sport complex's licensed premises and as noted on the private multi-sport complex's floorplan. The licensee may sell alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer from a golf cart or food truck owned or leased by the licensee and also operated by the licensee when the golf cart or food truck is located on the private multi-sport complex's licensed premises;

~~(7)~~ (G) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

~~(8)~~ (H) Meets and is subject to all other private club requirements; and

~~(9)~~ (I) 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 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 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 is \$1,000 if the private club bar or restaurant has fewer than 1,000 members; \$1,000 for a private club restaurant, private hotel, or private resort hotel to be licensed as a private caterer as defined in §60-7-2 of this code; \$500 if the private club is a private bakery; \$1,500 if the private club is a private wedding venue or barn or a private cigar shop; \$2,000 if the private club is a private nine-hole golf course, private farmers market, private food truck, private college sports stadium, 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, 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 is \$7,500 and the annual license fee for a private resort hotel with at least six, but no more than 10 designated areas 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 is \$22,500. A private resort hotel 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 license issued following January 1 of any year that expires on June 30 of that year 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 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) The commissioner shall pay the fees to the State Treasurer ~~and credited to~~ for deposit into 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.

**§60-7-8f. 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 and delivery shall be subject to legal identification verification;~~

(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, and delivery shall be subject to legal identification verification;~~

(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.

#### **§60-7-17. Repealer.**

[Repealed.]

### **ARTICLE 8. SALE OF WINES.**

#### **§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. The wine served and sold in a sealed wine growler may include ice or water mixed with the wine to create a frozen alcoholic beverage. Any frozen alcoholic beverage machine used for filling wine growlers shall be sanitized daily and shall be under control and served by the licensee from the secure area. Notwithstanding any other provision of this code to the contrary, a securely sealed wine growler is not an open container under state and local law. A wine growler with a broken seal is an open container under state and local law unless it is located in an area of the motor vehicle physically separated from the passenger compartment. For purpose of this article, a secure seal means using a tamper evident seal, such as: (1) A plastic heat shrink wrap band, strip, or sleeve extending around the cap or lid of wine growler to form a seal that ~~must~~ shall 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.

**§60-8-6e. 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~~ \$20 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~~. \$20.

(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 and delivery shall be subject to legal identification verification;~~

(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, and delivery shall be subject to legal identification verification;~~

(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~~ and delivery shall be subject to legal identification verification;

(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, and delivery shall be subject to legal identification verification;

(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.

## 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~~ upon conviction thereof, shall be punished by a fine not exceeding \$200: *Provided*, That there is exemption from this prohibition for: (a) A private bakery, private cigar shop, private caterer, private club restaurant, private manufacturer club, private fair and festival, private resort hotel, private hotel, private golf club, private food truck, private nine-hole golf course, 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 college sports stadium or coliseum, 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)(115), §60-7-2(h)(49), §60-7-2(i)(8), §60-7-2(j)(7), §60-7-2(k)(84), §60-7-2(l)(8), §60-7-2(m)(7), §60-7-2(n)(78), §60-7-2(o)(8), §60-7-2(p)(87), §60-7-2(q)(128), §60-7-2(r)(8), §60-7-2(s)(97), §60-7-2(6)(iv), §60-7-2(7)(D), §60-7-2(8)(I), §60-7-2(10)(L), §60-7-2(11)(D), §60-7-2(12)(H), §60-7-2(13)(6), §60-7-2(14)(H), 60-7-2(15)(H), §60-7-2(16)(G), §60-7-2(17)(G), §60-7-2(18)(H), §60-7-2(19)(H), §60-7-2(20)(H), §60-7-2(21)(L), §60-7-2(22)(H), §60-7-2(23)(H), §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, by using a mandatory carding or identification program by which all members or guests being served or sold alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer are asked and 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.

On motion of Senator Trump, the following amendment to the Judiciary committee amendment to the bill (Eng. H. B. 4848) was reported by the Clerk and adopted:

On page seventy, section six-f, line forty-two, after the word "dollars." by adding the following: The convenience fee charged by the third-party private wine delivery licensee to the purchasing person shall be no greater than \$20 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 \$20.

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

Engrossed House Bill 4848, as just amended, was then put upon its passage.

Pending discussion,

The question being "Shall Engrossed House Bill 4848 pass?"

On the passage of the bill, the yeas were: Beach, Boley, Brown, Caputo, Clements, Geffert, Hamilton, Jeffries, Lindsay, Maroney, Maynard, Nelson, Phillips, Plymale, Romano, Rucker, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, and Blair (Mr. President)—26.

The nays were: Azinger, Baldwin, Grady, Karnes, Martin, Roberts, Smith, and Woodrum—8.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4848) passed.

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

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

**Eng. House Bill 4848**—A Bill to repeal §60-4-23 of the Code of West Virginia, 1931, as amended; to repeal §60-7-17 of said code; to amend said code by adding thereto a new section, designated §11-16-5a, to amend and reenact §11-16-6d, §11-16-6f, and §11-16-8 of said code; to amend said code by adding thereto a new section designated §60-1-3a; to further amend said code by adding thereto a new section, designated § 60-3-26; to amend and reenact §60-3A-3a, §60-3A-3b, §60-3A-8, and §60-3A-17 of said code; to amend and reenact §60-4-22 of said code; to amend and reenact §60-6-24 of said code; to amend and reenact §60-7-2, §60-7-6, and 60-7-8f of said code; to amend and reenact §60-8-6c, §60-8-6e, and §60-8-6f of said code; and to amend and reenact §61-8-27 of said code, all relating to nonintoxicating beer, wine, and liquor licenses and requirements; clarifying that licenses are not required to place nonintoxicating beer, wine, and liquor in a bag after purchase; removing requirement that servers at a sampling have specific knowledge of the West Virginia product being sampled; providing for modification of the 300 foot requirement to 200 feet with the option for a college, university, or church to provide a written waiver; directing the Commissioner of the Alcoholic Beverage Control Administration to discontinue the state's acquisition of alcoholic liquors manufactured in the Russian Federation or by any person or entity located therein; establishing duration of the ban; authorizing the commissioner, at the Governor's direction, to sell or auction alcoholic liquors made in the Russian Federation or under the authority of a business located within the federation with the proceeds going to charitable organizations assisting the people of Ukraine; increasing the maximum

convenience fee charge for delivery of nonintoxicating beer and alcoholic liquors to \$20; removing delivery provisions requiring storage of a scanned image of legal identification but requiring review of legal identification for nonintoxicating beer and alcoholic liquors; increasing the markup to private clubs from 110 percent to 112.5 percent; clarifying licensure requirements for nonintoxicating beer and alcoholic liquors; clarifying licensure requirements for wholesale representatives; removing prohibition against an elected official or his or her relative being employed as a wholesale representative; repealing an exotic entertainment; revising the blood alcohol chart; creating a license for a private bakery to produce confections with alcohol added, setting forth license requirements and setting a license fee; creating a license for a private cigar shop to, where legally permissible, permit the sale of alcohol, food, and cigars for on-premises consumption, setting forth license requirements and setting a license fee; creating a license for a private college sports stadium for alcohol sales in certain areas of Division I, II, or III sports stadiums, setting forth license requirements, and setting a license fee; allowing private multi-sport complex to also serve nonintoxicating beer and nonintoxicating craft beer from a golf cart; creating a license for a private food truck to conduct food and alcohol sales at various locations where permitted by a county or municipality, setting forth license requirements and setting a license fee; permitting private hotels and private resort hotels to apply for a private caterer license; authorizing private hotels and private resort hotels to utilize in-room mini bars for limited nonintoxicating beer and alcoholic liquor sales to adults 21 years of age or over, and setting forth requirements; removing language automatically repealing inconsistent code language; authorizing wine growler sales where wine may be mixed with ice and water by the licensee to produce a frozen alcoholic beverage for sale by the licensee in sealed wine growlers, and additional requirements; and providing additional exceptions to the criminal penalty for the unlawful admission of children to a dance house or other places of entertainment for certain private clubs with an age verification system.

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

At the request of Senator Takubo, unanimous consent being granted, the Senate proceeded to the ninth order of business.

**Eng. House Bill 2300**, Including Family Court Judges in the Judges' Retirement System.

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

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the unreported Judiciary committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. Com. Sub. for House Bill 2910**, To modify the allowable number of magistrate judges per county.

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

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

**Eng. House Bill 3073**, Relating to the West Virginia Emergency School Food Act.

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

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the unreported Education committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. Com. Sub. for House Bill 4001**, Generally relating to broadband.

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

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the unreported Economic Development committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. Com. Sub. for House Bill 4002**, Creating the Certified Sites and Development Readiness Program.

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

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

**Eng. Com. Sub. for House Bill 4012**, Prohibiting the showing of proof of a COVID-19 vaccination.

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

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

**Eng. Com. Sub. for House Bill 4025**, Providing exemption to severance tax for severing rare earth elements and other critical minerals.

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

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

**Eng. Com. Sub. for House Bill 4105**, Relating to service employees with National Association for Pupil Transportation Certifications.

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

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the unreported Education committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. Com. Sub. for House Bill 4111**, Relating to the prescriptive authority of advance practice registered nurses.

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

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

**Eng. Com. Sub. for House Bill 4252**, To reduce copay cap on insulin and devices.

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

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the unreported Health and Human Resources committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. House Bill 4307**, Increase some benefits payable from Crime Victims Compensation Fund.

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

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

**Eng. Com. Sub. for House Bill 4340**, Relating to maximizing the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.

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

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

**Eng. Com. Sub. for House Bill 4344**, Relating to foster care.

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

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

**Eng. Com. Sub. for House Bill 4353**, Relating to On Cycle Elections - Voter Turnout Act.

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

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the unreported Judiciary committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. Com. Sub. for House Bill 4377**, To update the involuntary commitment process.

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

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the unreported Judiciary committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. Com. Sub. for House Bill 4393**, To increase the managed care tax if the managed care organization receives a rate increase.

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

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

**Eng. Com. Sub. for House Bill 4408**, Relating to contracts for construction of recreational facilities in state parks and forests.

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

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the unreported Finance committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. Com. Sub. for House Bill 4439**, Creating a special revenue account known as the Military Authority Reimbursable Expenditure Fund.

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

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the unreported Finance committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. House Bill 4450**, Removing the \$0.50 fee charged and deposited in the Combined Voter Registration and Driver's Licensing Fund for each driver's license issued by the Department of Motor Vehicles.

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

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

**Eng. House Bill 4463**, To increase the compensation members of the State Athletic Commission may receive for their attendance and participation in the commission's public meetings.

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

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

**Eng. Com. Sub. for House Bill 4502**, Establishing the BUILD WV Act.

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

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the unreported Finance committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. House Bill 4522**, Relating to the expungement of criminal records.

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

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the unreported Judiciary committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. House Bill 4571**, Modifying foundation allowance to account for transportation by electric powered buses.

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

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

**Eng. Com. Sub. for House Bill 4600**, Making it a felony for a "Person in a Position of Trust" to assault, batter, or verbally abuse a child, or neglect to report abuse they witness.

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

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the unreported Judiciary committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. Com. Sub. for House Bill 4607**, To remove opioid treatment programs from requiring a certificate of need.

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

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the unreported Health and Human Resources committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. Com. Sub. for House Bill 4613**, Relating to increasing the multiplier for use in determining accrued benefit in the West Virginia Municipal Police Officers and Firefighters Retirement System.

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

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

**Eng. House Bill 4627**, To provide for no more than two licensed laboratories for medical cannabis testing in this state.

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

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the unreported Health and Human Resources committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. Com. Sub. for House Bill 4667**, Prohibition on county, city, or municipality restrictions on advanced air mobility aircraft.

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

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

**Eng. Com. Sub. for House Bill 4668**, Relating to air bag fraud.

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

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the unreported Judiciary committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. Com. Sub. for House Bill 4688**, Relating to Emergency Medical Services Retirement System Act.

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

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

**Eng. Com. Sub. for House Bill 4756**, Relating to authorizing municipalities to create pension funding programs to reduce the unfunded liability of certain pension and relief funds.

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

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the unreported Pensions committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. House Bill 4827**, Relating to the promotion and development of public-use vertiports.

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

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the unreported Judiciary committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. House Bill 4845**, Establishing the Katherine Johnson Academy.

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

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

**Eng. House Bill 4847**, Relating to missing persons generally.

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

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

**Eng. House Joint Resolution 104**, Providing Term Limits for certain Constitutional Officers.

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

At the request of Senator Takubo, and by unanimous consent, the resolution was advanced to third reading with the unreported Judiciary committee amendment pending and the right for further amendments to be considered on that reading.

Pending announcement of a meeting of a standing committee of the Senate,

On motion of Senator Takubo, at 3:25 p.m., the Senate recessed until 4:30 p.m. today.

The Senate reconvened at 4:57 p.m. and, at the request of Senator Takubo, unanimous consent being granted, returned to the eighth order of business.

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

**Eng. Com. Sub. for House Bill 4008**, Relating to Higher Education Policy Commission funding formula.

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

Pending discussion,

The question being "Shall Engrossed Committee Substitute for House Bill 4008 pass?"

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4008) passed.

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

**Eng. Com. Sub. for House Bill 4008**—A Bill to amend and reenact §18B-1-1f of the Code of West Virginia, 1931, as amended; and to amend and reenact §18B-1B-4 of said code, all relating to powers and duties of the Higher Education Policy Commission generally; establishing additional criteria for a state college or university to be considered exempt from the requirement that the commission approve the establishment of new programs on their own campuses for



programs incentivized within the funding formula established herein; directing the Higher Education Policy Commission, in conjunction with the West Virginia Council for Community and Technical College Education, to propose rules to establish a funding formula model governing its appropriation request to the Legislature regarding distribution of general revenue to the state's institutions of higher education; setting forth parameters for the formula and minimum requirements for the rule; revising and removing certain related commission powers and duties; requiring interim chancellor to meet all criteria required of the chancellor; clarifying the commission and council's responsibilities, in conjunction with the West Virginia Network, to support systemwide technology needs; revising provisions for rulemaking regarding transfers of credits and obtaining academic credit or advanced placement standing based on experience; authorizing commission to promulgate rules, and exercise powers and duties, governing student loans, scholarships, state aid as provided in Chapter 18C of the code; removing requirements to provide education about certain disease; and making non-substantive technical cleanup corrections and clarifying changes.

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

Action as Engrossed Committee Substitute for House Bill 4008 having been concluded, the Senate proceeded to the consideration of

**Eng. Com. Sub. for House Bill 4020**, Relating to reorganizing the Department of Health and Human Resources.

On third reading, coming up in deferred order, with the unreported Finance committee amendment pending, and with the right having been granted on March 9, 2022, for further amendments to be received on third reading, was read a third time.

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

Engrossed Committee Substitute for House Bill 4020 was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: Caputo and Romano—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4020) passed.

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

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

Action as to Engrossed Committee Substitute for House Bill 4020 having been concluded, the Senate proceeded to the consideration of

**Eng. Com. Sub. for House Bill 4087**, Allowing variance in state fire code for certain buildings used solely for emergency equipment storage.

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

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

Thereupon, on motion of Senator Weld, the following amendment to the bill was reported by the Clerk and adopted:

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

## **CHAPTER 15A. DEPARTMENT OF HOMELAND SECURITY.**

### **ARTICLE 11. FIRE COMMISSION.**

#### **§15A-11-5. Promulgation of rules and statewide building code.**

(a) The State Fire Commission shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to safeguard life and property and to ensure the quality of construction of all structures erected or renovated throughout this state through the adoption of a State Building Code. The rule may include provisions regarding building construction, renovation, and all other aspects as related to the construction and mechanical operations of a structure. The rule shall include building energy codes. The rules shall be in accordance with standard safe practices so embodied in widely recognized standards of good practice for building construction and all aspects related thereto and have force and effect in those counties and municipalities adopting the State Building Code: *Provided*, That each county or municipality may adopt the code to the extent that it is only prospective and not retroactive in its application; *Provided, however*, That buildings or structures utilized primarily for agricultural purposes shall be exempt from the provisions of the State Building Code, the State Fire Code, and any county or municipal building code or ordinance that is or may be adopted, such as the ICC International Property Maintenance Code.

(b) The State Fire Commission may establish advisory boards as it considers appropriate to encourage representative participation in subsequent rulemaking from groups or individuals with an interest in any aspect of the State Building Code or related construction or renovation practices.

(c) For the purpose of this section, the term "building code" is intended to include all aspects of safe building construction and mechanical operations and all safety aspects related thereto. Whenever any other state law, county, or municipal ordinance, or regulation of any agency thereof is more stringent or imposes a higher standard than is required by the State Building Code, the provisions of the state law, county or municipal ordinance, or regulation of any agency thereof governs if they are not inconsistent with the laws of West Virginia and are not contrary to recognized standards and good engineering practices. In any question, the decision of the State Fire Commission determines the relative priority of any such state law, county or municipal ordinance, or regulation of any agency thereof, and determines compliance with State Building Code by officials of the state, counties, municipalities, and political subdivisions of the state.

(d) Enforcement of the provisions of the State Building Code is the responsibility of the respective local jurisdiction. Also, any county or municipality may enter into an agreement with any other county or municipality to provide inspection and enforcement services: *Provided*, That any county or municipality may adopt the State Building Code with or without adopting the BOCA National Property Maintenance Code. If a county adopts a property maintenance code or ordinance including, but not limited to, the ICC International Property Maintenance Code, such code or ordinance shall exempt all property used for agricultural purposes or otherwise cause such property to be exempted from any such code or ordinance from enforcement. Any such code that may be or is adopted by any county shall be and is unenforceable as to agricultural property.

(e) After the State Fire Commission has promulgated rules as provided in this section, each county or municipality intending to adopt the State Building Code shall notify the State Fire Marshal of its adoption.

(f) The State Fire Commission may conduct public meetings in each county or municipality adopting the State Building Code to explain the provisions of the rules.

(g) The provisions of the State Building Code relating to the construction, repair, alteration, restoration, and movement of structures are not mandatory for existing buildings and structures identified and classified by the State Register of Historic Places under the provisions of §29-1-8 of this code or the National Register of Historic Places, pursuant to 16 U.S.C. § 470a. Prior to renovations regarding the application of the State Building Code, in relation to historical preservation of structures identified as such, the authority having jurisdiction shall consult with the Division of Culture and History, State Historic Preservation Office. The final decision is vested in the State Fire Marshal. Additions constructed on a historic building are not excluded from complying with the State Building Code.

(h) For purposes of this section, the term "agricultural purposes" has the same meaning as is set forth in §15A-11-3 of this code.

(i) The State Fire Commission shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code relating to sprinkler protection, specifically providing that buildings commencing construction after July 1, 2022, housing emergency fire, rescue, or ambulance services shall be protected throughout by approved automatic sprinkler systems: *Provided*, That emergency services buildings, not exceeding a total of 5,000 square feet in area, that house only equipment, and do not have designated sleeping areas or quarters within them, regardless when constructed or commencing construction, are exempt from this requirement.

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

### **ARTICLE 3E. FIREWORKS SAFETY.**

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

(a) In addition to the sales tax, a fireworks safety fee of 12 percent of all sales is levied on retail sales of consumer fireworks in this state. The fee shall be distributed pursuant to the provisions of this subsection. The fee computation under this subsection shall be carried to the third decimal place, and the fee rounded up to the next whole cent whenever the third decimal place is greater than four, and rounded down to the lower whole cent whenever the third decimal place is four or less.

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

(1) Seventy-five percent shall be deposited into a special account in the State Treasury, designated the Veterans' Facility Support Fund established by the provisions of §9A-1-11 of this code for expenditure on veterans' programs.

(2) Twenty-five percent shall be deposited into a special account in the State Treasury, designated the Fire Protection Fund ~~established in §33-3-33 of this code and shall be allocated and distributed in accordance with that section to each volunteer fire company or department on an equal share basis by the State Treasurer~~ according to the requirements of §33-3-33 of this code.

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

(c) A retailer shall remit to the State Tax Commissioner no later than 30 days after the end of each preceding month all moneys collected for such preceding month, pursuant to the requirements of this section, and shall report such collections on forms and in the manner prescribed by the State Tax Commissioner.

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

(e) Each and every provision of the West Virginia Tax Crimes and Penalties Act set forth §11-9-1 *et seq.* of this code applies to the fees imposed pursuant to this article, with like effect as if that act were applicable only to the fees imposed by this article and were set forth in extenso in this article.

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

## CHAPTER 33. INSURANCE.

### ARTICLE 3. LICENSING, FEES, AND TAXATION OF INSURERS.

#### **§33-3-14d. Additional fire and casualty insurance premium tax; allocation of proceeds; effective date.**

(a) (1) For the purpose of providing additional revenue for municipal policemen's and firemen's pension and relief funds and the Teachers Retirement System Reserve Fund and for volunteer and part-volunteer fire companies and departments, there is hereby levied and imposed an additional premium tax equal to one percent of taxable premiums for fire insurance and casualty insurance policies. For purposes of this section, casualty insurance does not include insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction or insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy.

(2) All moneys collected from this additional tax shall be received by the commissioner and paid by him or her into a special account in the State Treasury, designated the Municipal Pensions and Protection Fund, to be allocated as follows: *Provided, That on or after January 1, 2010, the commissioner shall pay*

(A) Ten percent of the amount collected ~~to~~ shall be deposited in the Teachers Retirement System Reserve Fund created in §18-7A-18 of this code;

(B) Twenty-five percent of the amount collected ~~to~~ shall be deposited in the Fire Protection Fund ~~created in section 33 of this article for allocation~~ distribution by the State Treasurer to volunteer and part-volunteer fire companies and departments according to the requirements of §33-3-33 of this code; and

~~65% of the amount collected to the Municipal Pensions and Protection Fund: *Provided, however, That upon notification by the Municipal Pensions Oversight Board pursuant to the provisions of §8-22-18b of this code, on or after January 1, 2010, or as soon thereafter as the Municipal Pensions Oversight Board is prepared to receive the funds,*~~

(C) Sixty-five percent of the amount collected by the commissioner shall be deposited in the Municipal Pensions Security Fund created in §8-22-18b of this code ~~the net proceeds of this tax after appropriation thereof by the Legislature is~~ to be distributed in accordance with the provisions of this section, except for distribution from proceeds pursuant to ~~§8-22-8a(d)~~ §8-22-18a(d) of this code.

(b) *Municipal Pensions Security Fund allocation and distribution —*

(1) Before August 1 of each year, the treasurer of each municipality in which a municipal policemen's or firemen's pension and relief fund is established shall report to the ~~State Treasurer~~ Municipal Pensions Oversight Board the average monthly number of members who worked at least 100 hours per month and the average monthly number of retired members of municipal policemen's or firemen's pension and relief fund or the Municipal Police Officers and Firefighters Retirement System during the preceding fiscal year. ~~*Provided, That beginning in the year 2010 and continuing thereafter, the report shall be made to the oversight board created in §8-22-18a. These reports received by the oversight board shall be provided*~~ The reports received by the Municipal Pensions Oversight Board shall be provided annually to the State Treasurer by September 1.

(2) ~~Before September 1 of each calendar year, the State Treasurer, or the Municipal Pensions Oversight Board once in operation, shall allocate and authorize for distribution the revenues in the Municipal Pensions and Protection Fund which were collected during the preceding calendar year for the purposes set forth in this section. Before September 1 of each calendar year, and after the Municipal Pensions Oversight Board has notified the Treasurer and commissioner pursuant to §8-22-18b of this code, the Municipal Pensions Oversight Board shall allocate and authorize for distribution the revenues in the Municipal Pensions Security Fund which were collected during the preceding calendar year for the purposes set forth in this section. In any year the actuarial report required by §8-22-20 of this code indicates no actuarial deficiency in the municipal policemen's or firemen's pension and relief fund, no revenues may be allocated from the Municipal Pensions and Protection Fund or the Municipal Pensions Security Fund to that fund. The revenues from the Municipal Pensions and Protection~~ Security Fund shall then be allocated to all other pension and relief funds which have an actuarial deficiency.

~~(3) The Municipal Pensions Oversight Board shall annually review the investment performance of each municipal policemen's or firemen's pension and relief fund. If the municipal pension and relief fund's board fails for three consecutive years to comply with the investment provisions established by §8-22-22a of this code, the oversight board may require the municipal policemen's or firemen's pension and relief fund to invest with the Investment Management Board to continue to receive its allocation of funds from the premium tax. If the municipal pension and relief fund fails to move its investments to the Investment Management Fund within the 18-month drawdown period, provided in §8-22-19(e) of this code, the revenues shall be reallocated to all other municipal policemen's or firemen's pension and relief funds that have drawn down one hundred percent of their allocations.~~

~~(4) The moneys, and the interest earned thereon, in the Municipal Pensions and Protection Fund allocated to volunteer and part volunteer fire companies and departments shall be allocated and distributed quarterly to the volunteer fire companies and departments. Before each distribution date, the State Fire Marshal shall report to the State Treasurer the names and addresses of all volunteer and part volunteer fire companies and departments within the state which meet the eligibility requirements established in §8-15-8a of this code.~~

~~(c) (1) Each municipal pension and relief fund shall have allocated and authorized for distribution a pro rata share of the revenues allocated to municipal policemen's and firemen's pension and relief funds based on the corresponding municipality's average monthly number of police officers and firefighters who worked at least one hundred hours per month during the preceding fiscal year. On and after July 1, 1997, from~~

~~(3) The Municipal Pensions Oversight Board shall allocate and distribute the growth in any moneys collected pursuant to a pro rata share of the tax imposed by this section and earnings and interest thereon there shall be allocated and authorized for distribution to each municipal policemen's or municipal firemen's pension and relief fund, a pro rata share of the revenues allocated to municipal policemen's and firemen's pension and relief funds based on the corresponding municipality's average number of police officers and firefighters who worked at least 100 hours per month during the preceding fiscal year and average monthly number of retired police officers and firefighters during the preceding fiscal year. For the purposes of this subsection, the growth in moneys collected from earnings the tax collected pursuant to this section is determined by subtracting the amount of the tax collected during the fiscal year ending June 30, 1996, from the tax collected during the fiscal year for which the allocation is being made and interest thereon. All moneys received by municipal pension and relief funds under this section may be expended only for those purposes described in §8-22-16 through §8-22-28 §8-22-28a of this code.~~

~~(2) Each volunteer fire company or department shall receive an equal share of the revenues allocated for volunteer and part volunteer fire companies and departments.~~

~~(3) In addition to the share allocated and distributed in accordance with subdivision (1) of this subsection, each municipal fire department composed of full-time paid members and volunteers and part volunteer fire companies and departments shall receive a share equal to the share distributed to volunteer fire companies under subdivision (2) of this subsection reduced by an amount equal to the share multiplied by the ratio of the number of full-time paid fire department members who are also members of a municipal firemen's pension and relief fund or the Municipal Police Officers and Firefighters Retirement System to the total number of members of the fire department.~~

~~(d) (4) The allocation and distribution of revenues provided in this section are subject to the provisions of §8-22-20, §8-15-8a, and §8-15-8b of said chapter this code.~~

~~(e) Based upon the findings of an audit by the Treasurer, the Legislature hereby finds and declares that during the period of 1982 through April 27, 2012, allocations from the Municipal Pensions and Protection Fund were miscalculated and errors were made in amounts transferred, resulting in overpayments and underpayments to the relief and pension funds and to the Teachers Retirement System, and that the relief and pension funds and the Teachers Retirement System were not at fault for any of the overpayments and underpayments. The Legislature hereby further finds and declares that any attempt by the Municipal Pension Oversight Board or other entity to recover any of the overpayments would be unjust and create economic hardship for the entities that received overpayments. No entity, including, without limitation, the Municipal Pension Oversight Board, may seek to recover from a relief or pension fund, the Teachers Retirement System or the state any overpayments received from the Municipal Pensions and Protection Fund and the overpayments are not subject to recovery, offset or litigation. Pursuant to the audit by the Treasurer, the amount of \$3,631,846.55 is determined owed to specific relief and pension funds through the period of April 27, 2012. The Treasurer is hereby authorized to transfer the amount of \$3,631,846.55 from the Unclaimed Property Trust Fund to the Municipal Pensions and Protection Fund, which is hereby reopened for the sole purpose of the transfer and remittances pursuant to this subsection, and to use the amount transferred to remit the amounts due to the pension and relief funds. The payment of \$3,631,846.55 to the pension and relief funds is complete satisfaction of any amounts due and no entity, including, without limitation, the Municipal Pension Oversight Board and any pension or relief fund, may seek to recover any further amounts.~~

~~(c) The Municipal Pensions Oversight Board shall annually review the investment performance of each municipal policemen's or firemen's pension and relief fund. If a municipal pension and relief fund's board fails for three consecutive years to comply with the investment provisions established by §8-22-22a of this code, the oversight board may require the municipal policemen's or firemen's pension and relief fund to invest with the Investment Management Board to continue to receive its allocation of funds from the premium tax. If the municipal pension and relief fund fails to move its investments to the Investment Management Fund within the 18-month drawdown period provided in §8-22-19(e) of this code, the revenues shall be reallocated to all other municipal policemen's or firemen's pension and relief funds that have drawn down 100 percent of their allocations.~~

**~~§33-3-33. Surcharge on fire and casualty insurance policies to benefit volunteer and part-volunteer fire departments; Public Employees Insurance Agency and municipal pension plans; special fund created; Fire Protection Fund; allocation of proceeds. effective date.~~**

~~(a)(1) For the purpose of providing additional revenue for volunteer fire departments, part-volunteer fire departments and certain retired teachers and the teachers retirement reserve fund, there is hereby authorized and imposed on and after July 1, 1992, on the policyholder of any fire insurance policy or casualty insurance policy issued by any insurer, authorized or unauthorized, or by any risk retention group, a policy surcharge equal to one percent of the taxable premium for each such policy. After June 30, 2005, the surcharge shall be imposed as specified in subdivisions (2) and (3) of this subsection.~~

~~(2) After June 30, 2005, through December 31, 2005, for the purpose of providing additional revenue for volunteer fire departments, part-volunteer fire departments and to provide additional revenue to the Public Employees Insurance Agency and municipal pension plans, there is hereby~~

~~authorized and imposed on and after July 1, 2005, on the policyholder of any fire insurance policy or casualty insurance policy issued by any insurer, authorized or unauthorized, or by any risk retention group, a policy surcharge equal to one percent of the taxable premium for each such policy.~~

(a) For the purposes of this section:

(1) "Full-time paid members" means the members of a fire department who are compensated to provide services to the department on a full-time basis and are also members of a municipal firemen's pension and relief fund or the Municipal Police Officers and Firefighters Retirement System.

(2) The "policy surcharge" refers to the surcharge on certain insurance policies imposed by subsection (b) of this section.

(3) "Volunteer fire departments" or "departments" includes volunteer and part-volunteer fire departments and companies, as described in §18-15-1 et seq. of this code.

~~(3) (b) After December 31, 2005, December 31, 2022, for the purpose of providing additional revenue for volunteer fire departments and part-volunteer fire departments, there is hereby authorized and imposed on the policyholder of any fire insurance policy or casualty insurance policy issued by any insurer, authorized or unauthorized, or by any risk retention group, a policy surcharge equal to 0.055% one percent of the taxable premium for each such policy. The policy surcharge is separate from and in addition to the tax imposed by §33-3-14d of this code.~~

~~(4) (c) For purposes of this section, casualty insurance may does not include insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction or insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy. The policy surcharge may is not be subject to premium taxes, agent commissions, or any other assessment against premiums.~~

~~(b) (d) The policy surcharge imposed by this section shall be collected and remitted to the commissioner by the insurer, or in the case of surplus lines coverage, by the surplus lines licensee, or if the policy is issued by a risk retention group, by the risk retention group. The amount required to be collected under this section shall be remitted to the commissioner on a quarterly basis on or before the 25th day of the month succeeding the end of the quarter in which they are collected, except for the fourth quarter for which the surcharge shall be remitted on or before March 1 of the succeeding year. All money from the policy surcharge shall be collected by the commissioner who shall disburse all of the money received from the surcharge into the Fire Protection Fund for distribution as provided in subsection (f) of this section.~~

~~(e) (e) Any person failing or refusing to collect and remit to the commissioner any policy surcharge and whose surcharge payments are not postmarked by the due dates for quarterly filing is liable for a civil penalty of up to \$100 for each day of delinquency, to be assessed by the commissioner. The commissioner may suspend the insurer, broker, or risk retention group until all surcharge payments and penalties are remitted in full to the commissioner.~~

~~(d) (f) Fire Protection Fund allocation and distribution. —~~



~~(1) All money from the policy surcharge shall be collected by the Commissioner who shall disburse the money received from the surcharge into a special account in the state Treasury, designated the Fire Protection Fund. The State Treasurer's Office shall distribute the net proceeds of this portion of the tax the policy surcharge, the amount deposited into the Fire Protection Fund pursuant to §29-3E-7 of this code, the amount deposited into the Fire Protection Fund pursuant to §33-3-14d of this code, and the interest thereon on a quarterly basis, after appropriation by the Legislature. shall be distributed quarterly. The distributions shall occur on the first day of the months of January, April, July, and October to each eligible volunteer fire company or department, on an equal share basis by the state Treasurer. After June 30, 2005, the money received from the surcharge shall be distributed as specified in subdivisions (2) and (3) of as provided in this subsection.~~

~~(2)(A) After June 30, 2005, through December 31, 2005, all money from the policy surcharge shall be collected by the Commissioner who shall disburse one half of the money received from the surcharge into the Fire Protection Fund for distribution as provided in subdivision (1) of this subsection.~~

~~(B) The remaining portion of moneys collected shall be transferred into the fund in the state Treasury of the Public Employees Insurance Agency into which are deposited the proportionate shares made by agencies of this state of the Public Employees Insurance Agency costs of those agencies, until November 1, 2005. After the October 31, 2005, through December 31, 2005, the remain portion shall be transferred to the special account in the state Treasury, known as the Municipal Pensions and Protection Fund.~~

~~(3) After December 31, 2005, all money from the policy surcharge shall be collected by the Commissioner who shall disburse all of the money received from the surcharge into the Fire Protection Fund for distribution as provided in subdivision (1) of this subsection.~~

~~(4) (2) Before each distribution date to volunteer fire companies or departments, the State Fire Marshal shall report to the State Treasurer:~~

~~(A) The names and addresses of all volunteer and part-volunteer fire companies and departments within the state which meet met the eligibility requirements established in §8-15-8a of this code during the preceding quarter; and~~

~~(B) The number of volunteer firefighters and the number of full-time paid members providing services to each volunteer and part-volunteer department during the preceding quarter.~~

~~(3) Each eligible volunteer fire department shall receive an equal share of the amount of proceeds to be distributed each quarter: *Provided*, That each part-volunteer department's share will be reduced by a percentage amount equal to the percentage of the members of the fire department who are full-time paid members of the department, according to the report described in subdivision (2) of this subsection.~~

~~(e) (g) The allocation, distribution, and use of revenues provided in the Fire Protection Fund are subject to the provisions of §8-15-8a and §8-15-8b of this code.~~

## CHAPTER 37. REAL PROPERTY.

### ARTICLE 6. LANDLORD AND TENANT.

**§37-6-5a. Recovery residences.**

(a) The purpose of this section is to create one pilot program in Cabell County to study the uniqueness of recovery residences as they relate to landlord-tenant law and determine an equitable resolution when circumstances arise which bring about an unanticipated cessation of an individual's participation in a recovery residence's program.

(b) For the purposes of this section:

(1) "Recovery residence" has the meaning ascribed in §16-59-1(4) of this code.

(2) "Residence agreement" means an agreement between an individual residing in a recovery residence and the recovery residence.

(3) "Resident" means a person residing in and receiving services from a recovery residence.

(c) A recovery residence in the pilot county may immediately discharge a resident without filing a petition for summary relief for wrongful occupation of residential rental property for any of the following reasons:

(1) The use, possession, or distribution of alcohol, any controlled substance, or prescription medication for which the resident does not have a valid prescription;

(2) Sexual misconduct;

(3) Any crime of violence against a person or threat of crime of violence against a person; or

(4) Any conduct which jeopardizes the safety of another resident.

(d) If a recovery residence in the pilot county seeks to discharge a resident for a reason not enumerated in subdivisions (1) through (4), subsection (c) of this section, the resident is entitled to the due process and protections afforded a "tenant" as that term is defined in §37-6A-1 of this code; the recovery residence shall be treated as a "landlord" as that term is defined in §37-6A-1 of this code; and the recovery residence shall be required to proceed against the resident under §55-3A-1 of this code with the filing of a petition for summary relief seeking removal of the resident for wrongful occupation of residential rental property.

(e) If a resident is discharged, evicted, or otherwise removed from a recovery residence in the pilot county prior to the expiration of the time period for which he or she has previously paid rent or any other fee for residency or services, the recovery residence shall issue a refund of the rent or fee to the discharged resident in an amount prorated, on a per diem basis, to account for the remainder of that time period.

(f) If requested by the resident, a recovery residence in the pilot county shall first apply any refund required by subsection (e) of this section to costs related to placing the resident in a higher level care facility or transferring the resident to another recovery residence: *Provided*, That if the resident does not request to be placed in a higher level care facility or does not request to be transferred to another recovery residence, within 72 hours of a resident's discharge, eviction, or removal, the recovery residence shall issue any refund due to a resident: *Provided, however*, That if the rent or fee moneys were paid by a third party on behalf of the resident, any refund required

by subsection (e) of this section shall be issued directly to the third-party payor within 72 hours of a resident's discharge, eviction, or removal.

(g) If a resident was transported by the recovery residence in the pilot county from any location outside the state of West Virginia and is discharged, evicted, or otherwise removed from the recovery residence, the recovery residence shall provide transportation to the location from which the resident was initially transported to the discharged, evicted, or otherwise removed resident, at the expense of the recovery residence.

(h) If the resident is discharged, evicted, or otherwise removed prior to the expiration of the time period for which he or she has previously paid rent or any other fee for residency or service, the recovery residence in the pilot county shall report non-identifying resident information regarding the reason for the early discharge, eviction, or removal of the resident to the West Virginia Department of Health and Human Resources, Office of Drug Control Policy.

## **ARTICLE 6A. RESIDENTIAL RENTAL SECURITY DEPOSITS.**

### **§37-6A-5. Landlord's noncompliance.**

(a) If a landlord fails to comply with any of the provisions of this article, and ~~such~~ the noncompliance is willful or not in good faith, the tenant is entitled to a judgment for:

(1) The amount of any unreturned security deposit; and

(2) Damages for annoyance or inconvenience resulting from the landlord's nonconformance equal to one and a half times the amount wrongfully withheld, unless the tenant owes rent to the landlord, in which case, the court shall order an amount equal to any amount awarded to the tenant pursuant to this subsection to be credited against any rent due to the landlord: *Provided*, That if an individual is residing in a recovery residence in the pilot county established under the provisions of §37-6-5a, the recovery residence is required to comply with the provisions of this article, and if the recovery residence's noncompliance is willful or not in good faith, the court shall also award reasonable attorney's fees.

(b) Jurisdiction for any civil action brought pursuant to this article shall be in magistrate ~~court~~ or circuit court in the county where the residential rental premises or units are located.

(c) This section does not limit rights or remedies available to a landlord or tenant under any other law.

## **CHAPTER 55. ACTIONS, SUITS, AND ARBITRATION; JUDICIAL SALE.**

### **ARTICLE 3A. REMEDIES FOR WRONGFUL OCCUPATION OF RESIDENTIAL RENTAL PROPERTY.**

#### **§55-3A-1. Petition for summary relief for wrongful occupation of residential rental property.**

(a) A person desiring to remove a tenant, including a resident of a recovery residence in the pilot county established under the provisions of §37-6-5a who is discharged for a reason other than those enumerated in §37-6-5a(c)(1) through (4) of this code, from residential rental property may apply for ~~such~~ relief to the magistrate ~~court~~ or the circuit court of the county in which ~~such~~ the property is located, by verified petition, setting forth the following:

(1) That he or she is the owner or agent of the owner and as such has a right to recover possession of the property;

(2) A brief description of the property sufficient to identify it;

(3) That the tenant is wrongfully occupying ~~such~~ the property in that the tenant is in arrears in the payment of rent, has breached a warranty or a leasehold covenant, or has deliberately or negligently damaged the property or knowingly permitted another person to do so, and describing such arrearage, breach, or act or omission; and

(4) A prayer for possession of the property.

(b) Previous to the filing of the petition the person shall request from the court the time and place at which the petitioner shall be heard. The court shall fix a time for ~~such~~ the hearing, which time shall not be less than five nor more than 10 judicial days following ~~such~~ the request.

(c) Immediately upon being apprised of the time and place for the hearing, the petitioner shall ~~cause~~ have a notice of the ~~same to be~~ hearing served upon the tenant in accordance with the provisions of Rule 4 of the West Virginia Rules of Civil Procedure or by certified mail, return receipt requested. ~~Such~~ The notice shall inform the tenant that any defense to the petition ~~must~~ shall be submitted in writing to the petitioner within five days of the receipt by the tenant of the notice, and in no case later than the fifth day next preceding the date of hearing. Upon receipt of the return of service or the return receipt as the case may be, evidencing service upon the tenant, the petitioner shall file with the court his or her petition and such proof of service.

Engrossed Committee Substitute for House Bill 4087, as just amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4087) passed.

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

**Eng. Com. Sub. for House Bill 4087**—A Bill to amend and reenact §15A-11-5, §29-3E-7, §33-3-14d, §33-3-33, §37-6A-5, and §55-3A-1 of the Code of West Virginia, 1931, as amended; and amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §37-6-5a; relating to requiring the State Fire Commission to propose rules relating to sprinkler protection, providing that buildings commencing construction after July 1, 2022, housing emergency fire, rescue, or ambulance services shall be protected throughout by approved automatic sprinkler systems; and exempting emergency services buildings meeting certain criteria that only house equipment and do not have sleeping areas or quarters within them from

the requirement; all relating generally to residents of recovery residences; creating one pilot program in Cabell County relating to recovery residences as they relate to landlord-tenant law; defining terms; providing that a resident of a recovery residence in the pilot county may be immediately discharged in certain circumstances; establishing procedures for removing recovery resident in the pilot county; establishing refund process for fees for residency or services paid to a recovery residence in the pilot county; requiring return transportation be provided to an individual transported to a recovery residence in the pilot county from outside the state of West Virginia; requiring the reporting of certain information to West Virginia Department of Health and Human Resources; requiring award of reasonable attorney's fees against recovery residence in the pilot county in certain instances; and requiring recovery residence in the pilot county file a petition for summary relief for wrongful occupation of residential rental property in certain circumstances; all relating generally to the distribution of certain taxes and surcharges to benefit volunteer and part-volunteer fire departments; defining terms; providing the method of allocation and distribution for proceeds of the fireworks safety fee deposited in the Fire Protection Fund; eliminating obsolete language; increasing certain policy surcharge; establishing effective date for policy surcharge increase; requiring the State Fire Marshal provide certain information to the State Treasurer; and clarifying the requirements for distribution of funds in the Fire Protection Fund.

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

Action as to Engrossed Committee Substitute for House Bill 4087 having been concluded, the Senate proceeded to the consideration of

**Eng. Com. Sub. for House Bill 4112**, Provide consumers a choice for pharmacy services.

On third reading, coming up in regular order, with the unreported Health and Human Resources committee amendment pending, and with the right having been granted on yesterday, Thursday, March 10, 2022, for further amendments to be received on third reading, was read a third time.

The following amendment to the bill, from the Committee on Health and Human Resources, was reported by the Clerk:

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

## **ARTICLE 51. PHARMACY AUDIT INTEGRITY ACT.**

### **§33-51-3. Definitions.**

For purposes of this article:

"340B entity" means an entity participating in the federal 340B drug discount program, as described in 42 U.S.C. § 256b, including its pharmacy or pharmacies, or any pharmacy or pharmacies, contracted with the participating entity to dispense drugs purchased through such program.

"Affiliate" means a pharmacy, pharmacist, or pharmacy technician which, either directly or indirectly through one or more intermediaries: (A) Has an investment or ownership interest in a pharmacy benefits manager licensed under this chapter; (B) shares common ownership with a

pharmacy benefits manager licensed under this chapter; or (C) has an investor or ownership interest holder which is a pharmacy benefits manager licensed under this article.

"Auditing entity" means a person or company that performs a pharmacy audit, including a ~~covered entity~~, pharmacy benefits manager, managed care organization, or third-party administrator.

"Business day" means any day of the week excluding Saturday, Sunday, and any legal holiday as set forth in §2-2-1 of this code.

"Claim level information" means data submitted by a pharmacy, or required by a payer ~~payor~~, or claims processor to adjudicate a claim.

~~"Covered entity" means a contract holder or policy holder providing pharmacy benefits to a covered individual under a health insurance policy pursuant to a contract administered by a pharmacy benefits manager and may include a health benefit plan.~~

"Covered individual" means a member, participant, enrollee, or beneficiary of a ~~covered entity~~ health benefit plan who is provided health coverage health care service coverage by a ~~covered entity~~ health benefit plan, including a dependent or other person provided health coverage through the policy or contract of a covered individual.

"Extrapolation" means the practice of inferring a frequency of dollar amount of overpayments, underpayments, nonvalid claims, or other errors on any portion of claims submitted, based on the frequency of dollar amount of overpayments, underpayments, nonvalid claims, or other errors actually measured in a sample of claims.

"Defined cost sharing" means a deductible payment or coinsurance amount imposed on an enrollee for a covered prescription drug under the enrollee's health plan.

"Health benefit plan" or "health plan" means a policy, contract, certificate, or agreement entered into, offered, or issued by a ~~health carrier~~ health care payor to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

"Health care payor" or "payor" means a health insurance company, a health maintenance organization, a hospital, medical, or dental corporation, a health care corporation, an entity that provides, administers, or manages a self-funded health benefit plan, including a governmental plan, or any other payor that provides prescription drug coverages, including a workers' compensation insurer. Health care payor does not include an insurer that provides coverage under a policy of casualty or property insurance.

"Health care provider" has the same meaning as defined in §33-41-2 of this code.

"Health insurance policy" means a policy, subscriber contract, certificate, or plan that provides prescription drug coverage. The term includes both comprehensive and limited benefit health insurance policies.

"Insurance commissioner" or "commissioner" has the same meaning as defined in §33-1-5 of this code.

"Network" means a pharmacy or group of pharmacies that agree to provide prescription services to covered individuals on behalf of a ~~covered entity or group of covered entities~~ health benefit plan in exchange for payment for its services by a pharmacy benefits manager or pharmacy services administration organization. The term includes a pharmacy that generally dispenses outpatient prescriptions to covered individuals or dispenses particular types of prescriptions, provides pharmacy services to particular types of covered individuals or dispenses prescriptions in particular health care settings, including networks of specialty, institutional or long-term care facilities.

"Maximum allowable cost" means the per unit amount that a pharmacy benefits manager reimburses a pharmacist for a prescription drug, excluding dispensing fees and copayments, coinsurance, or other cost-sharing charges, if any.

"National average drug acquisition cost" means the monthly survey of retail pharmacies conducted by the federal Centers for Medicare and Medicaid Services to determine average acquisition cost for Medicaid covered outpatient drugs.

"Nonproprietary drug" means a drug containing any quantity of any controlled substance or any drug which is required by any applicable federal or state law to be dispensed only by prescription.

"Pharmacist" means an individual licensed by the West Virginia Board of Pharmacy to engage in the practice of pharmacy.

"Pharmacy" means any place within this state where drugs are dispensed and pharmacist care is provided.

"Pharmacy audit" means an audit, conducted ~~on-site~~ by or on behalf of an auditing entity of any records of a pharmacy for prescription or nonproprietary drugs dispensed by a pharmacy to a covered individual.

"Pharmacy benefits management" means the performance of any of the following:

(1) The procurement of prescription drugs at a negotiated contracted rate for dispensation within the state of West Virginia to covered individuals;

(2) The administration or management of prescription drug benefits provided by a ~~covered entity~~ health benefit plan for the benefit of covered individuals;

(3) The administration of pharmacy benefits, including:

(A) Operating a mail-service pharmacy;

(B) Claims processing;

(C) Managing a retail pharmacy network;

(D) Paying claims to a pharmacy for prescription drugs dispensed to covered individuals via retail or mail-order pharmacy;

(E) Developing and managing a clinical formulary including utilization management and quality assurance programs;

(F) Rebate contracting administration; and

(G) Managing a patient compliance, therapeutic intervention, and generic substitution program.

"Pharmacy benefits manager" means a person, business, or other entity that performs pharmacy benefits management for ~~covered entities~~ health benefit plans;

"Pharmacy record" means any record stored electronically or as a hard copy by a pharmacy that relates to the provision of prescription or nonproprietary drugs or pharmacy services or other component of pharmacist care that is included in the practice of pharmacy.

"Pharmacy services administration organization" means any entity that contracts with a pharmacy to assist with ~~third-party payer~~ payer interactions and that may provide a variety of other administrative services, including contracting with pharmacy benefits managers on behalf of pharmacies and managing pharmacies' claims payments from ~~third-party payers~~ payors.

"Point-of-sale fee" means all or a portion of a drug reimbursement to a pharmacy or other dispenser withheld at the time of adjudication of a claim for any reason.

"Rebate" means any and all payments that accrue to a pharmacy benefits manager or its health plan client, directly or indirectly, from a pharmaceutical manufacturer, including, but not limited to, discounts, administration fees, credits, incentives, or penalties associated directly or indirectly in any way with claims administered on behalf of a health plan client. The term "rebate" does not include any discount or payment that may be provided to or made to any 340B entity through such program.

"Retroactive fee" means all or a portion of a drug reimbursement to a pharmacy or other dispenser recouped or reduced following adjudication of a claim for any reason, except as otherwise permissible as described in this article.

"Specialty drug" means a drug used to treat chronic and complex, or rare medical conditions and requiring special handling or administration, provider care coordination, or patient education that cannot be provided by a non-specialty pharmacy or pharmacist.

~~"Third party" means any insurer, health benefit plan for employees which provides a pharmacy benefits plan, a participating public agency which provides a system of health insurance for public employees, their dependents and retirees, or any other insurer or organization that provides health coverage, benefits, or coverage of prescription drugs as part of workers' compensation insurance in accordance with state or federal law. The term does not include an insurer that provides coverage under a policy of casualty or property insurance.~~

### **§33-51-8. Licensure of pharmacy benefit managers.**

(a) A person or organization may not establish or operate as a pharmacy benefits manager in the state of West Virginia without first obtaining a license from the Insurance Commissioner pursuant to this section: *Provided*, That a pharmacy benefit manager registered pursuant to §33-51-7 of this code may continue to do business in the state until the Insurance Commissioner has



completed the legislative rule as set forth in ~~§33-55-10~~ §33-51-10 of this code: *Provided, however,* That additionally the pharmacy benefit manager shall submit an application within six months of completion of the final rule. The Insurance Commissioner shall make an application form available on its publicly accessible internet website that includes a request for the following information:

(1) The identity, address, and telephone number of the applicant;

(2) The name, business address, and telephone number of the contact person for the applicant;

(3) When applicable, the federal employer identification number for the applicant; and

(4) Any other information the Insurance Commissioner considers necessary and appropriate to establish the qualifications to receive a license as a pharmacy benefit manager to complete the licensure process, as set forth by legislative rule promulgated by the Insurance Commissioner pursuant to §33-51-10 of this code.

(b) *Term and fee.* —

(1) The term of licensure shall be two years from the date of issuance.

(2) The Insurance Commissioner shall determine the amount of the initial application fee and the renewal application fee for the registration. The fee shall be submitted by the applicant with an application for registration. An initial application fee is nonrefundable. A renewal application fee shall be returned if the renewal of the registration is not granted.

(3) The amount of the initial application fees and renewal application fees must be sufficient to fund the Insurance Commissioner's duties in relation to his/her responsibilities under this section, but a single fee may not exceed \$10,000.

(4) Each application for a license, and subsequent renewal for a license, shall be accompanied by evidence of financial responsibility in an amount of \$1 million.

(c) *Licensure.* —

(1) The Insurance Commissioner shall propose legislative rules, in accordance with §33-51-10 of this code, establishing the licensing, fees, application, financial standards, and reporting requirements of pharmacy benefit managers.

(2) Upon receipt of a completed application, evidence of financial responsibility, and fee, the Insurance Commissioner shall make a review of each applicant and shall issue a license if the applicant is qualified in accordance with the provisions of this section and the rules promulgated by the Insurance Commissioner pursuant to this section. The commissioner may require additional information or submissions from an applicant and may obtain any documents or information reasonably necessary to verify the information contained in the application.

(3) The license may be in paper or electronic form, is nontransferable, and shall prominently list the expiration date of the license.

(d) *Network adequacy.* —

(1) A pharmacy benefit manager's network shall be reasonably adequate, shall provide for convenient patient access to pharmacies within a reasonable distance from a patient's residence and shall not be comprised only of mail-order benefits but must have a mix of mail-order benefits and physical stores in this state.

(2) A pharmacy benefit manager shall provide a pharmacy benefit manager's network report describing the pharmacy benefit manager's network and the mix of mail-order to physical stores in this state in a time and manner required by rule issued by the Insurance Commissioner pursuant to this section. A pharmacy benefit manager's network report shall include a detailed description of any separate, sub-networks for specialty drugs.

(3) Failure to provide a timely report may result in the suspension or revocation of a pharmacy benefit manager's license by the Insurance Commissioner.

(4) A pharmacy benefit manager may not require a pharmacy or pharmacist, as a condition for participating in the pharmacy benefit manager's network, to obtain or maintain accreditation, certification, or credentialing that is inconsistent with, more stringent than, or in addition to state requirements for licensure or other relevant federal or state standards.

(e) *Enforcement.* —

(1) The Insurance Commissioner shall enforce this section and may examine or audit the books and records of a pharmacy benefit manager providing pharmacy benefits management to determine if the pharmacy benefit manager is in compliance with this section: *Provided*, That any information or data acquired during the examination or audit is considered proprietary and confidential and exempt from disclosure under the West Virginia Freedom of Information Act pursuant to §29B-1-4(a)(1) of this code.

(2) The Insurance Commissioner may propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code regulating pharmacy benefit managers in a manner consistent with this chapter. Rules adopted pursuant to this section shall set forth penalties or fines, including, without limitation, monetary fines, suspension of licensure, and revocation of licensure for violations of this chapter and the rules adopted pursuant to this section.

(f) *Applicability.* —

~~This section is applicable to any contract or health benefit plan issued, renewed, recredentialled, amended, or extended on or after July 1, 2019.~~

### **§33-51-9. Regulation of pharmacy benefit managers.**

(a) A pharmacy, a pharmacist, and a pharmacy technician shall have the right to provide a covered individual with information related to lower cost alternatives and cost share for the covered individual to assist health care consumers in making informed decisions. Neither a pharmacy, a pharmacist, nor a pharmacy technician may be penalized by a pharmacy benefit manager for discussing information in this section or for selling a lower cost alternative to a covered individual, if one is available, without using a health insurance policy.

(b) A pharmacy benefit manager may not collect from a pharmacy, a pharmacist, or a pharmacy technician a cost share charged to a covered individual that exceeds the total submitted charges by the pharmacy or pharmacist to the pharmacy benefit manager.

~~(c) A pharmacy benefit manager may only directly or indirectly charge or hold a pharmacy, a pharmacist, or a pharmacy technician responsible for a fee related to the adjudication of a claim if:~~

~~(1) The total amount of the fee is identified, reported, and specifically explained for each line item on the remittance advice of the adjudicated claim; or~~

~~(2) The total amount of the fee is apparent at the point of sale and not adjusted between the point of sale and the issuance of the remittance advice.~~

~~(d) (c) A pharmacy benefit manager, or any other third party, that reimburses a 340B entity for drugs that are subject to an agreement under 42 U.S.C. § 256b shall not reimburse the 340B entity for pharmacy-dispensed drugs at a rate lower than that paid for the same drug to pharmacies similar in prescription volume that are not 340B entities, and shall not assess any fee, charge-back, or other adjustment upon the 340B entity on the basis that the 340B entity participates in the program set forth in 42 U.S.C. §256b. For purposes of this subsection, the term "other adjustment" includes placing any additional requirements, restrictions, or unnecessary burdens upon the 340B entity that results in administrative costs or fees to the 340B entity that are not placed upon other pharmacies that do not participate in the 340B program, including affiliate pharmacies of the pharmacy benefit manager, and further includes but is not limited to requiring a claim for a drug to include a modifier or be processed or resubmitted to indicate that the drug is a 340B drug. Provided, That nothing in this subsection shall be construed to prohibit the Medicaid program or a Medicaid managed care organization as described in 42 U.S.C. § 1396b(m) from preventing duplicate discounts as described in 42 U.S.C. 256b(a)(5)(A)(i). The provisions of this subsection are applicable to the West Virginia Public Employees Insurance Agency.~~

~~(e) (d) With respect to a patient eligible to receive drugs subject to an agreement under 42 U.S.C. § 256b, a pharmacy benefit manager, or any other third party that makes payment for such drugs, shall not discriminate against a 340B entity in a manner that prevents or interferes with the patient's choice to receive such drugs from the 340B entity: *Provided*, That for purposes of this section, "third party" does not include apply to the state Medicaid program when Medicaid is providing reimbursement for covered outpatient drugs, as that term is defined in 42 U.S.C. §1396r-8(k), on a fee-for-service basis: Provided, however, That "third party" does include this subsection does apply to a Medicaid-managed care organization as described in 42 U.S.C. § 1396b(m). For purposes of this subsection, it shall be considered a discriminatory practice that prevents or interferes with a patient's choice to receive drugs at a 340B entity if a pharmacy benefit manager places additional requirements, restrictions or unnecessary burdens upon a 340B entity that results in administrative costs or fees to the 340B entity that are not placed upon other pharmacies that do not participate in the 340B program, including affiliate pharmacies of the pharmacy benefit manager or any other third-party, and further includes but is not limited to requiring a claim for a drug to include a modifier or be processed or resubmitted to indicate that the drug is a 340B drug. Provided further, That nothing in this subsection shall be construed to prohibit the Medicaid program or a Medicaid managed care organization as described in 42 U.S.C. § 1396b(m) from preventing duplicate discounts as described in 42 U.S.C. 256b(a)(5)(A)(i). The provisions of this subsection are applicable to the West Virginia Public Employees Insurance Agency.~~

~~(f) (e) A pharmacy benefit manager may not reimburse a pharmacy or pharmacist for a prescription drug or pharmacy service in an amount less than the national average drug acquisition cost for the prescription drug or pharmacy service at the time the drug is administered~~

or dispensed, plus a professional dispensing fee of \$10.49: *Provided*, That if the national average drug acquisition cost is not available at the time a drug is administered or dispensed, a pharmacy benefit manager may not reimburse in an amount that is less than the wholesale acquisition cost of the drug, as defined in 42 U.S.C. § 1395w-3a(c)(6)(B), plus a professional dispensing fee of \$10.49.

~~(g)~~ (f) A pharmacy benefit manager may not reimburse a pharmacy or pharmacist for a prescription drug or pharmacy service in an amount less than the amount the pharmacy benefit manager reimburses itself or an affiliate for the same prescription drug or pharmacy service.

~~(h)~~ (g) The commissioner may order reimbursement to an insured, pharmacy, or dispenser who has incurred a monetary loss as a result of a violation of this article or legislative rules implemented pursuant to this article.

~~(i)~~ (h) (1) Any methodologies utilized by a pharmacy benefits manager in connection with reimbursement shall be filed with the commissioner at the time of initial licensure and at any time thereafter that the methodology is changed by the pharmacy benefit manager for use in determining maximum allowable cost appeals. The methodologies are not subject to disclosure and shall be treated as confidential and exempt from disclosure under the West Virginia Freedom of Information Act §29B-1-4(a)(1) of this code. The filed methodologies shall comply with the provisions of §33-51-9(e) of this code, and a pharmacy benefits manager shall not enter into a contract with a pharmacy that provides for reimbursement methodology not permissible under the provisions of §33-51-9(e) of this code.

(2) For purposes of complying with the provisions of §33-51-9(e) of this code, A a pharmacy benefits manager shall utilize the most recently published monthly national average drug acquisition cost as a point of reference for the ingredient drug product component of a pharmacy's reimbursement for drugs appearing on the national average drug acquisition cost list; and,

~~(j)~~ (i) A pharmacy benefits manager may not:

(1) Discriminate in reimbursement, assess any fees or adjustments, or exclude a pharmacy from the pharmacy benefit manager's network on the basis that the pharmacy dispenses drugs subject to an agreement under 42 U.S.C. § 256b; or

(2) Engage in any practice that:

(A) In any way bases pharmacy reimbursement for a drug on patient outcomes, scores, or metrics. This does not prohibit pharmacy reimbursement for pharmacy care, including dispensing fees from being based on patient outcomes, scores, or metrics so long as the patient outcomes, scores, or metrics are disclosed to and agreed to by the pharmacy in advance;

(B) Includes imposing a point-of-sale fee or retroactive fee; or

(C) Derives any revenue from a pharmacy or insured in connection with performing pharmacy benefits management services: *Provided*, That this may not be construed to prohibit pharmacy benefits managers from receiving processing deductibles or copayments as have been approved by a covered individual's health benefit plan.

~~(k)~~ (j) A pharmacy benefits manager shall offer a health plan the option of charging such health plan the same price for a prescription drug as it pays a pharmacy for the prescription drug:

*Provided*, That a pharmacy benefits manager shall charge a health benefit plan administered by or on behalf of the state or a political subdivision of the state, the same price for a prescription drug as it pays a pharmacy for the prescription drug.

~~(j)(k)~~ A covered individual's defined cost sharing for each prescription drug shall be calculated at the point of sale based on a price that is reduced by an amount equal to at least 100% percent of all rebates received, or to be received, in connection with the dispensing or administration of the prescription drug. Any rebate over and above the defined cost sharing would then be passed on to the health plan to reduce premiums. Nothing precludes an insurer from decreasing a covered individual's defined cost sharing by an amount greater than what is previously stated. The commissioner may propose a legislative rule or by policy effectuate the provisions of this subsection. ~~Notwithstanding any other effective date to the contrary, the amendments to this article enacted during the 2021 regular legislative session shall apply to all policies, contracts, plans, or agreements subject to this section that are delivered, executed, amended, adjusted, or renewed on or after January 1, 2022.~~

~~(m) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2022. This section applies to all policies, contracts, plans, or agreements subject to this section that are delivered, executed, amended, adjusted, or renewed on or after the effective date of this section.~~

### **§33-51-11. Freedom of consumer choice for pharmacy.**

(a) A pharmacy benefits manager ~~or health benefit plan~~, may not:

(1) Prohibit or limit any covered individual from selecting a pharmacy or pharmacist of his or her choice who has agreed to participate in the health benefit plan according to the terms offered by the ~~insurer~~ health benefit plan;

(2) Deny a pharmacy or pharmacist the right to participate as a contract provider under the policy or plan if the pharmacy or pharmacist agrees to provide pharmacy services, including, but not limited to, prescription drugs, that meet the terms and requirements set forth by the ~~insurer~~ under the policy or health benefit plan and agrees to the terms of reimbursement set forth by the insurer;

(3) Impose upon a pharmacy or pharmacist, as a condition of participation in a health benefit plan network, any course of study, accreditation, certification, or credentialing that is inconsistent with, more stringent than, or in addition to state requirements for licensure or certification as provided for in the §30-5-1 et seq. and legislative rules of the Board of Pharmacy.

~~(3)(4)~~ Impose upon a beneficiary of pharmacy services under a health benefit plan any copayment, fee, or condition that is not equally imposed upon all beneficiaries in the same benefit category, class, or copayment level under the health benefit plan when receiving services from a contract provider;

~~(4)~~ (5) Impose a monetary advantage or penalty under a health benefit plan that would affect a beneficiary's choice among those pharmacies or pharmacists who have agreed to participate in the plan according to the terms offered by the insurer. Monetary advantage or penalty includes higher copayment, a reduction in reimbursement for services, or promotion of one participating pharmacy over another by these methods;

~~(5)~~ (6) Reduce allowable reimbursement for pharmacy services to a beneficiary under a health benefit plan because the beneficiary selects a pharmacy of his or her choice, so long as that pharmacy has enrolled with the health benefit plan under the terms offered to all pharmacies in the plan coverage area;

(7) Prohibit or otherwise limit a beneficiary's access to prescription drugs from a pharmacy or pharmacist enrolled with the health benefit plan under the terms offered to all pharmacies in the plan coverage area by unreasonably designating the covered prescription drug as a specialty drug. Any beneficiary or pharmacy impacted by an alleged violation of this subsection may file a complaint with the Insurance Commissioner, who shall, in consultation with the West Virginia Board of Pharmacy, make a determination as to whether the covered prescription drug meets the definition of a specialty drug;

(8) Limit a beneficiary's access to specialty drugs;

~~(6)~~ (9) Require a beneficiary, as a condition of payment or reimbursement, to purchase pharmacy services, including prescription drugs, exclusively through a mail-order pharmacy; or

~~(7)~~ (10) Impose upon a beneficiary any copayment, amount of reimbursement, number of days of a drug supply for which reimbursement will be allowed, or any other payment or condition relating to purchasing pharmacy services from any pharmacy, including prescription drugs, that ~~is~~ are more costly or more restrictive than that which would be imposed upon the beneficiary if such services were purchased from a mail-order pharmacy or any other pharmacy that is willing to provide the same services or products for the same cost and copayment as any mail order service.

(b) If a health benefit plan providing reimbursement to West Virginia residents for prescription drugs restricts pharmacy participation, the ~~entity providing the~~ health benefit plan shall notify, in writing, all pharmacies within the geographical coverage area of the health benefit plan, and offer to the pharmacies the opportunity to participate in the health benefit plan at least 60 days prior to the effective date of the plan. All pharmacies in the geographical coverage area of the plan shall be eligible to participate under identical reimbursement terms for providing pharmacy services, including prescription drugs. Participating pharmacies shall be entitled to 30 business days effective date notice for any subsequent contract amendment or provider manual change by a health benefit plan or a pharmacy benefit manager. The ~~entity providing the~~ health benefit plan shall, through reasonable means, on a timely basis and on regular intervals, inform the beneficiaries of the plan of the names and locations of pharmacies that are participating in the plan as providers of pharmacy services and prescription drugs. Additionally, participating pharmacies shall be entitled to announce their participation to their customers through a means acceptable to the pharmacy and the ~~entity providing the~~ health benefit plans. The pharmacy notification provisions of this section shall not apply when an individual or group is enrolled, but when the plan enters a particular county of the state.

(c) The Insurance Commissioner shall not approve any pharmacy benefits manager or health benefit plan providing pharmaceutical services which do not conform to this section.

(d) Any covered individual or pharmacy injured by a violation of this section may maintain a cause of action to enjoin the continuance of any such violation.

(e) This section shall apply to all pharmacy benefits managers and health benefit plans providing pharmaceutical services benefits, including prescription drugs, to any resident of West

Virginia. For purposes of this section, "health benefit plan" means any entity or program that provides reimbursement for pharmaceutical services. This section shall also apply to insurance companies and health maintenance organizations that provide or administer coverages and benefits for prescription drugs. This section shall not apply to any entity that has its own facility, employs or contracts with physicians, pharmacists, nurses, and other health care personnel, and that dispenses prescription drugs from its own pharmacy to its employees and dependents enrolled in its health benefit plan; but this section shall apply to an entity otherwise excluded that contracts with an outside pharmacy or group of pharmacies to provide prescription drugs and services.

**§33-51-1213. Effective date.**

Notwithstanding any other effective date to the contrary, the amendments to this article enacted during the 2022 regular legislative session shall apply to all policies, contracts, plans, or agreements subject to this section that are delivered, executed, amended, adjusted, or renewed on or after January 1, 2023.

Following discussion,

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

Engrossed Committee Substitute for House Bill 4112, as just amended, was then put upon its passage.

Pending discussion,

The question being "Shall Engrossed Committee Substitute for House Bill 4112 pass?"

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: Caputo and Romano—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4112) passed.

At the request of Senator Maroney, as chair of the Committee on Health and Human Resources, and by unanimous consent, the unreported Health and Human Resources committee amendment to the title of the bill was withdrawn.

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

**Eng. Com. Sub for House Bill 4112**—A Bill to amend and reenact §33-51-3, §33-51-8, §33-51-9, and §33-51-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §33-51-13, all relating to the regulation of pharmacy

benefit managers; defining terms; updating terminology; prohibiting a pharmacy benefit manager from limiting a consumer's access to prescription drugs through the designation of specialty drugs; prohibiting a pharmacy benefit manager from placing certain requirements or restrictions on a pharmacist or pharmacy; updating requirements placed upon 340B entities; clarifying how drug acquisition cost is to be calculated; requiring pharmacy benefit managers to disclose any sub-networks for specialty drugs to the Insurance Commissioner; prohibiting a pharmacy benefit manager from limiting network access; providing clarification regarding assessment of fees related to adjudication of claims; providing clarification regarding criteria for requirements of methodologies; requiring notice of contract changes; and providing an effective date.

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

Action as to Engrossed Committee Substitute for House Bill 4112 having been concluded, the Senate proceeded to the consideration of

**Eng. House Bill 4288**, Relating to expanding the practice of auricular acudetox to professions approved by the acupuncturist board.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Trump, Weld, Woodrum, and Blair (Mr. President)—32.

The nays were: Tarr and Woelfel—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4288) passed with its title.

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

Action as to Engrossed House Bill 4288 having been concluded, the Senate proceeded to the consideration of

**Eng. House Bill 4355**, Relating to the disclosure by state institutions of higher education of certain information regarding textbooks and digital courseware and certain charges assessed for those items.

On third reading, coming up in deferred order, with the unreported Education committee amendment pending, and with the right having been granted on yesterday, Thursday, March 10, 2022, for further amendments to be received on third reading, was read a third time.

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

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



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

**ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.**

**§18B-10-14. Bookstores.**

(a) Definitions: The following words when used in this section have the meanings ascribed to them unless the context clearly indicates a different meaning:

(1) "Digital Courseware" means a system of educational content and software designed to support the delivery of all or part of a particular course. The term does not include a learning management platform or any other software system designed to provide support for courses generally;

(2) "Course material" means a textbook, supplemental material, or open educational resource; and

(3) "Open Education Resource Materials" has the meaning assigned in §10-1-14a of this code.

~~(a)~~ (b) Each governing board may establish and operate a bookstore at the institutions under its jurisdiction to sell course materials, educational materials, books, stationery, and other school and office supplies generally carried in college bookstores.

~~(b)~~ (c) The prices to be charged may not be less than the prices fixed by any fair trade agreements and shall, in all cases, include in addition to the purchase price paid by the bookstore, a sufficient handling charge to cover all expenses incurred for personal and other services, supplies and equipment, storage, and other operating expenses.

~~(c)~~ (d) Each governing board shall establish, or if already established, continue, an educational materials affordability committee consisting of faculty, students, administrators and bookstore representatives and the committee shall make recommendations to the governing board to:

(1) ~~Ensure that~~ Encourage bookstores operated at institutions under its jurisdiction minimize the costs to students of purchasing educational materials;

(2) ~~Ensure~~ Encourage course instructors to select appropriate, high quality course educational materials; ~~are selected by course instructors~~

(3) ~~Encourage and incentivize~~ the use of previous or older versions of basic educational materials to the extent those older versions are available and less costly to students and remain relevant, high quality educational materials with up-to-date information and content;

(4) Require the repurchase and resale of educational materials on an institutional basis;

(5) ~~Provide for~~ Encourage the use of certain basic educational materials for a reasonable number of years;

(6) ~~Encourage and incentivize~~ the use of emerging technologies, such as electronic textbooks, online textbooks, print-on-demand services, and other open resource materials; and

(7) Prohibit employees from profiteering by requiring the purchase of one-time use materials (such as worksheets) or receiving payment or other consideration as an inducement to require students to purchase ~~particular textbooks~~ course materials.

~~(d) The Legislature recognizes that in 2004, the Congress of the United States commissioned the United States Government Accountability Office to study the high prices of college textbooks. Upon completion of the study, the Legislative Oversight Commission on Education Accountability shall obtain the results and any related reports produced by the office.~~

(e) An employee of a governing board:

(1) May not:

(A) Receive a payment, loan, subscription, advance, deposit of money, service, benefit or thing of value, present or promised, as an inducement for requiring students to purchase a specific ~~textbook~~ course material for coursework or instruction; or

(B) Require for any course a ~~textbook~~ course material that includes his or her own writing or work if the ~~textbook~~ course material incorporates either detachable worksheets or workbook-style pages intended to be written on or removed from the ~~textbook~~ course material. This provision does not prohibit an employee from requiring as a supplement to a ~~textbook~~ course materials any workbook or similar material which is published independently from the ~~textbook~~ course material; and

(2) May receive:

(A) Sample copies, instructor's copies and instructional material which are not to be sold; and

(B) Royalties or other compensation from sales of ~~textbooks~~ course materials that include the employee's own writing or work.

(f) A governing board shall provide to students a listing of ~~textbooks~~ course materials required or assigned for any course offered at the institution.

(1) The listing shall be prominently posted:

(A) In a central location at the institution;

(B) In any campus bookstore; and

(C) On the institution's website.

(2) The list shall include for each textbook the International Standard Book Number (ISBN), the edition number and any other relevant information.

(3) The list shall include whether the course material is an open educational resource material, and whether all educational materials required for the course or course section are generally available at no cost and without limitation to all students enrolled in the course or course section.

(4) The list shall include any associated fee or charge, such as a technology cost, library use cost, or printing or publication fee.

(5) If the student will be charged for the course material or for access to digital courseware for a course by the institution or another entity on the student's enrollment in a course, course section, or program or in the institution for the applicable semester or term, the list shall include the disclosures required under subsections (g)-(j) of this section.

(3) (6) An institution shall post a ~~book~~ course material to the listing when the adoption process is complete and, for course materials that comes at a cost to the student, when the ~~textbook~~ course material is designated for order by the bookstore.

(g) An institution shall disclose to a student enrolled at the institution as provided by this section any charges for course materials or access to digital courseware assessed by the institution or another entity to the student on the student's enrollment in a course, course section, or program or in the institution for the applicable semester or term, regardless of how the charge is assessed on an opt-in, opt-out, or compulsory basis. This subsection does not apply to a charge assessed for a purchase initiated by the student separately from the enrollment process at the institution, such as the purchase of course materials at a bookstore that may be charged to the student's account at the institution.

(h) If the required course materials or digital courseware have not been selected prior to a student's enrollment in a course or course section such that the requirements of subsection (g) are not met, or if a change to the course materials or digital courseware required would cause an increased charge to the student, the institution shall:

(1) Provide individual notice to each student affected of the new or increased charges, including all of the information required under subsection (g);

(2) Provide each student affected with the opportunity to withdraw from the course or course section, or change to a different course or course section, without penalty; and

(3) Only assess the new or increased charge to a student if that student affirmatively opts in to accepting the charge for that specific course or course section.

(i) For a charge described by subsection (g) that is assessed based on the cost of required or recommended course materials or access to digital courseware for a certain course or course section in which the student is enrolled, the institution shall:

(1) In the listing required under subsection (f), state or provide an internet website link to:

(A) The full amount of the charge;

(B) If the charge is for a course material in a primarily electronic format or for access to digital courseware, the terms under which the publisher of the course material or digital courseware collects and uses student data obtained through a student's use of the course material or digital courseware; and

(C) Any provision that allows the student to opt in or opt out of the charge or the collection or use of the student's data; and

(2) Itemize the charge separately from any other charges assessed for the course or course section in the institution's billing to the student.

(j) For a charge described by subsection (g) that is assessed on the basis of the number of semester credit hours or the equivalent or the number of courses in which the student is enrolled or on any other basis not described by subsection (i), the institution shall:

(1) Include the amount of the charge in the institution's tuition or fees under §18B-10-1 of this code;

(2) In a prominent location in any written or electronic agreement authorizing the charge, disclose:

(A) If the charge is for course materials in a primarily electronic format or for access to digital courseware, the terms under which the publisher of the course material or digital courseware collects and uses student data obtained through a student's use of the course material or digital courseware; and

(B) Any provision that allows the student to opt in or opt out of the charge or the collection or use of the student's data; and

(3) Not assess the charge to a student for a course or course section for which all required educational materials are generally available at no cost in at least one form to the student, such as:

(A) An open educational resource material;

(B) Digital materials available at no cost through a multi-user license held by the institution's library; or

(C) Other lawfully made materials available to the public at no cost and without limitation to all students enrolled in the course or course section.

(k) An institution may enter into an agreement between the institution and an entity under which the institution assesses on the entity's behalf or allows the entity to assess a charge described by subsection (g) to students enrolled at the institution only if:

(1) The institution's educational materials affordability committee established under subsection (d) determines the agreement to be consistent with the goals enumerated in subsection (d);

(2) The governing board of the institution adopts a policy that provides that:

(A) The institution's refund policy would apply with respect to the charges assessed to a student if the student withdraws from the course or course section; and

(B) A student may opt out of the charge at any time during a period beginning no later than when the student enrolls in the course or course section or takes any other action triggering the assessment of the charge, and ending no earlier than the last day to withdraw from the course without penalty;

(3) The agreement does not provide for a penalty or charge added to price of materials provided under the agreement based on failing to meet a target or quota for a number or percentage of:

(A) Students to whom the charge is assessed; or

(B) Courses or course sections for which the charge is assessed; and

(4) The agreement prohibits the entity from engaging in, or authorizing third parties to engage in, the sale, disclosure, licensing, use, retention, or other exploitation of any data collected under the agreement, including but not limited to personally identifiable information, location data, anonymized data, and any materials derived therefrom, except as expressly authorized, in each case, in the agreement: *Provided*, That this subsection shall not apply to the disclosure of information to a government entity or scholarship entity in order to be reimbursed for the distribution of course materials to a student using financial aid subsidies for course materials.

(l) An agreement authorized under subsection (k) is a public record under chapter 29B of this code.

(m) An institution may not deny, or enter into an agreement with another entity that would permit the entity to deny, a student access to educational materials for which the student has been, or would otherwise be, automatically charged under subsection (g) based on the student's refusal or failure to agree to the sale, disclosure, licensing, use, retention, or other exploitation of any data pertaining to the student that would be obtained through the student's use of the educational materials.

~~(g)~~ (n) All moneys derived from the operation of the bookstore shall be paid into a special revenue fund as provided in §12-2-2 of this code. Subject to the approval of the Governor, each governing board periodically shall change the amount of the revolving fund necessary for the proper and efficient operation of each bookstore.

~~(h)~~ (o) Moneys derived from the operation of the bookstore shall be used first to replenish the stock of goods and to pay the costs of operating and maintaining the bookstore. Notwithstanding any other provision of this section, any institution that has contracted with a private entity for bookstore operation shall deposit into an appropriate account all revenue generated by the operation and enuring to the benefit of the institution. The institution shall use the funds for nonathletic scholarships.

~~(i)~~ (p) Each governing board shall promulgate a rule in accordance with the provisions of §18B-1-6 of this code to implement the provisions of this section

~~(j)~~ (q) This section applies to ~~textbook~~ course material sales and bookstores supported by an institution's auxiliary services and those operated by a private contractor.

(r) This section may not be construed to affect any authority granted to a faculty member by an institution to select course materials for courses taught by the faculty member.

~~(k) "Educational Materials" means textbooks and other supplementary course materials that come at a cost to the student, regardless of format.~~

Engrossed House Bill 4355, as just amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Nelson, Phillips,

Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maynard—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4355) passed.

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

**Eng. House Bill 4355**—A Bill to amend and reenact §18B-10-14 of the Code of West Virginia, 1931, as amended, relating to higher education course materials and digital courseware; defining terms; modifying requirements for recommendations by an educational materials affordability committee to the higher education institution governing board; removing obsolete language; changing the term textbook to course material; modifying information that is required to be included in the listing of course materials required or assigned for any course offered at an institution; requiring institution to disclose to a student enrolled at the institution any charges for course materials or access to digital courseware assessed by the institution or another entity to the student on the student's enrollment in a course, course section, or program or in the institution for the applicable semester or term; imposing requirements on institutions in instances where the required course materials or digital courseware has not been selected prior to a student's enrollment or if a change to the course materials or digital courseware required would cause an increased charge to the student; imposing requirements on institutions in instances where certain charges are assessed based on the cost of required or recommended course material or access to digital courseware for a certain course or course section in which the student is enrolled; imposing requirements on institutions in instances where certain charges are assessed on the basis of the number of semester credit hours or the equivalent or the number of courses in which the student is enrolled or on certain other basis; allowing an institution to enter into an agreement between the institution and an entity under which the institution assesses on the entity's behalf or allows the entity to assess a charge; allows an institution to enter into an agreement between the institution and an entity under which the institution assesses on the entity's behalf or allows the entity to assess a certain described charge to students enrolled at the institution under certain conditions; making the agreement a public record; prohibiting an institution from denying or entering into an agreement with another entity that would permit the entity to deny, a student access to certain educational materials on the student's refusal or failure to agree to the sale, disclosure, licensing, use, retention, or other exploitation of any data pertaining to the student that would be obtained through the student's use of the educational materials; and providing that section cannot be construed to affect any authority granted to a faculty member by an institution to select course materials for courses taught by the faculty member.

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

Action as to Engrossed House Bill 4355 having been concluded, the Senate proceeded to the consideration of

**Eng. Com. Sub. for House Bill 4511**, To make numerous amendments to modernize and increase efficiencies in the administration of the West Virginia Unclaimed Property Act.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4511) passed.

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

**Eng. Com. Sub. for House Bill 4511**—A Bill to amend and reenact §36-8-1, §36-8-2, §36-8-8, §36-8-10, §36-8-13, §36-8-15, §36-8-25, and §36-8-33 of the Code of West Virginia, 1931, as amended, all relating generally to unclaimed property and escheatment of said property to the state; defining terms; setting forth presumption of abandonment period for virtual currency; setting forth the presumption of abandonment period for demand, savings, or time deposits; requiring the holder of virtual currency to liquidate said currency prior to remittance to the state; providing that the owner of abandoned virtual currency has no recourse against the holder or state for gain in value after liquidation; providing that the administrator shall reimburse the holder of a safety deposit box for the cost of opening said box upon remittance to the administrator using administrative funds in the Unclaimed Property Fund; authorizing the administrator to invest the moneys in the Unclaimed Property Fund and allowing earnings to accrue to said fund; eliminating obsolete language related to previous transfers of moneys from the Unclaimed Property Fund; discontinuing an annual transfer from the Unclaimed Property Trust Fund to the Prepaid Trust Escrow Fund and instead providing for an annual transfer from the Unclaimed Property Trust Fund to the Jumpstart Savings Trust Fund; authorizing the administrator to waive the requirement that an apparent owner file a claim with the administrator in certain circumstances; permitting the administrator to disclose the monetary value and nature or type of a property to a person who is reasonably believed to be the property's apparent owner or a person authorized to receive the property on the owner's behalf; and requiring the administrator to publish a report including certain unclaimed property data for the most recently concluded fiscal year.

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

Action as to Engrossed Committee Substitute for House Bill 4511 having been concluded, the Senate proceeded to the consideration of

**Eng. Com. Sub. for House Bill 4634**, Relating to occupational licensing or other authorization to practice.

On third reading, coming up in deferred order, with the right having been granted on yesterday, Thursday, March 10, 2022, for amendments to be received on third reading, was read a third time.

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

On page four, section four, after line eleven, by inserting two new subdivisions, designated subdivision (3) and subdivision (4), to read as follows:

(3) The person qualifies for employment under the E-Verify program administered by the United States Department of Homeland Security and the United States Social Security Administration;

(4) The person can show proof he or she passed a drug and alcohol test within the previous 12 months that meets the requirements set out in §21-1D-2, *et seq.* of this code.;

And,

By renumbering the remaining subdivisions.

Following discussion,

The question being on the adoption of Senator Lindsay's amendment to the bill, and on this question, Senator Baldwin demanded the yeas and nays.

The roll being taken, the yeas were: Baldwin, Beach, Brown, Caputo, Geffert, Jeffries, Lindsay, Plymale, Romano, Stollings, Sypolt, and Woelfel—12.

The nays were: Azinger, Boley, Clements, Grady, Hamilton, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Rucker, Smith, Stover, Swope, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—22.

Absent: None.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Lindsay's amendment to the bill rejected.

On motion of Senator Romano, the following amendment to the bill (Eng. Com. Sub. for H. B. 4634) was next reported by the Clerk:

On page five, section nine, lines one through three, by striking out all of subsection (a) and inserting in lieu thereof a new subsection (a), to read as follows:

(a) An occupational license or other authorization to practice issued pursuant to this article may only be issued to a person who holds a valid occupational license or other authorization in another state which has entered into a licensing compact or reciprocity agreement with this state or otherwise expressly provides for such reciprocity by the laws of that state.

Following discussion,

The question being on the adoption of Senator Romano's amendment to the bill, and on this question, Senator Baldwin demanded the yeas and nays.

The roll being taken, the yeas were: Baldwin, Beach, Brown, Caputo, Geffert, Jeffries, Lindsay, Nelson, Plymale, Romano, Stollings, Stover, Takubo, Weld, and Woelfel—15.



The nays were: Azinger, Boley, Clements, Grady, Hamilton, Karnes, Maroney, Martin, Maynard, Phillips, Roberts, Rucker, Smith, Swope, Sypolt, Tarr, Trump, Woodrum, and Blair (Mr. President)—19.

Absent: None.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Romano's amendment to the bill rejected.

On motion of Senator Romano, the following amendment to the bill (Eng. Com. Sub. for H. B. 4634) was next reported by the Clerk:

On page three, section three, line fourteen, after the word "code" by changing the semicolon to a colon and inserting the following proviso: *Provided*, That notwithstanding any provision of code to the contrary, the board shall request and the Tax Commissioner shall provide confirmation of whether the applicant for issuance of an occupational license has filed a resident tax return for the most recent year without disclosure of any other information.

Following discussion,

The question being on the adoption of Senator Romano's amendment to the bill, and on this question, Senator Baldwin demanded the yeas and nays.

The roll being taken, the yeas were: Baldwin, Beach, Brown, Caputo, Clements, Geffert, Grady, Jeffries, Lindsay, Plymale, Romano, Stollings, Stover, and Woelfel—14.

The nays were: Azinger, Boley, Hamilton, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—20.

Absent: None.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Romano's amendment to the bill rejected.

Engrossed Committee Substitute for House Bill 4634 was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Boley, Clements, Grady, Hamilton, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Rucker, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Woodrum, and Blair (Mr. President)—22.

The nays were: Baldwin, Beach, Brown, Caputo, Geffert, Jeffries, Lindsay, Plymale, Romano, Stollings, Weld, and Woelfel—12.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4634) passed with its title.

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

Action as to Engrossed Committee Substitute for House Bill 4634 having been concluded, the Senate proceeded to the consideration of

**Eng. Com. Sub. for House Bill 4636**, Clarifying when business and occupation taxes owed to a city or municipality are considered to be remitted on time.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4636) passed.

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

**Eng. Com. Sub. for House Bill 4636**—A Bill to amend and reenact §8-13-5 and §8-13-13 of the Code of West Virginia, 1931, as amended, all relating to providing that municipal business and occupation taxes, as well as municipal rates, fees, and charges that are owed to a municipality that are postmarked after the due date are late and subject to late fees or penalties; clarifying that municipal business and occupation taxes, as well as municipal rates, fees, and charges that are owed to a municipality are considered to be remitted on time when the date on which the payment is postmarked is on or before the due date; and clarifying that municipalities may not impose a late fee or penalty for those municipal taxes or municipal rates, fees, and charges owed to them if the payment is postmarked on or before the due date.

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

Action as to Engrossed House Bill 4636 having been concluded, the Senate proceeded to the consideration of

**Eng. Com. Sub. for House Bill 4662**, Relating to licensure of Head Start facilities in this state.

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

Senator Martin requested a ruling from the Chair as to whether he should be excused from voting under Rule 43 of the Rules of the Senate, as he has some contracts with Head Start.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub for H. B. 4662) passed.

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

**Eng. Com. Sub. for House Bill 4662**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §49-2-115a, relating to licensure of Head Start facilities in this state; permitting deemed licensee to request to utilize West Virginia for Clearance Access Registry and Employment Screening program; and requiring rulemaking.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4662) takes effect from passage.

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

Action as to Engrossed House Bill 4662 having been concluded, the Senate proceeded to the consideration of

**Eng. House Bill 4829**, Modifying definitions of certain school cafeteria personnel.

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

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

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

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

**CHAPTER 6C. PUBLIC EMPLOYEES.****ARTICLE 2. WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE PROCEDURE.****§6C-2-1. Purpose.**

(a) The purpose of this article is to provide a procedure for the resolution of employment grievances raised by the public employees of the State of West Virginia, except as otherwise excluded in this article.

(b) Resolving grievances in a fair, efficient, cost-effective, and consistent manner will maintain good employee morale, enhance employee job performance, and better serve the citizens of the State of West Virginia.

(c) Nothing in this article prohibits the informal disposition of grievances by stipulation or settlement agreed to in writing by the parties, nor the exercise of any hearing right provided in chapter 18 or 18A of this code. Parties to grievances shall at all times act in good faith and make every possible effort to resolve disputes at the lowest level of the grievance procedure.

~~(d) Effective July 1, 2007, any reference in this code to the education grievance procedure, the state grievance procedure, article twenty nine, chapter eighteen of this code or article six-a, chapter twenty-nine of this code, or any subsection thereof, shall be considered to refer to the appropriate grievance procedure pursuant to this article.~~

**§6C-2-2. Definitions.**

For the purpose of this article and §6C-3-1 *et seq.* of this code:

(a) "Board" means the West Virginia Public Employees Grievance Board created in §6C-3-1 *et seq.* of this code.

(b) "Chief administrator" means, in the appropriate context, the commissioner, chancellor, director, president, secretary, or head of any state department, board, commission, agency, state institution of higher education, commission or council, the state superintendent, the county superintendent, the executive director of a regional educational service agency, or the director of a multicounty vocational center who is vested with the authority to resolve a grievance. A "chief administrator" includes a designee, with the authority delegated by the chief administrator, appointed to handle any aspect of the grievance procedure as established by this article.

(c) "Days" means working days exclusive of Saturday, Sunday, official holidays, and any day in which the employee's workplace is legally closed under the authority of the chief administrator due to weather or other cause provided for by statute, rule, policy, or practice.

(d) "Discrimination" means any differences in the treatment of similarly situated employees, unless the differences are related to the actual job responsibilities of the employees or are agreed to in writing by the employees.

(e)(1) "Employee" means any person hired for permanent employment by an employer for a probationary, full- or part-time position.

(2) A substitute education employee is considered an "employee" only on matters related to days worked or when there is a violation, misapplication, or misinterpretation of a statute, policy, rule, or written agreement relating to the substitute.

(3) "Employee" does not mean a member of the West Virginia State Police employed pursuant to §15-2-1 *et seq.* of this code, but does include civilian employees hired by the superintendent of the State Police. "Employee" does not mean an employee of a constitutional officer unless he or she is covered under the civil service system, an employee of the Legislature, or a patient or inmate employed by a state institution.

(f) "Employee organization" means an employee advocacy organization with employee members that has filed with the board the name, address, chief officer, and membership criteria of the organization.

(g) "Employer" means a state agency, department, board, commission, college, university, institution, State Board of Education, Department of Education, county board of education, regional educational service agency, or multicounty vocational center, or agent thereof, using the services of an employee as defined in this section.

(h) "Favoritism" means unfair treatment of an employee as demonstrated by preferential, exceptional, or advantageous treatment of a similarly situated employee unless the treatment is related to the actual job responsibilities of the employee or is agreed to in writing by the employee.

(i)(1) "Grievance" means a claim by an employee alleging a violation, a misapplication, or a misinterpretation of the statutes, policies, rules, or written agreements applicable to the employee including:

~~(i)~~ (A) Any violation, misapplication, or misinterpretation regarding compensation, hours, terms and conditions of employment, employment status, or discrimination;

~~(ii)~~ (B) Any discriminatory or otherwise aggrieved application of unwritten policies or practices of his or her employer;

~~(iii)~~ (C) Any specifically identified incident of harassment;

~~(iv)~~ (D) Any specifically identified incident of favoritism; or

~~(v)~~ (E) Any action, policy, or practice constituting a substantial detriment to or interference with the effective job performance of the employee or the health and safety of the employee.

(2) "Grievance" does not mean:

(A) Any pension matter or other issue relating to public employees insurance in accordance with §5-16-1 *et seq.* of this code retirement or any other matter in which the authority to act is not vested with the employer;

(B) Actions taken by the employer related to declared states of preparedness or states of emergency; or

(C) Any matter relating to the protected classes set forth in §5-11-1 *et seq.* of this code.

(j) "Grievance proceeding", "proceeding", or the plural means a conference, level one hearing, mediation, private mediation, private arbitration, or level three hearing, or any combination, unless the context clearly indicates otherwise.

(k) "Grievant" means an employee or group of similarly situated employees filing a grievance.

(l) "Harassment" means repeated or continual disturbance, irritation, or annoyance of an employee that is contrary to the behavior expected by law, policy, and profession.

(m) "Party" or the plural, means the grievant, intervenor, employer, and the Director of the Division of Personnel or his or her designee, for state government employee grievances. The Division of Personnel shall not be a party to grievances involving higher education employees or Department of Transportation employees.

(n) "Representative" means any employee organization, fellow employee, attorney, or other person designated by the grievant or intervenor as his or her representative and may not include a supervisor who evaluates the grievant.

(o) "Reprisal" means the retaliation of an employer toward a grievant, witness, representative, or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it.

### **§6C-2-3. Grievance procedure generally.**

(a) ~~Time limits~~ Filing. —

(1) ~~An employee~~ Each grievant shall file a grievance form, signed by the grievant and notarized within the time limits specified in this article. If more than one grievant is a party to the grievance, each grievant must submit a signed and notarized form initiating the grievance: Provided, That each may submit a signed and notarized signature page appended to the grievance form. Failure to properly sign and notarize the form will result in immediate dismissal of a grievance, without prejudice. Within five days of receipt of an order of dismissal of a grievance without prejudice, the employee may refile the grievance, in accordance with this article and applicable rules of procedure, if the initial grievance was timely filed.

(2) The specified time limits may be extended to a date certain by mutual written agreement ~~and shall~~ or the grievance evaluator, mediator, or administrative law judge at the request of any party. The specified time limits shall be extended for cause whenever an agency representative or a grievant is not working because of accident, sickness, death in the immediate family, or other cause for which the agency representative or grievant has approved leave from employment. Grievant representatives who file on behalf of one or more grievants shall provide, as part of the grievance form, the name of each employee and his or her work location for each employee being represented.

(b) Default. —

(1) The grievant or the employer prevails by default if a required response is not made by the grievant or the employer within the time limits established in this article, unless the employer or grievant is prevented from doing so directly as a result of injury, illness, or a justified delay not caused by negligence or intent to delay the grievance process.

(2) Within 10 days of the default, the grievant or employer may file with the chief administrator a written notice of intent to proceed directly to the next level or to enforce the default. If the chief administrator objects to the default, then the chief administrator may, within five days of the filing of the notice of intent, request a hearing before an administrative law judge for the purpose of stating a defense to the default, as permitted by subdivision (1) of this subsection, or showing that the remedy requested by the prevailing grievant is contrary to law or contrary to proper and available remedies. ~~In making a determination regarding the remedy, the~~ The administrative law judge shall determine whether the remedy is proper, available, and not contrary to law.

(3) If the administrative law judge finds that the grievant or the employer has a defense to the default as permitted by subdivision (1) of this subsection or that the remedy is contrary to law or not proper or available at law, the administrative law judge may deny the default or modify the remedy to be granted to comply with the law or otherwise make the grievant whole.

(c) *Defenses and limitations.* —

(1) ~~*Untimeliness.* — Any assertion that the filing of the grievance at level one was untimely shall be made at or before level two.~~ *Timeliness.* — A grievance must be filed within the time frames established in §6C-2-4 of this code. If the level one evaluator determines that the grievance was not timely filed, he or she shall issue an order dismissing the grievance. The grievant may appeal the dismissal to level three, and an administrative law judge shall review the order. If the administrative law judge overturns the order of dismissal, he or she shall issue an order stating with particularity the facts and the law found to be in error in the order below, and the grievance will be returned to level one for disposition. An administrative law judge will decide an appeal of a dismissal for untimeliness within 30 days. If the grievance proceeds directly to level three, the administrative law judge shall make a determination of timeliness prior to proceeding with the level three hearing.

(2) *Motion to dismiss.* — Any party may, at any time, file a motion to dismiss asserting that the board lacks jurisdiction under §6C-2-2(i) of this code, or that grievant has otherwise failed to state a claim under this article upon which relief may be granted, the grievance was not timely filed, or a remedy wholly unavailable to the grievant is requested. Upon filing of such a motion, the chief administrator or administrative law judge shall hold in abeyance all other proceedings, and must, within 10 days of receipt of such filing, issue a ruling on the motion or schedule the motion for a hearing. In no event shall a motion to dismiss be held in abeyance while other proceedings take place.

(2) (3) *Back pay.* — When it backpay is a proper remedy, ~~back pay~~ it may only be granted for one year prior to the filing of a grievance unless the grievant shows, by a preponderance of the evidence, that the employer acted in bad faith ~~in concealing or fraudulently concealed~~ the facts giving rise to the claim for back pay, in which case an 18-month limitation on back pay applies.

(3) (4) *Statutory defense.* — If a party intends to assert the application of any statute, policy, rule, or written agreement as a defense at any level, then a copy of the materials shall be forwarded to all parties.

(d) *Withdrawal and reinstatement of grievance.* — An employee may withdraw a grievance at any time by filing a written notice of withdrawal with the chief administrator or the administrative law judge. The grievance may not be reinstated by the grievant unless it would be timely upon reinstatement and reinstatement is granted by the chief administrator or the administrative law

judge. If more than one employee is named as a grievant, the withdrawal of one employee does not prejudice the rights of any other employee named in the grievance.

(e) *Consolidation and groups of similarly situated employees.* —

(1) Grievances may be consolidated at any level by agreement of all parties or at the discretion of the chief administrator or administrative law judge: Provided, That a grievance that has been dismissed under the provisions of subdivision (1) or (2) of this section may not be revived or consolidated with another grievance.

(2) Class actions are not permitted. However, a grievance may be filed by one or more employees on behalf of a group of similarly situated employees. Any similarly situated employee shall complete a grievance form stating his or her intent to join the group of similarly situated employees. Only one employee filing a grievance on behalf of similarly situated employees shall be required to participate in the conference or level one hearing.

(f) *Intervention.* — Upon a timely request, any employee may intervene and become a party to a grievance at any level when the employee demonstrates that the disposition of the action may substantially and adversely affect his or her rights or property and that his or her interest is not adequately represented by the existing parties.

(g) *Representation and disciplinary action.* —

(1) An employee may designate and shall provide the contact information for the individual or organization of the representative who may be present at any step of the procedure as well as at any meeting that is held with the employee for the purpose of discussing or considering disciplinary action.

(2) An employee may not be compelled to testify against himself or herself in a disciplinary grievance hearing.

(h) *Reprisal.* — No reprisal or retaliation of any kind may be taken by an employer against a grievant or any other participant in a grievance proceeding by reason of his or her participation. Reprisal or retaliation constitutes a grievance and any person held responsible is subject to disciplinary action for insubordination.

(i) *Improper classification.* — A supervisor or administrator responsible for a willful act of bad faith toward an employee or who intentionally works an employee out of classification may be subject to disciplinary action, including demotion or discharge.

(j) *Forms.* — The board shall create the forms for filing grievances, giving notice, taking appeals, making reports, and recommendations, and all other necessary documents and provide them to chief administrators to make available to any employee upon request.

(k) *Discovery.* — The parties are entitled to copies of all material submitted to the chief administrator or the administrative law judge by any party.

(l) *Notice.* — Reasonable notice of a proceeding shall be sent at least five days prior to the proceeding to all parties and their representatives and shall include the date, time, and place of the proceeding. If an employer causes a proceeding to be postponed without adequate notice to



employees who are scheduled to appear during their normal workday, the employees may not suffer any loss in pay for work time lost.

(m) *Record.* — Conferences are not required to be recorded, but all documents admitted and the decision, agreement, or report become part of the record. All the testimony at a level one and level three hearing shall be recorded by mechanical means and a copy of the recording provided to any party upon request. The board is responsible for paying for and promptly providing a certified transcript of a level three hearing to the court for a mandamus or appellate proceeding.

(n) *Grievance decisions and reports.* —

(1) Any party may propose findings of fact and conclusions of law within 20 days of an arbitration or a level three hearing.

(2) A decision, agreement, or report shall be dated, in writing, setting forth the reasons for the decision or outcome and transmitted to the parties and, in a private arbitration, to the board, within the time limits prescribed. If the grievance is not resolved, the written decision or report shall include the address and procedure to appeal to the next level.

(o) *Scheduling.* — All proceedings shall be scheduled during regular work hours in a convenient location accessible to all parties in accommodation to the parties' normal operations and work schedules. By agreement of the parties, a proceeding may be scheduled at any time or any place. Disagreements shall be decided by the administrative law judge.

(p) *Attendance and preparation.* —

(1) The grievant, witnesses, and an employee representative shall be granted reasonable and necessary time off during working hours to attend grievance proceedings without loss of pay and without charge to annual or compensatory leave credits.

(2) In addition to actual time spent attending grievance proceedings, the grievant and an employee representative shall be granted time off during working hours, not to exceed four hours per grievance, for the preparation of the grievance without loss of pay and without charge to annual or compensatory leave credits. However, the first responsibility of any employee is the work assigned to the employee. An employee may not allow grievance preparation and representation activities to seriously affect the overall productivity of the employee.

(3) The grievant and an employee representative shall have access to the employer's equipment for purposes of preparing grievance documents subject to the reasonable rules of the employer governing the use of the equipment for nonwork purposes.

(4) Disagreements regarding preparation time shall be decided by the administrative law judge.

(q) *Grievance files.* —

(1) All grievance forms decisions, agreements, and reports shall be kept in a file separate from the personnel file of the employee and may not become a part of the personnel file, but shall remain confidential except by mutual written agreement of the parties.

(2) The grievant may file a written request to have ~~the grievant's~~ his or her identity removed from any files kept by the employer one year following the conclusion of the grievance.

(r) *Number of grievances.* — The number of grievances filed against an employer by an employee is not, per se, an indication of the employer's or the employee's job performance.

(s) *Procedures and rules.* — The board shall prescribe rules and procedures in compliance with this article, §6C-3-1 *et seq.* of this code, and the state Administrative Procedures Act under chapter 29A of this code for all proceedings relating to the grievance procedure.

#### **§6C-2-4. Grievance procedural levels.**

(a) *Level one: Chief administrator.* —

(1) Within 15 days following the occurrence of the event upon which the grievance is based, or within 15 days of the date upon which the event became known to the employee, or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, an employee may file a written grievance with the chief administrator stating the nature of the grievance and the relief requested and request either a conference or a hearing. The employee shall also file a copy of the grievance with the board. State government employees using the services of the Division of Personnel shall further file a copy of the grievance with the Director of the Division of Personnel.

(2) *Conference.* — The chief administrator shall hold a conference within ~~ten~~ 20 days of receiving the grievance. A conference is a private, informal meeting between the grievant and the chief administrator to discuss the issues raised by the grievance, exchange information, and attempt to resolve the grievance. The chief administrator may permit other employees and witnesses to attend and participate in a conference to reach a resolution. The chief administrator shall issue a written decision within 15 days of the conference.

(3) *Level one hearing.* — The chief administrator shall hold a level one hearing within ~~fifteen~~ 20 days of receiving the grievance. A level one hearing is a recorded proceeding conducted in private in which the grievant is entitled to be heard and to present evidence; the formal rules of evidence and procedure do not apply, but the parties are bound by the rules of privilege recognized by law. The parties may present and cross-examine witnesses and produce documents, but the number of witnesses, motions and other procedural matters may be limited by the chief administrator. The chief administrator shall issue a written decision within 15 days of the level one hearing.

(4) An employee may proceed directly to level three upon the agreement of the parties or when the grievant has been discharged, suspended without pay or demoted or reclassified resulting in a loss of compensation or benefits. Level one and level two proceedings are waived in these matters.

(b) *Level two: Alternative dispute resolution.* —

(1) Within ~~ten~~ 10 days of receiving an adverse written decision at level one, the grievant shall file a written request for mediation, private mediation or private arbitration.

(2) *Mediation.* — The board shall schedule the mediation between the parties within 20 days of the request. Mediation shall be conducted by an administrative law judge pursuant to standard

mediation practices and board procedures at no cost to the parties. Parties may be represented and shall have the authority to resolve the dispute. The report of the mediation shall be documented in writing within 15 days. Agreements are binding and enforceable in this state by a writ of mandamus.

(3) *Private mediation.* — The parties may agree in writing to retain their choice of a private mediator and share the cost. The mediator shall schedule the mediation within 20 days of the written request and shall follow standard mediation practices and any applicable board procedures. Parties may be represented and shall have the authority to resolve the dispute. The report of the mediation shall be documented in writing within 15 days. Agreements are binding and enforceable in this state by a writ of mandamus.

(4) *Private arbitration.* — The parties may agree, in writing, to retain their choice of a private arbitrator and share the cost. The arbitrator shall schedule the arbitration within 20 days of the written request and shall follow standard arbitration practices and any applicable board procedures. The arbitrator shall render a decision in writing to all parties, setting forth findings of fact and conclusions of law on the issues submitted within 30 days following the arbitration. An arbitration decision is binding and enforceable in this state by a writ of mandamus. The arbitrator shall inform the board, in writing, of the decision within 10 days.

(c) *Level three hearing.* —

(1) Within 10 days of receiving a written report stating that level two was unsuccessful, the grievant may file a written appeal with the employer and the board requesting a level three hearing on the grievance. State government employees who utilize the services of the Division of Personnel shall further file a copy of the grievance with the Director of the Division of Personnel.

(2) The administrative law judge shall conduct all proceedings in an impartial manner and shall ensure that all parties are accorded procedural and substantive due process.

(3) The administrative law judge shall schedule the level three hearing and any other proceedings or deadlines within ~~a reasonable time~~ 30 days of receipt of the appeal from a lower level decision in consultation with the parties. The location of the hearing and whether the hearing is to be made public are at the discretion of the administrative law judge. Hearings may be rescheduled at the request of either party or the administrative law judge for good cause shown.

(4) The administrative law judge may issue subpoenas for witnesses, limit witnesses, administer oaths, and exercise other powers granted by rule or law.

(5) Within 30 days following the hearing or the receipt of the proposed findings of fact and conclusions of law, the administrative law judge shall render a decision in writing to all parties setting forth findings of fact and conclusions of law on the issues submitted.

(6) The administrative law judge may make a determination of bad faith and, in extreme instances, allocate the cost of the hearing to the party found to be acting in bad faith. The allocation of costs shall be based on the relative ability of the party to pay the costs.

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

Which point of order, the President ruled well taken.

Engrossed Committee Substitute for House Bill 4829 was then put upon its passage.

Pending discussion,

The question being "Shall Engrossed Committee Substitute for House Bill 4829 pass?"

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4829) passed with its title.

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

Action as to Engrossed Committee Substitute for House Bill 4829 having been concluded,

At the request of Senator Takubo, unanimous consent being granted, the Senate returned to the fourth order of business.

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

Your Committee on Health and Human Resources has had under consideration

**Eng. Com. Sub. for House Bill 4004**, Relating to limiting an abortion to fifteen weeks' gestation.

And has amended same.

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

Respectfully submitted,

Michael J. Maroney,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4004) contained in the preceding report from the Committee on Health and Human Resources was taken up for immediate consideration, read a first time, and ordered to second reading.

At the request of Senator Trump, as chair of the Committee on the Judiciary, unanimous consent was granted to dispense with the second committee reference of the bill contained in the foregoing report from the Committee on Health and Human Resources.

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

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 4642**, Relating to pecuniary interests of county and district officers, teachers and school officials in contracts.

And has amended same.

Now on second reading, having been read a first time and re-referred to the Committee on the Judiciary on March 10, 2022;

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 4642) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration and read a second time.

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the unreported Judiciary committee amendment pending and the right for further amendments to be considered on that reading.

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

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 4846**, Relating to flying under the influence and other aviation offenses.

And has amended same.

Now on second reading, having been read a first time and re-referred to the Committee on the Judiciary on March 10, 2022;

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 4846) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration and read a second time.

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the unreported Judiciary committee amendment pending and the right for further amendments to be considered on that reading.

The Senate proceeded to the thirteenth order of business.

At the request of Senator Phillips, unanimous consent being granted, it was ordered that the Journal show had Senator Phillips been present in the chamber on Thursday, March 19, 2022, he would have voted "yea" on the passage of Engrossed Senate Bill 531.

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were added as co-sponsors to the following and resolutions on March 10, 2022:

**Senate Resolution 52:** Senator Rucker;

And,

**Senate Resolution 55:** Senator Martin.

On motion of Senator Takubo, at 6:21 p.m., the Senate adjourned until tomorrow, Saturday, March 12, 2022, at 10 a.m.

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## **SENATE CALENDAR**

**Saturday, March 12, 2022  
10:00 AM**

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### **SPECIAL ORDER OF BUSINESS**

**Saturday, March 12, 2022 – 11:00 AM**

Consideration of executive nominations

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### **UNFINISHED BUSINESS**

S. C. R. 62 - Requesting Joint Legislative Oversight Commission on State Water Resources study and evaluate quality of water services in WV

### **THIRD READING**

Eng. H. B. 2300 - Including Family Court Judges in the Judges' Retirement System - (Com. amend. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 2910 - To modify the allowable number of magistrate judges per county - (Com. amend. and title amend. pending) - (With right to amend)

Eng. H. B. 3073 - Relating to the West Virginia Emergency School Food Act - (Com. amend. and title amend. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 4001 - Generally relating to broadband - (Com. amend. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 4002 - Creating the Certified Sites and Development Readiness Program - (With right to amend)

Eng. Com. Sub. for H. B. 4012 - Prohibiting the showing of proof of a COVID-19 vaccination - (Com. amend. and title amend. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 4025 - Providing exemption to severance tax for severing rare earth elements and other critical minerals - (With right to amend)

Eng. Com. Sub. for H. B. 4105 - Relating to service employees with National Association for Pupil Transportation Certifications - (Com. amend. and title amend. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 4111 - Relating to the prescriptive authority of advance practice registered nurses - (Com. amend. and title amend. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 4252 - To reduce copay cap on insulin and devices - (Com. amend. and title amend. pending) - (With right to amend)

- Eng. H. B. 4307 - Increase some benefits payable from Crime Victims Compensation Fund - (Com. title amend. pending) - (With right to amend)
- Eng. Com. Sub. for H. B. 4340 - Relating to maximizing the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education - (Com. amend. and title amend. pending) - (With right to amend)
- Eng. Com. Sub. for H. B. 4344 - Relating to foster care - (Com. amend. and title amend. pending) - (With right to amend)
- Eng. Com. Sub. for H. B. 4353 - Relating to On Cycle Elections - Voter Turnout Act - (Com. amend. and title amend. pending) - (With right to amend)
- Eng. Com. Sub. for H. B. 4377 - To update the involuntary commitment process - (Com. amend. and title amend. pending) - (With right to amend)
- Eng. Com. Sub. for H. B. 4393 - To increase the managed care tax if the managed care organization receives a rate increase - (With right to amend)
- Eng. Com. Sub. for H. B. 4408 - Relating to contracts for construction of recreational facilities in state parks and forests - (Com. amend. and title amend. pending) - (With right to amend)
- Eng. Com. Sub. for H. B. 4439 - Creating a special revenue account known as the Military Authority Reimbursable Expenditure Fund - (Com. amend. and title amend. pending) - (With right to amend)
- Eng. H. B. 4450 - Removing the \$0.50 fee charged and deposited in the Combined Voter Registration and Driver's Licensing Fund for each driver's license issued by the Department of Motor Vehicles - (With right to amend)
- Eng. H. B. 4463 - To increase the compensation members of the State Athletic Commission may receive for their attendance and participation in the commission's public meetings. - (With right to amend)
- Eng. Com. Sub. for H. B. 4502 - Establishing the BUILD WV Act - (Com. amend. and title amend. pending) - (With right to amend)
- Eng. H. B. 4522 - Relating to the expungement of criminal records - (Com. amend. and title amend. pending) - (With right to amend)
- Eng. H. B. 4571 - Modifying foundation allowance to account for transportation by electric powered buses - (Com. title amend. pending) - (With right to amend)
- Eng. Com. Sub. for H. B. 4600 - Making it a felony for a "Person in a Position of Trust" to assault, batter, or verbally abuse a child, or neglect to report abuse they witness - (Com. amend. and title amend. pending) - (With right to amend)
- Eng. Com. Sub. for H. B. 4607 - To remove opioid treatment programs from requiring a certificate of need - (Com. amend. pending) - (With right to amend)
- Eng. Com. Sub. for H. B. 4613 - Relating to increasing the multiplier for use in determining accrued benefit in the West Virginia Municipal Police Officers and Firefighters Retirement System. - (With right to amend)



- Eng. H. B. 4627 - To provide for no more than two licensed laboratories for medical cannabis testing in this state - (Com. amend. pending) - (With right to amend) (original similar to SB674)
- Eng. H. B. 4642 - Relating to pecuniary interests of county and district officers, teachers and school officials in contracts - (Com. amend. and title amend. pending) - (With right to amend) (original similar to HB4365)
- Eng. Com. Sub. for H. B. 4667 - Prohibition on county, city, or municipality restrictions on advanced air mobility aircraft - (Com. amend. and title amend. pending) - (With right to amend)
- Eng. Com. Sub. for H. B. 4668 - Relating to air bag fraud - (Com. amend. pending) - (With right to amend)
- Eng. Com. Sub. for H. B. 4688 - Relating to Emergency Medical Services Retirement System Act - (With right to amend)
- Eng. Com. Sub. for H. B. 4756 - Relating to authorizing municipalities to create pension funding programs to reduce the unfunded liability of certain pension and relief funds - (Com. amend. pending) - (With right to amend)
- Eng. H. B. 4827 - Relating to the promotion and development of public-use vertiports - (Com. amend. and title amend. pending) - (With right to amend)
- Eng. H. B. 4845 - Establishing the Katherine Johnson Academy - (Com. amend. pending) - (With right to amend)
- Eng. H. B. 4846 - Relating to flying under the influence and other aviation offenses - (Com. amend. and title amend. pending) - (With right to amend)
- Eng. H. B. 4847 - Relating to missing persons generally - (With right to amend)
- Eng. H. J. R. 104 - Providing Term Limits for certain Constitutional Officers - (Com. amend. and title amend. pending) - (With right to amend)

## **SECOND READING**

- Eng. Com. Sub. for H. B. 4004 - Relating to limiting an abortion to fifteen weeks' gestation - (Com. amend. and title amend. pending)