

WEST VIRGINIA LEGISLATURE

SENATE JOURNAL

EIGHTY-SIXTH LEGISLATURE
REGULAR SESSION, 2024
FIFTY-EIGHTH DAY

Charleston, West Virginia, Thursday, March 7, 2024

The Senate met at 10:45 a.m.

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

Prayer was offered by the Honorable Bill Hamilton, a senator from the eleventh district.

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

Pending the reading of the Journal of Wednesday, March 6, 2024,

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

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

The Senate then proceeded to the third order of business.

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

Eng. Senate Bill 148, Establishing auto-renewal program for wildlife licenses.

A message from the Clerk of the House of Delegates announced that that body had refused to recede from its amendments, and requested the appointment of a committee of conference of three from each house on the disagreeing votes of the two houses, as to

Eng. Senate Bill 219, Relating to Uniform Controlled Substances Act.

The message further announced the appointment of the following conferees on the part of the House of Delegates:

Delegates Kelly, Steele, and Garcia.

On motion of Senator Takubo, the Senate agreed to the appointment of a conference committee on the bill.

Whereupon, Senator Blair (Mr. President) appointed the following conferees on the part of the Senate:

Senators Weld, Deeds, and Woelfel.

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

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

Eng. Senate Bill 438, Modifying roster requirements of authorizing entities.

A message from the Clerk of the House of Delegates announced that that body had receded from its amendments to, and the passage as amended by deletion, to take effect from passage, of

Eng. Com. Sub. for Senate Bill 451, Directing Prosecuting Attorneys Institute to make training available to certain new prosecuting attorneys.

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

Eng. Com. Sub. for Senate Bill 477, Prohibiting public disclosure of personal information on internet.

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

Eng. Senate Bill 487, Requiring periodic review of professional development for teachers and education staff.

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

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

On page 1, section 1, line 17, by striking out "10" and inserting in lieu thereof "5".

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

Engrossed Senate Bill 487, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

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

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

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

Eng. Com. Sub. for Senate Bill 540, Updating WV coordinate systems.

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

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

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

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

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

Eng. Senate Bill 806, Removing certain required reports to Legislative Oversight Commission on Education Accountability.

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

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

On page 5, by striking out Article 9F in its entirety, and inserting in lieu thereof the following:

ARTICLE 9F. SCHOOL ACCESS SAFETY ACT.

§18-9F-8. Report.

The authority shall report to the Legislative Oversight Commission on Education Accountability ~~during the June and September, 2007, and January, 2008, interim meeting periods regarding implementation of the provisions of~~ annually regarding its duties under this article, including but not limited to:

(1) County school access safety plans or annual plan updates;

(2) Allocations, transfers and disbursements of School Access Safety Fund moneys; and

(3) Collaboration with the state board and the Division of Homeland Security and Emergency Management in complying with the provisions of this article.;

And,

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

Eng. Senate Bill 806—A Bill to amend and reenact §18-2-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-5B-7 of said code; to repeal §18-5F-6 of said code; to repeal §18-9A-7a of said code; to amend and reenact §18-9F-8 of said code; and to amend and reenact §18A-3C-3 of said code, all relating to the Legislative Oversight Commission on Education Accountability; removing required submission of plan to implement and update computer science instruction and learning standards in the public schools; removing required submission of annual report on innovation zones and the progress of innovation zone plans; removing required report on all aspects of the program at the end of the first year a virtual instruction program is implemented; removing required report on proposed revisions to the calculation of the allowance for service personnel to provide additional funded service personnel positions for lower-population density districts covering a large geographic areas; revising School Building Authority reporting on the school access safety and crisis response article to require the authority to report annually on its duties under the article; and removing requirement for review of the progress of the implementation of the comprehensive systems of support for teacher and leader induction and professional growth.

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

Engrossed House Bill 806, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 806) passed with its House of Delegates amended title.

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

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

Eng. Com. Sub. for Senate Bill 844, Redesignating Educational Broadcasting Authority as Educational Broadcasting Commission.

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

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

Following a point of inquiry to the President, with resultant response thereto,

Senator Takubo moved that the bill take effect from passage.

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

The nays were: Caputo, Plymale, and Woelfel—3.

Absent: Maroney—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 844) takes effect from passage.

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

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

Eng. Com. Sub. for Senate Bill 865, Changing reference to Curator of Department of Arts, Culture, and History to secretary.

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

Eng. Com. Sub. for House Bill 4845, To prohibit swatting.

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

Eng. Com. Sub. for House Bill 4940, A squatter cannot be considered a tenant in WV.

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

Eng. Com. Sub. for House Bill 5178, Requiring car dealerships in this state to utilize a search engine to determine if buyers of vehicles have valid motor vehicle insurance.

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

Eng. House Bill 5237, Prohibiting driving slow in left lane except under certain circumstances.

On motion of Senator Takubo, the Senate refused to recede from its amendments to the bill and requested the appointment of a committee of conference of three from each house on the disagreeing votes of the two houses.

Whereupon, Senator Blair (Mr. President) appointed the following conferees on the part of the Senate:

Senators Clements, Oliverio, and Woelfel.

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

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

Eng. Com. Sub. for House Bill 5432, To move the essential functions of the Information Services and Communications Division into the Office of Technology.

Executive Communications

Senator Blair (Mr. President) laid before the Senate the following proclamation from His Excellency, the Governor, extending this current legislative session until and including the tenth day of March, 2024, which was received and read by the Clerk:

EXECUTIVE DEPARTMENT**Charleston****A PROCLAMATION****By the Governor**

WHEREAS, the Constitution of West Virginia sets forth the respective powers, duties, and responsibilities of the three separate branches of government; and

WHEREAS, Article VI, Section 22 of the Constitution of West Virginia provides that the current regular session of the Legislature shall not exceed sixty calendar days computed from and including the second Wednesday of January two thousand twenty-four; and

WHEREAS, pursuant to Article VI, Section 22 of the Constitution of West Virginia, the two thousand twenty-four regular session of the Legislature is scheduled to conclude on the ninth day of March, two thousand twenty-four; and

WHEREAS, Article VI, Section 51 of the Constitution of West Virginia sets forth the obligations of the Governor and the Legislature relating to the preparation and enactment of the Budget Bill; and

WHEREAS, Subsection D, Article VI, Section 51 of the Constitution of West Virginia requires the Governor to issue a proclamation extending the regular session of the Legislature if the Budget Bill shall not have been finally acted upon by the Legislature three days before the expiration of its regular session; and

WHEREAS, the Budget Bill has not been finally acted upon by the Legislature as of this seventh day of March, two thousand twenty-four;

NOW, THEREFORE, I, JIM JUSTICE, Governor of the State of West Virginia, do hereby issue this Proclamation, in accordance with Subsection D, Article VI, Section 51 of the Constitution of West Virginia, extending the two thousand twenty-four regular session of the Legislature for an additional period not to exceed one day, through and including the tenth day of March, two thousand twenty-four; but no matters other than the Budget Bill shall be considered during this extension of the regular session, except the matters detailed in section 14, article VII of this Constitution and a provision for the cost thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.



By the Governor

DONE at the Capitol in the City of Charleston, State of West Virginia, on this the Seventh Day of March, in the Year of our Lord, Two Thousand Twenty-Four, and in the One Hundred Sixty-First Year of the State.

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

GOVERNOR

A handwritten signature in blue ink, reading "Mac Warner".

SECRETARY OF STATE

Senator Blair (Mr. President) then laid before the Senate the following communication from His Excellency, the Governor, regarding annual reports, which communication was received and filed with the Clerk:



Jim Justice
Governor of West Virginia

March 7, 2024

Executive Message 2
2024 Regular Session

The Honorable Craig Blair
President, West Virginia State Senate
State Capitol, Rm 229M
Charleston, WV 25305

Dear Mr. President:

Pursuant to the provisions of section twenty, article one, chapter five of the Code of West Virginia, I hereby certify that the following annual reports have been received in the Office of the Governor:

Accountancy, West Virginia Board of; Annual Report FY 2023

Administration, West Virginia Department of; State Building Commission Fund Month End of May 2023

Administration, West Virginia Department of; State Building Commission Fund Month End of June 2023

Administration, West Virginia Department of; State Building Commission Fund Month End of January 2022

Administration, West Virginia Department of; State Building Commission Fund Month End of August 2023

Administration, West Virginia Department of; State Building Commission Fund Month End of July 2023

Administration, West Virginia Department of; State Building Commission Fund End of Month October 2023

Administration, West Virginia Department of; State Building Commission Fund End of Month November 2023

Administration, West Virginia Department of; Shared Services Section within the Finance Division Annual Report

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OFFICE OF THE GOVERNOR

Administration, West Virginia Department of; State Building Commission Fund Month End of December 2023

Administration, West Virginia Department of; State Building Commission Fund Month End of January 2024

Agriculture, West Virginia Department of; Farm-to-Food Bank Tax Credit 2021-2022

Architects, West Virginia Board of; Annual Report FY2023 & FY2022

Attorney General, West Virginia Office of the; Annual Report 2023

Attorney General, West Virginia Office of the; 2023 Annual Report on the Activities of the Consumer Protection and Antitrust Division

Auditors Office, West Virginia State; 2023 Annual Report

Auditors Office, West Virginia State; 2023 West Virginia State Dollar

City of Welch; First Semi-Annual Progress Report of 2023

City of Welch; Second Semi-Annual Progress Report of 2023

Claims Commission, West Virginia Legislative; Supplemental Report of the Legislative Claims Commission for December 2023

Coal Mine Health and Safety, State of West Virginia Board of; 2023 Annual Report of the Board of Coal Mine Health and Safety

Consolidated Public Retirement Board, West Virginia; West Virginia State Police Disability Experience Annual Report Fiscal Year 2023

Dentistry, West Virginia Board of; Report for the Biennium for Fiscal Years 2022 & 2023

Examiners in Counseling, West Virginia Board of; 2021-2023 Annual Report

Grievance Board, Public Employee; 2022 Annual Report

Insurance Commissioner, State of West Virginia Offices of the; Occupational Pneumoconiosis Board 2022-2023 Annual Report

Insurance Commissioner, State of West Virginia Offices of the; West Virginia State Agency Workers' Compensation Annual Report

Insurance Commissioner, State of West Virginia Offices of the; 2022 Annual Report

Insurance Commissioner, State of West Virginia Offices of the; 2022 Annual Medical Malpractice Report

Insurance Commissioner, State of West Virginia Offices of the; Office of the Consumer Advocate Annual Report for Calendar Year 2023

Interstate Medical Licensure Compact; FY2023 Annual Report

Jobs Investment Trust, West Virginia; Fiscal Year 2023 Annual Report

Licensed Dietitians, West Virginia Board of; Annual Report for Fiscal Year's 2021/2022

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Licensed Dietitians, West Virginia Board of; Annual Report for Fiscal Year 2022-2023

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending May 31, 2023

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending June 30, 2023

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending August 31, 2023

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending July 31, 2023

Lottery, West Virginia; Monthly Report on Lottery Operations Month End September 2023

Lottery, West Virginia; Monthly Report on Lottery Operations Month End April 2023

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending November 30, 2023

Lottery, West Virginia; Monthly Report on Lottery Operations Month End January 2024

Lottery, West Virginia; 2023 Annual Comprehensive Financial Report for the Fiscal Years Ended June 30, 2023 and 2022

Medical Imaging & Radiation Therapy Technology Board of Examiners, West Virginia; FY 2023 Annual Report

Miners' Health, Safety and Training, West Virginia Office of; FY2023 Annual Report and Directory of Mines

Multimodal Transportation Facilities, West Virginia Department of Transportation/Division of; Annual Report for Fiscal Year 2022-2023

Municipal Bond Commission, West Virginia; Annual Receipts and Disbursements July 1, 2022-June 30, 2023

National Guard, West Virginia; Annual Report 2023

Natural Resources, West Virginia Division of; Annual Report 2022-2023

Natural Resources, West Virginia Division of; Annual Report 2022-2023

Occupational Therapy, West Virginia Board of; Annual Report 2022-2023

Osteopathic Medicine, West Virginia School of; Annual Report 2022-2023

Pharmacy, West Virginia Board of; Controlled Substances Monitoring Program 2023 Annual Report

Potomac River Basin, Interstate Commission on the; Eighty Second Financial Statement for the period of October 1, 2021 to September 30, 2022

Public Transit, West Virginia Department of Transportation/Division of; 2022 Annual Safety Status Report

Real Estate Appraiser Licensing and Certification Board, West Virginia; Annual Report Fiscal Years 2022 and 2023

Registration for Professional Engineers, West Virginia Board of; FY 2023 Annual Report

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Rehabilitation Council, West Virginia State; 2023 Annual Report

Respiratory Care, West Virginia Board of; Annual Report July 1, 2022 - June 30, 2023

State Fire Marshal, West Virginia; FY 2023 Annual Report

State Police, West Virginia; 2022-2023 Annual Report

State Privacy Office, West Virginia; 2023 Annual Report

State Resiliency Office, West Virginia; Annual Report 2023

Tax Department, West Virginia State; 2023 Tax Credit and Accountability Report for the West Virginia Innovative Mine Safety Technology Tax Credit

Tax Department, West Virginia State; Fifty-Fifth Biennial Report West Virginia Tax Laws

Tax Department, West Virginia State; Special Method for Appraising Qualified Capital Additions to Manufacturing Facilities Tax Year 2023

Tax Department, West Virginia State; Special Method for Appraising Qualified Capital Additions to Manufacturing Facilities Tax Year 2022

Tax Department, West Virginia State; West Virginia Tax Expenditure Study for 2024

Tax Department, West Virginia State; West Virginia Tax Credit Review and Accountability Report for the Economic Opportunity Tax Credit and the Manufacturing Investment Tax Credit

Treasurer, West Virginia Office of the; Cash Management Improvement Act CMIA

Treasury Investments, Board of; Operating Report June 2023

Treasury Investments, Board of; Operating Report May 2023

Treasury Investments, Board of; Operating Report August 2023

Treasury Investments, Board of; Operating Report September 2023

Treasury Investments, Board of; Operating Report October 2023

Treasury Investments, Board of; Audited Financial Statements with Supplementary & Other Financial Information Year Ended June 30, 2023

Treasury Investments, Board of; Annual Comprehensive Financial Report Fiscal Year Ended June 30, 2023

Treasury Investments, Board of; Operating Report December 2023

Treasury Investments, Board of; Operating Report January 2024

Veterinary Medicine, West Virginia Board of; 2023 Fiscal Year Biennium Report

Water Development Authority, West Virginia; Fiscal Year 2023 Annual Report

Water Sanitation Commission, Ohio River Valley; 2023 Annual Report

OFFICE OF THE GOVERNOR

Sincerely,



Jim Justice
Governor

cc: Lee Cassis, Clerk, West Virginia State Senate
Division of Culture and History

Senator Blair (Mr. President) next laid before the Senate the following communication from His Excellency, the Governor, submitting the annual probation and parole report, which was received:



Jim Justice
Governor of West Virginia

March 7, 2024

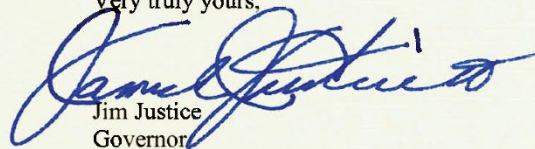
EXECUTIVE MESSAGE NO. 3
2024 REGULAR SESSION

The Honorable Craig Blair
President, Senate of West Virginia
State Capitol, Rm 229M
Charleston, West Virginia 25305

Dear Mr. President:

In accordance with the provisions of section 11, article 7 of the Constitution of the State of West Virginia, and section 16, article 1, chapter 5 of the Code of West Virginia, I hereby report that I granted no pardons or reprieves, nor commuted punishment to any person, nor remitted any fines or penalties, during the period of March 11, 2023 through March 6, 2024.

Very truly yours,


Jim Justice
Governor

cc: Lee Cassis, Senate of West Virginia
Division of Archives and History

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The Senate proceeded to the sixth order of business.

Senator Weld offered the following resolution:

Senate Resolution 70—Memorializing the life of Heather Nicole Miller.

Which, under the rules, lies over one day.

Senator Stover offered the following resolution:

Senate Resolution 71—Congratulating Kerri-Anne Cook on her remarkable high school golf career and for becoming the first female golfer in West Virginia history to win the WVSSAC AA state golf tournament.

Which, under the rules, lies over one day.

Senator Takubo announced that in the meeting of the Committee on Rules previously held, the committee, in accordance with Rule 17 of the Rules of the Senate, had removed from the Senate third reading calendar, **Engrossed Committee Substitute for House Bill 5127**; and from the Senate second reading calendar, **Engrossed Committee Substitute for House Bill 5609**.

The Senate proceeded to the seventh order of business.

Senate Resolution 68, Designating March 7, 2024, as Recovery Community Day.

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

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

Senate Resolution 69, Recognizing month of March as National Social Work Awareness Month.

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

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

The Senate proceeded to the eighth order of business.

Eng. Com. Sub. for House Bill 4190, Relating to the establishment of an alert system for missing cognitively impaired persons.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4190) passed.

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

Eng. Com. Sub. for House Bill 4190—A Bill to amend and reenact §15-3A-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §15-3B-2, §15-3B-3, §15-3B-4, and §15-3B-6 of said code; and to amend said code by adding thereto a new article, designated §15-3F-1, §15-3F-2, §15-3F-3, §15-3F-4, §15-3F-5, §15-3F-6, and §15-3F-7; all relating to establishing a "Purple Alert" program; providing for inclusion of the "Purple Alert" program in the "Guardian Angel Video Monitoring" Program; providing a date for implementation for addition of the "Silver Alert" and "Purple Alert" programs in the "Guardian Angel Video Monitoring" Program; removing persons with cognitive impairment from the "Silver Alert"; providing legislative findings relating to the "Purple Alert" program; defining cognitive impairment; providing for the establishment of a "Purple Alert" Plan; providing criteria for the activation of a "Purple Alert"; providing for termination of a "Purple Alert"; providing for date of implementation of the "Purple Alert"; providing for notice and broadcasting of a "Purple Alert"; providing for the Secretary to develop and undertake a campaign to inform law enforcement agencies about the "Purple Alert"; and providing immunity for individuals providing information pursuant to a "Purple Alert" in good faith.

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

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4190) takes effect July 1, 2024.

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

Eng. House Bill 4305, Relating to granting in-state resident status to economic development participants.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4305) passed with its title.

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

Eng. Com. Sub. for House Bill 4552, To ensure party affiliation is consistent with candidate's voter registration.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4552) passed.

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

Eng. Com. Sub. for House Bill 4552—A Bill to amend and reenact §3-5-7 of the Code of West Virginia, 1931, as amended, relating to verification of candidate's party affiliation as stated in certificate of announcement; specifying that certificate of announcement for partisan election must include candidate's political party on date of submittal; requiring election officer receiving certificate of announcement to electronically verify candidate's current party affiliation; requiring election officer to refuse certificate of announcement if candidate's current party affiliation not as stated on certificate of announcement; and providing an internal effective date.

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

Eng. House Bill 4721, Require Surveyors to offer to record surveys of property.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4721) passed.

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

Eng. House Bill 4721—A Bill to amend and reenact §30-13A-10 of the Code of West Virginia, 1931, as amended, relating to requiring land surveyors to offer to record maps or plats of measured parcels of land made by the surveyor for a reasonable fee.

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

Eng. Com. Sub. for House Bill 4812, Capping amount of moneys to third party vendors who collect business and occupation taxes on behalf of cities.

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

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

Eng. House Bill 4822, Creating the Certified Sites and Development Readiness Program.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4822) passed with its title.

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

Eng. Com. Sub. for House Bill 4829, Relating to employment of service personnel and removing the requirement for a high school diploma or general education development certificate.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4829) passed.

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

Eng. Com. Sub. for House Bill 4829—A Bill to amend and reenact §18A-2-5 of the Code of West Virginia, 1931, as amended, relating to employment of service personnel and removing the requirement for a high school diploma or general education development certificate for school bus drivers who are 21 years of age or older.

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

Eng. Com. Sub. for House Bill 4851, To allow for public and private schools in West Virginia to employ security personnel.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4851) passed.

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

Eng. Com. Sub. for House Bill 4851—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-51, relating to the creation of the West Virginia Guardian Program; setting out purpose of the program; allowing county school boards to contract with certain persons to provide safety services as independent contractors; defining terms; setting out the authority of independent contractors participating in the program; providing requirements for participation of a person in the program; providing exclusions from participation of a person in the program; setting forth a limitation of liability; providing exemptions from purchasing requirements; and excluding independent contractor from participation in state benefit programs.

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

Eng. Com. Sub. for House Bill 4867, Require pornography websites to utilize age verification methods to prevent minors from accessing content.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4867) passed.

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

Eng. Com. Sub. for House Bill 4867—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new chapter, designated §49A-1-101, §49A-1-102, §49A-1-103, §49A-1-104, and §49A-1-105 all relating to creating liability for publishers and distributors of sexual material harmful to minors; providing definitions; relating to what constitutes reasonable age verification; providing exceptions to applicability of this article; requiring a commercial entity that provides pornography and other materials defined as being harmful to minors as a substantial portion of the entity's content to verify the age of individuals accessing the material, relating to liability, and establishing a cause of action; establishing requirements, liability, and a establishing a cause of action for the retention of data; imposing liability for publishers and distributors of material harmful to minors who fail to comply with verification requirements; providing that an internet service provider or hosting entity is not liable for hosting or transmitting material harmful to minors to the extent that it is not the creator of the material; providing a five year statute of limitations to these civil actions; relating to certain civil actions allowable by the Attorney General, relating to remedy of civil penalties, and relating to a five year statute of limitations for civil actions relating for attorney general civil actions.

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

Eng. Com. Sub. for House Bill 4880, Relating to personal income tax social security exemption.

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

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

Eng. Com. Sub. for House Bill 4882, Extending in-state tuition rates to all members and veterans of the National Guard, reserves, and armed forces as well as their spouses and dependents.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4882) passed with its title.

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

Eng. Com. Sub. for House Bill 4919, Relating to the Promise Scholarship.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4919) passed with its title.

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

Eng. House Bill 4945, Relating generally to the Hope Scholarship Program.

On third reading, coming up in regular order, with the unreported Finance committee amendment pending, and with the right having been granted on yesterday, Wednesday, March 6, 2024, for further amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar, with the right to amend on third reading remaining in effect and with the unreported Finance committee amendment pending.

Eng. Com. Sub. for House Bill 4967, Relating to the administration of the Voluntary Remediation and Redevelopment Act to provide new liability protections for persons and companies who wish to purchase and redevelop former industrial properties.

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

Pending discussion,

The question being "Shall Engrossed Committee Substitute for House Bill 4967 pass?"

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4967) passed.

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

Eng. Com. Sub. for House Bill 4967—A Bill to amend and reenact §22-22-1, §22-22-2, §22-22-3, §22-22-4, §22-22-5, §22-22-6, §22-22-7, §22-22-8, §22-22-9, §22-22-10, §22-22-11, §22-22-12, §22-22-13, §22-22-14, §22-22-15, §22-22-16, of the Code of West Virginia, 1931, as amended, to repeal §22-22-17 of said code, and amend and reenact §22-22-18 and §22-22-20, all relating to the administration of the Voluntary Remediation and Redevelopment Act to provide new liability protections for those who wish to purchase and redevelop former industrial properties; defining terms; providing for rulemaking by the Secretary of the Department of Environmental Protection; clarifying procedures involving the Brownfields Revolving Fund; revising public notice provisions concerning the fund; providing that the Secretary may limit the liability of lenders, innocent purchasers, landowners, de minimis contributors, or others who have limited responsibility for contamination under the Hazardous Waste Management Act, the Water Pollution Control Act, the Groundwater Protection Act or any other applicable law; providing that bona fide prospective purchasers are not liable for a containment at a brownfield site if certain conditions are met; providing that an innocent land owner who holds title or security interest in a brownfield site are not liable for contamination at a brownfield site if defined conditions are met; providing that a person that owns contiguous real property that is contaminated by a release of a hazardous substance from real property that is not owned by that person is not liable for contamination under defined conditions; and providing that the Secretary may require anyone responsible for contamination to remediate sites where substances have been improperly managed.

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

Eng. Com. Sub. for House Bill 5127, Including Potomac State College in the definition of community and technical college education program for participation in the "Learn and Earn Program".

Having been removed from the Senate third reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. Com. Sub. for House Bill 5188, Relating to awards and benefits for duty related disability in the municipal police officers and firefighters retirement system.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 5188) passed with its title.

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

Eng. House Bill 5257, Relating generally to allowing the Supreme Court of Appeals discretion to create uniform pay scales for all levels of judicial support staff.

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

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

Eng. Com. Sub. for House Bill 5338, Relating to Safe Harbor for Cybersecurity Programs.

On third reading, coming up in regular order, with the unreported Finance committee amendment pending, and with the right having been granted on yesterday, Wednesday, March 6, 2024, for further amendments to be received on third reading, was read a third time.

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

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

ARTICLE 8H. SAFE HARBOR FOR CYBERSECURITY PROGRAMS.

§31A-8H-1. Definitions.

As used in this article:

(1) "Business" means any limited liability company, limited liability partnership, corporation, sole proprietorship, association, or other group, however organized and whether operating for profit or not for profit, including a financial institution or bank holding company organized, chartered, or holding a license authorizing operation under the laws of this state, any other state, the United States, or any other country, or the parent or subsidiary of any of the foregoing.

"Business" does not include any body, authority, board, bureau, commission, district, or agency of the state or of any political subdivision of the state.

(2) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this article and other applicable law.

(3) "Covered entity" means a business that accesses, maintains, communicates, or processes personal information or restricted information in or through one or more systems, networks, or services located in or outside this state.

(4) "Data breach" means unauthorized access to and acquisition of computerized data that compromises the security or confidentiality of personal information or restricted information owned by or licensed to a covered entity and that causes, reasonably is believed to have caused, or reasonably is believed will cause a material risk of identity theft or other fraud to person or property. "Data breach" does not include either of the following:

(A) Good faith acquisition of personal information or restricted information by the covered entity's employee or agent for the purposes of the covered entity provided that the personal information is not used for an unlawful purpose or subject to further unauthorized disclosure;

(B) Acquisition of personal information pursuant to a search warrant, subpoena, or other court order, or pursuant to a subpoena, order, or duty of a regulatory state agency.

(5) "Distributed ledger technology" means an electronic ledger or other record of transactions or other data to which all of the following apply:

(A) The electronic ledger is uniformly ordered.

(B) The electronic ledger is redundantly maintained or processed by more than one computer or machine to guarantee the consistency or nonrepudiation of the recorded transactions or other data.

(6) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(7) "Encryption" means the use of an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key.

(8) "Individual" means a natural person.

(9)(A) "Personal information" means any information relating to an individual who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, social security number, driver's license number or state identification card number, passport number, account number, or credit or debit card number, precise location data, biometric data, an online identifier, or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that individual.

(B) "Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records or any of the following media that are widely distributed:

(i) Any news, editorial, or advertising statement published in any bona fide newspaper, journal, or magazine, or broadcast over radio, television, or the internet.

(ii) Any gathering or furnishing of information or news by any bona fide reporter, correspondent, or news bureau to news media identified in this paragraph.

(iii) Any publication designed for and distributed to members of any bona fide association or charitable or fraternal nonprofit business.

(iv) Any type of media similar in nature to any item, entity, or activity identified in this paragraph.

(10) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(11) "Redacted" means altered or truncated so that no more than the last four digits of a social security number, driver's license number, state identification card number, passport number, account number, or credit or debit card number is accessible as part of the data.

(12) "Smart contract" means an electronic record that is an event-driven program or computerized transaction protocol that runs on a distributed, decentralized, shared, and replicated ledger that executes the term of a contract, including but not limited to, taking custody over and instructing the transfer of assets.

(13) "Transaction" means a sale, trade, exchange, transfer, payment, or conversion of virtual currency or other digital asset or any other property or any other action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

§31A-8H-2. Affirmative defenses.

(a) A covered entity seeking an affirmative defense under this chapter shall do at least one of the following:

(1) create, maintain, and comply with a written cybersecurity program that contains administrative, technical, operational, and physical safeguards for the protection of personal information and that reasonably conforms to an industry recognized cybersecurity framework, as described in §31A-8H-3; or

(2) Create, maintain, and comply with a written cybersecurity program that contains administrative, technical, and physical safeguards for the protection of both personal information and restricted information and that reasonably conforms to an industry recognized cybersecurity framework, as described in §31A-8H-3.

(b) A covered entity's cybersecurity program shall be designed to do all of the following with respect to the personal information described in division (a)(1) or (2) of this section, as applicable:

(1) Protect the security and confidentiality of the personal information;

(2) Protect against any anticipated threats or hazards to the security or integrity of the personal information;

(3) Protect against unauthorized access to and acquisition of the personal information that is likely to result in a material risk of identity theft or other fraud to the individual to whom the personal information relates.

(c) The scale and scope of a covered entity's cybersecurity program under division (A) (1) or (2) of this section, as applicable, is appropriate if it is based on all of the following factors:

- (1) The size and complexity of the covered entity;
- (2) The nature and scope of the activities of the covered entity;
- (3) The sensitivity of the information to be protected;
- (4) The cost and availability of tools to improve information security and reduce vulnerabilities;
- (5) The resources available to the covered entity.

(d) (1) A covered entity that satisfies subsections (a)(1),(b), and (c) of this section is entitled to an affirmative defense to any cause of action sounding in tort that is brought under the laws of this state or in the courts of this state and that alleges that the failure to implement reasonable information security controls resulted in a data breach concerning personal information.

(2) A covered entity that satisfies subsections (a)(2), (b), and (c) of this section is entitled to an affirmative defense to any cause of action sounding in tort that is brought under the laws of this state or in the courts of this state and that alleges that the failure to implement reasonable information security controls resulted in a data breach concerning personal information or restricted information.

A covered entity satisfies all requirements of this section if its cybersecurity program reasonably conforms to an industry-recognized cybersecurity framework, as described in §31A-8H-3 of this code.

§31A-8H-3. Cybersecurity program framework.

(a) A covered entity's cybersecurity program, as described in section §31A-8H-2 of this code, reasonably conforms to an industry-recognized cybersecurity framework for purposes of this article if the cybersecurity program meets any of the following three requirements as applicable:

(1)(A) The cybersecurity program reasonably conforms to the current version of any of the following or any combination of the following, subject to paragraph (B) of this subdivision and subsection (b) of this section:

(i) The framework for improving critical infrastructure cybersecurity developed by the national institute of standards and technology.

(ii) National institute of standards and technology special publication 800-171.

(iii) National institute of standards and technology special publications 800-53 and 800-53a.

(iv) National institute of standards and technology special publication 800-76-1.

(v) The federal risk and authorization management program security assessment framework.

(vi) The center for internet security critical security controls for effective cyber defense.

(vii) The international organization for standardization/international electrotechnical commission 27000 family — information security management systems.

(viii) The Cybersecurity Maturity Model Certification at a minimum of Level 2 with external certification.

(B) When a final revision to a framework listed in paragraph (A) is published, a covered entity whose cybersecurity program reasonably conforms to that framework shall reasonably conform the elements of its cybersecurity program to the revised framework within the time frame provided in the relevant framework upon which the covered entity intends to rely to support its affirmative defense, but in no event later than one year after the publication date stated in the revision.

(2)(A) The covered entity is regulated by the state, by the federal government, or both, or is otherwise subject to the requirements of any of the laws or regulations listed below, and the cybersecurity program reasonably conforms to the entirety of the current version of any of the following, subject to paragraph (B) of this subdivision:

(i) The security requirements of the federal Health Insurance Portability and Accountability Act of 1996, as set forth in 45 C.F.R. pt. 164, subpt. C.

(ii) Title V of the federal Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102, as amended.

(iii) The federal Information Security Modernization Act of 2014, Pub. L. No. 113-283.

(iv) The federal Health Information Technology for Economic and Clinical Health Act as set forth in 45 C.F.R. pt. 162.

(v) Any applicable rules, regulations, or guidelines for critical infrastructure protection adopted by the federal environmental protection agency, the federal cybersecurity and infrastructure security agency, or the north American reliability corporation.

(B) When a framework listed in paragraph (A) of this subdivision is amended, a covered entity whose cybersecurity program reasonably conforms to that framework shall reasonably conform the elements of its cybersecurity program to the amended framework within the time frame provided in the relevant framework upon which the covered entity intends to rely to support its affirmative defense, but in no event later than one year after the effective date of the amended framework.

(3)(A) The cybersecurity program reasonably complies with both the current version of the payment card industry data security standard and conforms to the current version of another applicable industry-recognized cybersecurity framework listed in subdivision (a)(1) of this section, subject to paragraph (B) of this subdivision and subsection (b) of this section.

(B) When a final revision to the payment card industry data security standard is published, a covered entity whose cybersecurity program reasonably complies with that standard shall reasonably comply the elements of its cybersecurity program with the revised standard within the time frame provided in the relevant framework upon which the covered entity intends to rely to support its affirmative defense, but not later than the effective date for compliance.

(b) If a covered entity's cybersecurity program reasonably conforms to a combination of industry-recognized cybersecurity frameworks and two or more of those frameworks are revised,

the covered entity whose cybersecurity program reasonably conforms to or complies with, as applicable, those frameworks shall reasonably conform the elements of its cybersecurity program to or comply with, as applicable, all of the revised frameworks within the time frames provided in the relevant frameworks but in no event later than one year after the latest publication date stated in the revisions.

§31A-8H-4. Limitation on private right of action.

This article shall not be construed to provide a private right of action, including a class action, with respect to any act or practice regulated therein.

§31A-8H-5. Security assessments; limitation on liability.

(a) Any institution of higher education in this state may offer a cybersecurity assessment program as part of an undergraduate or graduate program relating to cybersecurity to any business in the state.

(b) An institution of higher education in this state, or any employee or student thereof, offering a cybersecurity assessment program shall be immune from civil liability that arises from the failure of a covered entity to conform to the provisions of this article.

Engrossed Committee Substitute for House Bill 5338, as just amended, was then put upon its passage.

Pending extended discussion,

The question being "Shall Engrossed Committee Substitute for House Bill 5338 pass?"

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Clements, Deeds, Grady, Hamilton, Jeffries, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Smith, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—27.

The nays were: Chapman, Hunt, Karnes, Rucker, Stover, and Woelfel—6.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 5338) passed.

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

Eng. Com. Sub. for House Bill 5338—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §31A-8H-1, §31A-8H-2, §31A-8H-3, §31A-8H-4, and §31A-8H-5, all relating to providing an affirmative legal defense to certain types of businesses against certain types of lawsuits claiming that the business failed to implement reasonable cybersecurity protections and that as a result, a data breach of personal information or restricted information occurred if the business creates, maintains, and complies with a written cybersecurity program that contains administrative, technical, operational, and physical safeguards for the protection of personal information as set forth in this act; defining terms;

describing the requirements of the cybersecurity program; construction of article; clarifying no private cause of action provided by article; and providing immunity in certain circumstances to certain institutions of higher education in this state that offer a cybersecurity assessment program as part of an undergraduate or graduate program relating to cybersecurity to any business in the state.

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

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Clements, Deeds, Grady, Hamilton, Jeffries, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Smith, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—27.

The nays were: Chapman, Hunt, Karnes, Rucker, Stover, and Woelfel—6.

Absent: Maroney—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 5338) takes effect January 1, 2025.

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

Eng. Com. Sub. for House Bill 5405, Providing additional professional development and support to West Virginia educators through teacher and leader induction and professional growth.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 5405) passed.

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

Eng. Com. Sub. for House Bill 5405—A Bill to amend and reenact §18-9A-10 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18A-3C-3 of said code, all relating to increasing support and professional development for educators; expanding factors used to determine how funds for supporting county-level implementation of the comprehensive systems for teacher and leader induction and professional growth are allocated to the counties; authorizing retention of certain funding for 2024 – 2025 school year by the Department of Education for certain regional professional learning cadres or teacher leadership networks, implementing the Department of Education's academic initiatives, and to assist teachers who are less than fully certified; requiring up to a certain portion of the retained funding to be distributed

to county boards for certain purposes under a grant program to be established by state board rule; specifying minimum contents of rule; requiring county boards to ensure that the results on the comprehensive statewide student assessment for the students taught by each teacher are provided to that teacher; adding to topics to be addressed by the plan for implementation of a comprehensive system of support for improving professional practice; requiring certain additional amounts paid to a teacher be only for the duration of any service provided and not be considered salary for the computation of an annuity under the Teachers Retirement System; and removing requirement for the Legislative Oversight Commission on Education Accountability to review the progress of the implementation of the comprehensive systems of support for teacher and leader induction and professional growth and authority to make recommendations to the Legislature.

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

Eng. Com. Sub. for House Bill 5514, Enhancing training requirements for county boards of education members.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 5514) passed with its title.

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

Eng. House Bill 5528, Relating to the renewable energy facilities program.

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

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

The nays were: Phillips—1.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 5528) passed with its title.

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

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

Pending announcement of a meeting of the Committee on Rules,

On motion of Senator Takubo, at 12:11 p.m., the Senate recessed until 1:30 p.m. today.

The Senate reconvened at 1:54 p.m. and resumed consideration of the remainder of its third reading calendar, the next bill coming up in numerical sequence being

Eng. Com. Sub. for House Bill 5544, Relating to requiring certain reporting from the Mountaineer Trail Network Authority each year.

On third reading, coming up in regular order, with the right having been granted on yesterday, Wednesday, March 6, 2024, for amendments to be received on third reading, was read a third time.

On motions of Senators Maynard and Woodrum, the following amendment to the bill was reported by the Clerk and adopted:

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

ARTICLE 17A. MOUNTAINEER TRAIL NETWORK RECREATION AUTHORITY.

§20-17A-6. Reporting.

(a) There shall be an annual report made from the Mountaineer Trail Network Authority to the Joint Committee on Economic Development concerning:

(1) Progress made towards the goals laid out in §20-17-1 et seq. and §20-17A-1 et seq. of this code;

(2) A report of grants requested and received; and

(3) Progress made on other projects within the Trail Networks throughout the state.

(b) This reporting shall begin on December 1, 2024.

ARTICLE 20. MOUNTAIN BIKE RESPONSIBILITY ACT.

§20-20-1. Legislative findings.

The West Virginia Legislature finds that our natural resources and topography provide world class opportunities to attract both resident and nonresident bicyclists to this state to enjoy the sport of mountain biking, significantly contributing to the economy of West Virginia. Further, it is recognized that there are inherent risks in the sport of bicycling, and the purpose of this article is to define those areas of responsibilities and affirmative acts for which the mountain operators shall be liable for loss, damage, or injury and to define those risks that the bicyclist expressly assume. Nothing in this article shall impact other defenses that may be raised by mountain operators against claims asserted by bicyclists.

§20-20-2. Definitions.

The terms in this article have the following meaning, unless the context clearly requires a different meaning:

(1) "Aerial passenger tramway" means any device operated by a trail system operator used to transport passengers by single or double reversible tramway, chairlift or gondola lift, T-bar lift, J-bar lift, platter lift, or similar device; a fiber rope or wire rope tow, or a conveyor.

(2) "Mountain Bicyclist" means any person present at a trail system area under the control of a trail system operator for the purpose of engaging in activities, including, without limitation, bicycling downhill or uphill, jumping on a bicycle, or any other cycling device. "Mountain Bicyclist" does not include a person using an aerial passenger tramway.

(3) "Trail system area" means the property owned, leased, or authorized under a special use permit, and under the control of the trail system operator.

(4) "Trail system operator" means any person, partnership, corporation, or other commercial entity, its agents, officers, employees, or representatives, who has, as part of a commercial, private, or for-profit endeavor, operational responsibility for mountain bicycling activities at any trail system area and the use of an aerial passenger tramway for such purpose. Trail system operator does not include any public or non-profit corporation, its agents, officers, employees, or representatives, who has operational responsibility of mountain bicycling activities at any trail system area.

(5) "Passenger" means any person who is lawfully using an aerial passenger tramway or is waiting to embark or has recently disembarked from an aerial passenger tramway and is in its immediate vicinity.

(6) "Mountain Bike trails" means all mountain bike trails designated by the trail system operator to be used by mountain bicyclists for the purpose of participating in the sport of mountain biking including but not limited, to downhill trails, cross-country trails, free ride trails, pump tracks, and skills areas.

§20-20-3. Duties of trail system operators with respect to trail system.

Every trail system operator shall:

(1) Maintain a trail board at a prominent location at the trail system area displaying that area's network of mountain bike trails;

(2) Designate and mark conspicuously all mountain bike trails with a name and color, or symbol recognized in the mountain biking industry reflecting the relative degree of difficulty of the mountain bike trail. Such designation shall be at or near the top or entrance of the mountain bike trail. Any mountain bike trail which is closed shall be so marked at the trailhead;

(3) Follow published operational industry standards and guidelines;

(4) Provide internal trained and dedicated emergency response personnel or enter into an adequate emergency response plan with a local fire or EMS agency, or post at the trail board maintained under subdivision (1) of this section instructions on how to contact emergency response personnel;

(5) Maintain the mountain bike trails in a reasonably safe condition, except that such trail system operator shall not be responsible for any injury, loss or damage caused by the following: uneven or slippery rail and feature conditions; varying slopes and terrain; bumps; stumps; trees; roots; forest growth; cliffs; rock and rock drops; loose gravel and dirt; wet surfaces; holes and potholes; downed timber; debris; depressions; other bicyclists; dark tunnels; jumps; bridges; dirt or wood features/jumps; elevated features; and other constructed features; lift loading and unloading; padded and nonpadded barriers; paved surfaces; collisions with vehicles, pedestrians, wildlife, heavy equipment that is identified as a dangerous and/or hazardous work zone; properly marked permanent structures; and mechanical or other failure of rental or personal equipment;

(6) Post at the trail board maintained under subdivision (1) of this section the following language:

"WARNING – ASSUMPTION OF RISKS:

Under West Virginia law, every mountain bicyclist is considered to have accepted and to have knowledge of the risk of injury (including death) to the mountain bicyclist, as well as damage to property of the mountain bicyclist. Under West Virginia law, every mountain bicyclist has the duty to take the precautions that are necessary to avoid injury or death, as well as damage to property. West Virginia law sets forth certain limitations on the liability of trail system operators for injury or death to a bicyclist, as well as damage to property.

(7) Post a sign at all aerial passenger tramways that advises the passengers to seek advice if not familiar with riding the aerial passenger tramway; and

(8) Construct, operate, maintain, and repair any aerial passenger tramway in accordance with relevant and published national standards and safety requirements for such machinery.

§20-20-4. Duties of passengers.

No passenger shall:

(1) Board or embark upon or disembark from an aerial passenger tramway except at an area designated for such purpose;

(2) Drop, throw, or expel any object from an aerial passenger tramway;

(3) Perform any act that interferes with the running or operation of an aerial passenger tramway;

(4) Use any aerial passenger tramway if the passenger does not have the ability to use it safely without instruction, until the passenger has received sufficient instruction to permit safe usage;

(5) Embark on an aerial passenger tramway without engaging such safety or restraining devices as may be provided;

(6) Embark on an aerial passenger tramway without the authority, expressed or implied, of the trail system operator;

(7) Embark on an aerial passenger tramway while impaired by alcohol or drugs.

§20-20-5. Duties of mountain bicyclists.

(a) It is expressly recognized that mountain bicycling as a recreational sport is hazardous, regardless of all feasible safety measures which can be taken.

(b) Each mountain bicyclist expressly assumes the risk of, and legal responsibility for, any injury, loss or damage to person or property which results from participation in the sport of mountain bicycling including, but not limited to, any injury, loss or damage caused by the following: uneven or slippery trail and feature conditions; varying slopes and terrain; bumps, stumps; trees; roots; forest growth; cliffs; rock and rock drops; loose gravel and dirt; wet surfaces; holes and potholes; downed timber; debris; depressions; other bicyclists; dark tunnels; jumps; bridges; dirt or wood features/jumps; elevated features and other constructed features; lift loading and unloading; padded and nonpadded barriers; paved surfaces; collisions with vehicles, pedestrians, wildlife, heavy equipment that is identified as a dangerous and/or hazardous work zone; properly marked permanent structures; and mechanical or other failure of rental or personal equipment.

(c) Each mountain bicyclist shall have the sole individual responsibility for knowing the range of his or her own ability to negotiate any trail. Further, it shall be the duty of each mountain bicyclist to ride within the limits of the mountain bicyclist's own ability; to maintain reasonable control of speed and course at all times while mountain bicycling; to heed all posted warnings; to mountain bicycle only on a bike trail area designated by the trail system operator; to assess the difficulty of mountain bike trails; to be able to stop or avoid other individuals and objects; and to refrain from acting in a manner which may cause or contribute to the injury of anyone.

(d) If involved in a collision with another individual that results in injury, it shall be the duty of a mountain bicyclist to remain in the vicinity of the collision until giving his or her name and current address to a representative of the trail system operator or to all other parties to the collision except to secure aid for a person injured in a collision. A mountain bicyclist who leaves the vicinity to secure aid shall provide his or her name and current address after securing the aid.

(e) If while mountain bicycling any mountain bicyclist collides with any object or person, except an obviously intoxicated person of whom the trail system operator is aware, the responsibility for such collision shall be solely that of the mountain bicyclist or mountain bicyclists involved and not that of the trail system operator.

§20-20-6. Liability of trail system operator.

(a) A trail system operator may be liable for injury, loss, or damage caused by its failure to follow the duties set forth in section 3 of this article where the violation of duty is causally related to the injury, loss, or damage suffered.

(b) A trail system operator is not liable for any injury, loss, or damage caused by the negligence of any person who is not an agent or employee of the trail system operator.

(c) A trail system operator is not liable for any injury, loss, or damage caused by a mountain bicyclist or passenger's violation of any duty described in this article.

(d) Every trail system operator shall carry public liability insurance in limits of no less than \$100,000 per person, \$300,000 per occurrence, and \$10,000 for property damage.

§20-20-7. Liability of passengers.

Any passenger may be liable for injury, loss, or damage resulting from violations of the duties established in section four of this article where the violation of duty is causally related to the injury, loss, or damage suffered.

§20-20-8. Liability of mountain bicyclist.

Any mountain bicyclist may be liable for injury, loss, or damage resulting from violations of the duties established in section five of this article where the violation of duty is causally related to the injury, loss, or damage suffered.

§20-20-9. Release of minor participant.

A parent or guardian of a minor participant may execute a release assuming responsibility for the risks of the minor participant. The release must give notice to the minor participant, and the parent or guardian, of the risks associated with the release.

Engrossed Committee Substitute for House Bill 5544, as just amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 5544) passed.

On motions of Senators Maynard and Woodrum, the following amendment to the title of the bill was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 5544—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §20-17A-6, and to amend said code by adding thereto a new article, designated §20-20-1, §20-20-2, §20-20-3, §20-20-4, §20-20-5, §20-20-6, §20-20-7, §20-20-8, and §20-20-9, all relating to requiring certain reporting from the Mountaineer Trail Network Authority each year, beginning on December 1, 2024; to the creation of the Mountain Bike Responsibility Act; stating a legislative purpose; defining terms; and providing for duties of trail system operators, mountain bicyclists, and passengers on aerial passenger tramways.

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

Eng. House Bill 5548, Relating to modifying requirements imposed on any owner, operator, or manager within a tourism development project.

On third reading, coming up in regular order, with the unreported Economic Development committee amendment pending, and with the right having been granted on yesterday,

Wednesday, March 6, 2024, for further amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar, with the right to amend on third reading remaining in effect and with the unreported Economic Development committee amendment pending.

Eng. House Bill 5594, Exempting the West Virginia School of Osteopathic Medicine, West Virginia University and Marshall University from contracts, agreements, or memorandums of understanding with spending units in state government with exceptions.

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

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

The nays were: Rucker—1.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 5594) passed with its title.

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

Eng. Com. Sub. for House Bill 5604, Relating to procurement by state spending units.

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

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

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

On page 6, section 26, by striking out the entirety of subsection (b) and inserting in lieu thereof a new subsection (b) to read as follows:

"(b) Local fiscal bodies may not obligate funds beyond the current fiscal year except for contracts executed to procure technology licensing service agreements or technology services including cloud computing. Local fiscal bodies shall justify entering into multi-year technology license service agreements or technology services including cloud computing by maintaining documentation of material fiscal savings to the body."

Engrossed Committee Substitute for House Bill 5604, as just amended, was then put upon its passage.

Pending discussion,

The question being "Shall Engrossed Committee Substitute for House Bill 5604 pass?"

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 5604) passed.

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

Eng. Com. Sub. for House Bill 5604—A Bill to amend and reenact §5A-3-10 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section designated §5A-3-10f; to amend and reenact §5A-6-2 of said code; to amend said code by adding thereto a new section, designated §5A-6-4f; and to amend and reenact §11-8-26 of said code, all relating generally to procurement by state spending units and local fiscal bodies of technology and technical infrastructure products and services; modifying process for procurement of technical infrastructure by state spending units; and permitting local fiscal bodies to enter into multi-year technology license service agreements with justification.

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

Eng. House Joint Resolution 21, Amending the Constitution to prohibit persons not United States citizens from voting in any election held within this state.

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

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

The Senate proceeded to the ninth order of business.

Eng. Com. Sub. for House Bill 4110, Authorizing certain miscellaneous agencies and boards to promulgate legislative rules.

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

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

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

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS BOARDS AND AGENCIES TO PROMULGATE LEGISLATIVE RULES.

§64-9-1. West Virginia Board of Accountancy.

The legislative rule filed in the State Register on July 24, 2023, authorized under the authority of §30-9-5 of this code, relating to the West Virginia Board of Accountancy (board rules and rules of professional conduct, 1 CSR 01), is authorized.

§64-9-2. West Virginia Board of Acupuncture.

The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-36-7 of this code, modified by the West Virginia Board of Acupuncture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 22, 2023, relating to the West Virginia Board of Acupuncture (applications for licensure to practice acupuncture, 32 CSR 03), is authorized.

§64-9-3. West Virginia Department of Agriculture.

(a) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §19-11B-10 of this code, modified by the West Virginia Department of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 16, 2023, relating to the West Virginia Department of Agriculture (frozen desserts and imitation frozen desserts, 61 CSR 04B), is authorized.

(b) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §19-16A-4 of this code, modified by the West Virginia Department of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 3, 2023, relating to the West Virginia Department of Agriculture (certified pesticide applicator rules, 61 CSR 12A), is authorized.

(c) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §19-16A-4 of this code, modified by the West Virginia Department of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 26, 2023, relating to the West Virginia Department of Agriculture (licensing to pesticide businesses, 61 CSR 12B), is authorized.

(d) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §19-29-1 of this code, modified by the West Virginia Department of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 26, 2023, relating to the West Virginia Department of Agriculture (West Virginia molluscan shellfish, 61 CSR 23B), is authorized.

(e) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §19-12E-7 of this code, relating to the West Virginia Department of Agriculture (select plant-based derivative products, 61 CSR 30), is not authorized.

(f) The legislative rule filed in the State Register on December 15, 2022, authorized under the authority of §19-36-1 of this code, relating to the West Virginia Department of Agriculture (agritourism, 61 CSR 37), is authorized.

§64-9-4. West Virginia Board of Barbers and Cosmetologists.

(a) The legislative rule filed in the State Register on June 14, 2023, authorized under the authority of §30-27-5 of this code, modified by the West Virginia Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and

refiled in the State Register on August 11, 2023, relating to the West Virginia Board of Barbers and Cosmetologists (procedures, criteria, and curricula for examination and licensure of barbers, cosmetologists, nail technicians, aestheticians, and hair stylists, 3 CSR 01), is authorized with the following amendments:

On page 3, by striking out the entirety of subsection 11.1. and inserting in lieu thereof a new subsection 11.1. to read as follows:

"11.1. The Board shall issue a professional license to practice to an applicant who holds a comparable valid license or other authorization to practice in that particular field from another state, if the applicant demonstrates that he or she:

11.1.a. Holds a valid license or other authorization to practice in another state which was granted after completion of educational requirements required in another state;

11.1.b. Does not have charges pending against his or her valid license or other authorization to practice and has never had a valid license or other authorization to practice revoked;

11.1.c. Has paid the applicable fee;

11.1.d. Is at least 18 years of age;

11.1.e. Has a high school diploma, a GED, or has passed the "ability to benefit test" approved by the United States Department of Education;

11.1.f. Is a citizen of the United States or is eligible for employment in the United States; and

11.1.g. Has presented a certificate of health issued by a licensed physician.

11.2 The Board shall recognize reciprocity for military barbers with a DD214."

(b) The legislative rule filed in the State Register on June 14, 2023, authorized under the authority of §30-1-23 of this code, modified by the West Virginia Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 24, 2023, relating to the West Virginia Board of Barbers and Cosmetologists (application for waiver of initial licensing fees for certain individuals, 3 CSR 15), is authorized.

(c) The legislative rule filed in the State Register on June 14, 2023, authorized under the authority of §30-27-8a of this code, modified by the West Virginia Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 21, 2023, relating to the West Virginia Board of Barbers and Cosmetologists (cosmetology apprenticeship, 3 CSR 16), is authorized.

§64-9-5. West Virginia Board of Examiners in Counseling.

(a) The legislative rule filed in the State Register on October 6, 2023, authorized under the authority of §30-31-6 of this code, modified by the West Virginia Board of Examiners in Counseling to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 15, 2023, relating to the West Virginia Board of Examiners in Counseling (licensing rule, 27 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on October 6, 2023, authorized under the authority of §30-31-6 of this code, modified by the West Virginia Board of Examiners in Counseling to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 15, 2023, relating to the West Virginia Board of Examiners in Counseling (marriage and family therapist licensing rule, 27 CSR 08), is authorized.

§64-9-6. West Virginia Board of Dentistry.

The legislative rule filed in the State Register on July 25, 2023, authorized under the authority of §60A-9-5A of this code, modified by the West Virginia Board of Dentistry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 18, 2023, relating to the West Virginia Board of Dentistry (practitioner requirements for accessing the West Virginia Controlled Substances Monitoring Program database, 5 CSR 10), is authorized.

§64-9-7. West Virginia Board of Licensed Dietitians.

(a) The legislative rule filed in the State Register on April 25, 2023, authorized under the authority of §30-35-4 of this code, modified by the West Virginia Board of Licensed Dietitians to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 11, 2023, relating to the West Virginia Board of Licensed Dietitians (licensure and renewal requirements, 31 CSR 01), is authorized with the following amendment:

On page 2, paragraph 4.1.2.3., by striking out "\$50" and inserting in lieu thereof "\$46".

(b) The legislative rule filed in the State Register on April 25, 2023, authorized under the authority of §30-35-4 of this code, modified by the West Virginia Board of Licensed Dietitians to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 11, 2023, relating to the West Virginia Board of Licensed Dietitians (continuing professional education requirements, 31 CSR 05), is authorized.

(c) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-35-4 of this code, relating to the West Virginia Board of Licensed Dietitians (telehealth practice, requirements, and definitions, 31 CSR 07), is authorized.

§64-9-8. West Virginia Department of Economic Development.

The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §20-19-7 of this code, modified by the West Virginia Department of Economic Development to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 13, 2023, relating to the West Virginia Department of Economic Development (the operation of motorsports complexes and events, 145 CSR 19), is authorized with the following amendments:

On page 1, subsection 2.5., after the word "to" and before the word "impact" by inserting the word "reasonably";

On page 2, subsection 3.1, after the word "is" by inserting the word "reasonably";

On page 2, subsection 3.7., by striking out the words "at any time" and inserting in lieu thereof the words "during normal business hours";

On page 2, by striking out the entirety of subdivision 3.8.1. and inserting in lieu thereof a new subdivision 3.8.1. to read as follows:

"3.8.1. Helmet and eye protection requirements shall be governed by the safety procedures and requirements established by the sanctioning body hosting the motorsports events.";

On page 2, by striking out the entirety of subdivisions 3.8.2., 3.8.3., and 3.8.4.;

On page 3, by striking out the entirety of subdivisions 3.9.1., 3.9.2., 3.9.3., 3.9.4., and 3.9.5., and inserting in lieu thereof of new subdivision 3.9.1. to read as follows:

"3.9.1. Safety belts, shoulder harness, and crotch belt requirements shall be governed by the safety procedures and requirements established by the sanctioning body hosting the motorsport event.";

On page 3, by striking out the entirety of subdivision 3.10.2. and inserting in lieu thereof a new subdivision 3.10.2. to read as follows:

"3.10.2. Vehicles participating in a race or race practice shall be governed by the safety procedures and requirements established by the sanctioning body hosting the motorsport event.";

On page 3, by striking out the entirety of subdivisions 3.11.1, 3.11.2., and 3.11.3 and inserting in lieu thereof a new subdivision 3.11.1. to read as follows:

"3.11.1. Clothing requirements for non-drivers shall be governed by the safety procedures and requirements established by the sanctioning body hosting the motorsports event."

On page 3, by striking out the entirety of subdivision 3.13.1. and inserting in lieu thereof a new subdivision 3.13.1 to read as follows:

"3.13.1. Fences shall be erected around the perimeter of the road course, with the specific requirements determined by a risk assessment considering the track's size, terrain, type of racing, and potential hazards."

On page 4 by striking out the entirety of subdivisions 3.13.2. and 3.13.3. and inserting in lieu thereof a new subdivision 3.13.2. to read as follows:

"3.13.2. If the infield of the road course is accessible by spectators or other non-driving participants, multiple access points shall also be provided to allow emergency entry and exit.";

On page 4, by striking out the entirety of subdivisions 3.14.1., 3.14.2., 3.14.3., 3.14.4., and 3.14.5. and inserting in lieu thereof a new subdivision 3.14.1. to read as follows:

"3.14.1. Flag station and flagmen requirements shall be governed by the safety procedures and requirements established by the sanctioning body hosting the motorsports event.";

On page 4, subsection 4.1., after the word "maintained" by adding the words "in accordance with the requirements established by the sanctioning body hosting the motorsports event.";

On page 5, by striking out the entirety of subsections 4.3. and 4.4.;

On page 5, by striking out the entirety of subsection 5.1. and inserting in lieu thereof a new subsection 5.1. to read as follows:

"5.1. All run-off areas at a motorsport facility must be of sufficient size and constructed with materials appropriate for the intended racing events to provide a reasonable expectation of minimizing injury or damage to the drivers and spectators in the event of an off-track excursion.";

On page 5, by striking out the entirety of subdivision 6.1.1. and 6.1.2. and inserting in lieu thereof a new subdivision 6.1.1. to read as follows:

"6.1.1. Fire services provided by a motorsports operator must ensure all emergency equipment meets or exceeds State safety requirements.";

And,

On page 5, by striking out the entirety of subdivisions 6.2.1. and 6.2.2.

§64-9-9. State Election Commission.

(a) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §3-8-8 of this code, modified by the State Election Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 25, 2023, relating to the State Election Commission (corporate and membership organization political activity, 146 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on September 13, 2023, authorized under the authority of §3-1A-5 of this code, modified by the State Election Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 17, 2023, relating to the State Election Commission (regulation of campaign finance, 146 CSR 03), is authorized.

(c) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §3-1-48 of this code, modified by the State Election Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 25, 2023, relating to the State Election Commission (application and approval process for Secretary of State expenditures from the County Assistance Voting Equipment Fund, 146 CSR 07), is authorized.

§64-9-10. Board of Funeral Service Examiners.

The legislature directs the Board of Funeral Service Examiners to amend the legislative rule filed in the State Register on April 1, 2023, authorized under the authority of §30-6-6 of this code, relating to the Board of Funeral Service Examiners (funeral director, embalmer, apprentice, courtesy card holder, and funeral establishment requirements, 175 CSR 02), with the following amendments:

On page 1, subsection 2.2, by striking out the word "general" and inserting in lieu thereof the word "direct";

On page 6, subdivision 5.7.1., by striking out the word "ABFSC" and inserting in lieu thereof the words "American Board of Funeral Home Education (ABFSE)";

On page 10, by striking out subdivision 12.1.2 in its entirety;

And,

By renumbering the remaining subdivisions.

§64-9-11. West Virginia Massage Therapy Licensure Board.

(a) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-37-6 of this code, modified by the West Virginia Massage Therapy Licensure Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 22, 2023, relating to the West Virginia Massage Therapy Licensure Board (general provisions, 194 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-37-6 of this code, modified by the West Virginia Massage Therapy Licensure Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 22, 2023, relating to the West Virginia Massage Therapy Licensure Board (schedule of fees, 194 CSR 04), is authorized.

(c) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-37-6 of this code, relating to the West Virginia Massage Therapy Licensure Board (establishment licensure, 194 CSR 07), is authorized.

§64-9-12. West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners.

The legislative rule filed in the State Register on July 24, 2023, authorized under the authority of §30-23-7 of this code, modified by the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 6, 2023, relating to the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners (medical imaging technologists, 18 CSR 01), is authorized.

§64-9-13. West Virginia Board of Medicine.

(a) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §30-3E-3 of this code, modified by the West Virginia Board of Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 1, 2023, relating to the West Virginia Board of Medicine (licensure, practice requirements, disciplinary and complaint procedures, continuing education, and physician assistants, 11 CSR 01B), is authorized.

(b) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §30-3-7 of this code, modified by the West Virginia Board of Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 1, 2023, relating to the West Virginia Board of Medicine (continuing education for physicians and podiatric physicians, 11 CSR 06), is authorized.

(c) The legislative rule filed in the State Register on November 21, 2022, authorized under the authority of §30-3-7 of this code, relating to the West Virginia Board of Medicine (permitting and

disciplinary procedures: educational permits for graduate medical interns, residents and fellows, 11 CSR 12), is authorized.

§64-9-14. West Virginia Nursing Home Administrators Licensing Board.

The legislative rule filed in the State Register on June 9, 2023, authorized under the authority of §30-25-6 of this code, relating to the West Virginia Nursing Home Administrators Licensing Board (nursing home administrators, 21 CSR 01), is authorized with the following amendment:

On page 13, by adding a new paragraph 6.2.a.3.G., to read as follows:

"6.2.a.3.G Failure to cooperate with OHFLAC or the designated Medicare Beneficiary and Family Centered Care – Quality Improvement Organization is grounds for disciplinary action and further review by the Board."

And,

By renumbering the remaining paragraphs.

§64-9-15. West Virginia Board of Optometry.

(a) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-8-6 of this code, modified by the West Virginia Board of Optometry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 16, 2023, relating to the West Virginia Board of Optometry (rules of the West Virginia Board of Optometry, 14 CSR 01), is authorized with the following amendments:

On page 6, by striking out all of subsection 11.1. and inserting in lieu thereof a new subsection 11.1. to read as follows:

11.1. The Board may issue a temporary permit to practice optometry to an applicant who has graduated from an optometry school accredited by the Accreditation Council of Optometric Education or its successor. The applicant shall also meet the requirements of subsections 11.2-11.3. and pay the temporary permit fee required in the Board's rule, Schedule of Fees, W. Va. Code of State Rules, §14CSR5. The temporary permit may be issued before the applicant passes all sections of the prescribed exam administered by the National Board of Examiners in Optometry, its successor or equivalent. A certified copy of the applicant's accredited optometry school transcript indicating successful completion of the requirements for a doctorate degree in optometry must be submitted to qualify for a non-military temporary permit. The provisions of §14-1-18 of this rule establish alternative temporary permit requirements for members of the military and their spouses.;

On page 6, subdivision 11.2.1. by striking out the words "parts I and II of";

On page 6, subdivision 11.2.1. by striking out the words "registration for the exam National Board exam";

On page 7, by striking out all of subsection 11.3 and renumbering the remaining subsections.

And,

On page 9, subsection 16.1. by striking the words "if the spouse" and inserting in lieu thereof the word "and".

(b) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-8-6 of this code, modified by the West Virginia Board of Optometry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 15, 2023, relating to the West Virginia Board of Optometry (continuing education, 14 CSR 10), is authorized.

(c) The legislative rule filed in the State Register on July 31, 2023, authorized under the authority of §30-8-6 of this code, modified by the West Virginia Board of Optometry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 16, 2023, relating to the West Virginia Board of Optometry (injectable pharmaceutical agents certificate, 14 CSR 11), is authorized with the following amendments:

On page 3, after section 7, by adding a new section 8 to read as follows:

"§14-11-8. Reporting.

8.1. The certificate holder shall notify the primary care physician or other health care provider as identified by the patient receiving the medication by injection and shall document in the patient's record that the patient's primary care provider was notified of an injection given to the patient. The notification shall include the diagnosis, treatment, any adverse effects of the injection, and the expected results of the injection. In no event shall the reporting be construed as permission or approval of an order for treatment by injection.

8.2. If the patient does not have a primary care provider or refuses to provide written permission to report the injection to his or her primary care provider, the certificate holder may provide a written statement to the patient regarding the injections he or she received to give to his or her current primary care provider or any subsequent primary care provider.

8.3. The certificate holder shall maintain a logbook of all injections and submit it to the Board upon request. The logbook shall include:

8.3.a. The patient's initials, age, gender and race;

8.3.b. The purpose of the injection;

8.3.c. The name of the medication administered and the type and location of the injection;

8.3.d. The treatment guidelines which were followed and which must be compliant with the guidelines approved by the Board:

8.3.e. The name and certification or licensure level of any persons working in conjunction with the certificate holder to administer medication through injections; and

8.3.f. How the primary care provider was notified that the patient needed an injection.

8.4. The Board may require a certificate holder to supply the complete medical record for any of the patients listed in the logbook for review and may also request an audit of the certificate holder's full records to ensure compliance with injection certificate requirements.

8.5. If a patient has an adverse reaction to the injection, the certificate holder shall provide the Board with an incident report, within 5 business days, listing the details of the adverse reaction and the measures used to correct that reaction.

8.6. A certificate holder's reports containing patient Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) patient privacy requirements.";

And,

Renumbering the following sections accordingly.

(d) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-8-6 of this code, modified by the West Virginia Board of Optometry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 15, 2023, relating to the West Virginia Board of Optometry (eyelid procedures, 14 CSR 14), is authorized with the following amendments:

On page 1, subsection 3.1, after the word 'adnexa' by adding the following: 'that do not extend beyond the dermal layer of the skin or mucus membranes';

On page 1, after section 3, by adding a new section 4 to read as follows:

"§14-14-4. Exclusions.

An optometrist may not perform:

4.1. Surgery related to removal of the eye from a living human being;

4.2. Surgery requiring full thickness incision or excision of the cornea or sclera other than paracentesis in an emergency situation requiring immediate reduction of the pressure inside the eye;

4.3. Penetrating keratoplasty (corneal transplant) or lamellar keratoplasty;

4.4. Surgery requiring incision of the iris or ciliary body;

4.5. Surgery of the eyelid for eyelid malignancies or mechanical repair of blepharochalasis, ptosis, or tarsorrhaphy;

4.6. Surgery of the bony orbit, including orbital implants;

4.7. Incisional or excisional surgery of the lacrimal system other than lacrimal probing or related procedures; or

4.8. Surgery requiring full thickness conjunctivoplasty."

§64-9-16. West Virginia Board of Osteopathic Medicine.

(a) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-14-14 of this code, modified by the West Virginia Board of Osteopathic Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State

Register on September 15, 2023, relating to the West Virginia Board of Osteopathic Medicine (licensing procedures for osteopathic physicians, 24 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-3E-3 of this code, modified by the West Virginia Board of Osteopathic Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 15, 2023, relating to the West Virginia Board of Osteopathic Medicine (osteopathic physician assistants, 24 CSR 02), is authorized.

§64-9-17. West Virginia Board of Pharmacy.

(a) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-5-7 of this code, modified by the West Virginia Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 26, 2023, relating to the West Virginia Board of Pharmacy (licensure and practice of pharmacy, 15 CSR 01), is authorized with the following amendments:

On page 16, subdivision 12.3.1. by striking out the word "current" and inserting in lieu thereof 2023;

On page 14, subsection 9.4, by striking out 15 CSR 19 and inserting in lieu thereof 15CSR 20;

On page 16, subdivision 12.3.2. by striking out the word "current" and inserting in lieu thereof 2023;

And,

On page 19, subdivision 13.2.2. by striking out the word "current" and inserting in lieu thereof 2023;

(b) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-5-7 of this code, relating to the West Virginia Board of Pharmacy (Board of Pharmacy rules for continuing education for licensure for pharmacists, 15 CSR 03), is authorized.

(c) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-5-7 of this code, relating to the West Virginia Board of Pharmacy (Board of Pharmacy rules for registration of pharmacy technicians, 15 CSR 07), is authorized.

(d) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-5-7 of this code, modified by the West Virginia Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 26, 2023, relating to the West Virginia Board of Pharmacy (immunizations administered by pharmacists, pharmacy interns, and pharmacy technicians, 15 CSR 12), is authorized.

(e) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-5-7 of this code, modified by the West Virginia Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 26, 2023, relating to the West Virginia Board of Pharmacy (Board of Pharmacy rules for centralized prescription processing, 15 CSR 14), is authorized.

(f) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-5-7 of this code, modified by the West Virginia Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 26, 2023, relating to the West Virginia Board of Pharmacy (regulations governing pharmacy permits, 15 CSR 15), is authorized.

(g) The legislative rule filed in the State Register on July 20, 2023, authorized under the authority of §30-5-7 of this code, relating to the West Virginia Board of Pharmacy (Board of Pharmacy rules for the substitution of biological pharmaceuticals, 15 CSR 17), is authorized.

§64-9-18. Board of Professional Surveyors.

The legislative rule filed in the State Register on July 31, 2023, authorized under the authority of §30-13A-6 of this code, modified by the Board of Professional Surveyors to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 3, 2023, relating to the Board of Professional Surveyors (examination and licensing of professional surveyors in West Virginia, 23 CSR 01), is authorized.

§64-9-19. Board of Examiners of Psychologists.

(a) The legislative rule filed in the State Register on July 25, 2023, authorized under the authority of §30-21-6 of this code, modified by the Board of Examiners of Psychologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 15, 2023, relating to the Board of Examiners of Psychologists (disciplinary and complaint procedures for psychologists, 17 CSR 04), is authorized with the following amendments:

On page 2, section 5, subsection 6, after the word "shall" by inserting the following: "first determine whether the conduct alleged in the complaint, if true, would constitute a violation of the rules of the Board or otherwise falls within the jurisdiction of the Board. Upon completing that initial determination, the Board shall";

On page 3, section 5, subsection 6, subdivision 2, after the word "Board" by inserting the words "and dismissed";

On page 3, section 5, subsection 7, by striking out the word "The" and inserting in lieu thereof "If it determines that the complaint falls within its jurisdiction, the";

On page 3, section 5, subsection 12, by striking out the words "unless the complaint is determined to fall within the provisions of sub-division 5.6.2. of this rule" and inserting in lieu thereof the words "initially determined pursuant to sub-section 5.6 of this rule to be within its jurisdiction"; and

On page 4, section 5, subsection 17, after the words "discretion to dismiss a complaint hereunder", by inserting the words "or under subsection 5.6".

(b) The legislative rule filed in the State Register on July 25, 2023, authorized under the authority of §30-21-6 of this code, modified by the Board of Examiners of Psychologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 15, 2023, relating to the Board of Examiners of Psychologists (contested case hearing procedure, 17 CSR 05), is authorized.

§64-9-20. West Virginia Real Estate Commission.

(a) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-40-8 of this code, modified by the West Virginia Real Estate Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 27, 2023, relating to the West Virginia Real Estate Commission (licensing real estate brokers, associate brokers, and salespersons and the conduct of brokerage business, 174 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-40-8 of this code, relating to the West Virginia Real Estate Commission (schedule of fees, 174 CSR 02), is authorized.

(c) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-40-8 of this code, modified by the West Virginia Real Estate Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 27, 2023, relating to the West Virginia Real Estate Commission (requirements for real estate courses, course providers, and instructors, 174 CSR 03), is authorized.

§64-9-21. West Virginia Board of Registered Nurses.

(a) The legislative rule filed in the State Register on August 1, 2023, authorized under the authority of §30-7-4 of this code, modified by the West Virginia Board of Registered Nurses to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 16, 2023, relating to the West Virginia Board of Registered Nurses (policies, standards and criteria for the evaluation, approval and national nursing accreditation of prelicensure nursing education programs, 19 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on July 26, 2023, authorized under the authority of §30-7-4 of this code, modified by the West Virginia Board of Registered Nurses to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 16, 2023, relating to the West Virginia Board of Registered Nurses (requirements for registration and licensure and conduct constituting professional misconduct, 19 CSR 03), is authorized with the following amendments:

On page 2, paragraph 3.1.a.4. by striking out the word "that" and inserting in lieu thereof the word "this";

On page 3, paragraph 3.1.b.5., by striking out the word "state" and inserting in lieu thereof the words "West Virginia";

On page 4, paragraph 3.1.c.4., by striking out the word "state" and inserting in lieu thereof the words "West Virginia";

And,

On page 6, subdivision 6.1.e., by striking out the word "state" and inserting in lieu thereof the words "West Virginia";

(c) The legislative rule filed in the State Register on July 26, 2023, authorized under the authority of §30-7-4 of this code, relating to the West Virginia Board of Registered Nurses (advanced practice registered nurse licensure requirements, 19 CSR 07), is authorized.

(d) The legislative rule filed in the State Register on July 26, 2023, authorized under the authority of §30-7-4 of this code, relating to the West Virginia Board of Registered Nurses (fees for services rendered by the board, 19 CSR 12), is authorized.

§64-9-22. West Virginia Board of Respiratory Care.

The legislative rule filed in the State Register on June 8, 2023, authorized under the authority of §30-34-6a of this code, modified by the West Virginia Board of Respiratory Care to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 28, 2023, relating to the West Virginia Board of Respiratory Care (student temporary permit, 30 CSR 09), is authorized with the following amendment:

On page 2, subsection 3.2, after the word "review" by inserting the words "and approval".

§64-9-23. Secretary of State.

(a) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §3-1A-6 of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 25, 2023, relating to the Secretary of State (guidelines for the use of nicknames and other designations on the ballot, 153 CSR 14), is authorized.

(b) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §3-1A-6 of this code, relating to the Secretary of State (Combined Voter Registration and Driver Licensing Fund, 153 CSR 25), is authorized.

(c) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §3-1A-6 of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 25, 2023, relating to the Secretary of State (minimum standards for election administration, infrastructure, and security minimum standards and reserve funding, 153 CSR 55), is authorized.

§64-9-24. State Treasurer.

(a) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §36-8-28 of this code, modified by the West Virginia State Treasurer to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 2, 2023, relating to the West Virginia State Treasurer (enforcement of the Uniform Unclaimed Property Act, 112 CSR 05), is authorized with the following amendments:

On page 1, line 6, in the name of the Series, following the words "PROPERTY ACT", by adding the words "AND THE UNKNOWN AND UNLOCATABLE INTEREST OWNERS ACT";

And,

On page 7, subsection 15.4, following the words "requirements of section", by striking out the number "10" and inserting in lieu thereof the number "9."

(b) The legislative rule filed in the State Register on July 13, 2023, authorized under the authority of §18-30A-6 of this code, modified by the West Virginia State Treasurer to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 2, 2023, relating to the West Virginia State Treasurer (Jumpstart Savings Program, 112 CSR 20), is authorized.

(Senator Trump in the Chair.)

Senator Smith requested a ruling from the Chair as to whether he should be excused from voting under Rule 43 of the Rules of the Senate.

The Chair replied that any impact on Senator Smith would be as a member of a class of persons and that he would be required to vote.

Following discussion,

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

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

The bill (Eng. Com. Sub. for H. B. 4110), as amended, was then ordered to third reading.

Eng. House Bill 4292, Providing for enhanced damages for non-payment of royalties due from oil, natural gas, or natural gas liquids production.

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

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

Eng. House Bill 4297, Law Enforcement Officers Safety Act.

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

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

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

ARTICLE 3. DIVISION OF CORRECTIONS AND REHABILITATION.

§15A-3-10. Law-enforcement powers of employees; authority to carry firearms.

(a) Other than as outlined in this section, a correctional officer employed by the division is not a law-enforcement officer as that term is defined in §30-29-1 of this code.

(b) The commissioner is a law-enforcement official, and ~~has the authority to use~~ may, and permit and allow or disallow his or her designated employees to use, publicly provided carriage to travel from their residences to their workplace and return: *Provided*, That the usage is subject

to the supervision of the commissioner and is directly connected with and required by the nature and in the performance of the official's or designated employee's duties and responsibilities.

(c) All employees of the division are responsible for enforcing rules and laws necessary for the control and management of correctional units and the maintenance of public safety that is within the scope of responsibilities of the division.

(d) Persons employed by the Division of Corrections and Rehabilitation as correctional officers ~~are authorized and empowered to~~ may make arrests of persons already charged with a violation of law who surrender themselves to the correctional officer, ~~to~~ arrest persons already in the custody of the division for violations of law occurring in the officer's presence, ~~to~~ detain or arrest persons for violations of state law committed on the property of any facility under the jurisdiction of the commissioner, and ~~to~~ conduct investigations, pursue, and apprehend escapees from the custody of a facility of the division.

(e) The commissioner may designate correctional employees as correctional peace officers ~~who have the authority~~ may:

(1) ~~To detain~~ Detain persons for violations of state law committed on the property of any state correctional institution;

(2) ~~To conduct~~ Conduct investigations regarding criminal activity occurring within a correctional facility;

(3) ~~To execute~~ Execute criminal process or other process in furtherance of these duties; and

(4) ~~To apply~~ Apply for, obtain, and execute search warrants necessary for the completion of ~~his or her~~ their duties and responsibilities.

(f) The Corrections Special Operations Team is continued and consists of the Corrections Emergency Response Team, the K9 unit, and the Crisis Negotiations team created under the former Division of Corrections. The Corrections Special Operations Team serves as the first responder necessary for the protection of life, liberty, and property. It has limited law-enforcement authority regarding matters occurring at jails, correctional centers, and juvenile centers, and arrest powers to apprehend escapees, absconders, and in all matters arising on the grounds of a facility under the care and control of the commissioner: *Provided*, That at any time the Corrections Special Operations Team is apprehending an escapee or an absconder outside the confinement of the facility grounds, it does so with the assistance and cooperation of local law enforcement or the West Virginia State Police.

(g) Notwithstanding any provision of this code to the contrary, the commissioner may issue a certificate authorizing any correctional employee who has successfully completed the division's training program for firearms certification to carry a firearm in the performance of his or her official duties. The training program shall be approved by the commissioner and be equivalent to the training requirements applicable to deputy sheriffs for the use and handling of firearms. Any correctional employee authorized to do so by the commissioner may carry division-issued firearms while in the performance of his or her official duties, which shall include travel to and from work sites. To maintain certification, a correctional employee must successfully complete an annual firearms qualification course equivalent to that required of certified law-enforcement officers as established by the law enforcement professional standards program. The certificate shall be on a form prescribed by the commissioner and shall bear his or her official signature.

(h) In recognition of the duties of their employment supervising the confinement and transportation of inmates, and their arrest powers referenced in this section which constitute law enforcement, correctional officers with the power to arrest and who have been authorized to carry firearms by the Commissioner are determined to be qualified law-enforcement officers as that term is used in 18 U.S.C. § 926B.

(i) Any state designated correctional officer may carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U.S.C. § 926B, if the following criteria are met:

(1) The Commissioner of Corrections has a written policy authorizing correctional officers to carry a concealed firearm for self-defense purposes;

(2) There is in place a requirement that the designated correctional officers annually qualify in the use of a firearm with standards for qualification which are equal to, or exceed, those required of sheriff's deputies by the Law-Enforcement Professional Standards Program;

(3) The Commissioner issues a photographic identification and certification card which identify the designated correctional officers as qualified law-enforcement employees pursuant to the provisions of this subsection.

(j) Any policy instituted pursuant to this section shall include provisions which:

(1) Preclude or remove a person from participation in the concealed firearm program;

(2) Preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm and;

(3) Prohibit persons from carrying a firearm pursuant to the provisions of this subsection while in an impaired state as defined in §17C-5-2 of this code.

(k) Any designated correctional officer who participates in a program authorized by the provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(l) It is the intent of the Legislature in enacting the amendments to this section during the 2024 regular session of the Legislature to authorize designated correctional officers wishing to do so to meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. § 926B.

(m) The privileges authorized by the amendments to this section enacted during the 2024 regular session of the Legislature are wholly within the discretion of the Commissioner.

The bill (Eng. H. B. 4297), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4350, Relating to appointment of candidates after filing period.

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

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

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

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.**§3-5-11. Withdrawals; filling vacancies in candidacy; publication.**

a) A candidate who has filed a certificate of announcement and wishes to withdraw and decline to stand as a candidate for the office shall file a signed and notarized statement of withdrawal on a form provided by the Secretary of State with the same officer with whom the certificate of announcement was filed. If the notarized statement of withdrawal is received by the proper officer by the deadlines set forth in subsection (b) of this section, the candidate's withdrawal is final and his or her name shall not be certified as a candidate nor printed on any ballot. If a candidate files a notarized statement of withdrawal after the deadlines set forth in subsection (b) of this section, the candidate shall not be withdrawn and the candidate's name shall remain on the ballot.

(b) Deadlines for withdrawing as a candidate:

(1) For primary or special primary elections or nonpartisan elections held in conjunction with a primary election: The notarized statement of withdrawal must be received by the same officer with whom the certificate of announcement was filed by the close of business of that officer not later than the third Tuesday following the close of the candidate filing period.

(2) For general or special general elections or nonpartisan elections held in conjunction with a general election: The notarized statement of withdrawal must be received by the same officer with whom the certificate of announcement was filed by the close of business of that officer not later than ~~eighty-four~~ 84 days before the general election.

(c) Upon request of the candidate's family, the board of ballot commissioners may remove the name of a candidate who dies before the ballots are printed. If a candidate dies after the ballots are printed but before the election, the clerk of the county commission shall give a written notice which shall be posted with the sample ballot at each precinct with the county to the following effect: "To the voter: (name) of (residence), a candidate for (office) is deceased."

(d) If after the time is closed for announcing as a candidate there is a vacancy on the ballot caused by the failure of any person of a particular party to file for each available seat of each available office, ~~the executive committee of the party for the political division within which such candidate was to be voted for, or its chair if the committee fails to act, may fill the vacancy and certify the candidate named to the appropriate filing officer: *Provided*, That for a delegate district or senatorial district situated entirely within a single county, the county executive committee, or its chairperson if the committee fails to act, may fill the vacancy and certify the candidate named to the appropriate filing officer. Certification of the appointment by the executive committee or its chair, the candidate's certificate of announcement, and the filing fee must be received by the appropriate filing officer as follows: For an appointment by an executive committee, no later than the second Friday following the close of filing, for an appointment by its chair, no later than the third Tuesday following the close of filing: *Provided, however*, That any candidate appointed to an intra-county delegate or senatorial district by a county executive committee for that district pursuant to the process and by the deadline provided in this subsection shall not be refused certification for placement on the 2022 primary election ballot for that reason. A candidate appointed to fill a vacancy on the ballot under this subsection shall have his or her name printed on the primary ballot for that party. that vacancy may not be filled: *Provided*, That if no person in any party has filed to run for an available seat or available office by the close of the candidate filing period, the relevant party executive committee may fill the vacancy and submit the name to~~

the appropriate filing officer no later than the third Tuesday following the close of the filing period: *Provided, however,* That if the executive committee fails to make an appointment within the time required, the chairperson of the executive committee may make the appointment not later than two days following the deadline for the executive committee; *Provided further,* That for a delegate district or senatorial district situated entirely within a single county, the county executive committee, or its chairperson if the committee fails to act, may fill the vacancy and certify the candidate named to the appropriate filing officer.

(e) No other vacancy shall be filled after the date of the primary election, except as provided in §3-5-19 of this code.

~~(e) The amendments to this section enacted by the Legislature during the 2022 Regular Session shall be retrospective to January 30, 2022.~~

§3-5-19. Vacancies in nominations; how filled; fees.

(a) If any vacancy occurs in the party nomination of candidates for office nominated at the primary election or by appointment under the provisions of section ~~eleven~~ 11 of this article, the vacancies may be filled, subject to the following requirements and limitations:

(1) Each appointment made under this section shall be made by the executive committee of the political party for the political division in which the vacancy occurs: *Provided,* That if the executive committee holds a duly called meeting in accordance with §3-1-9 of this code but fails to make an appointment or fails to certify the appointment of the candidate to the proper filing officer within the time required, the chairperson of the executive committee may make the appointment not later than two days following the deadline for the executive committee: *Provided, however,* That for a delegate district or senatorial district situated entirely within a single county, the county executive committee, or its chairperson if the committee fails to act, may fill the vacancy and certify the candidate named to the appropriate filing officer.

(2) Each appointment made under this section is complete only upon the receipt by the proper filing officer of the certificate of appointment by the executive committee, or its chairperson, as the case may be, the certificate of announcement of the candidate as prescribed in section seven of this article and, except for appointments made under subdivision (4), (5), (6) or (7) of this subsection, the filing fee or waiver of fee as prescribed in section eight or eight-a of this article. The proper filing officer is the officer with whom the original certificate of announcement is regularly filed for that office.

(3) If a vacancy in nomination will be caused by the failure of a candidate to file for an office, or by withdrawal of a candidate, ~~no later than the third Tuesday following the close of candidate filing pursuant to the provisions of section eleven of this article, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than 30 days after the last day to file a certificate of announcement pursuant to section seven of this article: *Provided,* That in no case shall any such vacancy be filled after the date of the primary election.~~ the vacancy may not be filled.

(4) If a vacancy in nomination is caused by the disqualification of a candidate and the vacancy occurs not later than 84 days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer not later than 78 days before the general election. A candidate may be determined disqualified if a written request is made by an individual with information to show a candidate's ineligibility to the State Election Commission no

later than 84 days before the general election explaining grounds why a candidate is not eligible to be placed on the general election ballot or not eligible to hold the office, if elected. The State Election Commission shall review the reasons for the request. If the commission finds the circumstances warrant the disqualification of the candidate, the commission shall authorize appointment by the executive committee to fill the vacancy. Upon receipt of the authorization, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than 78 days before the general election.

(5) If a vacancy in nomination is caused by the incapacity of the candidate and if the vacancy occurs not later than 84 days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than 78 days before the general election.

~~(6) If a vacancy in nomination is caused by the timely filing of a notarized statement of withdrawal, according to section eleven of this article, of a candidate whose name would otherwise appear on the general election ballot, a replacement on the general election ballot may be appointed by the executive committee and certified to the proper filing officer no later than 78 days before the general election.~~

~~(7)~~(6) If a vacancy in nomination is caused by the death of the candidate occurring no later than 25 days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than 21 days following the date of death or no later than 22 days before the general election, whichever date occurs first.

(b) Except as otherwise provided in §3-10-1 *et seq.* of this code, if any vacancy occurs in a partisan office or position other than political party executive committee, which creates an unexpired term for a position which would not otherwise appear on the ballot in the general election, and the vacancy occurs after the close of candidate filing for the primary election but not later than 84 days before the general election, a nominee of each political party may be appointed by the executive committee and certified to the proper filing officer no later than 78 days before the general election. Appointments shall be filed in the same manner as provided in subsection (a) of this section, except that the filing fee shall be paid before the appointment is complete.

(c) When a vacancy occurs in the board of education after the close of candidate filing for the primary election but not later than 84 days before the general election, a special candidate filing period shall be established. Candidates seeking election to any unexpired term for board of education shall file a certificate of announcement and pay the filing fee to the clerk of the county commission no earlier than the first Monday in August and no later than 77 days before the general election.

~~(d) The amendments to this section enacted by the Legislature during the 2022 Regular Session shall be retrospective to January 30, 2022.~~

The bill (Eng. Com. Sub. for H. B. 4350), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4399, Creating the equitable right to expungement.

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

At the request of Senator Weld, as vice chair of the Committee on the Judiciary, and by unanimous consent, the unreported Judiciary committee amendment to the bill was withdrawn.

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

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

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-22. Pretrial diversion agreements; conditions; drug court programs.

(a) A prosecuting attorney of any county of this state or a person acting as a special prosecutor may enter into a pretrial diversion agreement with a person charged with an offense against the State of West Virginia, when he or she considers it to be in the interests of justice. The agreement is to be in writing and is to be executed in the presence of the person's attorney, unless the person has executed a waiver of counsel.

(b) Any agreement entered into pursuant to the provisions of subsection (a) of this section may not exceed 24 months in duration. The duration of the agreement must be specified in the agreement. The terms of any agreement entered into pursuant to the provisions of this section may include conditions similar to those set forth in §62-12-9 of this code relating to conditions of probation. The agreement may require supervision by a probation officer of the circuit court, with the consent of the court. An agreement entered into pursuant to this section must include a provision that the applicable statute of limitations be tolled for the period of the agreement.

(c) A person who has entered into an agreement for pretrial diversion with a prosecuting attorney and who has successfully complied with the terms of the agreement is not subject to prosecution for the offense or offenses described in the agreement or for the underlying conduct or transaction constituting the offense or offenses described in the agreement, unless the agreement includes a provision that upon compliance the person agrees to plead guilty or nolo contendere to a specific related offense, with or without a specific sentencing recommendation by the prosecuting attorney.

(d) No person charged with a violation of the provisions of §17C-5-2 of this code may participate in a pretrial diversion program: *Provided*, That a court may defer proceedings in accordance with §17C-5-2b of this code.

(e) No person is eligible for pretrial diversion programs if charged with:

(1) A felony crime of violence against the person where the alleged victim is a family or household member as defined in ~~§48-27-203~~ §48-27-204 of this code;

(2) A violation of §61-8-12 of this code or a felony violation of the provisions of §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, and §61-8D-1 *et seq.* of this code;

(3) A violation of §61-2-9a(a) of this code;

(4) A violation of §61-2-9d of this code;

(5) A violation of § 61-2-28 of this code; or

(6) A violation of §61-2-9 of this code where the alleged victim is a family or household member as defined in ~~§48-27-203~~ §48-27-204 of this code.

§61-11-22a. Deferred adjudication.

(a) Upon the entry of a guilty plea to a felony or misdemeanor before a circuit or magistrate court of this state entered in compliance with the provisions of Rule 11 of the West Virginia Rules of Criminal Procedure or Rule 10 of the West Virginia Rules of Criminal Procedure for Magistrate Courts and applicable judicial decisions, the court may, upon motion, defer acceptance of the guilty plea and defer further adjudication thereon and release the defendant upon such terms and conditions as the court deems just and necessary. Terms and conditions may include, but are not limited to, periods of incarceration, drug and alcohol treatment, counseling and participation in programs offered under §62-11A-1 *et seq.*, §62-11B-1 *et seq.*, and §62-11C-1 *et seq.* of this code.

(b) If the offense to which the plea of guilty is entered is a felony, the circuit court may defer adjudication for a period not to exceed three years. If the offense to which the plea of guilty is entered is a misdemeanor, the court may defer adjudication for a period not to exceed two years.

(c) Unless otherwise specified by this section, a person is ineligible for a deferred adjudication program if he or she is charged with;

(1) A felony crime of violence against the person where the alleged victim is a family or household member as defined in ~~§48-27-203~~ §48-27-204 of this code;

(2) A violation of §61-8-12 of this code or a felony violation of the provisions of §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, and §61-8D-1 *et seq.* of this code;

(3) A violation of §61-2-9a(a) of this code;

(4) A violation of §61-2-9d of this code;

(5) A violation of §61-2-28 prosecuted under the provisions of subsections (c) or (d) of that section; or

(6) A violation of §61-2-9(a) of this code, or a violation of §61-2-9(b) or §61-2-9(c) of this code prosecuted under the provisions of subsection (d) of that section, where the alleged victim is a family or household member as defined in ~~§48-27-203~~ §48-27-204 of this code.

(7) A violation of §61-2-9(b) or §61-2-9(c) of this code or §61-2-28(a) or §61-2-28(b) of this code where a weapon was used in the commission of the crime, the defendant has a prior conviction of any of the offenses listed in subsection (c) of this section, the defendant has a prior felony conviction, or the defendant has previously entered into a prior pretrial diversion or deferred adjudication of crimes where the alleged victim is a family or household member as defined in §48-27-203 of this code.

(d) A person charged under §61-2-9a, §61-2-9d, or §61-2-9(a) of this code who has not previously been convicted of any of the offenses set forth in subsection (c) of this section, who has no prior felony conviction, and who has not previously entered into a prior pretrial diversion or deferred adjudication of crimes where the alleged victim is a family or household member as defined in ~~§48-27-203~~ §48-27-204 of this code, is eligible to participate in a deferred adjudication program: *Provided*, That the person is not eligible for dismissal upon successful completion of the deferred period.

(e)(1) A person charged with a first offense violation of §61-2-28(a) or §61-2-28(b) of this code or a violation of §61-2-9(b) or §61-2-9(c) of this code where the alleged victim is a family or household member as defined in ~~§48-27-203~~ §48-27-204 is eligible for deferred adjudication if agreed to by the state and the defendant: *Provided*, That, for purposes of this section, "first offense violation" means the person would not, due to any prior charges or convictions, be subject to the enhancement provisions set forth in §61-2-9(d) or §61-2-28(c) or §61-2-28(d);

(2) In addition to terms and conditions authorized in subsection (a) of this section, a person participating in a deferred adjudication program pursuant to this subsection may be required to participate in compliance hearings and batterer intervention programs licensed under §48-26-402 of this code;

(3) Notwithstanding the provisions of subsection (b) of this section, a deferral under this subsection shall be for a period of not less than 18 months nor more than three years; and

(4) A person may not participate in more than one deferred adjudication pursuant to this subsection.

(f) If the defendant complies with the court-imposed terms and conditions he or she shall be permitted to withdraw his or her plea of guilty and the matter dismissed or, as may be agreed upon by the court and the parties, enter a plea of guilty or no contest to a lesser offense.

(g) In the event the defendant is alleged to have violated the terms and conditions imposed upon him or her by the court during the period of deferral the prosecuting attorney may file a motion to accept the defendant's plea of guilty and, following notice, a hearing shall be held on the matter.

(h) In the event the court determines that there is reasonable cause to believe that the defendant violated the terms and conditions imposed at the time the plea was entered, the court may accept the defendant's plea to the original offense and impose a sentence in the court's discretion in accordance with the statutory penalty of the offense to which the plea of guilty was entered or impose such other terms and conditions as the court deems appropriate.

(i) The procedures set forth in this section are separate and distinct from that set forth in Rule 11(a)(2) of the West Virginia Rules of Criminal Procedure.

§61-11-25. Expungement of criminal records for those found not guilty of crimes or against whom charges have been dismissed; expungement of criminal records for those that have successfully completed all requirements of a deferred adjudication or pretrial diversion; exceptions.

(a) Any person who has been charged with a criminal offense under the laws of this state and who has been found not guilty of the offense, or against whom charges have been dismissed, and not in exchange for a guilty plea to another offense resulting in a conviction, may file a civil petition in the circuit court in which the charges were filed to expunge all records relating to the arrest, charge, or other matters arising out of the arrest or charge. Any person whose charges have been dismissed following a full and successful completion of a pre-trial diversion pursuant to §61-11-22 of this code, or whose charges have been dismissed following the full and successful completion of a deferred adjudication pursuant to §61-11-22a of this code, may file a civil petition in the circuit court in which the dismissed charges were filed to expunge all records relating to the arrest, charges, or other matters arising out of the arrest or charges. *Provided*, That no record in

the Division of Motor Vehicles may be expunged by virtue of any order of expungement entered pursuant to §17C-5-2b of this code nor may any charges ultimately dismissed by way of full and successful completion of any deferred adjudication be expunged for violations of §61-2-28(a), §61-2-28(b), §61-2-9(a), §61-2-9a, §61-2-9(b), or §61-2-9(c) of this code where the alleged victim is a family or household member as defined in §48-27-204 of this code: *Provided, further,* That any person who has previously been convicted of a felony may not file a petition for expungement pursuant to this section. The term records as used in this section includes, but is not limited to, arrest records, fingerprints, photographs, index references, or other data whether in documentary or electronic form, relating to the arrest, charge, or other matters arising out of the arrest or charge. Criminal investigation reports and all records relating to offenses subject to the provisions of §15-12-1 *et seq.* of this code because the person was found not guilty by reason of mental illness, ~~mental retardation~~, intellectual disability, or addiction are exempt from the provisions of this section.

(b) The expungement petition shall be filed not sooner than 60 days following the order of acquittal or dismissal by the court. Any court entering an order of acquittal or dismissal shall inform the person who has been found not guilty or against whom charges have been dismissed of his or her rights to file a petition for expungement pursuant to this section.

(c) Following the filing of the petition, the court may set a date for a hearing. If the court does so, it shall notify the prosecuting attorney and the arresting agency of the petition and provide an opportunity for a response to the expungement petition.

(d) If the court finds that there are no current charges or proceedings pending relating to the matter for which the expungement is sought, the court may grant the petition and order the sealing of all records in the custody of the court and expungement of any records in the custody of any other agency or official including law enforcement records. Every agency with records relating to the arrest, charge, or other matters arising out of the arrest or charge, that is ordered to expunge records, shall certify to the court within 60 days of the entry of the expungement order, that the required expungement has been completed. All orders enforcing the expungement procedure shall also be sealed.

(e) Upon expungement, the proceedings in the matter shall be ~~deemed~~ considered never to have occurred. The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record is expunged shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application.

(f) Inspection of the sealed records in the court's possession may thereafter be permitted by the court only upon a motion by the person who is the subject of the records or upon a petition filed by a prosecuting attorney that inspection and possible use of the records in question ~~are~~ is necessary to the investigation or prosecution of a crime in this state or another jurisdiction. If the court finds that the interests of justice will be served by granting the petition, it may be granted.

(g) There shall be no filing fees charged or costs assessed for filing an action pursuant to this section.

The bill (Eng. Com. Sub. for H. B. 4399), as amended, was then ordered to third reading.

Eng. House Bill 4700, Banning certain persons from sport wagering activities.

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

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

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

ARTICLE 22D. WEST VIRGINIA LOTTERY SPORTS WAGERING ACT.

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

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

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

(c) The commission ~~has the authority~~ may, pursuant to §29A-1-1, *et seq.* and §29A-3-1, *et seq.* of this code, ~~to promulgate or otherwise enact any legislative, interpretive, and procedural rules the commission considers necessary for the successful implementation, administration, and enforcement of this article. Rules proposed by the commission before December 1, 2018, may be promulgated as emergency rules pursuant to §29A-3-15 of this code.~~

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

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

(d) The commission shall propose a rule for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code that enumerates the reasons for which patrons of sports gaming may be banned from engaging in sports betting. The list of reasons for which patrons may be banned shall include, but not be limited to:

(1) A prior conviction under §61-2-15a of this code;

(2) A prior violation of an order of the commission; or

(3) If the commission determines that the person poses a threat to the safety of patrons or participants in a sporting event or determines that the person has engaged in a pattern of conduct of harassing a sports official, coach, or any participants.

(e) The rule shall also set forth the procedure by which complaints against patrons are lodged with and investigated by the commission. The commission shall notify a patron of the commission's intent to ban the patron from sports betting, and the patron is entitled to a hearing before the commission pursuant to §29A-5-1 et seq. of this code.

~~(d) (f) The commission shall determine the eligibility of a person to hold or continue to hold a license, shall issue all licenses, and shall maintain a record of all licenses issued under this article. The commission may accept applications, evaluate qualifications of applicants, and undertake initial review of licenses prior to promulgation of emergency rules upon the effective date of this article.~~

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

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

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

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

§29-22D-15. Authorization of sports wagering in this state; requirements.

(a) An operator shall accept wagers on sports events and other events authorized under this article from persons physically present in a licensed gaming facility where authorized sports wagering occurs, or from persons not physically present who wager by means of electronic devices. A person placing a wager shall be at least 21 years of age.

(b) An operator may accept wagers from an individual physically located within this state using a mobile or other digital platform or a sports wagering device, approved by the commission, through the patron's sports wagering account.

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

~~(d) The Until such time as a rule proposed by the commission is approved for promulgation by the Legislature, the commission or operator may ban any person from entering a gaming area of a gaming facility conducting sports wagering or the grounds of a gaming facility licensed under this article or from participating in the play or operation of any West Virginia Lottery sports~~

wagering. A log of all excluded players shall be kept by the commission and each licensee, and no player on the commission's exclusion list or the licensed operator's exclusion list shall wager on any West Virginia Lottery sports wagering under this article.

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

(f) The commission shall, when a federal law is enacted or repealed or when a federal court decision is issued that permits a state to regulate sports wagering, publish a notice in the State Register notifying the public of the enactment or repeal of federal law or of the issuance of ~~such~~ the court decision. The commission ~~shall not be authorized to~~ may not conduct sports wagering in this state until the notice prescribed in this subsection is published in the State Register.

(g) ~~No~~ A licensed gaming facility employee may not place a wager on any sports wagering at the employer's facility or through any other mobile application or digital platform of ~~their~~ his or her employer.

(h) ~~No~~ A commission employee may not knowingly wager or be paid any prize from any wager placed at any licensed gaming facility with West Virginia Lottery sports wagering within this state or at any facility outside this jurisdiction that is directly or indirectly owned or operated by a sports wagering licensee.

The bill (Eng. H. B. 4700), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4753, Relating to providing health insurance coverage concerning biomarker testing.

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 amendments pending and the right for further amendments to be considered on that reading.

Eng. Com. Sub. for House Bill 4786, Delivery Network Company (DNC) Insurance Model Act.

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

At the request of Senator Azinger, as chair of the Committee on Banking and Insurance, and by unanimous consent, the unreported Banking and Insurance committee amendment to the bill was withdrawn.

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

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

ARTICLE 63. DELIVERY NETWORK COMPANY INSURANCE ACT.

§33-63-1. Short title and definitions.

(a) This article may be cited as the "Delivery Network Company Insurance Act."

(b) As used in this article:

(1) "Delivery network company" or "DNC" means a corporation, partnership, sole proprietorship, or other entity that operates in West Virginia and uses a digital network to connect a delivery network company customer to a delivery network driver to provide delivery services. A DNC shall not be deemed to control, direct, or manage the personal vehicles or delivery network drivers that connect to its digital network, except where agreed to by written contract.

(2) "Delivery network company customer" or "customer" means a person who uses a digital network and orders the delivery of goods and prompts a delivery network driver to deliver such goods at the direction of the customer.

(3) "Delivery network driver" or "driver" means a person who provides delivery services through a DNC's digital network using a personal vehicle. For purposes of this Act, a driver shall be deemed to be an independent contractor and not an employee of the DNC, unless otherwise agreed in writing.

(4) "Delivery available period" means the period when a delivery network driver:

(A) Is operating a personal vehicle;

(B) Has logged on to a digital network and is eligible to receive requests to provide delivery services from a delivery network company, and

(C) Is not providing delivery services or operating in the delivery service period.

(5) "Delivery services" means the fulfillment of delivery requests made by a customer through a digital network, including the pickup of any goods and the delivery of the goods by a delivery network driver. Delivery services may include a series of deliveries to different customers, or to different locations at the direction of a customer.

(6) "Delivery service period" means the period beginning when a driver starts operating a personal vehicle to pick up goods for a delivery or series of deliveries as documented via a digital network controlled by a delivery network company, continuing while the driver transports the requested deliveries, and ending upon delivery of the requested goods to:

(A) The customer or the last customer in a series of deliveries;

(B) A location designated by the customer, or the last location so designated in a series of deliveries; or

(C) The location designated by the delivery network company, including for purposes of returning the goods.

(7) "Digital network" means any online-enabled application, software, website, or system offered or utilized by a delivery network company that enables deliveries with delivery network drivers.

(8) "Personal vehicle" means a vehicle as defined in §17C-1-2 of this code that is:

(A) Used by a delivery network driver to provide delivery services via a digital network; and

(B) Owned, leased, or otherwise authorized for use by the delivery network driver.

§33-63-2. Interaction with other law.

Nothing in this article limits the scope of federal or state law regarding delivery or transport of goods. Deliveries made under this article that are subject to such other law must also comply with the requirements of that law. In the event of a conflict between this article and another law dealing with the delivery or transport of goods, the other law prevails.

§33-63-3. Insurance requirements.

(a) A delivery network company shall ensure that during the delivery available period, if it applies, and during the delivery service period, primary motor vehicle liability insurance is in place that recognizes that the driver is a delivery network company driver or that does not exclude coverage for use of a personal vehicle to provide deliveries.

(b) During the delivery service period and delivery available period, the delivery network driver, delivery network company, or any combination of the two shall maintain insurance that insures the driver for liability to third parties of not less than \$50,000 for damages arising out of bodily injury sustained by any one person in an accident, of not less than \$100,000 for damages arising out of bodily injury sustained by all persons injured in an accident, and of not less than \$25,000 for all damages arising out of damage to or destruction of property in an accident: *Provided*, That no provision in this article relieves the DNC and driver from the requirements of §17A-1-1 *et seq.* and §17D-1-1 *et seq.* of this code and from the uninsured motorists' coverage requirements of §33-6-31 of this code.

(c) If the insurance coverage maintained by a delivery network driver pursuant to subsections (a) and (b) of this section has lapsed or does not provide the required coverage, insurance maintained by the delivery network company shall provide the coverage required by this section beginning with the first dollar of a claim and the insurance maintained by the delivery network company shall have the duty to defend the claim.

(d) Coverage under a motor vehicle insurance policy maintained by the delivery network company shall not be dependent upon another motor vehicle liability insurer first denying a claim, nor shall another motor vehicle liability insurance policy be required to first deny a claim.

(e) Insurance coverage required by this section may be obtained from an insurance company duly licensed to transact business under the insurance laws of this state or by an eligible surplus lines broker under §33-12C-1 *et seq.* of this code.

(f) The coverage required pursuant to this section shall be deemed to meet the financial responsibility law of this state.

(g) A delivery network driver shall carry proof of insurance required pursuant to this section at all times while using a personal vehicle in connection with a digital network. In the event of an accident, a delivery network driver shall, upon request, provide insurance coverage information to the directly interested parties, motor vehicle insurers, and investigating law enforcement officers. The insurance coverage information may be displayed or provided in either paper or electronic form as provided in §17D-2A-4 of this code. A delivery network driver shall, upon request, disclose to the directly interested parties, motor vehicle insurers, and investigating law

enforcement officers whether the driver was operating during the delivery available period or the delivery service period at the time of the accident.

(h) In a claims coverage investigation, a delivery network company or its insurer shall cooperate with all insurers that are involved in the claims coverage investigation to facilitate the exchange of information and shall immediately provide upon request by directly involved parties or any insurer the precise times that a delivery network driver began and ended the delivery available period, the delivery service period, or both periods on the delivery network company's digital network in the 12-hour period immediately preceding the accident and in the 12-hour period immediately following the accident. Insurers potentially providing the coverage required in this section shall disclose, upon request by any other such insurer involved in the particular claim, the applicable coverages, exclusions, and limits provided under any motor vehicle insurance maintained in order to satisfy the requirements of this section.

(i) The insurer or insurers of a delivery network company providing coverage under subsections (a) and (b) of this section shall assume primary liability for a claim when a dispute exists as to when the delivery available period, the delivery service period, or both periods began or ended and the delivery network company does not have available, did not retain, or fails to provide the information required by subsection (h) of this section.

§33-63-4. Disclosures to delivery network drivers.

A delivery network company shall not permit a delivery network driver to accept a request for a delivery or engage in delivery services on a DNC's digital network until the DNC discloses in writing to the driver:

(1) The insurance coverage, including the types of coverage and the limits for each coverage, that the delivery network company provides while the driver uses a personal vehicle in connection with a delivery network company's digital network; and

(2) That the delivery network driver's own motor vehicle insurance policy might not provide any coverage during the delivery available period, if it applies, or the delivery service period.

§33-63-5. Exclusions in motor vehicle liability insurance policies.

(a) An authorized insurer that writes motor vehicle liability insurance in this state may exclude any and all coverage and the duty to defend or indemnify for any injury or loss that occurs during the delivery available period and the delivery service period, including, but not limited to:

(1) Liability coverage for bodily injury and property damage;

(2) Uninsured and underinsured motorist coverage pursuant to §33-6-31 of this code;

(3) Medical payments coverage;

(4) Comprehensive physical damage coverage; and

(5) Collision physical damage coverage.

(b) Nothing in this article invalidates or limits an exclusion contained in a motor vehicle liability insurance policy, including any insurance policy in use or approved for use that excludes coverage for motor vehicles used for delivery or for any business use.

(c) Nothing in this article invalidates, limits, or restricts an insurer's ability under existing law to underwrite any insurance policy. Nothing in this article invalidates, limits, or restricts an insurer's ability under existing law to cancel and non-renew policies.

(d) A motor vehicle liability insurer that defends or indemnifies a claim against a delivery network driver that is excluded under the terms of its policy shall have the right to seek recovery against the insurer providing coverage under §33-63-3(a) and §33-63-3(b) of this code if the claim:

(1) Occurs during the delivery available period or the delivery service period; and

(2) Is excluded under the terms of its policy.

§33-63-6. Effective date.

This article shall take effect on July 1, 2025.

The bill (Eng. Com. Sub. for H. B. 4786), as amended, was then ordered to third reading.

Eng. House Bill 4793, Relating to distilled liquor.

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

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

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

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-10. Unlawful operation of plant manufacturing distilled spirits; exception for personal consumption.

(a) A person who unlawfully owns, operates, or maintains a plant for the manufacture of distilled spirits, or aids or abets in the operation or maintenance of such a plant shall be guilty of a felony and, upon conviction shall be fined not less than \$100 nor more than \$1,000 or confined in the penitentiary not less than one nor more than five years.

(b) Notwithstanding the restriction of subsection (a) of this section, a person at least 21 years of age may manufacture alcoholic liquor for personal or family use. The aggregate amount of alcoholic liquor manufactured per household may not exceed 10 gallons per calendar year, if there are two or more persons over the age of 21 years, or 5 gallons per calendar year, if there is only one person over the age of 21 years in the household. Any alcoholic liquor manufactured under this section may not be sold or offered for sale.

The bill (Eng. H. B. 4793), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4837, Clarifying the duty of banks to retain and procure records.

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

At the request of Senator Azinger, as chair of the Committee on Banking and Insurance, and by unanimous consent, the unreported Banking and Insurance committee amendment to the bill was withdrawn.

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 31A. BANKS AND BANKING.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-35. Reproduction of checks and other records; admissibility of copies in evidence; disposition of originals; record production generally.

(a) Any bank may cause to be copied or reproduced, by any photographic, photostatic, microphotographic or by similar miniature photographic process or by nonerasable optical image disks (commonly referred to as compact disks) or by other records retention technology approved by rule of the Commissioner of Banking, all or any number of its checks and all or any part of its documents, books, records, correspondence and all other instruments, papers and writings in any manner relating to the operation of its business, other than its notes, bonds, mortgages and other securities and investments, and may substitute such copies or reproductions either in positive or negative form for the originals thereof. Thereafter, such copy or reproduction in the form of a positive print thereof shall be deemed for all purposes to be an original counterpart of and shall have the same force and effect as the original thereof and shall be admissible in evidence in all courts and administrative agencies in this state, to the same extent and for the same purposes as the original thereof, and the banking institution may destroy or otherwise dispose of the original, but every banking institution shall retain either the originals or such copies or reproductions of its records of final entry, including, without limiting the generality of the foregoing, cards used under the card system and deposit tickets for deposits made, for a period of at least five years from the date of the last entry on such books or the date of making of such deposit tickets and card records or, in the case of a banking institution exercising trust or fiduciary powers, accounting and legal records shall be retained until the expiration of five years from the date of termination of any trust or fiduciary relationship relating to such accounting and legal records by a final accounting, release, court decree or other proper means of termination and supporting documentation for fiduciary account transactions shall be retained for five years from the dates of entry of such transactions.

All circumstances surrounding the making or issuance of such checks, documents, books, records, correspondence and other instruments, papers or writings, or the photographic, photostatic or microphotographic copies or optical disks or other permissible reproductions thereof, when the same are offered in evidence, may be shown to affect the weight but not the admissibility thereof.

Any device used to copy or reproduce such documents and records shall be one which correctly and accurately reproduces the original thereof in all details and any disk or film used therein shall be of durable material.

(b) When a subpoena duces tecum is served upon a custodian of records of any bank in an action or proceeding in which the bank is neither a party nor the place where any cause of action is alleged to have arisen and the subpoena requires the production of all or any part of the records of the bank relating to the conduct of its business with its customers, the bank shall be entitled to a search fee not to exceed \$10, together with reimbursement for costs incurred in the copying or other reproduction of any such record or records which have already been reduced to written form, in an amount not to exceed 75 cents per page. Any and all such costs shall be borne by the party requesting the production of the record or records.

(c) Notwithstanding any other provision of this code establishing a statute of limitations for any period greater than five years, any action by or against a bank for any balance, amount, or proceeds from any time, savings or demand deposit account based on the contents of records for which a period of retention or preservation is set forth in ~~section (a)~~ subsection (a) of this section shall be brought within the time for which the record must be retained or preserved. ~~If records are retained beyond the period set forth in section (a) of this section or the bank otherwise has information regarding the status of funds held or previously held in any time, savings or demand deposit account, the bank shall provide such information, to the extent permitted by all applicable state and federal privacy laws, upon written request, to anyone with a legal interest in such balance, amount, or proceeds. This section does not apply to savings accounts or certificates of deposit established as a result of any legal action for the benefit of a minor.~~

(d) If records are retained beyond the period set forth in subsection (a) of this section or the bank otherwise has information regarding the status of funds held or previously held in any time, savings or demand deposit account, the bank shall provide such information, to the extent permitted by all applicable state and federal privacy laws, upon written request, to anyone with a legal interest in such balance, amount, or proceeds. This section does not apply to savings accounts or certificates of deposit established as a result of any legal action for the benefit of a minor: *Provided*, That an action to enforce a demand, savings, or time deposit, including a deposit that is automatically renewable, is barred where the property meets the criteria for abandonment pursuant to §36-8-2(a)(5) of this code.

(e) No liability shall accrue against any bank because of the destruction of any of its records or copies thereof as permitted by subsection (a), and in any judicial or other action or proceeding in which any such records or copies thereof may be called in question or be demanded of the institution or any officer or employee thereof, a showing that such records or copies thereof have been destroyed in accordance with the provisions of subsection (a) is a sufficient defense for the failure to produce them.

CHAPTER 46. UNIFORM COMMERCIAL CODE.

PART 1. GENERAL PROVISIONS AND DEFINITIONS

ARTICLE 3. NEGOTIABLE INSTRUMENTS.

§46-3-118. Statute of limitations.

(a) Except as provided in subsection (e), an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within ~~six~~ five years after the due date or dates stated in the note or, if a due date is accelerated, within ~~six~~ five years after the accelerated due date. An action to enforce the obligation of a demand, savings, or time deposit, including a

deposit that is automatically renewable, brought more than 10 years after the initial date of the maturity shall be presumed to have been paid and redeemed absent evidence of:

(1) Owner consent in a record on file with the holder to renewal at or about the time of renewal pursuant to §36-8-2 of this code; or

(2) Escheatment to the state pursuant to §38-8-1 et seq. of this code.

(b) Except as provided in subsection (d) or (e), if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within ~~six~~ five years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if ~~neither principal nor interest on the note has been paid for a continuous period of 10 years.:~~

(1) Neither principal nor interest on the note has been paid for a continuous period of 10 years;

(2) The bank, pursuant to §31A-4-35 of this code, is no longer required to retain records relating to the note and actually no longer has such records; or

(3) The note has, in accordance with §36-8-1 et seq. of this code, been presumed abandoned; reported to the State Treasurer; and paid, delivered, or caused to be paid or delivered to the State Treasurer.

(c) Except as provided in subsection (d), an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within three years after dishonor of the draft or 10 years after the date of the draft, whichever period expires first.

(d) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within three years after demand for payment is made to the acceptor or issuer, as the case may be.

(e) An action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within ~~six~~ five years after demand for payment is made to the maker, but if the instrument states a due date and the maker is not required to pay before that date, the ~~six-year~~ five-year period begins when a demand for payment is in effect and the due date has passed: Provided, That no action to enforce the obligation may be maintained against the bank if the bank has destroyed or otherwise disposed of all records relating to the certificate of deposit in compliance with §31A-4-35 of this code.

(f) An action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced (i) within ~~six~~ five years after the due date or dates stated in the draft or acceptance if the obligation of the acceptor is payable at a definite time or (ii) within ~~six~~ five years after the date of the acceptance if the obligation of the acceptor is payable on demand.

(g) Unless governed by other law regarding claims for indemnity or contribution, an action (i) for conversion of an instrument, for money had and received, or like action based on conversion, (ii) for breach of warranty, or (iii) to enforce an obligation, duty, or right arising under this article and not governed by this section must be commenced within three years after the cause of action accrues.

On motion of Senator Trump, the following amendment to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 4837) was reported by the Clerk:

On page 4, section 118, line 9, after the words "pursuant to" by striking out "§38-8-1" and inserting in lieu thereof "36-8-1".

Senators Trump, Nelson, Stuart, and Smith requested rulings from the Chair as to whether they should be excused from voting on any matter pertaining to the bill under Rule 43 of the Rules of the Senate.

The Chair replied that any impact on Senators Trump, Nelson, Stuart, and Smith would be as members of a class of persons and that they would be required to vote on any matter pertaining to the bill.

Following a point of inquiry to the President, with resultant response thereto,

The question being on the adoption of Senator Trump's amendment 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.

The bill (Eng. Com. Sub. for H. B. 4837), as amended, was then ordered to third reading.

Eng. House Bill 4863, Patriotic Access to Students in Schools 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 4883, Relating to increasing annual salaries of certain employees of the 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 Finance committee amendment pending and the right for further amendments to be considered on that reading.

Eng. Com. Sub. for House Bill 4911, Relating to the sale of raw milk.

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

At the request of Senator Hamilton, as chair of the Committee on Agriculture and Natural Resources, and by unanimous consent, the unreported Agriculture and Natural Resources committee amendment to the bill was withdrawn.

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

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

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-7. ~~Shared animal ownership agreement to consume~~ Sale of raw milk.

~~(a) Notwithstanding any other provision of the law to the contrary, a responsible party may enter into a written shared animal ownership agreement to consume raw milk in which he or she:~~

~~(1) Acquires a percentage ownership interest in a milk-producing animal;~~

~~(2) Agrees to pay another for the percentage ownership interest for the care and boarding of the milk-producing animal at the dairy farm;~~

~~(3) Is entitled to receive a fair share of the animal's raw milk production as a condition of the contractual agreement;~~

~~(4) Agrees to sign a written document acknowledging the inherent dangers of consuming raw milk that may contain bacteria, such as Brucella, Campylobacter, Listeria, Salmonella, and E. Coli, that has not been pasteurized to remove bacteria and that is particularly dangerous to children, pregnant women, and those with compromised immunity. The responsible party then agrees to release the herd seller of liability for the inherent dangers of consuming raw milk but not for those dangers that are caused by negligent acts or omissions of the herd seller; and~~

~~(5) Agrees not to distribute raw milk. The sale or resale of raw milk obtained from a herd share is strictly prohibited.~~

~~(b) The signed and executed shared animal ownership agreement shall be filed by the herd seller with the Commissioner of Agriculture and shall contain the names, addresses, and phone numbers of the herd seller and the responsible party so that either party may be contacted in the event of an illness.~~

~~(c) The herd seller shall meet the animal health requirements for milk-producing animals established by the state veterinarian in accordance with state and national standards including the following:~~

~~(1) Raw milk from milk-producing animals intended for consumption shall be from a herd that tested negative within the previous 12 months for brucellosis, tuberculosis, and other diseases as required by the state veterinarian. Additions to the herd shall test negative for the diseases within the previous 30 days before introduction into the herd; and~~

~~(2) Milk-producing animals producing bloody, stringy, or abnormal milk, but with only slight inflammation of the udder, shall be excluded from the milking herd until reexamination shows that the milk has become normal. Milk-producing animals showing chronic mastitis, whether producing abnormal milk or not, shall be permanently excluded from the milking herd.~~

~~(d) Parties to a shared animal ownership agreement and physicians who become aware of an illness directly related to consuming raw milk shall report the illness to the local health department and the Commissioner of Agriculture. Upon receipt of such a report, the Commissioner of Agriculture or his or her designee shall contact and warn other parties consuming raw milk from the same herd seller.~~

~~(e) The Commissioner of Agriculture may impose an administrative penalty not to exceed \$100 for a person who violates the provisions of this section. Any penalty imposed under this subsection may be contested by the person against whom it is imposed pursuant to §29A-5-1 et seq. of this code.~~

~~(f) The Commissioner of Agriculture, in consultation with the Department of Health, may propose rules for promulgation in accordance with the provisions of §29A-3-1 et seq. of this code in compliance with raw milk dairy industry standards.~~

~~(g) Notwithstanding any provision of code to the contrary, raw milk may be sold without the parties entering into a written shared animal ownership agreement if the raw milk is to be used:~~

~~(1) As an ingredient in the preparation or making of a nonedible product, such as a soap or lotion; or~~

~~(2) As feed for another animal: *Provided*, That the sale of raw milk to be used as animal feed is subject to the provisions of §19-14-1 et seq. of this code.~~

(a) For purposes of this section, "raw milk" means milk that has not been pasteurized as specified in 21 C.F.R. §1240.61.

(b) Notwithstanding any other provision of this code to the contrary, raw milk may be sold by a seller in West Virginia to a consumer in West Virginia: *Provided*, That any container of raw milk sold pursuant to this article shall be clearly labeled as "unpasteurized raw milk", and shall include the name and physical address of the seller, the date of production, and the following warning: "Consuming unpasteurized raw milk may increase your risk of foodborne illness, especially for children, elderly, immunocompromised individuals, and persons with certain medical conditions".

(c) The Commissioner of Agriculture, in consultation with the Department of Health, may propose rules for promulgation in accordance with the provisions of §29A-3-1 et seq. of this code in compliance with raw milk dairy industry standards.

Senator Smith requested a ruling from the Chair as to whether he should be excused from voting under Rule 43 of the Rules of the Senate.

The Chair replied that any impact on Senator Smith would be as a member of a class of persons and that he would be required to vote.

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

The bill (Eng. Com. Sub. for H. B. 4911), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4956, Creating the Oral Health and Cancer Rights Act.

On second reading, coming up in regular order, was 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 amendments pending and the right for further amendments to be considered on that reading.

Eng. Com. Sub. for House Bill 4975, Relating to establishing a foster parent information 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 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 4999, Creating exception to spousal privilege.

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

Eng. Com. Sub. for House Bill 5084, Require retailers to verify identification and age upon purchase of vape products.

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

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

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

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§16-9A-1. Legislative findings and intent.

Intent. - The Legislature hereby declares it to be the policy and intent of this state to discourage and ban the use of tobacco products by minors. As basis for this policy, the Legislature hereby finds and accepts the medical evidence that ~~smoking tobacco products~~ may cause lung cancer, lung or heart disease, emphysema, and other serious health problems while the use of smokeless tobacco may cause gum disease and oral cancer. It is the further intent of the Legislature to reduce tobacco use by keeping tobacco products out of the hands of youth and young adults in ~~by banning the use of tobacco products by minors~~ the sale of tobacco products to persons younger than 21 years of age to ease the personal tragedy and eradicate the severe economic loss associated with the use of tobacco and to provide the state with a citizenry free from the use of tobacco.

§16-9A-2. ~~Definitions; sale or gift of cigarette, cigarette paper, pipe, cigar, snuff, chewing tobacco, pipe tobacco, roll-your-own tobacco, tobacco products, tobacco derived and alternative nicotine product or vapor products to persons under eighteen; penalties for first and subsequent offense; consideration of prohibited act as grounds for dismissal; impact on eligibility for unemployment benefits.~~

(a) For purposes of this article, the term:

"Electronic smoking device" means any device that can be used to deliver any heated, aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, any e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component part, or accessory of the device, whether or not sold separately, and

includes any substance intended to be heated, aerosolized, or vaporized during the use of the device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs, devices, or combination products approved by the United States Food, Drug, and Cosmetic Act.

~~(1) "Tobacco product" and "tobacco derived product" means any product containing, made, or derived from tobacco, or containing nicotine derived from tobacco, that is intended for human consumption, whether smoked, breathed, chewed, absorbed, dissolved, inhaled vaporized, snorted, sniffed, or ingested by any other means, including but not limited, to cigarettes, cigars, cigarillos, little cigars, pipe tobacco, snuff, snus, chewing tobacco, or other common tobacco-containing products. A tobacco-derived product also includes electronic cigarettes or similar devices, alternative nicotine products and vapor products electronic smoking devices and any accessory of a tobacco product or electronic smoking device, whether or not any of these contain tobacco or nicotine, including but not limited to, filters, rolling papers, blunt or hemp wraps, and pipes. Tobacco product or "tobacco derived product" does not include any product drugs, devices, or combination products that is are regulated by the United States Food and Drug Administration under Chapter V of the Food, Drug and Cosmetic Act.~~

~~(2) "Alternative nicotine product" means any non-combustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. "Alternative nicotine product" does not include any tobacco product, vapor product or product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug and Cosmetic Act.~~

~~(3) "Vapor product" means any noncombustible product containing nicotine that employs a heating element, power source, electronic circuit or other electronic, chemical or mechanical means, regardless of shape and size, that can be used to produce vapor from nicotine in a solution or other form. "Vapor product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe or similar product or device, and any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe or similar product or device. "Vapor product" does not include any product that is regulated by the United States Food and Drug Administration under Chapter V of the Food, Drug and Cosmetic Act.~~

~~(b) No person, firm, corporation, or business entity may sell, give or furnish, or cause to be sold, given or furnished, to any person under the age of 18 years:~~

~~(1) Any pipe, cigarette paper or any other paper prepared, manufactured, or made for the purpose of smoking any tobacco or tobacco product;~~

~~(2) Any cigar, cigarette, snuff, chewing tobacco or tobacco product, in any form; or~~

~~(3) Any tobacco-derived product, alternative nicotine product or vapor product.~~

~~(c) Any firm or corporation that violates any of the provisions of subsection (b) of this section and any individual who violates any of the provisions of subsection (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined \$50 for the first offense. Upon any subsequent violation at the same location or operating unit, the firm, corporation or individual shall be fined as follows: At least \$250 but not more than \$500 for the second offense, if it occurs within two years of the first conviction; at least \$500 but not more than \$750 for the third offense, if it~~

~~occurs within two years of the first conviction; and at least \$1,000 but not more than \$5,000 for any subsequent offenses, if the subsequent offense occurs within five years of the first conviction.~~

~~(d) Any individual who knowingly and intentionally sells, gives or furnishes or causes to be sold, given or furnished to any person under the age of eighteen years any cigar, cigarette, snuff, chewing tobacco, tobacco product or tobacco-derived product, in any form, is guilty of a misdemeanor and, upon conviction thereof, for the first offense shall be fined not more than \$100; upon conviction thereof for a second or subsequent offense, is guilty of a misdemeanor and shall be fined not less than \$100 nor more than \$500~~

~~(e) Any employer who discovers that his or her employee has sold or furnished tobacco products or tobacco-derived products to minors may dismiss such employee for cause. Any such discharge shall be considered as "gross misconduct" for the purposes of determining the discharged employee's eligibility for unemployment benefits in accordance with the provisions of §21A-6-3 of this code, if the employer has provided the employee with prior written notice in the workplace that such act or acts may result in their termination from employment.~~

~~§16-9A-3. Use or possession of tobacco or tobacco products, alternative nicotine products or vapor products by persons under the age of 18 years; penalties.~~

~~A person under the age of 18 years shall not have on or about his or her person or premises or use any cigarette, or cigarette paper, or any other paper prepared, manufactured or made for the purpose of smoking any tobacco products, in any form; any pipe, snuff, chewing tobacco, tobacco product, or tobacco-derived product: *Provided*, That minors participating in the inspection of locations where tobacco products or tobacco-derived products are sold or distributed pursuant to §16-9A-7 of this code is not considered to violate the provisions of this section. Any person violating the provisions of this section shall for the first violation be fined \$50 and be required to serve eight hours of community service; for a second violation, the person shall be fined \$100 and be required to serve 16 hours of community service; and for a third and each subsequent violation, the person shall be fined \$200 and be required to serve 24 hours of community service. Notwithstanding the provisions of §49-4-701 of this code, the magistrate court has concurrent jurisdiction.~~

§16-9A-3. Sale or gift of tobacco products to persons younger than 21 years of age; penalties for first and subsequent offenses; provision of non-criminal, non-monetary penalties; consideration of prohibited act as grounds for dismissal.

(a) A person, firm, corporation, or business entity may not sell, give, or furnish, or cause to be sold, given, or furnished, any tobacco product, in any form, to any person younger than 21 years of age, which shall be verified by a valid driver's license, state identification card, or any valid and unexpired federally issued identification card such as a passport or military identification card:

(b) Any firm, corporation, or business entity that violates the provisions of subsection (a) of this section and any individual who violates the provisions of subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined \$250 for the first offense. Upon any subsequent violation at the same location or operating unit, the firm, corporation, or business entity or the individual shall be fined as follows: At least \$500, but not more than \$750 for the second offense, if it occurs within two years of the first conviction; at least \$750, but not more than \$1,000 for the third offense, if it occurs within two years of the first conviction; and at least \$2,000, but not more than \$5,000 for any subsequent offenses, if the subsequent offense occurs within five years of the first conviction.

(c) Any person who violates subsection (a) of this section while acting as a non-management agent or employee of a retail outlet where tobacco products are sold is subject to non-criminal, non-monetary penalties, including, but not limited to, education classes, diversion programs, and community service. The alcohol beverage control commissioner shall promulgate rules for legislative approval pursuant to §29A-3-1 et seq. of this code, to establish standards for education classes, diversion programs, and community service.

(d) Any employer who discovers that his or her employee has sold or furnished tobacco products to any person younger than 21 years of age may dismiss the employee for cause, if the employer has provided the employee with prior written notice in the workplace that such act or acts may result in his or her termination from employment.

§16-9A-4. Use of ~~tobacco, tobacco products, alternative nicotine products or vapor products~~ in certain areas of certain public schools prohibited; penalty.

~~Every~~ Any person who shall ~~smoke a cigarette or cigarettes, pipe, cigar or other implement, of any type or nature, designed, used or employed for smoking any tobacco or tobacco product; or who shall use~~ uses any tobacco product ~~or tobacco-derived product~~ in any building or part thereof used for instructional purposes, in any public school of this state, as defined in ~~section one, article one, chapter eighteen~~ of this code, or on any lot or grounds actually used for instructional purposes of any ~~such~~ public school of this state while ~~such~~ the public school is used or occupied for school purposes, ~~shall be~~ is guilty of a misdemeanor, and, upon conviction thereof, shall be punished for each offense by a fine of not less than one nor more than \$5: *Provided*, That this prohibition shall not be construed to prevent the use of any ~~tobacco or tobacco product or tobacco-derived product~~, in any faculty lounge, or staff lounge, or faculty office or other area of ~~said~~ the public school not used for instructional purposes: *Provided, however*, That students do not have access ~~thereto~~ to the area: *Provided further*, That nothing ~~herein~~ contained in this section shall be construed to prevent any county board of education from promulgating rules and regulations that further restrict the use of tobacco products ~~or tobacco-derived products~~, in any form, from any other part or section of any public school building under its jurisdiction.

§16-9A-7. Enforcement of youth smoking laws and youth nicotine restrictions; inspection of retail outlets where ~~tobacco, tobacco products, vapor products or alternative nicotine products~~ are sold; use of minors in inspections; annual reports; penalties; defenses.

~~(a) The Commissioner of the West Virginia Alcohol Beverage Control Administration Bureau for Behavioral Health of the Department of Human Services, the Superintendent of the West Virginia State Police, the sheriffs of the counties of this state, and the chiefs of police of municipalities of this state, may periodically conduct unannounced inspections at locations where tobacco products or tobacco-derived products, are sold or distributed to ensure compliance with the provisions of §16-9A-2 and §16-9A-3 of this code and in such manner as to conform with applicable federal and state laws, rules, and regulations. Persons under the age of eighteen~~ younger than 21 years of age may be enlisted by ~~such~~ the commissioner, superintendent, sheriffs or chiefs of police or employees or agents thereof, to test compliance with these sections: *Provided*, That ~~minors~~ a person younger than 18 years of age may be used to test compliance only if the testing is conducted under the direct supervision of the commissioner, superintendent, sheriffs, or chiefs of police or employees or agents thereof, and written consent of ~~the~~ his or her parent or guardian of such person ~~is first obtained and such minors shall not be in violation of §16-9A-3 of this code article and chapter when acting under the direct supervision of the commissioner, superintendent, sheriffs or chiefs of police or employees or agents thereof and~~

~~with the written consent of the parent or guardian. It is unlawful for any person to use persons under the age of eighteen years~~ younger than the age of 21 to test compliance in any manner not set forth ~~herein in this subsection~~ and the person ~~so~~ using a minor is guilty of a misdemeanor and, upon conviction thereof, shall be fined the same amounts as set forth in ~~§16-9A-2~~ §16-9A-3 of this code.

(b) A person charged with a violation of ~~§16-9A-2 and §16-9A-3~~ of this code, as the result of an inspection under subsection (a) of this section has a complete defense if, at the time the ~~cigarette, other tobacco product or tobacco-derived product, or cigarette wrapper~~ was sold, delivered, bartered, furnished, or given,

(1) ~~The buyer or recipient falsely evidenced that he or she was eighteen~~ 21 years of age or older;

(2) ~~The appearance of the buyer or recipient was such that a prudent person would believe the buyer or recipient to be eighteen~~ 21 years of age or older; and

(3) ~~Such~~ the person carefully checked a driver's license or an identification card issued by this state or another state of the United States, a passport, or a United States armed services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was ~~eighteen~~ 21 years of age or older.

(c) Any fine collected after a conviction of violating ~~§16-9A-2~~ §16-9A-3 of this code, shall be paid to the clerk of the court in which the conviction was obtained: *Provided*, That the clerk of the court, upon receiving the fine, shall promptly notify the Commissioner of the West Virginia Alcohol Beverage Control Administration of the conviction and the collection of the fine: *Provided, however*, That any ~~community service~~ non-criminal, non-monetary penalty imposed ~~after a conviction of violating~~ on an employee of a retail outlet where tobacco products are sold who violated §16-9A-3 of this code shall be recorded by the clerk of the court in which the ~~conviction was obtained~~ violation occurred: *Provided further*, That the clerk of the court, upon being advised that ~~community service~~ non-criminal, non-monetary obligations have been fulfilled, shall promptly notify the Commissioner of the West Virginia Alcohol Beverage Control Administration of the ~~conviction~~ violation and the satisfaction of imposed ~~community service~~ non-criminal, non-monetary penalty.

(d) ~~The Commissioner of the West Virginia Alcohol Beverage Control Administration~~ Commissioner of the Bureau for Behavioral Health or his or her designee shall prepare and submit to the Governor on the last day of September of each year, a report of the enforcement and compliance activities undertaken pursuant to this section and the results of the ~~same~~ with a copy to the Secretary of the West Virginia Department of Health and Human Resources activities. The report shall be in the form and substance that the Governor shall submit to the applicable state and federal programs.

§16-9A-8. Selling of tobacco products, ~~tobacco-derived products, alternative nicotine products or, vapor products~~ in vending machines prohibited except in certain places.

~~No~~ A person or business entity may not offer for sale any ~~cigarette~~ tobacco product ~~or tobacco-derived product~~, in a vending machine. Any person or business entity which violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined \$250: *Provided*, That an establishment is exempt from this prohibition if individuals ~~under the age~~

~~of eighteen~~ younger than 21 years of age are not permitted to be in the establishment or if the establishment is licensed by the alcohol beverage control commissioner as a Class A licensee. The alcohol beverage control commissioner shall promulgate rules for legislative approval pursuant to §29A-3-1 *et seq.* of this code, to establish standards for the location and control of the vending machines in Class A licensed establishments for the purpose of restricting access by ~~minors~~ persons younger than 21 years of age.

The bill (Eng. Com. Sub. for H. B. 5084), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 5105, To eliminate the vaccine requirements for public virtual schools.

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

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

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

ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICABLE AND OTHER INFECTIOUS DISEASES.

§16-3-4. Compulsory immunization of school children; information disseminated; offenses; penalties.

(a) Whenever a resident birth occurs, the commissioner shall promptly provide parents of the newborn child with information on immunizations mandated by this state or required for admission to a public, private, and parochial school in this state or a state-regulated childcare center.

(b) Except as hereinafter provided, a child entering school or a state-regulated childcare center in this state must be immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus, and whooping cough.

(c) No child or person may be admitted or received in any of the schools of the state or a state-regulated childcare center until he or she has been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus, and whooping cough or produces a certificate from the commissioner granting the child or person an exemption from the compulsory immunization requirements of this section, except as provided in subsections (j) and (l).

(d) Any school or state-regulated childcare center personnel having information concerning any person who attempts to be enrolled in a school or state-regulated childcare center without having been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus, and whooping cough shall report the names of all such persons to the commissioner.

(e) Persons may be provisionally enrolled under minimum criteria established by the commissioner so that the person's immunization may be completed while missing a minimum amount of school. No person shall be allowed to enter school without at least one dose of each required vaccine.

(f) County health departments shall furnish the biologicals for this immunization for children of parents or guardians who attest that they cannot afford or otherwise access vaccines elsewhere.

(g) Health officers and physicians who provide vaccinations must present the person vaccinated with a certificate free of charge showing that they have been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus, and whooping cough, or he or she may give the certificate to any person or child whom he or she knows to have been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus, and whooping cough.

(h) The commissioner is authorized to grant, renew, condition, deny, suspend, or revoke exemptions to the compulsory immunization requirements of this section, on a statewide basis, upon sufficient medical evidence that immunization is contraindicated or there exists a specific precaution to a particular vaccine.

(1) A request for an exemption to the compulsory immunization requirements of this section must be accompanied by the certification of a licensed physician stating that the physical condition of the child is such that immunization is contraindicated or there exists a specific precaution to a particular vaccine.

(2) The commissioner is authorized to appoint and employ an Immunization Officer to make determinations on request for an exemption to the compulsory immunization requirements of this section, on a statewide basis, and delegate to the Immunization Officer the authority granted to the commissioner by this subsection.

(3) A person appointed and employed as the Immunization Officer must be a physician licensed under the laws of this state to practice medicine.

(4) The Immunization Officer's decision on a request for an exemption to the compulsory immunization requirements of this section may be appealed to the State Health Officer.

(5) The final determination of the State Health Officer is subject to a right of appeal pursuant to the provisions of §29A-5-1 *et seq.* of this code.

(i) A physician who provides any person with a false certificate of immunization against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus, and whooping cough is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$25 nor more than \$100.

(j) A private or parochial school may elect by informing the West Virginia Department of Health, in writing, to develop a policy that exempts the private or parochial school from the mandatory vaccination requirements of this section. In the event that a private or parochial school makes such an election the following conditions shall apply:

(1) For private and parochial schools who choose to maintain compliance with the mandatory vaccination requirements of this section, there is no cause of action against any school, administrator, employee, board, owner, or operator of the private or parochial school; and

(2) For private and parochial schools who choose to adopt a policy of exemption pursuant to subsection (j) of this section, there shall be no cause of action against any school, administrator, employee, board, owner, or operator of the private or parochial school: *Provided, however* in order

for the protections established by this subdivision to apply, a private or parochial school, shall upon enrollment and on an annual basis, thereafter inform, in writing, all parents and guardians with children attending the private or parochial school, regarding the private or parochial schools' election pursuant to subsection (j) and shall require signed acknowledgement form indicating that the parents or guardians are aware of the school's election to be exempt from the mandatory vaccination requirements of this section. A copy of the acknowledgement shall be maintained by the school.

(k) All students participating in any West Virginia Secondary School Activities Commission sponsored activities or any school sponsored club activities which result in competition with other schools shall meet the requirements of this section or have obtained an exemption under subsection (h).

(l) A full time virtual public school student and who does not physically attend public school shall be exempt from the requirements of subsection (c): *Provided*, That students enrolled in virtual public school classes that also attend a private or parochial school shall be subject to the requirements of subsection (j).

On motion of Senator Roberts, the following amendment to the Health and Human Resources committee amendment to the bill (Eng. Com. Sub. for H. B. 5105) was reported by the Clerk and adopted:

By striking out everything after the article heading and inserting in lieu thereof the following:

§16-3-4. Compulsory immunization of school children; information disseminated; offenses; penalties.

(a) Whenever a resident birth occurs, the commissioner shall promptly provide parents of the newborn child with information on immunizations mandated by this state or required for admission to a public, private, and parochial school in this state or a state-regulated childcare center.

(b) Except as hereinafter provided, a child entering school or a state-regulated childcare center in this state must be immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus, and whooping cough.

(c) No child or person may be admitted or received in any of the schools of the state or a state-regulated childcare center until he or she has been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus, and whooping cough or produces a certificate from the commissioner granting the child or person an exemption from the compulsory immunization requirements of this section, except as provided in subsections (j) and (l).

(d) Any school or state-regulated childcare center personnel having information concerning any person who attempts to be enrolled in a school or state-regulated childcare center without having been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus, and whooping cough shall report the names of all such persons to the commissioner.

(e) Persons may be provisionally enrolled under minimum criteria established by the commissioner so that the person's immunization may be completed while missing a minimum

amount of school. No person shall be allowed to enter school without at least one dose of each required vaccine.

(f) County health departments shall furnish the biologicals for this immunization for children of parents or guardians who attest that they cannot afford or otherwise access vaccines elsewhere.

(g) Health officers and physicians who provide vaccinations must present the person vaccinated with a certificate free of charge showing that they have been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus, and whooping cough, or he or she may give the certificate to any person or child whom he or she knows to have been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus, and whooping cough.

(h) The commissioner is authorized to grant, renew, condition, deny, suspend, or revoke exemptions to the compulsory immunization requirements of this section, on a statewide basis, upon sufficient medical evidence that immunization is contraindicated or there exists a specific precaution to a particular vaccine.

(1) A request for an exemption to the compulsory immunization requirements of this section must be accompanied by the certification of a licensed physician stating that the physical condition of the child is such that immunization is contraindicated or there exists a specific precaution to a particular vaccine.

(2) The commissioner is authorized to appoint and employ an Immunization Officer to make determinations on request for an exemption to the compulsory immunization requirements of this section, on a statewide basis, and delegate to the Immunization Officer the authority granted to the commissioner by this subsection.

(3) A person appointed and employed as the Immunization Officer must be a physician licensed under the laws of this state to practice medicine.

(4) The Immunization Officer's decision on a request for an exemption to the compulsory immunization requirements of this section may be appealed to the State Health Officer.

(5) The final determination of the State Health Officer is subject to a right of appeal pursuant to the provisions of §29A-5-1 *et seq.* of this code.

(i) A physician who provides any person with a false certificate of immunization against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus, and whooping cough is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$25 nor more than \$100.

(j) A private or parochial school may elect by informing the West Virginia Department of Health, in writing, to develop a policy that exempts the private or parochial school from the mandatory vaccination requirements of this section.

(1) For private or parochial schools who choose to maintain compliance with the mandatory vaccination requirements of this section, there shall be no cause of action against any school, administrator, employee, board, owner, or operator of the private or parochial school; and

(2) For private or parochial schools who choose to adopt a policy of exemption pursuant to subsection (j) of this section, there shall be no cause of action against any school, administrator, employee, board, owner, or operator of the private or parochial school: *Provided, however,* in order for the protections established by this subdivision to apply, a private or parochial school, shall upon enrollment and on an annual basis thereafter inform, in writing, all parents and guardians of children attending the private or parochial school, regarding the private or parochial schools' election pursuant to subsection (j) and shall require signed acknowledgement form indicating that the parents or guardians are aware of the school's election to be exempt from the mandatory vaccination requirements of this section. A copy of the acknowledgement shall be maintained by the school.

(k) All students participating in any activity sponsored by the West Virginia Secondary School Activities Commission or any school sponsored club activities which result in competition with other schools shall meet the requirements of this section or have obtained an exemption under subsection (h).

(l) A full time virtual public school student who does not physically attend public school shall be exempt from the requirements of subsection (c): *Provided,* That students enrolled in virtual public school classes that also attend a private or parochial school shall be subject to the requirements of subsection (j).

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

The bill (Eng. Com. Sub. for H. B. 5105), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 5158, Relating to making technical corrections to the special education code.

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

The following amendments to the bill, from the Committee on Education, were reported by the Clerk, considered simultaneously, and adopted:

On pages 10 and 11, by striking out all of section 1c and inserting in lieu thereof a new section, designated section 1c, to read as follows:

§18-20-1c. Integrated classrooms serving students with exceptional needs; and requirements as to the assistance, training and information to be provided to the ~~affected classroom teacher~~ integrated classroom teachers.

(a) The ~~regular general education~~ classroom teacher is entitled to the following when ~~placing a student~~ a student with exceptional needs is placed into an integrated classroom ~~when and~~ the student's individualized education program (IEP) requires ~~an adjustment in either the curriculum modifications, including delivery of, instruction or service~~ instruction or services and accommodations to be provided by the regular classroom teacher:

(1) Training provided ~~pursuant to the integrated classroom program and additional individualized training~~, pursuant to the rules developed by the State Board of Education, if requested by the regular classroom teacher to prepare the teacher to meet the exceptional needs of individual students. Whenever possible, the training shall be provided prior to the placement.

Where prior training is not possible, the training shall be commenced no later than ten days following the placement of the student into the regular integrated classroom. Unavoidable delays in the provision of training may not result in the exclusion of a ~~special-needs~~ student with exceptional needs from any class if the training cannot be provided in ten days;

(2) A signed copy of the individualized education program for the special education student prior to the placement of the student into the regular classroom. ~~The~~ When possible, the receiving and referring teachers shall participate in the development of that student's individualized education program and shall also sign the individualized education program as developed. In all cases the teacher shall receive a copy of the individualized education program for the ~~special education~~ student with exceptional needs prior to or at the time of the placement of the student into the regular classroom. Any teacher or other member of the IEP team disagreeing with the individualized education program ~~committee's~~ team's recommendation shall file a written explanation outlining his or her disagreement or recommendation;

(3) Participation by referring teachers in all eligibility committees and participation by referring and receiving teachers in all individualized education program committees which involve possible placement of an ~~exceptional~~ a student with exceptional needs in an integrated classroom;

(4) Opportunity to reconvene the committee responsible for the individualized education program of the student with ~~special-exceptional~~ needs assigned to the regular classroom teacher. Any teacher may request an IEP meeting if the data after 45 days shows that a student is not in the least restrictive environment for academic growth. The meeting shall include all persons involved in a student's individualized education program and shall be held within twenty-one days of the time the request is made. If changes are made to a student's IEP, affecting services and/or placement, the services shall be available immediately upon the change in placement; and

(5) A teacher may not be penalized in any way for advocating for his or her student and the teacher may work with the family or guardian of the student to recommend local advocates, share documentation and information, inform the guardians of his or her due process rights, and may call for an IEP meeting to review the information gathered from documentation to best address the student's special education needs; and

~~(5)~~ (6) Assistance from persons trained or certified to deal with address a student's exceptional needs whenever assistance is part of the student's individualized education program as necessary to promote accomplishment of the program's goals and objectives: *Provided*, That aides in the area of special education cannot be reassigned to more than one school without the employee's consent.

(b) Except teachers already required to participate in the development of a student's individualized education program and sign it as provided in subdivision (2) of this section, all other teachers in whose class or program a student with exceptional needs is enrolled shall:

(1) Participate in the meeting to develop the student's individualized education program, or read and sign a copy of the student's individualized education program plan acknowledging that he or she has read and understands it; and

(2) Make appropriate accommodations and modifications for the student, if needed or identified, to help the student succeed in the class or program, and document, at minimum, the provision of these accommodations and modifications: *Provided*, That the general education teacher shall not be responsible for daily accommodation logs. The general education teacher

shall only be responsible for acknowledging, at the end of each grading period, that each accommodation as required by the IEP has been met. All accommodations of the students shall be discussed before placement and it is the responsibility of the special education instructor to monitor progress: *Provided further*, That parents and guardians may request daily accommodation logs.

(3) Data to support the decision to place a student into an integrated classroom shall be included in the Individualized Education Plan.

(4) Nothing in this section may be construed as interfering with or limiting access to the Federal Individuals with Disabilities Education Act, and regulatory Due Process and complaint procedures available to students, families, and personnel.

(c) This requirement includes, but is not limited to, ~~teachers of music~~, musical education, art, driver education, health, foreign language, and other instruction offered.

(d) If the teacher provides a series of documentation within a 45-day grading period that shows that the student is not in their least restrictive environment, to the point that his or her placement does not ensure the student with exceptionalities makes appropriate progress toward meeting the student's annual goals, the teacher may begin all available Federal and State process and complaint procedures. The teacher may not be penalized in any way for advocating for his or her student and the teacher may work with the family or guardian of the student to recommend local advocates, share documentation and information, inform the guardians of his or her due process rights, and may call for an IEP meeting to review the information gathered from documentation and address the concerns to best adjust the IEP, as necessary, to best address the student's special education needs.;

On page 34, section 11, lines 121 and 122 by striking out the words "Department of Health and Human Resources" and inserting in lieu thereof the words "Department of Human Services";

And,

On page 36, after line 170, by striking out the remainder of the bill.

The bill (Eng. Com. Sub. for H. B. 5158), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 5162, Establish a program to promote creation and expansion of registered apprenticeship programs.

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

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the unreported Education committee amendment pending and the right for further amendments to be considered on that reading.

Eng. Com. Sub. for House Bill 5238, Mandating that all courts provide adjudication for juvenile offenders for traffic violations to the Division of Motor Vehicles.

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

The following amendments to the bill, from the Committee on Transportation and Infrastructure, were reported by the Clerk, considered simultaneously, and adopted:

On page 7, section 3a, line 152, by striking out the word "had";

And,

On page 7, section 3a, line 153, by striking out the word "involves" and inserting in lieu thereof the word "involve".

The bill (Eng. Com. Sub. for H. B. 5238), as amended, was then ordered to third reading.

Eng. House Bill 5252, Requiring certain minimum experience for the director or coordinator of services class title involving school transportation.

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

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

On page 7, section 8, lines 164 through 169, by striking out all of paragraph (A) and inserting in lieu thereof a new paragraph (A), to read as follows:

(A) Nothing in this subdivision prohibits a professional person or a professional educator from holding this class title: Provided, That after July 1, 2024, all persons employed for the first time in a position with this classification title as a director, assistant director, or coordinator of transportation shall possess a commercial driver's license within one year of employment except that this requirement shall not apply to persons who are multiclassified, hold multiple job titles, or provide documentation from a physician that they have a medical diagnosis that renders them physically unqualified to obtain a commercial driver's license;

The bill (Eng. H. B. 5252), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 5262, Relating generally to teacher's bill of rights.

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

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

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

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-18b. School counselors in public schools.

(a) A school counselor means a professional educator school counselor who holds a valid school counselor's certificate in accordance with §18A-1-1(c)(2) of this code.

(b) Each county board shall provide counseling services for each pupil enrolled in the public schools of the county.

(c) The school counselor shall work with individual pupils and groups of pupils in providing developmental, preventive and remedial guidance and counseling programs to meet academic, social, emotional, and physical needs; including programs to identify and address the problem of potential school dropouts. The school counselor also may provide consultant services for parents, teachers, and administrators and may use outside referral services, when appropriate, if no additional cost is incurred by the county board.

(d) The state board may adopt rules consistent with the provisions of this section that define the role of a school counselor based on the "National Standards for School Counseling Programs" of the American School Counselor Association. A school counselor is authorized to perform such services as are not inconsistent with the provisions of the rule as adopted by the state board. To the extent that any funds are made available for this purpose, county boards shall provide training for counselors and administrators to implement the rule as adopted by the state board.

(e) Each county board shall develop a comprehensive drop-out prevention program utilizing the expertise of school counselors and any other appropriate resources available.

(f) School counselors shall be full-time professional personnel, shall spend at least 80 percent of work time in a direct counseling relationship with pupils, and shall devote no more than 20 percent of the ~~work-day~~ workday to administrative activities: *Provided*, That such activities are ~~counselor related~~ directly related to their counseling duties: *Provide further*, That school counselors may not perform the following duties without a written agreement:

(1) Building the master schedule;

(2) Administering cognitive, aptitude, and achievement testing programs: *Provided*, That school counselors may administer make up tests and any tests that are required for virtual students, should no other person be available to administer the test;

(3) Routinely signing excuses for students who are tardy or absent;

(4) Performing disciplinary actions or assigning discipline consequences;

(5) Providing more than eight sessions of counseling in schools to address psychological disorders: *Provided*, That students who have experienced an emergency situation such as, but not limited to, CPS investigation, death, abuse, or home removal may be addressed regardless of how many sessions have previously been utilized.

(6) Covering classes when teachers are absent or to create teacher planning time;

(7) Maintaining student records: *Provided*, That school counselors may have access to student records;

(8) Computing grade-point averages: *Provided*, That school counselors may compute grade-point averages for the purpose of determining a student's eligibility for scholarships or post-secondary goals;

(9) Supervising classrooms or common areas;

(10) Keeping clerical records: *Provided*, That school counselors may access clerical records;

(11) Coordinating Individual Education Plans;

(12) Coordinating 504 Plans;

(13) Coordinating Student Study Teams;

(14) Coordinating Response to Intervention Plans;

(15) Coordinating the Multi-Tiered System of Support: *Provided*, That school counselors may perform duties related to a Multi-Tiered System of Support when the supports address truancy or behavioral interventions; and

(16) Overseeing School Attendance Review Boards: *Provided*, That school counselors may access attendance records.

(g) Beginning with the 2024—25 school year, school counselors shall participate in the training set forth below.

(1) At least once every two years, school counselors serving students in grades Pre-K through 12 shall participate in the School Counselors Conference, which shall address the following components:

(A) Career Counseling and Life Planning;

(B) Career awareness;

(C) Career and life planning;

(D) Career and life success;

(E) Opportunities with Career Technical Education available in West Virginia;

(F) Post secondary options;

(G) Academic Counseling and Personalized Planning;

(H) Academic motivation;

(I) Goal setting;

(J) Academic scheduling;

(K) Personalized Education Plans;

(L) Dual credit;

(M) Learning skills;

(N) Personal and Social Counseling;

(O) Decision making;

(P) Personal responsibility;

(Q) Conflict resolution; and

(R) Prevention.

(2) Upon completion of the School Counselor Conference training, an advanced credential in Career Counseling and non-degree graduate credits shall be available. Further, Licensed Professional Counselor continuing education credits shall be available, when applicable, as approved by the West Virginia Board of Examiners in counseling.

(3) Every two years, school counselors serving students in grades seven through 12 shall receive training regarding building and trades and apprenticeship programs available to students in West Virginia. This training shall be administered by the department of education and provided at no cost to the counselors.

~~(g)~~ (h) Nothing in this section prohibits a county board from exceeding the provisions of this section, or requires any specific level of funding by the Legislature.

(i) School counselors shall be afforded the protections set forth in §18A-2A-1 et seq. of this code.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-12. Special education student instructor ratio; waiver; compensation to teacher when ratio exceeded.

(a) Self-contained and resource classrooms, as well as any special education environment, shall not have a student/instructor ratio over the current limit provided for in the Individuals with Disabilities Education Act 2004 and State Board Policy 2419. A two-week waiver may be signed with the understanding that the local county board is responsible to remediate the situation while compensating the teacher with overage pay provided by the county per county funds. This waiver shall be good for two weeks to allow the district time to find an additional classroom teacher. Should the district be unable to find an additional classroom teacher, the district, upon the agreement of the teacher, may submit a waiver to the state board of education. This waiver shall have the teachers signature acknowledging that although they are over the limit, they recognize that this is a dire situation, and that they are entitled per compensation per student per county funds.

(b) The county may not submit a waiver to exceed the current limit of students set forth in Individuals with Disabilities Education Act 2004 and Policy 2419 without the written consent of the special education instructor. If the instructor chooses to sign the waiver to exceed the limit, that instructor shall be entitled to the full amount of compensation as provided per county.

(c) The county may not allow more than three students over the limit, even with the additional pay for the teacher.

§18-20-13. Special education teacher rights.

Special education teachers shall be afforded the protections set forth in §18A-2A-1 et seq. of this code.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 1. GENERAL PROVISIONS.

§18A-1-1. Definitions.

The definitions contained in §18-1-1 of this code apply to this chapter. In addition, the following words used in this chapter and in any proceedings pursuant to this chapter have the meanings ascribed to them unless the context clearly indicates a different meaning:

(a) "School personnel" means all personnel employed by a county board whether employed on a regular full-time basis, an hourly basis or otherwise. "School personnel" is comprised of two categories: Professional personnel and service personnel;

(b) "Professional person" or "professional personnel" means those persons or employees who meet the certification requirements of the state, licensing requirements of the state, or both, and includes a professional educator and other professional employee;

(c) "Professional educator" has the same meaning as "teacher" as defined in section one, article one, chapter eighteen of this code. Professional educators are classified as follows:

(1) "Classroom teacher" means a professional educator who has a direct instructional-~~or counseling~~ relationship with students and who spends the majority of his or her time in this capacity;

(2) "School counselor" means a certified school counselor who holds a master's degree in school counseling from an accredited university and certification through the state board of education and who is entitled to receive the same salary and benefits as a professional educator.

~~(2)~~ (3) "Principal" means a professional educator who functions as an agent of the county board and has responsibility for the supervision, management and control of a school or schools within the guidelines established by the county board. The principal's major area of responsibility is the general supervision of all the schools and all school activities involving students, teachers and other school personnel;

~~(3)~~ (4) "Supervisor" means a professional educator who is responsible for working primarily in the field with professional and other personnel in instructional and other school improvement. This category includes other appropriate titles or positions with duties that fit within this definition; and

~~(4)~~ (5) "Central office administrator" means a superintendent, associate superintendent, assistant superintendent and other professional educators who are charged with administering and supervising the whole or some assigned part of the total program of the countywide school system. This category includes other appropriate titles or positions with duties that fit within this definition;

(d) "Other professional employee" means a person from another profession who is properly licensed and who is employed to serve the public schools. This definition includes a registered professional nurse, licensed by the West Virginia Board of Examiners for Registered Professional

Nurses, who is employed by a county board and has completed either a two-year (sixty-four semester hours) or a three-year (ninety-six semester hours) nursing program;

(e) "Service person" or "service personnel", whether singular or plural, means a nonteaching school employee who is not included in the meaning of "teacher" as defined in §18-1-1 of this code and who serves the school or schools as a whole, in a nonprofessional capacity, including such areas as secretarial, custodial, maintenance, transportation, school lunch and aides. Any reference to "service employee" or "service employees" in this chapter or chapter 18 of this code means service person or service personnel as defined in this section;

(f) "Principals Academy" or "academy" means the academy created pursuant to §18A-3a-2b of this code;

~~(g) "Center for Professional Development" means the center created pursuant to §18A-3a-1 of this code;~~

~~(h)~~ (g) "Job-sharing arrangement" means a formal, written agreement voluntarily entered into by a county board with two or more of its employees who wish to divide between them the duties and responsibilities of one authorized full-time position;

~~(i)~~ (h) "Prospective employable professional person", whether singular or plural, means a certified professional educator who:

(1) Has been recruited on a reserve list of a county board;

(2) Has been recruited at a job fair or as a result of contact made at a job fair;

(3) Has not obtained regular employee status through the job posting process provided in §18A-4-7a of this code; and

(4) Has obtained a baccalaureate degree from an accredited institution of higher education within the past year;

~~(j)~~ (i) "Dangerous student" means a student who is substantially likely to cause serious bodily injury to himself, herself or another individual within that student's educational environment, which may include any alternative education environment, as evidenced by a pattern or series of violent behavior exhibited by the student, and documented in writing by the school, with the documentation provided to the student and parent or guardian at the time of any offense;

~~(k)~~ (j) "Alternative education" means an authorized departure from the regular school program designed to provide educational and social development for students whose disruptive behavior places them at risk of not succeeding in the traditional school structures and in adult life without positive interventions; and

~~(l)~~ (k) "Long-term substitute" means a substitute employee who fills a vacant position:

That the county superintendent expects to extend for at least thirty consecutive days, and is either:

(A) Listed in the job posting as a long-term substitute position of over thirty days; or

(B) Listed in a job posting as a regular, full-time position and:

(i) Is not filled by a regular, full-time employee; and

(ii) Is filled by a substitute employee.

For the purposes of §5-16-2 of this code, long-term substitute does not include a retired employee hired to fill the vacant position.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof; written notice bonus for teachers and professional personnel.

(a) Before entering upon their duties, all teachers shall execute a contract with their county boards, which shall state the salary to be paid and shall be in the form prescribed by the state superintendent. Each contract shall be signed by the teacher and by the president and secretary of the county board and shall be filed, together with the certificate of the teacher, by the secretary of the office of the county board. When necessary to facilitate the employment of employable professional personnel and prospective and recent graduates of teacher education programs who have not yet attained certification, the contract may be signed upon the condition that the certificate is issued to the employee prior to the beginning of the employment term in which the employee enters upon his or her duties.

(b) Each teacher's contract, under this section, shall be designated as a probationary or continuing contract. A probationary teachers contract shall be for a term of not less than one nor more than three years, one of which shall be for completion of a beginning teacher internship pursuant to the provisions of section two-b, article three of this chapter, if applicable. If, after three years of such employment, the teacher who holds a professional certificate, based on at least a bachelor's degree, has met the qualifications for a bachelors degree and the county board enter into a new contract of employment, it shall be a continuing contract, subject to the following:

(1) Any teacher with less than a bachelor's degree who holds a valid certificate and is employed in a county beyond the three-year probationary period shall be granted continuing contract status upon qualifying for the professional certificate based upon a bachelor's degree, if the teacher becomes reemployed; and

(2) A teacher holding continuing contract status with one county shall be granted continuing contract status with any other county upon completion of one year of acceptable employment if the employment is during the next succeeding school year or immediately following an approved leave of absence extending no more than one year.

(c) The continuing contract of any teacher shall remain in full force and effect except as modified by mutual consent of the school board and the teacher, unless and until terminated, subject to the following:

(1) A continuing contract may not be terminated except:

(A) By a majority vote of the full membership of the county board on or before May 1 of the then current year, after written notice, served upon the teacher, return receipt requested, stating

cause or causes and an opportunity to be heard at a meeting of the board prior to the board's action on the termination issue; or

(B) By written resignation of the teacher on or before May 1 to initiate termination of a continuing contract;

(2) The termination shall take effect at the close of the school year in which the contract is terminated;

(3) The contract may be terminated at any time by mutual consent of the school board and the teacher;

(4) This section does not affect the powers of the school board to suspend or dismiss a principal or teacher pursuant to section eight of this article;

(5) A continuing contract for any teacher holding a certificate valid for more than one year and in full force and effect during the school year 1984-1985 shall remain in full force and effect;

(6) A continuing contract does not operate to prevent a teacher's dismissal based upon the lack of need for the teacher's services pursuant to the provisions of law relating to the allocation to teachers and pupil-teacher ratios. The written notification of teachers being considered for dismissal for lack of need shall be limited to only those teachers whose consideration for dismissal is based upon known or expected circumstances which will require dismissal for lack of need. An employee who was not provided notice and an opportunity for a hearing pursuant to this subsection may not be included on the list. In case of dismissal for lack of need, a dismissed teacher shall be placed upon a preferred list in the order of their length of service with that board. A teacher may not be employed by the board until each qualified teacher on the preferred list, in order, has been offered the opportunity for reemployment in a position for which he or she is qualified, not including a teacher who has accepted a teaching position elsewhere. The reemployment shall be upon a teacher's preexisting continuing contract and has the same effect as though the contract had been suspended during the time the teacher was not employed.

(d) In the assignment of position or duties of a teacher under a continuing contract, the board may provide for released time of a teacher for any special professional or governmental assignment without jeopardizing the contractual rights of the teacher or any other rights, privileges or benefits under the provisions of this chapter. Released time shall be provided for any professional educator while serving as a member of the Legislature during any duly constituted session of that body and its interim and statutory committees and commissions without jeopardizing his or her contractual rights or any other rights, privileges, benefits or accrual of experience for placement on the state minimum salary schedule in the following school year under the provisions of this chapter, board policy and law.

(e) A teacher is disqualified to teach in any public school in the state for the duration of the next ensuing school year, if that teacher:

~~(1) Fails to fulfill his or her contract with the board, unless prevented from doing so by personal illness or other just cause or unless released from his or her contract by the board, or~~

~~(2) Violates~~ violates any lawful provision of his or her contract: *Provided*, That the marriage of a teacher is not considered a failure to fulfill, or violation of, the contract.

The State Department of Education or board may hold all papers and credentials of the teacher on file for a period of one year for the violation and shall report such disqualification status in the National Association of State Directors of Teacher Education and Certification (NASDTEC) database system.

(f) Any classroom teacher, as defined in section one, article one of this chapter, who desires to resign employment with a county board or request a leave of absence, the resignation or leave of absence to become effective on or before July 15 of the same year and after completion of the employment term, may do so at any time during the school year by written notification of the resignation or leave of absence and any notification received by a county board shall automatically extend the teacher's public employee insurance coverage until August 31 of the same year.

(g) (1) A classroom teacher who gives written notice to the county board on or before March 1 of the school year of his or her retirement from employment with the board at the conclusion of the school year shall be paid \$500 from the early notification of retirement line item established for the Department of Education for this purpose, subject to appropriation by the Legislature. If the appropriations to the Department of Education for this purpose are insufficient to compensate all applicable teachers, the Department of Education shall request a supplemental appropriation in an amount sufficient to compensate all such teachers. Additionally, if funds are still insufficient to compensate all applicable teachers, the priority of payment is for teachers who give written notice the earliest. This payment may not be counted as part of the final average salary for the purpose of calculating retirement.

(2) The position of a classroom teacher providing written notice of retirement pursuant to this subsection may be considered vacant and the county board may immediately post the position as an opening to be filled at the conclusion of the school year. If a teacher has been hired to fill the position of a retiring classroom teacher prior to the start of the next school year, the retiring classroom teacher is disqualified from continuing his or her employment in that position. However, the retiring classroom teacher may be permitted to continue his or her employment in that position and forfeit the early retirement notification payment if, after giving notice of retirement in accordance with this subsection, he or she becomes subject to a significant unforeseen financial hardship, including a hardship caused by the death or illness of an immediate family member or loss of employment of a spouse. Other significant unforeseen financial hardships shall be determined by the county superintendent on a case-by-case basis. This subsection does not prohibit a county school board from eliminating the position of a retiring classroom teacher.

ARTICLE 2A. TEACHERS BILL OF RIGHTS.

§18A-2A-1. Supplemental duty calendar provisions.

(a) In this section, "supplemental duty" means a duty other than a duty assigned under an employee's contract that is generally expected to be performed during an educational day and which may be governed by an agreement, other than the employee's contract, between the district and the employee.

(b) Not later than the 15th day before the first day of the employment term of each school year, the County Board professional staff of a school district shall adopt and provide to each classroom teacher, full-time counselor, and full-time librarian employed by the district a calendar that specifies the days each employee is expected to work for that school year: *Provided*, That any duty exceeding the eight hour contracted day shall be by agreement with the employee,

unless the duty is the result of an unanticipated emergency, and shall be paid a minimum of that employee's hourly rate in excess of eight hours: *Provided further*, That overtime shall be by agreement and approved by the county superintendent or by his or her designee.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-1c. Bill of Rights and Responsibilities for Students and School Personnel.

(a) The Legislature finds that:

(1) The mission of public schools is to prepare students for equal and responsible citizenship and productive adulthood;

(2) Democratic citizenship and productive adulthood begin with standards of conduct in schools;

(3) Schools should be safe havens for learning with high standards of conduct for students; and

(4) Rights necessarily carry responsibilities.

(b) In recognition of the findings in this section, the following Bill of Rights and Responsibilities for Students and School Personnel is established:

(1) The right to attend a school and ride a bus that is safe, orderly and drug free;

(2) The right to learn and work in a school that has clear discipline codes, as defined in state, county, or school policy, with fair and consistently enforced consequences for misbehavior;

(3) The right to learn and work in a school that has alternative educational placements for violent or chronically disruptive students;

(4) The right to be treated with courtesy and respect;

(5) The right to ~~a~~ attend a school and ride on a bus that is free from bullying;

(6) The right to support from school administrators when enforcing discipline policies;

(7) The right to support from parents, the community, public officials and businesses in their efforts to uphold high standards of conduct; and

(8) The responsibility to adhere to the principles in this Bill of Rights and Responsibilities for Students and School Personnel, and to behave in a manner that guarantees that other students and school personnel enjoy the same rights.

(c) The rights of teachers as otherwise set forth in §18A-2A-1 *et seq.* of this code are applicable for purposes of this section.

The following amendments to the Education committee amendment to the bill (Eng. Com. Sub. for H. B. 5262), from the Committee on Finance, were reported by the Clerk, considered simultaneously, and adopted:

On page 8, by striking out the article heading;

And,

On pages 8 through 12, by striking out all of section 2.

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

The bill (Eng. Com. Sub. for H. B. 5262), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 5287, Relating generally to traffic safety.

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 Transportation and Infrastructure committee amendment pending and the right for further amendments to be considered on that reading.

Eng. House Bill 5430, Relating to per diem compensation and expenses of newly elected or appointed judicial officers receiving education and training prior to taking the oath of office.

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 5435, Establishing the registered apprenticeship to associate of applied science program to be administered by the Council for Community and Technical College Education.

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

Eng. Com. Sub. for House Bill 5510, Clarify law regarding the crime of witness tampering.

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

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

On page 3, section 27, line 61, by striking out the word "aggravated" and inserting in lieu thereof the word "aggrieved".

The bill (Eng. Com. Sub. for H. B. 5510), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 5553, To provide and change graduation requirements and change duties relating to academic content standards.

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 5561, Relating to permitting the electronic execution of trusts.

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

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

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

CHAPTER 44D. UNIFORM TRUST CODE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§44D-1-103. Definitions

In this chapter:

~~(a)~~(1) "Action", with respect to an act of a trustee, includes a failure to act.

~~(b)~~(2) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code.

~~(c)~~(3) "Beneficiary" means a person that:

~~(1)~~(A) Has a present or future beneficial interest in a trust, vested or contingent;

~~(2)~~(B) In a capacity other than that of trustee, holds a power of appointment over trust property;
or

~~(3)~~(C) A charitable organization that is expressly designated in the terms of the trust instrument to receive distributions.

~~(d)~~(4) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in §44D-4-405 of this code.

~~(e)~~(5) "Conservator" means a person appointed by the court to administer the estate and financial affairs of a protected person.

~~(f)~~(6) "Court" means a court of this state having proper jurisdiction under §44D-2-203 of this code, and venue under §44D-2-204 of this code.

~~(g)~~(7) "Current beneficiary" means a beneficiary that, on the date the beneficiary's qualification is determined, is a distributee or permissible distributee of trust income or principal.

~~(h)~~(8) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

~~(i)~~(9) "Grantor" means a person, including a testator, who creates or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a grantor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

~~(j)~~(10) "Guardian" means a person appointed by the court who is responsible for the personal affairs of a protected person or a parent to make decisions regarding the support, care, education, health, and welfare of a minor. The term does not include a guardian ad litem.

~~(k)~~(11) "Interested person" means heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust or the property in a trust. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and ~~must~~ shall be determined according to the particular purposes of, and matter involved, in any proceeding.

~~(l)~~(12) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

~~(m)~~(13) "Internal Revenue Code" or "Internal Revenue Code of 1986" has the same meaning as when used in a comparable context in the laws of the United States then in effect relating to income, estate, generation-skipping transfer, and other taxes, including all amendments made to the laws of the United States and amendments which have been adopted and incorporated into West Virginia law by the West Virginia Legislature in §11-21-9 of this code.

~~(n)~~(14) "Jurisdiction" with respect to a geographic area, includes a state or country.

~~(o)~~(15) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, unincorporated nonprofit association, charitable organization, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

~~(p)~~(16) "Power of withdrawal" means a presently exercisable general power of appointment other than a power:

~~(1)~~(A) Exercisable by a trustee and limited by an ascertainable standard; or

~~(2)~~(B) Exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

~~(q)~~(17) "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

~~(r)~~(18) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

~~(1)~~(A) Is a distributee or permissible distributee of trust income or principal;

~~(2)~~(B) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in paragraph ~~(1)~~(B) of this subdivision terminated on that date without causing the trust to terminate; or

~~(3)(C)~~ Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(19) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. "Record" does not include a will of the grantor, unless the will is duly admitted to probate.

~~(s)(20)~~ "Revocable", as applied to a trust, means revocable by the grantor without the consent of the trustee or a person holding an adverse interest.

(21) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound, or process.

~~(t)(22)~~ "Spendthrift provision" means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary's interest.

~~(u)(23)~~ "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

~~(v)(24)~~ "Terms of a trust" means:

~~(1)(A)~~ Except as otherwise provided in ~~subparagraph (2)~~ paragraph (B); and the manifestation of the grantor's intent regarding a trust's provisions as:

~~(A)(i)~~ Expressed in the trust instrument; or

~~(B)(ii)~~ Established by other evidence that would be admissible in a judicial proceeding; or

~~(2)(B)~~ The trust's provisions as established, determined, or amended by:

(i) A trustee or trust director in accordance with applicable law;

(ii) A court order; or

(iii) A nonjudicial settlement agreement under §44D-1-111 of this code.

~~(w)(25)~~ "Trust instrument" means ~~a writing, including a will, executed by~~ of the grantor which is duly admitted to probate, or a record, signed by the grantor, that contains terms of the trust, including any amendments thereto.

~~(x)(26)~~ "Trustee" includes an original, additional, successor trustee and a cotrustee.

~~(y)~~ "Writing" or "written instrument" ~~does not include an electronic record or electronic signature as provided in §39A-1-1 et seq. of this code.~~

ARTICLE 4. CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST.

§44D-4-402. Requirement for creation.

(a) Except as created by an order of the court, a trust is created only if:

(1) The grantor has capacity to create a trust;

(2) The grantor indicates an intention, in ~~writing~~ a trust instrument, to create the trust;

(3) The trust has a definite beneficiary or is:

(A) A charitable trust;

(B) A trust for the care of an animal, as provided in §44D-4-408 of this code; or

(C) A trust for a noncharitable purpose, as provided in §44D-4-409 of this code;

(4) The trustee has duties to perform; and

(5) The same person is not the sole trustee and sole beneficiary.

(b) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(c) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails, and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

(d) Notwithstanding the foregoing:

(1) In accordance with ~~the provisions~~ §41-3-8 of this code, a trust is valid regardless of the existence, value, or character of the corpus of the trust.

(2) The grantor need not have capacity to create a trust if the trust is created in writing a record during the grantor's lifetime by the grantor's agent acting in accordance with authority granted under a durable power of attorney which expressly authorizes the agent to create a trust on the grantor's behalf.

(e) A trust is not invalid or terminated, and title to trust assets is not merged, because the trustee or trustees are the same person or persons as the beneficiaries of the trust.

ARTICLE 5. CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS.**§44D-5-503c. Vacancies; revocability of trust; right to withdraw.**

(a) A vacancy in the position of qualified trustee that occurs for any reason, whether or not there is then serving another trustee, shall be filled in the following order of priority:

(1) By a person eligible to be a qualified trustee and who is designated pursuant to the terms of the trust instrument to act as successor trustee;

(2) By a person eligible to be a qualified trustee and who is designated by unanimous agreement of the qualified beneficiaries; or

(3) By a person eligible to be a qualified trustee and who is appointed by the court pursuant to any of the provisions of §44D-7-1 *et seq.* of this code.

(b) A vacancy in the position of independent qualified trustee that occurs for any reason, whether or not there is then serving another trustee, shall be filled in the following order of priority:

(1) By a person eligible to be an independent qualified trustee and who is designated pursuant to the terms of the trust instrument to act as successor trustee; or

(2) By a person eligible to be an independent qualified trustee and who is designated by unanimous agreement of the qualified beneficiaries; or

(3) By a person eligible to be an independent qualified trustee and who is appointed by the court pursuant to any of the provisions of §44D-7-1 *et seq.* of this code.

(c) A trust instrument shall not be deemed revocable on account of the inclusion of any one or more of the following rights, powers, and interests:

(1) A power of appointment, exercisable by the grantor by will or other ~~written instrument~~ record effective only upon the grantor's death, other than a power to appoint to the grantor's estate or the creditors of the grantor's estate;

(2) The grantor's qualified interest in the trust;

(3) The grantor's right to receive income or principal pursuant to an ascertainable standard;

(4) The grantor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust (each within the meaning of Section 664(d) of the Internal Revenue Code) and the grantor's right, at any time, and from time to time, to release, in ~~writing~~ a record delivered to the qualified trustee, all or any part of the grantor's retained interest in such trust;

(5) The grantor's receipt each year of a percentage, not to exceed five percent, specified in the trust instrument of the initial value of the trust assets or their value determined from time to time pursuant to the trust instrument;

(6) The grantor's right to remove a qualified trustee or independent qualified trustee and to appoint a new trustee who meets the same criteria;

(7) The grantor's potential or actual use of real property held under a personal residence trust (within the meaning of Section 2702(c) of the Internal Revenue Code);

(8) The grantor's potential or actual receipt or use of a qualified annuity interest (within the meaning of Section 2702 of the Internal Revenue Code);

(9) The ability of a qualified trustee, whether pursuant to discretion or direction, to pay, after the grantor's death, all or any part of the grantor's debts outstanding at the time of the grantor's death, the expenses of administering the grantor's estate, or any federal or state estate, inheritance, or death tax imposed on or with respect to the grantor's estate; and

(10) A grantor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on trust income, or the direct payment of such taxes to the applicable tax authorities, pursuant to a provision in the trust instrument that expressly provides for the direct payment of such taxes or the reimbursement of the grantor for such tax payments.

(d) A beneficiary who has the right to withdraw his or her entire beneficial interest in a trust shall be treated as its grantor to the extent of such withdrawal right, when such right to withdraw has lapsed, been released, or otherwise expired, without regard to the limitations otherwise imposed by 44D-505(b) of this code.

ARTICLE 7. OFFICE OF THE TRUSTEE.

§44D-7-701. Accepting or declining trusteeship.

(a) Except as otherwise provided in subsection (c) of this section, a person designated as trustee accepts the trusteeship:

(1) By substantially complying with a method of acceptance provided in the terms of the trust instrument; or

(2) If the terms of the trust instrument do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship including by signing a ~~written instrument~~ record so stating.

(b) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A person designated as trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.

(c) A person designated as trustee, without accepting the trusteeship, may:

(1) Act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the grantor or, if the grantor is dead or lacks capacity, to a qualified beneficiary; and

(2) Inspect or investigate trust property to determine potential liability under environmental or other law or for any other proper purpose.

§44D-7-704. Vacancy in trusteeship; appointment of successor.

(a) A vacancy in a trusteeship occurs if:

(1) A person designated as trustee rejects the trusteeship;

(2) A person designated as trustee cannot be identified or does not exist;

(3) A trustee resigns;

(4) A trustee is disqualified or removed;

(5) A trustee dies; or

(6) A guardian or conservator is appointed for an individual serving as trustee.

(b) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled unless otherwise provided in the terms of the trust instrument. A vacancy in a trusteeship ~~must~~ shall be filled if the trust has no remaining trustee.

(c) Unless otherwise provided in the terms of the trust instrument, a vacancy in a trusteeship of a noncharitable trust that is required to be filled ~~must~~ shall be filled in the following order of priority:

(1) By a person designated in the terms of the trust instrument to act as successor trustee;

(2) By a person appointed by a unanimous ~~written agreement~~ record of the qualified beneficiaries; or

(3) By a person appointed by the court having jurisdiction of the trust.

(d) Unless otherwise provided, a vacancy in a trusteeship of a charitable trust that is required to be filled shall be filled in the following order of priority:

(1) By a person designated in the terms of the trust to act as successor trustee;

(2) By a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust instrument if the Attorney General of West Virginia either concurs in ~~writing a record~~ a record to the selection or fails to make a written objection to the selection within 90 days after receiving by certified or registered mail a notice of the selection by the charitable organizations; or

(3) By a person appointed by the court having jurisdiction over the trust.

(e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may upon petition of the grantor, a qualified beneficiary, or a cotrustee, appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

§44D-7-705. Resignation of trustee.

(a) Unless otherwise provided in the terms of the trust instrument, a trustee may resign without court approval by giving at least 30 days' notice in ~~writing a record~~ a record to the grantor, if living, all of the qualified beneficiaries and all cotrustees, if any.

(b) A trustee may resign with the approval of the court having jurisdiction of the trust upon the filing of a petition for such purpose which joins as respondents the grantor, if living, all of the qualified beneficiaries, and all cotrustees, if any. In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

(c) Unless otherwise provided by order of the court, any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

ARTICLE 8B. WEST VIRGINIA UNIFORM TRUST DECANTING ACT.

§44D-8B-2. Definitions.

(a) In addition to the definitions contained in §44D-1-103 of this code which apply to this article:

(1) "Appointive property" means the property or property interest subject to a power of appointment.

(2) "Authorized fiduciary" means:

(A) A trustee or other fiduciary, other than a grantor, that has discretion to distribute or direct a trustee to distribute part or all of the principal of the first trust to one or more current beneficiaries;

(B) A special fiduciary appointed under §44D-8B-9 of this code; or

(C) A special-needs fiduciary under §44D-8B-13 of this code.

(3) "Charitable interest" means an interest in a trust which:

(A) Is held by an identified charitable organization and makes the organization a qualified beneficiary;

(B) Benefits only charitable organizations and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary; or

(C) Is held solely for charitable purposes and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary.

(4) "Charitable organization" means:

(A) A person, other than an individual, organized and operated exclusively for charitable purposes; or

(B) A government or governmental subdivision, agency, or instrumentality, to the extent it holds funds exclusively for a charitable purpose.

(5) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, a municipal or other governmental purpose, or another purpose the achievement of which is beneficial to the community.

(6) "Decanting power" or "the decanting power" means the power of an authorized fiduciary under this article to distribute property of a first trust to one or more second trusts or to modify the terms of the first trust.

(7) "Expanded distributive discretion" means a discretionary power of distribution that is not limited to an ascertainable standard or a reasonably definite standard.

(8) "First trust" means a trust over which an authorized fiduciary may exercise the decanting power.

(9) "First-trust instrument" means the trust instrument for a first trust.

(10) "General power of appointment" means a power of appointment exercisable in favor of a powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

(11) "Power of appointment" means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The term does not include a power of attorney.

(12) "Powerholder" means a person in which a donor creates a power of appointment.

(13) "Presently exercisable power of appointment" means a power of appointment exercisable by the powerholder at the relevant time. The term:

(A) Includes a power of appointment exercisable only after:

- (i) The occurrence of the specified event;
- (ii) The satisfaction of the ascertainable standard; or
- (iii) The passage of the specified time; and

(B) Does not include a power exercisable only at the powerholder's death.

(14) "Reasonably definite standard" means a clearly measurable standard under which a holder of a power of distribution is legally accountable within the meaning of 26 U.S.C. §674(b)(5)(A) and any applicable regulations.

~~(15) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.~~

~~(16)~~(15) "Second trust" means:

(A) A first trust after modification under this article; or

(B) A trust to which a distribution of property from a first trust is or may be made under this article.

~~(17)~~(16) "Second-trust instrument" means the trust instrument for a second trust.

~~(18) "Sign" means with present intent to authenticate or adopt a record:~~

~~(A) To execute or adopt a tangible symbol; or~~

~~(B) To attach to or logically associate with the record an electronic symbol, sound, or process.~~

ARTICLE 10. LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE

§44D-10-1011. Interest as general partner.

(a) Except as otherwise provided in subsection (c) of this section or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited

partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract. The requirement of disclosure in the contract is satisfied if the trustee signs the contract, or signs another ~~writing~~ record which is contemporaneously delivered to the other parties to the contract, in a manner that clearly evidences that the trustee executed the contract in a fiduciary capacity.

(b) Except as otherwise provided in subsection (c) of this section, a trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

(c) The immunity provided by this section does not apply if an interest in the partnership is held by the trustee in a capacity other than that of trustee or is held by the trustee's spouse or one or more of the trustee's descendants, siblings, or parents, or the spouse of any of them.

(d) If the trustee of a revocable trust holds an interest as a general partner, the grantor is personally liable for contracts and other obligations of the partnership as if the grantor were a general partner.

The bill (Eng. Com. Sub. for H. B. 5561), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 5583, Permitting the Commissioner of the Division of Highways to issue a special permit to operate or move a vehicle or combination of vehicles of a size or weight of vehicles or nondivisible load exceeding the maximum specified.

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

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

On page 6, section 11, line 99, by changing the period to a colon and inserting the following proviso: *Provided, however*, That the Commissioner of the Division of Highways shall promptly issue a requested permit if the application is properly completed and the requested route, dates, and times meet state and federal laws, regulations, and safety requirements and do not violate any bond covenants.

The bill (Eng. Com. Sub. for H. B. 5583), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 5609, Relating to confidentiality of child care records and the Foster Care Ombudsman.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. Com. Sub. for House Joint Resolution 28, Protection from medically-assisted suicide or euthanasia in West Virginia Amendment.

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 committee amendments pending and the right for further amendments to be considered on that reading.

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

Eng. Com. Sub. for House Bill 4812, Capping amount of moneys to third party vendors who collect business and occupation taxes on behalf of cities.

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

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

Thereupon, on motion of Senator Smith, 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 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3uu. Health and safety fee.

(a) Each county commission may impose and collect a health and safety fee of up to \$1 for any or all of the following tourism and recreation activities within the county, on the basis stated in this section:

(1) The fee for the following activities shall be collected for each day or night of rental of the accommodation or vehicle:

(A) Hotel/motel/cabin/condominium/Airbnb/VRBO rentals;

(B) RV or tent camping rentals or fees;

(C) Automobile rentals;

(D) Boat rentals; and

(E) ATV/motorcycle/bicycle rentals.

(2) The fee for the following activities shall be collected for each ticket purchased or admission paid:

(A) Boat rides;

(B) Ski lift usage;

(C) Whitewater rafting;

(D) Golfing;

(E) Carnival, fair, or amusement park visits;

(F) Train rides;

(G) Museum or historical home tours;

(H) Zip lining, rock climbing, paddle boarding, and similar outdoor adventure activities; and

(I) Concerts or music festivals.

(3) The fee for the following activities shall be collected per person, per day:

(A) Bus excursions/charter; and

(B) Guided fishing or hunting excursions.

(b) The fee shall be collected only once on any seasonal or annual pass purchased for any of the activities to which the fee is applicable: *Provided*, That the fee shall equal one percent of the purchase price on any seasonal or annual pass for any of the activities to which the fee is applicable if the purchase price is greater than \$100.99.

(c) Any fee imposed by a county commission pursuant to this section may not be imposed on, or collected for, activities within the boundaries of a municipal corporation that has levied an amusement tax pursuant to §8-13-6 of this code.

(d) The person to whom the rental is made, or the service or activity is provided, shall pay to the operator or vendor of the activity the amount of the health and safety fee imposed by the county hereunder, which fee shall be added to and shall constitute a part of the consideration paid for the rental, service, or activity, and which fee shall be collectible as such by the operator or vendor who shall account for, and remit to the county, all fees paid by such persons. Operators who are subject to the collection and remittance of hotel occupancy tax pursuant to §7-18-1 *et seq.* of this code shall remit the fee with the remittance of the hotel occupancy tax but shall separately state the amount of the fee and the tax when remittance is made.

(e) The county commission shall notify the State Fire Marshal and the Office of Emergency Medical Services of its initial decision to impose and collect a health and safety fee. The county shall promulgate, by ordinance, order, rule, or regulation, administrative procedures for the assessment, collection, and refund of the fee authorized by this section. The sheriff of each county shall be the county's agent for administration and collection of the fee and shall have the power to initiate civil suits for the collection of the fee. The county commission may promulgate regulations and return forms as it determines are necessary or desirable for the administration and collection of the fee. In all circumstances, the moneys collected for the fee shall be kept in a discrete account solely for that purpose until they are expended in accordance with the provisions of subsection (g) of this section.

(f) Every county commission imposing a health and safety fee shall report annually on or before 90 days before the end of the fiscal year all collections and expenditures, including an income statement and balance sheet, to the State Auditor, the Joint Committee on Government and Finance, the State Fire Marshal, and the West Virginia Office of Emergency Medical Services.

(g) Sixty percent of the moneys collected for the fee shall be expended only for use in emergency services readiness and shall be appropriated at the discretion of the county commission among emergency medical services providers and volunteer and part-volunteer fire departments located in the county. Forty percent of the moneys collected for the fee shall be expended only for use in emergency services readiness or critical infrastructure projects and shall be appropriated at the discretion of the county commission among emergency medical services providers, volunteer and part-volunteer fire departments, and other critical infrastructure projects, as determined necessary by the county commission, located within the county: *Provided, however,* That a county may seek a waiver from the State Fire Marshal and the West Virginia Office of Emergency Medical Services allowing it to appropriate up to 100 percent of the moneys collected for use in critical infrastructure projects, if it is determined by the State Fire Marshal and the West Virginia Office of Emergency Medical Services that the county's emergency services readiness needs will be met during such time as the waiver is in effect. Such waiver may be in effect no longer than three years from the date of its issuance, at which point the county may reapply at the discretion of the county commission. The State Fire Marshal and the West Virginia Office of Emergency Medical Services may promulgate legislative rules in accordance with §29A-3-1 *et seq.* of this code relating to criteria which must be satisfied to qualify for such waiver.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

§8-13-5. Business and occupation or privilege tax; limitation on rates; effective date of tax; exemptions; activity in two or more municipalities; administrative provisions.

(a) *Authorization to impose tax.* — (1) Whenever any business activity or occupation, for which the state imposed its annual business and occupation or privilege tax under §11-13-1 *et seq.* of this code, prior to July 1, 1987, is engaged in or carried on within the corporate limits of any municipality, the governing body thereof shall have plenary power and authority, unless prohibited by general law, to impose a similar business and occupation tax thereon for the use of the municipality.

(2) Municipalities may impose a business and occupation or privilege tax upon every person engaging or continuing within the municipality in the business of aircraft repair, remodeling, maintenance, modification, and refurbishing services to any aircraft, or to an engine or other component part of any aircraft as a separate business activity.

(b) *Maximum tax rates.* — In no case shall the rate of the municipal business and occupation or privilege tax on a particular activity exceed the maximum rate imposed by the state, exclusive of surtaxes, upon any business activities or privileges taxed under §11-13-2a, §11-13-2b, §11-13-2c, §11-13-2d, §11-13-2e, §11-13-2g, §11-13-2h, §11-13-2i, and §11-13-2j of this code, as those rates were in effect under §11-13-1 *et seq.* of this code, on January 1, 1959, or in excess of one percent of gross income under §11-13-2k of this code, or in excess of three-tenths of one percent of gross value or gross proceeds of sale under §11-13-2m of this code. The rate of municipal business and occupation or privilege tax on the activity described in subdivision (2), subsection (a) of this section shall be ten one-hundredths of one percent. The rate of municipal business and occupation or privilege tax on the activity of a health maintenance organization holding a certificate of authority under the provisions of §33-25A-1 *et seq.* of this code, shall not exceed one-half of one percent to be applied solely to that portion of gross income received from the Medicaid program pursuant to Title XIX of the Social Security Act, the state employee programs administered by the Public Employees Insurance Agency pursuant to §5-16-1 *et seq.*

of this code, and other federal programs, for health care items or services provided directly or indirectly by the health maintenance organization, that is expended for administrative expenses; and shall not exceed one half of one percent to be applied to the gross income received from enrollees, or from employers on behalf of enrollees, from sources other than Medicaid, state employee programs administered by the Public Employees Insurance Agency, and other federal programs for health care items or services provided directly or indirectly by the health maintenance organization: *Provided*, That this tax rate limitation shall not extend to that part of the gross income of health maintenance organizations which is received from the use of real property other than property in which any company maintains its office or offices in this state, whether the income is in the form of rentals or royalties. This provision concerning the maximum municipal business and occupation tax rate on the activities of health maintenance organizations is effective beginning after December 31, 1996. Any payments of business and occupation tax made by a health maintenance organization to a municipality for calendar year 1997 is not subject to recovery by the health maintenance organization. Administrative expenses shall include all expenditures made by a health maintenance organization other than expenses paid for claims incurred or payments made to providers for the benefits received by enrollees.

(c) *Effective date of local tax.* — Any taxes levied pursuant to the authority of this section may be made operative as of the first day of the then current fiscal year or any date thereafter: *Provided*, That any new imposition of tax or any increase in the rate of tax upon any business, occupation or privilege taxed under ~~§11-2E-1 et seq.~~ §11-13-2e of this code, applies only to gross income derived from contracts entered into after the effective date of the imposition of tax or rate increase, and which effective date shall not be retroactive in any respect: *Provided, however*, That no tax imposed or revised under this section upon public utility services may be effective unless and until the municipality provides written notice of the same by certified mail to said public utility at least 60 days prior to the effective date of said tax or revision thereof.

(d) *Exemptions.* —

(1) A municipality shall not impose its business and occupation or privilege tax on any activity that was exempt from the state's business and occupation tax under the provisions of §11-13-3 of this code, prior to July 1, 1987, and determined without regard to any annual or monthly monetary exemption also specified therein: *Provided*, That on and after July 1, 2007, a municipality may impose its business and occupation or privilege tax on any activity of a corporation, association, or society organized and operated exclusively for religious or charitable purposes that was exempt from the state's business and occupation tax under the provisions of §11-13-3 of this code, prior to July 1, 1987, but only to the extent that the income generated by the activity is subject to taxation under the provisions of §511 of the Internal Revenue Code of 1986, as amended.

(2) Effective July 1, 2023, the municipal business and occupation or privilege tax on the sale of new automobiles that have never been registered in the name of an individual shall be reduced by 50 percent of the total amount of the tax: *Provided*, That, effective July 1, 2024, the remaining municipal business and occupation or privilege tax on the sale of new automobiles that have never been registered in the name of an individual shall be reduced by an additional 50 percent of the total amount of the tax: *Provided, however*, That July 1, 2025, the municipal business and occupation or privilege tax on the sale of new automobiles that have never been registered in the name of an individual shall be completely eliminated. For the purposes of this section, an automobile is a self-propelled vehicle used on the roads and highways by the use of motor vehicle fuel or propelled by one or more electric motors using energy stored in batteries or a combination

thereof. An automobile shall include a light-duty truck with an enclosed cabin and an open loading area at the rear and a sport utility vehicle. An automobile does not include a motorcycle.

(e) *Activity in two or more municipalities.* — Whenever the business activity or occupation of the taxpayer is engaged in or carried on in two or more municipalities of this state, the amount of gross income, or gross proceeds of sales, taxable by each municipality shall be determined in accordance with legislative rules as prescribed by the Tax Commissioner. It is the intent of the Legislature that multiple taxation of the same gross income, or gross proceeds of sale, under the same classification by two or more municipalities shall not be allowed, and that gross income, or gross proceeds of sales, derived from activity engaged in or carried on within this state, that is presently subject to state tax under §11-13-2c or §11-13-2h of this code, which is not taxed or taxable by any other municipality of this state, may be included in the measure of tax for any municipality in this state, from which the activity was directed, or in the absence thereof, the municipality in this state in which the principal office of the taxpayer is located. Nothing in this subsection shall be construed as permitting any municipality to tax gross income or gross proceeds of sales in violation of the Constitution and laws of this state or the United States, or as permitting a municipality to tax any activity that has a definite situs outside its taxing jurisdiction.

(f) Where the governing body of a municipality imposes a tax authorized by this section, the governing body may offer tax credits from the tax as incentives for new and expanding businesses located within the corporate limits of the municipality.

(g) *Administrative provisions.* — The ordinance of a municipality imposing a business and occupation or privilege tax shall provide procedures for the assessment and collection of the tax, which shall be similar to those procedures in §11-13-1 *et seq.* of this code, as in existence on June 30, 1978, or to those procedures in §11-10-1 *et seq.* of this code, and shall conform with such provisions as they relate to waiver of penalties and additions to tax.

(h) *Timely payment.* — Payments for taxes due under this section that are postmarked after the due date by which they are owed shall be considered late and may be subject to late fees or penalties: *Provided,* That payments that are received by the municipality after the due date, but that were postmarked on or before the due date shall be considered to be on time and shall not be assessed any late fees or penalties.

(i) Any third-party vendors who contract with a city or municipality to collect business and occupation taxes authorized by this section on behalf of a municipality may not charge for their services more than 20% of the amount of taxes collected.

Engrossed Committee Substitute for House Bill 4812, as just amended, was then put upon its passage.

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

The nays were: Chapman, Karnes, Martin, Maynard, and Rucker—5.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4812) passed.

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

Eng. Com. Sub. for House Bill 4812— A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-1-3uu; and to amend and reenact §8-13-5 of said code; all relating to taxes and fees imposed by political subdivisions; authorizing county commissions to impose a health and safety fee for tourism and recreational activities within the county; listing applicable activities and how fee to be calculated thereon; providing that fee may only be collected once on any seasonal or annual pass purchased for activities to which fee is applicable; establishing that fee may not be collected or imposed on activities within municipalities that have levied an amusement tax; establishing who owes fee, collection, and remittance to county; requiring counties who impose fee to notify the State Fire Marshal and the Office of Emergency Medical Services; authorizing counties to promulgate administrative procedures for collection of fee; providing that the sheriff is the county's agent for collection of fee; requiring moneys collected for fee be kept in a separate account; establishing requirements for use of proceeds from fee; establishing waiver process for alternative use of proceeds; providing rulemaking authority; and setting a limit on the amount of fees that may be collected by third party vendors or contractors who collect business and occupation taxes on behalf of a municipality.

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

Pending announcement of a meeting of the Committee on Rules,

On motion of Senator Takubo, at 3:16 p.m., the Senate recessed until 4:15 p.m. today.

The Senate reconvened at 5:44 p.m. and, at the request of Senator Takubo, and by unanimous consent, returned to the third order of business.

Executive Communications

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



Jim Justice
Governor of West Virginia

March 7, 2024

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

Dear Mr. Clerk:

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

Senate Bill No. One Hundred Seventy-Two (172), which was presented to me on March 1, 2024.

Committee Substitute for Senate Bill No. Five Hundred Forty-Four (544), which was presented to me on March 1, 2024.

Senate Bill No. Six Hundred (600), which was presented to me on March 1, 2024.

You will note that I have approved these bills on March 7, 2024.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jim Justice".

Jim Justice
Governor

JJ/mh

cc: The Honorable Stephen J. Harrison, Clerk

The Senate proceeded to the fourth order of business.

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

Your Committee on the Judiciary has had under consideration

Senate Concurrent Resolution 37 (originating in the Committee on the Judiciary)—Requesting the Joint Committee on Government and Finance study viability of reinstating capital punishment.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Ryan W. Weld,
Vice Chair.

At the request of Senator Takubo, unanimous consent being granted, the resolution (S. C. R. 37) contained in the foregoing report from the Committee on the Judiciary was then referred to the Committee on Rules.

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 4320, Relating to access for minor children's medical records.

With amendments from the Committee on Health and Human Resources pending;

And has also amended same.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on March 6, 2024;

And reports the same back with the recommendation that it do pass as last amended by the Committee on the Judiciary.

Respectfully submitted,

Ryan W. Weld,
Vice Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4320) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration and read a second time.

At the further request of Senator Takubo, as vice chair of the Committee on Health and Human Resources, and by unanimous consent, the unreported Health and Human Resources committee amendments to the bill were withdrawn.

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

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

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 30. WEST VIRGINIA HEALTH CARE DECISIONS ACT.

§16-30-2. Legislative findings and purpose.

(a) *Purpose.* — The purpose of this article is to ensure that a patient's right to self-determination in health care decisions be communicated and protected; and to set forth a process for private health care decision making for incapacitated adults, including the use of advance directives, which reduces the need for judicial involvement and defines the circumstances under which immunity shall be available for health care providers and surrogate decision makers who make health care decisions.

The intent of the Legislature is to establish an effective method for private health care decision making for incapacitated adults, and to provide that the courts should not be the usual venue for making decisions. It is not the intent of the Legislature to legalize, condone, authorize, or approve ~~mercy killing or assisted~~ medically-assisted suicide, euthanasia, or mercy killing, as defined in §16-30D-1 of this code.

(b) *Findings.* — The Legislature hereby finds that:

(1) Common law tradition and the medical profession in general have traditionally recognized the right of a capable adult to accept or reject medical or surgical intervention affecting one's own medical condition;

(2) The application of recent advances in medical science and technology increasingly involves patients who are unconscious or otherwise unable to accept or reject medical or surgical treatment affecting their medical conditions;

(3) Such advances have also made it possible to prolong the dying process artificially through the use of intervening treatments or procedures which, in some cases, offer no hope of medical benefit;

(4) Capable adults should be encouraged to issue advance directives designating their health care representatives so that in the event any such adult becomes unconscious or otherwise incapable of making health care decisions, decisions may be made by others who are aware of such person's own wishes and values; and

(5) The right to make medical treatment decisions extends to a person who is incapacitated at the moment of decision. An incapacitated person who has not made his or her wishes known in advance through an applicable living will, medical power of attorney, or through some other means has the right to have health care decisions made on his or her behalf by a person who will act in accordance with the incapacitated person's expressed values and wishes, or, if those values and wishes are unknown, in the incapacitated person's best interests.

§16-30-14. Insurance.

(a) No policy of life insurance or annuity or other type of contract that is conditioned on the life or death of the person, shall be legally impaired or invalidated in any manner by the withholding or withdrawal of life-prolonging intervention from a person in accordance with the provisions of this article, notwithstanding any terms of the policy to the contrary.

(b) The withholding or withdrawal of life-prolonging intervention from a principal in accordance with the provisions of this article does not, for any purpose, constitute a suicide ~~and does not constitute the crime of assisting suicide or murder, nor does it constitute medically-assisted suicide, euthanasia, or mercy killing, as defined in §16-30D-1 of this code.~~

(c) The making of a living will or medical power of attorney pursuant to this article does not affect in any manner the sale, procurement, or issuance of any insurance policy nor does it modify the terms of an existing policy.

(d) No health care provider or health care service plan, health maintenance organization, insurer issuing disability insurance, self-insured employee welfare benefit plan, nonprofit medical service corporation, or mutual nonprofit hospital service corporation shall require any person to execute a living will or medical power of attorney as a condition for being insured for or receiving health care services.

§16-30-15. Withholding of life support not assisted suicide or murder.

The withholding or withdrawal of life-prolonging intervention from a person in accordance with the decision of a medical power of attorney representative or surrogate decision maker made pursuant to the provisions of this article does not, for any purpose, constitute assisted suicide or murder, nor does it constitute medically-assisted suicide, euthanasia, or mercy killing, as defined in §16-30D-1 of this code. The withholding or withdrawal of life-prolonging intervention from a person in accordance with the decisions of a medical power of attorney representative or surrogate decision maker made pursuant to the provisions of this article, however, shall not relieve any individual of responsibility for any criminal acts that may have caused the person's condition. Nothing in this article shall be construed to legalize, condone, authorize, or approve ~~mercy killing or assisted~~ medically-assisted suicide, euthanasia, or mercy killing, as defined in §16-30D-1 of this code.

ARTICLE 30C. DO NOT RESUSCITATE ACT.

§16-30C-14. Not suicide or murder.

The withholding of cardiopulmonary resuscitation from a person in accordance with the provisions of this article does not, for any purpose, constitute suicide or murder, nor does it constitute medically-assisted suicide, euthanasia, or mercy killing, as defined in §16-30D-1 of this code. The withholding of cardiopulmonary resuscitation from a person in accordance with the provisions of this article, however, shall not relieve any individual of responsibility for any criminal acts that may have caused the person's condition. Nothing in this article shall be construed to legalize, condone, authorize, or approve ~~mercy killing or assisted~~ medically-assisted suicide, euthanasia, or mercy killing, as defined in §16-30D-1 of this code.

ARTICLE 30D. MEDICALLY-ASSISTED SUICIDE.

§16-30D-1. Medically-assisted suicide prohibited.

(a) No licensed medical professional in the State of West Virginia shall perform or assist in the practice of medically-assisted suicide, euthanasia, or mercy killing of a human.

(b) Nothing in this section prohibits the administration or prescription of medication for the purpose of alleviating pain or discomfort, or other palliative care, while the patient's condition follows its natural course; nor does anything in this section prohibit the withholding or withdrawing of life-sustaining treatment, as requested by the patient or the patient's decision-maker, in accordance with state law, so long as the intention is not to kill or cause the death of the patient in a manner that does not follow its natural course.

(c) For purposes of this article:

(1) "Licensed medical professional" means a person licensed under §30-3-1 et seq., §30-3E-1 et seq., §30-7-1 et seq., §30-7A-1 et seq., §30-14-1 et seq., and §30-14A-1 et seq. of this code.

(2) "Perform or assist in the practice of medically-assisted suicide, euthanasia, or mercy killing" means:

(A) An act performed with the intent of ending the life of a patient or enabling the patient to end his or her life in order to limit the patient's suffering, including, but not limited to, participating in a medical procedure, prescribing any drug, compound, or substance, or otherwise providing the physical means of performing medically-assisted suicide, euthanasia, or mercy killing to the patient, with the intent of ending the life of a patient or enabling the patient to end his or her life in order to limit the patient's suffering; or

(B) Intentionally advising or counseling a patient to end his or her life or otherwise providing knowledge or information about the physical means of performing medically-assisted suicide, euthanasia, or mercy killing to the patient with the intent of ending the life of a patient or enabling the patient to end his or her life in order to limit the patient's suffering.

§16-30D-2. Licensure action.

(a) A licensed medical professional who knowingly and willfully performs or assists in the practice of medically-assisted suicide, euthanasia, or mercy killing is subject to disciplinary action by his or her applicable licensing board. If the licensing board finds that the licensed medical professional has knowingly and willfully performed or assisted in the practice of medically-assisted suicide, euthanasia, or mercy killing, the licensing board shall revoke the licensed medical professional's license.

§16-30D-3. Criminal penalties

(a) A licensed medical professional who knowingly and willfully performs or assists in the practice of medically-assisted suicide, euthanasia, or mercy killing is guilty of a felony and, upon conviction thereof, shall be subject to the criminal penalties set forth in §61-2-3 of this code.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-14. Professional discipline of physicians and podiatrists; reporting of information to board pertaining to medical professional liability and professional incompetence

required; penalties; grounds for license denial and discipline of physicians and podiatrists; investigations; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the board; reapplication; civil and criminal immunity; voluntary limitation of license; probable cause determination; referral to law-enforcement authorities; rulemaking.

(a) (1) The board may independently initiate disciplinary proceedings as well as initiate disciplinary proceedings based on information received from medical peer review committees, physicians, podiatrists, hospital administrators, professional societies, the Board of Pharmacy, and others.

(2) The board may initiate investigations as to professional incompetence or other reasons for which a licensed physician or podiatrist may be adjudged unqualified based upon criminal convictions; complaints by citizens, pharmacists, physicians, podiatrists, peer review committees, hospital administrators, professional societies, or others; or unfavorable outcomes arising out of medical professional liability. The board shall initiate an investigation if it receives notice that three or more judgments, or any combination of judgments and settlements resulting in five or more unfavorable outcomes arising from medical professional liability, have been rendered or made against the physician or podiatrist within a five-year period. The board may not consider any judgments or settlements as conclusive evidence of professional incompetence or conclusive lack of qualification to practice.

(b) (1) Upon request of the board, any medical peer review committee in this state shall report any information that may relate to the practice or performance of any physician or podiatrist known to that medical peer review committee. Copies of the requests for information from a medical peer review committee may be provided to the subject physician or podiatrist if, in the discretion of the board, the provision of such copies will not jeopardize the board's investigation. If copies are provided, the subject physician or podiatrist is allowed 15 days to comment on the requested information and the comments shall be considered by the board.

(2) The chief executive officer of every hospital shall, within 60 days after the completion of the hospital's formal disciplinary procedure and also within 60 days after the commencement of and again after the conclusion of any resulting legal action, report in writing to the board the name of any member of the medical staff or any other physician or podiatrist practicing in the hospital whose hospital privileges have been revoked, restricted, reduced, or terminated for any cause, including resignation, together with all pertinent information relating to such action. The chief executive officer shall also report any other formal disciplinary action taken against any physician or podiatrist by the hospital upon the recommendation of its medical staff relating to professional ethics, medical incompetence, medical professional liability, moral turpitude or drug or alcohol abuse. Temporary suspension for failure to maintain records on a timely basis or failure to attend staff or section meetings need not be reported. Voluntary cessation of hospital privileges for reasons unrelated to professional competence or ethics need not be reported.

(3) Any managed care organization operating in this state which provides a formal peer review process shall report in writing to the board, within 60 days after the completion of any formal peer review process and also within 60 days after the commencement of and again after the conclusion of any resulting legal action, the name of any physician or podiatrist whose credentialing has been revoked or not renewed by the managed care organization. The managed care organization shall also report in writing to the board any other disciplinary action taken against a physician or podiatrist relating to professional ethics, professional liability, moral turpitude, or drug or alcohol abuse within 60 days after completion of a formal peer review process which results in the action

taken by the managed care organization. For purposes of this subsection, "managed care organization" means a plan that establishes, operates, or maintains a network of health care providers who have entered into agreements with and been credentialed by the plan to provide health care services to enrollees or insureds to whom the plan has the ultimate obligation to arrange for the provision of or payment for health care services through organizational arrangements for ongoing quality assurance, utilization review programs, or dispute resolutions.

(4) Any professional society in this state comprised primarily of physicians or podiatrists which takes formal disciplinary action against a member relating to professional ethics, professional incompetence, medical professional liability, moral turpitude, or drug or alcohol abuse shall report in writing to the board within 60 days of a final decision the name of the member, together with all pertinent information relating to the action.

(5) Any person licensed or authorized by the board to provide health care services to patients in this state shall submit a written report to the board of any of the following incidents the person reasonably believes to have occurred involving a person licensed or authorized by the board to provide health care services to patients in this state:

(A) Exercising influence within a provider-physician relationship for the purpose of engaging a patient in sexual activity;

(B) Engaging in sexual misconduct with a patient;

(C) Violating established medical or professional protocols regarding transferring controlled substances or prescribing controlled substances;

(D) Engaging in conduct which jeopardizes patient safety; or

(E) Other gross misconduct.

All reports required by this subdivision shall be submitted to the board within 30 days of the reportable incident, or if the licensee or other authorized person with a duty to report gained knowledge of the incident after it occurred, within 30 days of the licensee or other authorized person's knowledge of the incident. Failure of a licensee or other authorized person to report any such incidents to the board constitutes unprofessional conduct and is grounds for disciplinary action by the board. A physician who is licensed by the board and who obtains responsive information exclusively while functioning as the executive director or employee of a board-approved professional health program shall only be required to report in conformity with §30-3-9(h) of this code.

(6) Every person, partnership, corporation, association, insurance company, professional society, or other organization providing professional liability insurance to a physician or podiatrist in this state, including the state Board of Risk and Insurance Management, shall submit to the board the following information within 30 days from any judgment or settlement of a civil or medical professional liability action excepting product liability actions: the name of the insured; the date of any judgment or settlement; whether any appeal has been taken on the judgment and, if so, by which party; the amount of any settlement or judgment against the insured; and other information required by the board.

(7) Within 30 days from the entry of an order by a court in a medical professional liability action or other civil action in which a physician or podiatrist licensed by the board is determined to have

rendered health care services below the applicable standard of care, the clerk of the court in which the order was entered shall forward a certified copy of the order to the board.

(8) Within 30 days after a person known to be a physician or podiatrist licensed or otherwise lawfully practicing medicine and surgery or podiatry in this state or applying to be licensed is convicted of a felony under the laws of this state or of any crime under the laws of this state involving alcohol or drugs in any way, including any controlled substance under state or federal law, the clerk of the court of record in which the conviction was entered shall forward to the board a certified true and correct abstract of record of the convicting court. The abstract shall include the name and address of the physician or podiatrist or applicant, the nature of the offense committed, and the final judgment and sentence of the court.

(9) Upon a determination of the board that there is probable cause to believe that any person, partnership, corporation, association, insurance company, professional society, or other organization has failed or refused to make a report required by this subsection, the board shall provide written notice to the alleged violator stating the nature of the alleged violation and the time and place at which the alleged violator shall appear to show good cause why a civil penalty should not be imposed. The hearing shall be conducted in accordance with §29A-5-1 *et seq.* of this code. After reviewing the record of the hearing, if the board determines that a violation of this subsection has occurred, the board shall assess a civil penalty of not less than \$1,000 nor more than \$10,000 against the violator. The board shall notify any person so assessed of the assessment in writing and the notice shall specify the reasons for the assessment. If the violator fails to pay the amount of the assessment to the board within 30 days, the Attorney General may institute a civil action in the Circuit Court of Kanawha County to recover the amount of the assessment. In any civil action, the court's review of the board's action shall be conducted in accordance with §29A-5-4 of this code. Notwithstanding any other provision of this article to the contrary, when there are conflicting views by recognized experts as to whether any alleged conduct breaches an applicable standard of care, the evidence shall be clear and convincing before the board may find that the physician or podiatrist has demonstrated a lack of professional competence to practice with a reasonable degree of skill and safety for patients.

(10) Any person may report to the board relevant facts about the conduct of any physician or podiatrist in this state which in the opinion of that person amounts to medical professional liability or professional incompetence.

(11) The board shall provide forms for filing reports pursuant to this section. Reports submitted in other forms shall be accepted by the board.

(12) The filing of a report with the board pursuant to any provision of this article, any investigation by the board, or any disposition of a case by the board does not preclude any action by a hospital, other health care facility, or professional society comprised primarily of physicians or podiatrists to suspend, restrict, or revoke the privileges or membership of the physician or podiatrist.

(13) Any person who reports pursuant to this subsection, in good-faith and without fraud or malice, is immune from civil liability. Reports made in bad-faith, fraudulently, or maliciously constitute unprofessional conduct and, if made by persons licensed or authorized to practice by the board, are grounds for disciplinary action pursuant to § 30-3-14(c) of this code.

(c) The board may deny an application for a license or other authorization to practice medicine and surgery or podiatry in this state and may discipline a physician or podiatrist licensed or

otherwise lawfully practicing in this state who, after a hearing, has been adjudged by the board as unqualified due to any of the following reasons:

(1) Attempting to obtain, obtaining, renewing, or attempting to renew a license or other authorization to practice medicine and surgery or podiatry by bribery, fraudulent misrepresentation, or through known error of the board;

(2) Being found guilty of a crime in any jurisdiction, which offense is a felony, involves moral turpitude, or directly relates to the practice of medicine. Any plea of nolo contendere is a conviction for the purposes of this subdivision;

(3) False or deceptive advertising;

(4) Aiding, assisting, procuring, or advising any unauthorized person to practice medicine and surgery or podiatry contrary to law;

(5) Making or filing a report that the person knows to be false; intentionally or negligently failing to file a report or record required by state or federal law; willfully impeding or obstructing the filing of a report or record required by state or federal law; or inducing another person to do any of the foregoing. The reports and records covered in this subdivision mean only those that are signed in the capacity as a licensed physician or podiatrist;

(6) Requesting, receiving, or paying directly or indirectly a payment, rebate, refund, commission, credit, or other form of profit or valuable consideration for the referral of patients to any person or entity in connection with providing medical or other health care services or clinical laboratory services, supplies of any kind, drugs, medication, or any other medical goods, services, or devices used in connection with medical or other health care services;

(7) Unprofessional conduct by any physician or podiatrist in referring a patient to any clinical laboratory or pharmacy in which the physician or podiatrist has a proprietary interest unless the physician or podiatrist discloses in writing such interest to the patient. The written disclosure shall indicate that the patient may choose any clinical laboratory for purposes of having any laboratory work or assignment performed or any pharmacy for purposes of purchasing any prescribed drug or any other medical goods or devices used in connection with medical or other health care services;

As used in this subdivision, "proprietary interest" does not include an ownership interest in a building in which space is leased to a clinical laboratory or pharmacy at the prevailing rate under a lease arrangement that is not conditional upon the income or gross receipts of the clinical laboratory or pharmacy;

(8) Exercising influence within a patient-physician relationship for the purpose of engaging a patient in sexual activity or engaging in other sexual misconduct;

(9) Making a deceptive, untrue, or fraudulent representation in the practice of medicine and surgery or podiatry;

(10) Soliciting patients, either personally or by an agent, through the use of fraud, intimidation, or undue influence;

(11) Failing to keep written records justifying the course of treatment of a patient, including, but not limited to, patient histories, examination and test results, and treatment rendered, if any;

(12) Exercising influence on a patient in such a way as to exploit the patient for financial gain of the physician or podiatrist or of a third party. Any influence includes, but is not limited to, the promotion or sale of services, goods, appliances, or drugs;

(13) Prescribing, dispensing, administering, mixing, or otherwise preparing a prescription drug, including any controlled substance under state or federal law, other than in good-faith and in a therapeutic manner in accordance with accepted medical standards and in the course of the physician's or podiatrist's professional practice. A physician who discharges his or her professional obligation to relieve the pain and suffering and promote the dignity and autonomy of dying patients in his or her care and, in so doing, exceeds the average dosage of a pain relieving controlled substance, as defined in Schedules II and III of the Uniform Controlled Substance Act, does not violate this article or §16-30D-1 et seq. of this code;

(14) Performing any procedure or prescribing any therapy that, by the accepted standards of medical practice in the community, would constitute experimentation on human subjects without first obtaining full, informed, and written consent;

(15) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities that the person knows or has reason to know he or she is not competent to perform;

(16) Delegating professional responsibilities to a person when the physician or podiatrist delegating the responsibilities knows or has reason to know that the person is not qualified by training, experience, or licensure to perform them;

(17) Violating any provision of this article or a rule or order of the board or failing to comply with a subpoena or subpoena duces tecum issued by the board;

(18) Conspiring with any other person to commit an act or committing an act that would tend to coerce, intimidate, or preclude another physician or podiatrist from lawfully advertising his or her services;

(19) Gross negligence in the use and control of prescription forms;

(20) Professional incompetence;

(21) The inability to practice medicine and surgery or podiatry with reasonable skill and safety due to physical or mental impairment, including deterioration through the aging process, loss of motor skill, or abuse of drugs or alcohol. A physician or podiatrist adversely affected under this subdivision shall be afforded an opportunity at reasonable intervals to demonstrate that he or she may resume the competent practice of medicine and surgery or podiatry with reasonable skill and safety to patients. In any proceeding under this subdivision, neither the record of proceedings nor any orders entered by the board shall be used against the physician or podiatrist in any other proceeding; or

(22) Knowingly failing to report to the board any act of gross misconduct committed by another licensee of the board or failing to comply with any reporting requirement set forth in §30-3-14(b) of this code.

(d) The board shall deny any application for a license or other authorization to practice medicine and surgery or podiatry in this state to any applicant, and shall revoke the license of any physician or podiatrist licensed or otherwise lawfully practicing within this state who, is found guilty by any court of competent jurisdiction of any felony involving prescribing, selling, administering, dispensing, mixing, or otherwise preparing any prescription drug, including any controlled substance under state or federal law, for other than generally accepted therapeutic purposes. Presentation to the board of a certified copy of the guilty verdict or plea rendered in the court is sufficient proof thereof for the purposes of this article. A plea of nolo contendere has the same effect as a verdict or plea of guilt. Upon application of a physician that has had his or her license revoked because of a drug-related felony conviction, upon completion of any sentence of confinement, parole, probation, or other court-ordered supervision, and full satisfaction of any fines, judgments, or other fees imposed by the sentencing court, the board may issue the applicant a new license upon a finding that the physician is, except for the underlying conviction, otherwise qualified to practice medicine: *Provided*, That the board may place whatever terms, conditions, or limitations it deems appropriate upon a physician licensed pursuant to this subsection.

(e) The board may refer any cases coming to its attention to an appropriate committee of an appropriate professional organization for investigation and report. Except for complaints related to obtaining initial licensure to practice medicine and surgery or podiatry in this state by bribery or fraudulent misrepresentation, any complaint filed more than two years after the complainant knew, or in the exercise of reasonable diligence should have known, of the existence of grounds for the complaint shall be dismissed: *Provided*, That in cases of conduct alleged to be part of a pattern of similar misconduct or professional incapacity that, if continued, would pose risks of a serious or substantial nature to the physician's or podiatrist's current patients, the investigating body may conduct a limited investigation related to the physician's or podiatrist's current capacity and qualification to practice and may recommend conditions, restrictions, or limitations on the physician's or podiatrist's license to practice that it considers necessary for the protection of the public. Any report shall contain recommendations for any necessary disciplinary measures and shall be filed with the board within 90 days of any referral. The recommendations shall be considered by the board and the case may be further investigated by the board. The board after full investigation shall take whatever action it considers appropriate, as provided in this section.

(f) The investigating body, as provided in §30-3-14(e) of this code, may request and the board under any circumstances may require a physician or podiatrist or person applying for licensure or other authorization to practice medicine and surgery or podiatry in this state to submit to a physical or mental examination by a physician or physicians approved by the board. A physician or podiatrist submitting to an examination has the right, at his or her expense, to designate another physician to be present at the examination and make an independent report to the investigating body or the board. The expense of the examination shall be paid by the board. Any individual who applies for or accepts the privilege of practicing medicine and surgery or podiatry in this state is considered to have given his or her consent to submit to all examinations when requested to do so in writing by the board and to have waived all objections to the admissibility of the testimony or examination report of any examining physician on the ground that the testimony or report is privileged communication. If a person fails or refuses to submit to an examination under circumstances which the board finds are not beyond his or her control, failure or refusal is prima facie evidence of his or her inability to practice medicine and surgery or podiatry competently and in compliance with the standards of acceptable and prevailing medical practice.

(g) In addition to any other investigators it employs, the board may appoint one or more licensed physicians to act for it in investigating the conduct or competence of a physician.

(h) In every disciplinary or licensure denial action, the board shall furnish the physician or podiatrist or applicant with written notice setting out with particularity the reasons for its action. Disciplinary and licensure denial hearings shall be conducted in accordance with §29A-5-1 *et seq.* of this code. However, hearings shall be heard upon sworn testimony and the rules of evidence for trial courts of record in this state shall apply to all hearings. A transcript of all hearings under this section shall be made, and the respondent may obtain a copy of the transcript at his or her expense. The physician or podiatrist has the right to defend against any charge by the introduction of evidence, the right to be represented by counsel, the right to present and cross examine witnesses and the right to have subpoenas and subpoenas duces tecum issued on his or her behalf for the attendance of witnesses and the production of documents. The board shall make all its final actions public. The order shall contain the terms of all action taken by the board.

(i) In disciplinary actions in which probable cause has been found by the board, the board shall, within 20 days of the date of service of the written notice of charges or 60 days prior to the date of the scheduled hearing, whichever is sooner, provide the respondent with the complete identity, address, and telephone number of any person known to the board with knowledge about the facts of any of the charges; provide a copy of any statements in the possession of or under the control of the board; provide a list of proposed witnesses with addresses and telephone numbers, with a brief summary of his or her anticipated testimony; provide disclosure of any trial expert pursuant to the requirements of Rule 26(b)(4) of the West Virginia Rules of Civil Procedure; provide inspection and copying of the results of any reports of physical and mental examinations or scientific tests or experiments; and provide a list and copy of any proposed exhibit to be used at the hearing: *Provided*, That the board may not be required to furnish or produce any materials which contain opinion work product information or would be a violation of the attorney-client privilege. Within 20 days of the date of service of the written notice of charges, the board shall disclose any exculpatory evidence with a continuing duty to do so throughout the disciplinary process. Within 30 days of receipt of the board's mandatory discovery, the respondent shall provide the board with the complete identity, address, and telephone number of any person known to the respondent with knowledge about the facts of any of the charges; provide a list of proposed witnesses, with addresses and telephone numbers, to be called at hearing, with a brief summary of his or her anticipated testimony; provide disclosure of any trial expert pursuant to the requirements of Rule 26(b)(4) of the West Virginia Rules of Civil Procedure; provide inspection and copying of the results of any reports of physical and mental examinations or scientific tests or experiments; and provide a list and copy of any proposed exhibit to be used at the hearing.

(j) Whenever it finds any person unqualified because of any of the grounds set forth in §30-3-14(c) of this code, the board may enter an order imposing one or more of the following:

(1) Deny his or her application for a license or other authorization to practice medicine and surgery or podiatry;

(2) Administer a public reprimand;

(3) Suspend, limit, or restrict his or her license or other authorization to practice medicine and surgery or podiatry for not more than five years, including limiting the practice of that person to, or by the exclusion of, one or more areas of practice, including limitations on practice privileges;

(4) Revoke his or her license or other authorization to practice medicine and surgery or podiatry or to prescribe or dispense controlled substances for any period of time, including for the life of the licensee, that the board may find to be reasonable and necessary according to evidence presented in a hearing before the board or its designee;

(5) Require him or her to submit to care, counseling, or treatment designated by the board as a condition for initial or continued licensure or renewal of licensure or other authorization to practice medicine and surgery or podiatry;

(6) Require him or her to participate in a program of education prescribed by the board;

(7) Require him or her to practice under the direction of a physician or podiatrist designated by the board for a specified period of time; and

(8) Assess a civil fine of not less than \$1,000 nor more than \$10,000.

(k) Notwithstanding the provisions of §30-1-8 of this code, if the board determines the evidence in its possession indicates that a physician's or podiatrist's continuation in practice or unrestricted practice constitutes an immediate danger to the public, the board may take any of the actions provided in §30-3-4(j) of this code on a temporary basis and without a hearing if institution of proceedings for a hearing before the board are initiated simultaneously with the temporary action and begin within 15 days of the action. The board shall render its decision within five days of the conclusion of a hearing under this subsection.

(l) Any person against whom disciplinary action is taken pursuant to this article has the right to judicial review as provided in §29A-5-1 *et seq.* and §29A-6-1 *et seq.* of this code: *Provided*, That a circuit judge may also remand the matter to the board if it appears from competent evidence presented to it in support of a motion for remand that there is newly discovered evidence of such a character as ought to produce an opposite result at a second hearing on the merits before the board and:

(1) The evidence appears to have been discovered since the board hearing; and

(2) The physician or podiatrist exercised due diligence in asserting his or her evidence and that due diligence would not have secured the newly discovered evidence prior to the appeal.

A person may not practice medicine and surgery or podiatry or deliver health care services in violation of any disciplinary order revoking, suspending, or limiting his or her license while any appeal is pending. Within 60 days, the board shall report its final action regarding restriction, limitation, suspension, or revocation of the license of a physician or podiatrist, limitation on practice privileges, or other disciplinary action against any physician or podiatrist to all appropriate state agencies, appropriate licensed health facilities and hospitals, insurance companies or associations writing medical malpractice insurance in this state, the American Medical Association, the American Podiatry Association, professional societies of physicians or podiatrists in the state, and any entity responsible for the fiscal administration of Medicare and Medicaid.

(m) Any person against whom disciplinary action has been taken under this article shall, at reasonable intervals, be afforded an opportunity to demonstrate that he or she can resume the practice of medicine and surgery or podiatry on a general or limited basis. At the conclusion of a suspension, limitation, or restriction period the physician or podiatrist may resume practice if the board has so ordered.

(n) Any entity, organization, or person, including the board, any member of the board, its agents or employees, and any entity or organization or its members referred to in this article, any insurer, its agents or employees, a medical peer review committee and a hospital governing board, its members or any committee appointed by it acting without malice and without gross

negligence in making any report or other information available to the board or a medical peer review committee pursuant to law and any person acting without malice and without gross negligence who assists in the organization, investigation, or preparation of any such report or information or assists the board or a hospital governing body or any committee in carrying out any of its duties or functions provided by law is immune from civil or criminal liability, except that the unlawful disclosure of confidential information possessed by the board is a misdemeanor as provided in this article.

(o) A physician or podiatrist may request in writing to the board a limitation on or the surrendering of his or her license to practice medicine and surgery or podiatry or other appropriate sanction as provided in this section. The board may grant the request and, if it considers it appropriate, may waive the commencement or continuation of other proceedings under this section. A physician or podiatrist whose license is limited or surrendered or against whom other action is taken under this subsection may, at reasonable intervals, petition for removal of any restriction or limitation on or for reinstatement of his or her license to practice medicine and surgery or podiatry.

(p) In every case considered by the board under this article regarding discipline or licensure, whether initiated by the board or upon complaint or information from any person or organization, the board shall make a preliminary determination as to whether probable cause exists to substantiate charges of disqualification due to any reason set forth in §30-3-14(c) of this code. If probable cause is found to exist, all proceedings on the charges shall be open to the public who are entitled to all reports, records, and nondeliberative materials introduced at the hearing, including the record of the final action taken: *Provided*, That any medical records, which were introduced at the hearing and which pertain to a person who has not expressly waived his or her right to the confidentiality of the records, may not be open to the public nor is the public entitled to the records.

(q) If the board receives notice that a physician or podiatrist has been subjected to disciplinary action or has had his or her credentials suspended or revoked by the board, a hospital, or a professional society, as defined in §30-3-14(b) of this code, for three or more incidents during a five-year period, the board shall require the physician or podiatrist to practice under the direction of a physician or podiatrist designated by the board for a specified period of time to be established by the board.

(r) Notwithstanding any other provisions of this article, the board may, at any time, on its own motion, or upon motion by the complainant, or upon motion by the physician or podiatrist, or by stipulation of the parties, refer the matter to mediation. The board shall obtain a list from the West Virginia State Bar's mediator referral service of certified mediators with expertise in professional disciplinary matters. The board and the physician or podiatrist may choose a mediator from that list. If the board and the physician or podiatrist are unable to agree on a mediator, the board shall designate a mediator from the list by neutral rotation. The mediation may not be considered a proceeding open to the public, and any reports and records introduced at the mediation shall not become part of the public record. The mediator and all participants in the mediation shall maintain and preserve the confidentiality of all mediation proceedings and records. The mediator may not be subpoenaed or called to testify or otherwise be subject to process requiring disclosure of confidential information in any proceeding relating to or arising out of the disciplinary or licensure matter mediated: *Provided*, That any confidentiality agreement and any written agreement made and signed by the parties as a result of mediation may be used in any proceedings subsequently instituted to enforce the written agreement. The agreements may be used in other proceedings if the parties agree in writing.

(s) A physician licensed under this article may not be disciplined for providing expedited partner therapy in accordance with §16-4F-1 *et seq.* of this code.

(t) Whenever the board receives credible information that a licensee of the board is engaging or has engaged in criminal activity or the commission of a crime under state or federal law, the board shall report the information, to the extent that sensitive or confidential information may be publicly disclosed under law, to the appropriate state or federal law-enforcement authority and/or prosecuting authority. This duty exists in addition to and is distinct from the reporting required under federal law for reporting actions relating to health care providers to the United States Department of Health and Human Services.

(u) The board shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code which define sexual misconduct and identify prohibited professional misconduct, including sexual misconduct, for which an application may be denied and/or a license or other authorization to practice may be subject to disciplinary action by the board pursuant to this section.

ARTICLE 3A. MANAGEMENT OF INTRACTABLE PAIN.

§30-3A-2. Limitation on disciplinary sanctions or criminal punishment related to management of pain.

(a) A prescriber is not subject to disciplinary sanctions by a licensing board or criminal punishment by the state, including disciplinary sanctions or criminal punishment pursuant to §16-30D-1 *et seq.* of this code, for prescribing, administering, or dispensing pain-relieving controlled substances for the purpose of alleviating or controlling pain if:

(1) In the case of a dying patient experiencing pain, the prescriber practices in accordance with an accepted guideline as defined in §30-3A-1 of this code and discharges his or her professional obligation to relieve the dying patient's pain and promote the dignity and autonomy of the dying patient; or

(2) In the case of a patient who is not dying and is experiencing pain, the prescriber discharges his or her professional obligation to relieve the patient's pain, if the prescriber can demonstrate by reference to an accepted guideline that his or her practice substantially complied with that accepted guideline. Evidence of substantial compliance with an accepted guideline may be rebutted only by the testimony of a clinical expert. Evidence of noncompliance with an accepted guideline is not sufficient alone to support disciplinary or criminal action.

(b) A health care provider, as defined in §55-7B-2 of this code, with prescriptive authority is not subject to disciplinary sanctions by a licensing board or criminal punishment by the state for declining to prescribe, or declining to continue to prescribe, any controlled substance to a patient which the health care provider with prescriptive authority is treating if the health care provider with prescriptive authority in the exercise of reasonable prudent judgment believes the patient is misusing the controlled substance in an abusive manner or unlawfully diverting a controlled substance legally prescribed for their use.

(c) A licensed registered professional nurse is not subject to disciplinary sanctions by a licensing board or criminal punishment by the state for administering pain-relieving controlled substances to alleviate or control pain, if administered in accordance with the orders of a licensed physician.

(d) A licensed pharmacist is not subject to disciplinary sanctions by a licensing board or criminal punishment by the state for dispensing a prescription for a pain-relieving controlled substance to alleviate or control pain, if dispensed in accordance with the orders of a licensed physician.

(e) For purposes of this section, the term "disciplinary sanctions" includes both remedial and punitive sanctions imposed on a licensee by a licensing board, arising from either formal or informal proceedings.

(f) The provisions of this section apply to the treatment of all patients for pain, regardless of the patient's prior or current chemical dependency or addiction. The board may develop and issue policies or guidelines establishing standards and procedures for the application of this article to the care and treatment of persons who are chemically dependent or addicted.

The bill (Eng. Com. Sub. for H. B. 4320), as amended, was then ordered to third reading.

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 4951, To facilitate the interstate practice of School Psychology in educational or school settings.

And has amended same.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on March 6, 2024;

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

Respectfully submitted,

Ryan W. Weld,
Vice Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4951) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration and read a second time.

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

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

ARTICLE 10R. INTERSTATE COMPACT FOR SCHOOL PSYCHOLOGISTS.

§18-10R-1. Interstate Compact for School psychologists; purpose.

(a) The purpose of this compact is to facilitate the interstate practice of school psychology in educational or school settings, and in so doing to improve the availability of school psychological services to the public. This compact is intended to establish a pathway to allow school

psychologists to obtain equivalent licenses to provide school psychological services in any member state. In this way, this compact shall enable the member states to ensure that safe and effective school psychological services are available and delivered by appropriately qualified professionals in their educational settings.

(b) To facilitate the objectives described in subsection (a) of this section, this compact:

(1) Enables school psychologists who qualify for receipt of an equivalent license to practice in other member states without first satisfying burdensome and duplicative requirements;

(2) Promotes the mobility of school psychologists between and among the member states in order to address workforce shortages and to ensure that safe and reliable school psychological services are available in each member state;

(3) Enhances the public accessibility of school psychological services by increasing the availability of qualified, licensed school psychologists through the establishment of an efficient and streamlined pathway for licensees to practice in other member states;

(4) Preserves and respects the authority of each member state to protect the health and safety of its residents by ensuring that only qualified, licensed professionals are authorized to provide school psychological services within that state;

(5) Requires school psychologists practicing within a member state to comply with the scope of practice laws present in the state where the school psychological services are being provided;

(6) Promotes cooperation between the member states in regulating the practice of school psychology within those states; and

(7) Facilitates the relocation of military members and their spouses who are licensed to provide school psychological services.

§18-10R-2. Definitions.

"Active Military Member" means any person with full-time duty status in the armed forces of the United States, including members of the National Guard and Reserve.

"Adverse Action" means disciplinary action or encumbrance imposed on a license by a state licensing authority.

"Alternative Program" means a non-disciplinary, prosecutorial diversion, monitoring, or practice remediation process entered into in lieu of an adverse action which is applicable to a school psychologist and approved by the state licensing authority of a member state in which the participating school psychologist is licensed. This includes, but is not limited to, programs to which licensees with substance abuse or addiction issues may be referred in lieu of an adverse action.

"Commissioner" means the individual appointed by a member state to serve as the representative to the commission for that member state.

"Compact" means this School Psychologist Interstate Licensure Compact.

"Continuing Professional Education" means a requirement, imposed by a member state as a condition of license renewal to provide evidence of successful participation in professional educational activities relevant to the provision of school psychological services.

"Criminal Background Check" means the submission of fingerprints or other biometric-information for a license applicant for the purpose of obtaining that applicant's criminal history record information, as defined in 28 C.F.R. § 20.3(d), and the state's criminal history record repository as 81 defined in 28 C.F.R. § 20.3(f).

"Doctoral Level Degree" means a graduate degree program that consists of at least 90 graduate semester hours in the field of school psychology including a supervised internship.

"Encumbered License" means a license that a state licensing authority has limited in any way other than through an alternative program, including temporary or provisional licenses.

"Executive committee" means the commission's chair, vice chair, secretary and treasurer and any other commissioners as may be determined by commission rule or bylaw.

"Equivalent License" means a license to practice school psychology which a member state has identified as a license which may be provided to school psychologists from other member states pursuant to this compact.

"Home state" means the member state that issued the home state license to the licensee and is the licensee's primary state of practice.

"Home state License" means the license that is not an encumbered license issued by the home state to provide school psychological services.

"School Psychological Services" means academic, mental and behavioral health services including assessment, prevention, consultation and collaboration, intervention, and evaluation provided by a school psychologist in a school, as outlined in applicable professional standards as determined by commission rule.

"License" means a current license, certification, or other authorization granted by a member state's licensing authority that permits an individual to provide school psychological services.

"Licensee" means an individual who holds a license from a member state to provide school psychological services.

"Licensing Authority" means a member state's regulatory body responsible for issuing licenses or otherwise overseeing the practice of school psychology.

"Member State" means a state that has enacted the compact and been admitted to the commission in accordance with the provisions of this article and commission rules.

"Model Compact" means the model language for the School Psychologist Interstate Licensure Compact on file with the Council of State Governments or other entity as designated by the commission.

"Practice of School Psychology" means the delivery school psychological services.

"School Psychologist Interstate Licensure Compact Commission" or "Commission" means the joint government agency established by this compact whose membership consists of representatives from each member state that has enacted the compact, and as further described in section seven of this article.

"Specialist-Level Degree" means a degree program that requires at least 60 graduate semester hours or their equivalent in the field of school psychology including a supervised internship.

"Qualifying National Exam" means a national licensing examination endorsed by the National Association of School Psychologists and any other exam as approved by the rules of the commission.

"Qualifying School Psychologist Education Program" means an education program which awards a Specialist-Level or Doctoral-Level degree or equivalent upon completion and is approved by the rules of the commission as meeting the necessary minimum educational standards to ensure that its graduates are ready, qualified, and able to engage in the practice of school psychology.

"Remote State" means a member state other than the home state where a licensee holds a license through the compact.

"Rule" means a regulation promulgated by an entity, including but not limited to the commission and the state licensing authority of each member state, that has the force of law.

"School Psychologist" means an individual who has met the requirements to obtain a home state license that legally conveys the professional title of school psychologist, or its equivalent as determined by the rules of the commission.

"Scope of Practice" means the procedures, actions, and processes a school psychologist licensed in a state is permitted to undertake in that state and the circumstances under which that licensee is permitted to undertake those procedures, actions, and processes. The procedures, actions, and processes, and the circumstances under which they may be undertaken, may be established through means including, but not limited to, statute, rules, case law, and other processes available to the state licensing authority or other government agency.

"State" means any state, commonwealth, district, or territory of the United States of America.

"State Licensing Authority" means an agency, whether the Department of Education or otherwise, or other entity operating as an arm of a state that is responsible for the licensing and regulation of school psychologists.

"State Specific Requirement" means a requirement for licensure covered in coursework or examination that includes content of unique interest to the state.

"Unencumbered License" means a license that authorizes a licensee to engage in the full and unrestricted practice of school psychology.

§18-10R-3. State participation in the compact.

(a) To be eligible to join this compact, and to maintain eligibility as a member state, a state shall:

(1) Enact a compact statute that is not materially different from the model compact as defined in the commission's rules;

(2) Participate in the sharing of information with other member states as reasonably necessary to accomplish the objectives of this compact, and as further defined in section eight of this article;

(3) Identify and maintain with the commission a list of equivalent licenses available to licensees who hold a home state license under this compact;

(4) Have a mechanism in place for receiving and investigating complaints about licensees;

(5) Notify the commission, in compliance with the terms of the compact and the commission's rules, of any adverse action taken against a licensee, or of the availability of investigative information which relates to a licensee or applicant for licensure;

(6) Require that applicants for a home state license have:

(A) Taken and passed a qualifying national exam as defined by the rules of the commission;

(B) Completed a minimum of 1200 hours of supervised internship, of which at least 600 have been completed in a school, prior to being approved for licensure;

(C) Graduated from a qualifying school psychologist education program; and

(7) Comply with the terms of this compact and the rules of the commission.

(b) Each member state shall grant an equivalent license to practice school psychology in that state upon application by a licensee who satisfies the criteria of §18-10R-4(a) of this code. Each member state shall grant renewal of the equivalent license to a licensee who satisfies the criteria of §18-10R-4(b) of this code.

(c) Member states may set and collect a fee for granting an equivalent license.

§18-10R-4. School psychologist participant in the compact.

(a) To obtain and maintain an equivalent license from a receiving state under this compact, a licensee must:

(1) Hold and maintain an active home state license;

(2) Satisfy any applicable state specific requirements established by the member state after an equivalent license is granted;

(3) Complete any administrative or application requirements which the commission may establish by rule, and pay any associated fees;

(4) Complete any requirements for renewal in the home state, including applicable continuing professional education requirements. and

(5) Upon their application to receive a license under this compact, undergo a criminal background check in the member state in which the equivalent license is sought in accordance with the laws and regulations of such member state.

(b) To renew an equivalent license in a member state other than the home state, a licensee must only apply for renewal, complete a background check, and pay renewal fees as determined by the licensing authority.

§18-10R-5. Active military members or their spouses.

A licensee who is an active military member or is the spouse of an active military member shall be considered to hold a home state license in any of the following locations:

(a) The licensee's permanent residence;

(b). A member state that is the licensee's primary state of practice; or

(c). A member state where the licensee has relocated pursuant to a permanent change of station (PCS).

§18-10R- 6. Discipline; adverse actions.

(a) Nothing in this compact shall be considered or construed to limit the authority of a member state to investigate or impose disciplinary measures on licensees according to the state's practice laws.

(b) Member states may receive, and shall provide, files and information regarding the investigation and discipline, if any, of licensees in other member states upon request. Any member state receiving such information or files shall protect and maintain the security and confidentiality thereof, in at least the same manner that it maintains its own investigatory or disciplinary files and information. Prior to disclosing any disciplinary or investigatory information received from another member state, the disclosing state shall communicate its intention and purpose for such disclosure to the member state which originally provided that information.

§18R-10-7. Establishment of the School Psychologist Interstate Licensure Compact Commission.

(a) The member states hereby create and establish a joint government agency whose membership consists of all member states that have enacted the compact, and this agency shall be known as the School Psychologist Interstate Licensure Compact Commission. The commission is an instrumentality of the member states acting jointly and not an instrumentality of any one state. The commission shall come into existence on or after the effective date of the compact as set forth in §18-10R-11 of this code.

(b) Membership, Voting, and Meetings.

(1) Each member state shall have and be limited to one delegate selected by that member state's licensing authority.

(2) The delegate shall be the primary administrative officer of the member state licensing authority or his or her designee who is an employee of the member state licensing authority.

(3) The commission shall by rule or bylaw establish a term of office for delegates and may by rule or bylaw establish term limits.

(4) The commission may recommend removal or suspension of any delegate from office.

(5) A member state's licensing authority shall fill any vacancy of its delegate occurring on the commission within 60 days of the vacancy.

(6) Each delegate has one vote on all matters before the commission requiring a vote by commission delegates.

(7) A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates to meet by telecommunication, videoconference, or other means of communication.

(8) The commission shall meet at least once during each calendar year. Additional meetings may be held as set forth in the bylaws. The commission may meet by telecommunication, video conference or other similar electronic means.

(c) The powers, duties, and responsibilities of the commission include:

(1) Establishing the fiscal year of the commission;

(2) Establishing code of conduct and conflict of interest policies;

(3) Establishing and amending rules and bylaws;

(4) Establishing the procedure through which a licensee may change his or her home state;

(5) Maintaining its financial records in accordance with the bylaws;

(6) Meeting and taking such actions as are consistent with the provisions of this compact, the commission's rules, and the bylaws;

(7) Initiating and concluding legal proceedings or actions in the name of the commission, provided that the standing of any member state licensing authority to sue or be sued under applicable law shall not be affected;

(8) Maintaining and certifying records and information provided to a member state as the authenticated business records of the commission, and designating an agent to do so on the commission's behalf;

(9) Purchasing and maintaining insurance and bonds;

(10) Borrowing, accepting, or contracting for services of personnel, including, but not limited to, employees of a member state;

(11) Conducting an annual financial review;

(12) Hiring employees, electing or appointing officers, fixing compensation, defining duties, granting such individuals appropriate authority to carry out the purposes of the compact, and

establishing the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

(13) Assessing and collecting fees;

(14) Accepting any and all appropriate gifts, donations, grants of money, other sources of revenue, equipment, supplies, materials, and services, and receiving, using, and disposing of the same; provided that at all times the commission shall avoid any appearance of impropriety and/or conflict of interest;

(15) Leasing, purchasing, retaining, owning, holding, improving, or using any property, real, personal, or mixed, or any undivided interest therein;

(16) Selling, conveying, mortgaging, pledging, leasing, exchanging, abandoning, or otherwise disposing of any property real, personal, or mixed;

(17) Establishing a budget and making expenditures;

(18) Borrowing money;

(19) Appointing committees, including standing committees, composed of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;

(20) Providing and receiving information from, and cooperating with, law enforcement agencies;

(21) Establishing and electing an executive committee, including a chair and a vice chair;

(22) Determining whether a state's adopted language is materially different from the model compact language such that the state would not qualify for participation in the compact; and

(23) Performing any other functions necessary or appropriate to achieve the purposes of this compact.

(d) The Executive committee may act on behalf of the commission according to the terms of this compact. The powers, duties, and responsibilities of the executive committee include:

(1) Overseeing of the day-to-day activities of the administration of the compact including enforcement and compliance with the provisions of the compact, its rules and bylaws, and other such duties as considered necessary;

(2) Recommending to the commission changes to the rules or bylaws, changes to this compact legislation, fees charged to member states, fees charged to licensees, and other fees;

(3) Ensuring compact administration services are appropriately provided, including by contract;

(4) Preparing and recommending the budget;

(5) Maintaining financial records on behalf of the commission;

(6) Monitoring compact compliance of member states and provide compliance reports to the commission;

(7) Establishing additional committees as necessary;

(8) Exercising the powers and duties of the commission during the interim between commission meetings, except for adopting or amending Rules, adopting or amending bylaws, and exercising any other powers and duties expressly reserved to the commission by rule or bylaw; and

(9) Performing other duties as provided in the rules or bylaws of the commission.

(e) The executive committee shall be composed of up to seven members:

(1) The chair and vice chair of the commission shall be voting members of the executive committee; and

(2) The commission shall elect five voting members from the current membership of the commission.

(f) The commission may remove any member of the executive committee as provided in the commission's bylaws.

(g) The executive committee shall meet at least annually.

(1) Executive committee meetings shall be open to the public, except that the executive committee may meet in a closed, non-public meeting as provided in subdivision four, subsection (h) of this section.

(2) The executive committee shall give 30 days' notice of its meetings, posted on its website and as determined to provide notice to persons with an interest in the business of the commission.

(3) The executive committee may hold a special meeting in accordance with subsection subdivision three, subsection (h) of this section.

(4) The commission shall adopt and provide to the member states an annual report.

(h) Meetings of the commission.

(1) All meetings shall be open to the public, except that the commission may meet in a closed, non-public meeting as provided subdivision four, subsection (h) of this section.

(2) Public notice for all meetings of the full commission of meetings shall be given in the same manner as required under the rulemaking provisions in §18-10R-9 of this code, except that the commission may hold a special meeting as provided subsection subdivision three, subsection (h) of this section.

(3) The commission may hold a special meeting when it must meet to conduct emergency business by giving 48 hours' notice to all commissioners, on the commission's website, and other means as provided in the commission's rules. The commission's legal counsel shall certify that the commission's need to meet qualifies as an emergency.

(4) The commission or the executive committee or other committees of the commission may convene in a closed, non-public meeting for the commission or executive committee or other committees of the commission to receive legal advice or to discuss:

(i) Non-compliance of a member state with its obligations under the compact;

(1) The employment, compensation, discipline or other matters, practices or procedures related to specific employees;

(2) Current or threatened discipline of a Licensee by the commission or by a member state's licensing authority;

(3) Current, threatened, or reasonably anticipated litigation;

(4) Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

(5) Accusing any person of a crime or formally censuring any person;

(6) Trade secrets or commercial or financial information that is privileged or confidential;

(7) Information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(8) Investigative records compiled for law enforcement purposes;

(9) Information related to any investigative reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact;

(10) Matters specifically exempted from disclosure by federal or Member state law; or

(11) Other matters as promulgated by the commission by rule.

(j) If a meeting, or portion of a meeting, is closed, the presiding officer shall state that the meeting will be closed and reference each relevant exempting provision, and such reference shall be recorded in the minutes.

(k) The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release only by a majority vote of the commission or order of a court of competent jurisdiction.

(l) Financing of the commission.

(1) The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

(2) The commission may accept any and all appropriate revenue sources as provided in subsection subdivision 14, subsection (c) of this section.

(3) The commission may levy on and collect an annual assessment from each member state and impose fees on licensees practicing in the member states under an equivalent license to cover the cost of the operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount for member states shall be allocated based upon a formula that the commission shall promulgate by rule.

(4) The commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the commission pledge the credit of any of the member states, except by and with the authority of the member state.

(5) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the financial review and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission shall be subject to an annual financial review by a certified or licensed public accountant, and the report of the financial review shall be included in and become part of the annual report of the commission.

(j) Qualified Immunity, Defense, and Indemnification.

(1) The members, officers, executive director, employees and representatives of the commission shall be immune from suit and liability, both personally and in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities; provided that nothing in this subdivision shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person. The procurement of insurance of any type by the commission shall not in any way compromise or limit the immunity granted hereunder.

(2) The Commission shall defend any member, officer, executive director, employee, and representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or as determined by the commission that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing in this subdivision shall be construed to prohibit that person from retaining their own counsel at their own expense; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

(3) The commission shall indemnify and hold harmless any member, officer, executive director, employee, and representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

(4) Nothing in this section shall be construed as a limitation on the liability of any licensee for professional malpractice or misconduct, which shall be governed solely by any other applicable state laws.

(5) Nothing in this compact shall be interpreted to waive or otherwise abrogate a member state's state action immunity or state action affirmative defense with respect to antitrust claims under the Sherman Act, Clayton Act, or any other state or federal antitrust or anticompetitive law or regulation.

(6) Nothing in this compact shall be construed to be a waiver of sovereign immunity by the Member states or by the commission.

§18-10R-8. Facilitating information exchange.

(a) The commission shall provide for facilitating the exchange of information to administer and implement the provisions of this compact in accordance with the rules of the commission, consistent with generally accepted data protection principles.

(b). Notwithstanding any other provision of state law to the contrary, a member state shall agree to provide for the facilitation of the following Licensee information as required by the Rules of the commission, including:

(1) Identifying information;

(2) Licensure data;

(3). Adverse actions against a license and information related thereto;

(c) Non-confidential information related to alternative program participation, the beginning and ending dates of such participation, and other information related to such participation not made confidential under member state law;

(1) Any denial of application for licensure, and the reasons for such denial;

(2) The presence of investigative information; and

(3) Other information that may facilitate the administration of this compact or the protection of the public, as determined by the rules of the commission.

(d) Nothing in this compact shall be considered or construed to alter, limit, or inhibit the power of a member state to control and maintain ownership of its licensee information or alter, limit, or inhibit the laws or regulations governing Licensee information in the member state.

§18-10R-9. Rulemaking.

(a) The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this interstate compact and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

(b) The commission shall promulgate reasonable rules to achieve the intent and purpose of this interstate compact. In the event the commission exercises its rulemaking authority in a manner that is beyond purpose and intent of this interstate compact, or the powers granted

hereunder, then such an action by the commission shall be invalid and have no force and effect of law in the member states.

(c) If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact within four (4) years of the date of adoption of the rule, then such rule shall have no further force and effect in any member state.

(d) Rules or amendments to the Rules shall be adopted or ratified at a regular or special meeting of the commission in accordance with commission rules and Bylaws.

(e) Prior to promulgation and adoption of a final rule or rules by the commission, and at least thirty (30) days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:

(1) On the website of the commission or other publicly accessible platform; and

(2) On the website of each member state licensing authority or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.

(f) Upon determination that an emergency exists, the commission may consider and adopt an emergency rule with 48 hours' notice, with opportunity to comment, provided that the usual rulemaking procedures shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

(1) Meet an imminent threat to public health, safety, or welfare.

(2) Prevent a loss of commission or member state funds.

(3) Meet a deadline for the promulgation of an administrative Rule that is established by federal law or rule; or

(4) Protect public health and safety.

§18-10R-10. Oversight, dispute resolution, and enforcement.

(a) Oversight;

(1) The executive and judicial branches of the State government in each member state shall enforce this compact and take all actions necessary and appropriate to implement the compact.

(2) Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings. Nothing in this subdivision shall affect or limit the selection or propriety of venue in any action against a licensee for professional malpractice, misconduct or any such similar matter.

(3) The commission shall be entitled to receive service of process in any proceeding regarding the enforcement or interpretation of the compact and shall have standing to intervene in such a

proceeding for all purposes. Failure to provide the commission service of process shall render a judgment or order void as to the commission, this compact, or promulgated rules.

(b) Default, Technical Assistance, and Termination;

(1) If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall provide written notice to the defaulting state. The notice of default shall describe the default, the proposed means of curing the default, and any other action that the commission may take, and shall offer training and specific technical assistance regarding the default.

(2) The commission shall provide a copy of the notice of default to the other member states.

(c) If a state in default fails to cure the default, the defaulting state may be terminated from the compact upon an affirmative vote of a supermajority of the delegates of the member states, and all rights, privileges and benefits conferred on that state by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

(d) Termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the governor, the majority and minority leaders of the defaulting State's legislature, the defaulting state's licensing authority and each of the member states' licensing authorities.

(e) A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

(f) Upon the termination of a state's membership from this compact, that state shall immediately provide notice to all Licensees within that state of such termination. The terminated state shall continue to recognize all licenses granted pursuant to this compact for a minimum of six (6) months after the date of said notice of termination.

(g) The commission shall not bear any costs related to a state that is found to be in default or that has been terminated from the compact, unless agreed upon in writing between the commission and the defaulting state.

(h) The defaulting state may appeal the action of the commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees.

(i) Dispute Resolution;

(1) Upon request by a member state, the commission shall attempt to resolve disputes related to the compact that arise among member states and between member and non- member states.

(2) The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

(j) Enforcement:

(1) By majority vote as provided by rule, the commission may initiate legal action against a member state in default in the United States District Court for the District of Columbia or the federal district where the commission has its principal offices to enforce compliance with the provisions of the compact and its promulgated rules. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees. The remedies in this subdivision shall not be the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or the defaulting member state's law.

(2) A member state may initiate legal action against the commission in the U.S. District Court for the District of Columbia or the federal district where the commission has its principal offices to enforce compliance with the provisions of the compact and its promulgated rules. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees.

(3) No person other than a member state shall enforce this compact against the Commission.

§18-10R- 11. Effective date, withdrawal, and amendment.

(a) The compact shall come into effect on the date on which the compact statute is enacted into law in the seventh member state.

(1) On or after the effective date of the compact specified in subsection (a) of this section, the commission shall convene and review the enactment of each of the charter member states to determine if the statute enacted by each such charter member state is materially different than the model compact statute.

(A) A charter member state whose enactment is found to be materially different from the model compact statute shall be entitled to the default process set forth in §18-10R-10 of this code.

(B) If any member state is later found to be in default, or is terminated or withdraws from the compact, the commission shall remain in existence and the compact shall remain in effect even if the number of member states should be less than seven.

(2) Member states enacting the compact subsequent to the charter member states shall be subject to the process set forth in §18-10R-7(C)(21) to determine if their enactments are materially different from the model compact statute and whether they qualify for participation in the compact.

(3) All actions taken for the benefit of the commission or in furtherance of the purposes of the administration of the compact prior to the effective date of the compact or the commission coming into existence shall be considered to be actions of the commission unless specifically repudiated by the commission.

(A) Any state that joins the compact subsequent to the commission's initial adoption of the Rules and bylaws shall be subject to the rules and bylaws as they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the commission shall have the full force and effect of law on the day the compact becomes law in that state.

(B) Any member state may withdraw from this compact by enacting a statute repealing the same.

(C) A member state's withdrawal shall not take effect until 180 days after enactment of the repealing statute.

(D) Withdrawal shall not affect the continuing requirement of the withdrawing state's licensing authority to comply with the investigative and adverse action reporting requirements of this compact prior to the effective date of withdrawal.

(E) Upon the enactment of a statute withdrawing from this compact, a state shall immediately provide notice of such withdrawal to all licensees within that state. Notwithstanding any subsequent statutory enactment to the contrary, such withdrawing state shall continue to recognize all licenses granted pursuant to this compact for a minimum of six (6) months after the date of such notice of withdrawal.

(i) Nothing contained in this compact shall be construed to invalidate or prevent any licensure agreement or other cooperative arrangement between a member state and a non-member state that does not conflict with the provisions of this compact.

(ii) This compact may be amended by the member states. No amendment to this compact shall become effective and binding upon any member state until it is enacted into the laws of all member states.

§18-10R-12. Construction and severability.

(a) This compact and the commission's rulemaking authority shall be liberally construed so as to effectuate the purposes, and the implementation and administration of the compact. Provisions of the compact expressly authorizing or requiring the promulgation of rules shall not be construed to limit the commission's rulemaking authority solely for those purposes.

(b) The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is held by a court of competent jurisdiction to be contrary to the constitution of any Member state, a State seeking participation in the compact, or of the United States, or the applicability thereof to any government, agency, person or circumstance is held to be unconstitutional by a court of competent jurisdiction, the validity of the remainder of this compact and the applicability thereof to any other government, agency, person or circumstance shall not be affected thereby.

(c) Notwithstanding subsection B of this section, the commission may deny a state's participation in the compact or, in accordance with the requirements of §18-10R-10.B of this code, terminate a member state's participation in the compact, if it determines that a constitutional requirement of a Member state is a material departure from the compact. Otherwise, if this compact shall be held to be contrary to the constitution of any member state, the compact shall remain in full force and effect as to the remaining member states and in full force and effect as to the Member state affected as to all severable matters.

§18-10R-13. Consistent effect and conflict with other state laws.

(a) Nothing in this article shall prevent or inhibit the enforcement of any other law of a member state that is not inconsistent with the compact.

(b) Any laws, statutes, regulations, or other legal requirements in a member state in conflict with the compact are superseded to the extent of the conflict.

(c) All permissible agreements between the commission and the member states are binding in accordance with their terms.

The bill (Eng. Com. Sub. for H. B. 4951), as amended, was then ordered to third reading.

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

Your Committee on Rules has had under consideration

Eng. House Bill 5002, To require at least 1 baby changing station to existing and future rest areas in this state for both male and female restrooms.

With an amendment from the Committee on Finance pending;

Now on third reading, having been read a third time and referred to the Committee on Rules on March 5, 2024;

And reports the same back with the recommendation that it do pass as amended by the Committee on Finance to which the bill was first referred.

Respectfully submitted,

Craig Blair,
Chair ex officio.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 5002) contained in the preceding report from the Committee on Rules was taken up for immediate consideration.

Having been read a third time on March 5, 2024,

The question being "Shall Engrossed House Bill 5002 pass?"

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

The nays were: Azinger—1.

Absent: Boley, Grady, and Maroney—3.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 5002) passed.

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

Eng. House Bill 5002—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-67-1, relating to requiring that public rest areas provide diaper changing stations in both male and female restrooms; and providing for an effective date.

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

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 5232, The Business Liability Protection Act.

And has amended same.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on March 6, 2024;

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

Respectfully submitted,

Ryan W. Weld,
Vice Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5232) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration and read a second time.

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

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

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-14. Right of certain persons to limit possession of firearms on premises.

This section may be referred to as "The Business Liability Protection Act".

(a) As used in this section:

(1) "Parking lot" means any property that is used for parking motor vehicles and is available to customers, employees, or invitees for temporary or long-term parking or storage of motor vehicles: *Provided*, That for purposes of this section, parking lot does not include the private parking area at a business located at the primary residence of the property owner.

(2) "Motor vehicle" means any privately-owned automobile, truck, minivan, sports utility vehicle, motor home, recreational vehicle, motorcycle, motor scooter, or any other vehicle operated on the roads of this state and, which is required to be registered under state law: *Provided*, That for purposes of this section, motor vehicle does not mean vehicles owned, rented, or leased by an employer and used by the employee in the course of employment.

(3) "Employee" means any person, who is over 18 years of age, not prohibited from possessing firearms by the provisions of this code or federal law, and who:

- (A) Works for salary, wages, or other remuneration;
- (B) Is an independent contractor; or
- (C) Is a volunteer, intern, or other similar individual for an employer.

(4) "Employer" means any business that is a sole proprietorship, partnership, corporation, limited liability company, professional association, cooperative, joint venture, trust, firm, institution, association, or public-sector entity, that has employees.

(5) "Invitee" means any business invitee, including a customer or visitor, who is lawfully on the premises of a public or private employer.

(6) "Locked inside or locked to" means:

- (A) The vehicle is locked; or
- (B) The firearm is in a locked trunk, glove box, or other interior compartment, or
- (C) The firearm is in a locked container securely fixed to the vehicle; or
- (D) The firearm is secured and locked to the vehicle itself by the use of some form of attachment and lock.

(b) Notwithstanding the provisions of this article, any owner, lessee, or other person charged with the care, custody, and control of real property may prohibit the carrying openly or concealing of any firearm or deadly weapon on property under his or her domain: *Provided*, That for purposes of this section "person" means an individual or any entity which may acquire title to real property: *Provided, however*, That for purposes of this section "natural person" means an individual human being.

(c) Any natural person carrying or possessing a firearm or other deadly weapon on the property of another who refuses to temporarily relinquish possession of the firearm or other deadly weapon, upon being requested to do so, or to leave the premises, while in possession of the firearm or other deadly weapon, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in jail not more than six months, or both: *Provided*, That the provisions of this section do not apply to a natural person as set forth in §61-7-6(a)(5) through §61-7-6(a)(7) and §61-7-6(a)(9) through §61-7-6(a)(10) of this code while acting in his or her official capacity or to a natural person as set forth in §61-7-6(b)(1) through §61-7-6(b)(8) of this code, while acting in his or her official capacity: *Provided, however*, That under no circumstances, except as provided for by the provisions of §61-7-11a(b)(2)(A) through ~~(H)~~(K) of this code, may any natural person possess or carry or cause the possession or carrying of any firearm or other

deadly weapon on the premises of any primary or secondary educational facility in this state unless the natural person is a law-enforcement officer or he or she has the express written permission of the county school superintendent.

(d) *Prohibited acts.* – Notwithstanding the provisions of subsections (b) and (c) of this section:

(1) No owner, lessee, or other person charged with the care, custody, and control of real property may prohibit any customer, employee, or invitee from possessing any legally owned firearm, when the firearm is:

(A) Lawfully possessed;

(B) Out of view;

(C) Locked inside or locked to a motor vehicle in a parking lot; and

(D) When the customer, employee, or invitee is lawfully allowed to be present in that area.

(2) No owner, lessee, or other person charged with the care, custody, and control of real property may violate the privacy rights of a customer, employee, or invitee either

(A) ~~By verbal or written inquiry, regarding the presence or absence of a firearm locked inside or locked to a motor vehicle in a parking lot; or~~

(B) ~~By~~ by conducting an actual search of a motor vehicle in a parking lot to ascertain the presence of a firearm within the vehicle: *Provided*, That a search of a motor vehicle in a parking lot to ascertain the presence of a firearm within that motor vehicle may only be conducted by on-duty, law enforcement personnel, in accordance with statutory and constitutional protections.

~~(C)(3)~~ (3) No owner, lessee, or other person charged with the care, custody, and control of real property may ~~take any action against~~ remove a customer, employee, or invitee ~~based upon verbal or written statements of any party concerning possession of~~ for storing a firearm stored inside a motor vehicle in a parking lot ~~for lawful purposes as defined in this section, nor may they terminate an employee or take other adverse employment action against an employee for such storage, except in cases upon statements made pertaining to unlawful purposes or of threats of unlawful actions involving a firearm made in violation of §61-6-24 of this code action.~~

~~(3)(4)~~ (4) No employer may condition employment upon either:

(A) The fact that an employee or prospective employee holds or does not hold a license issued pursuant to §61-7-4 or §61-7-4a of this code; or

(B) An agreement with an employee or a prospective employee prohibiting that natural person from keeping a legal firearm locked inside or locked to a motor vehicle in a parking lot when the firearm is kept for lawful purposes.

~~(4)(5)~~ (5) No owner, lessee, or other person charged with the care, custody, and control of real property may prohibit or attempt to prevent any customer, employee, or invitee from entering the parking lot of the person's place of business because the customer's, employee's, or invitee's motor vehicle contains a legal firearm being carried for lawful purposes that is out of view within the customer's, employee's, or invitee's motor vehicle.

(e) Limitations on duty of care; immunity from civil liability. —

(1) When subject to the provisions of subsection (d) of this section, an employer, owner, lessee, or other person charged with the care, custody, and control of real property has no duty of care related to the acts prohibited under said subsection.

(2) An employer, owner, lessee, or other person charged with the care, custody, and control of real property is not liable in a civil action for money damages based upon any actions or inactions taken in compliance with subsection (d) of this section. The immunity provided in this subdivision does not extend to civil actions based on actions or inactions of employers, owners, lessees, or other persons charged with the care, custody, and control of real property unrelated to subsection (d) of this section.

(3) Nothing contained in this section may be interpreted to expand any existing duty or create any additional duty on the part of an employer, owner, lessee, or other person charged with the care, custody, and control of real property.

(f) *Enforcement.* – The Attorney General is authorized to enforce the provisions of subsection (d) of this section and may bring an action seeking either:

(1) Injunctive or other appropriate equitable relief to protect the exercise or enjoyment of the rights secured in subsection (d) of any customer, employee, or invitee;

(2) Civil penalties of no more than \$5,000 for each violation of subsection (d) and all costs and attorney's fees associated with bringing the action; or

(3) Both the equitable relief and civil penalties described in subdivisions (1) and (2) of this ~~section~~ subsection, including costs and attorney's fees. This action must be brought in the name of the state and instituted in the Circuit Court of Kanawha County. The Attorney General may negotiate a settlement with any alleged violator in the course of his or her enforcement of subsection (d) of this section.

(4) Notwithstanding any other provision in this section to the contrary, the authority granted to the Attorney General in this subsection does not affect the right of a customer, employee, or invitee aggrieved under the authority of subsection (d) of this section to bring an action for violation of the rights protected under this section in his or her own name and instituted in the circuit court for the county where the alleged violator resides, has a principal place of business, or where the alleged violation occurred. In any successful action brought by a customer, employee, or invitee aggrieved under the authority of subsection (d) of this section, the court may award injunctive or other appropriate equitable relief and civil penalties as set forth in subdivisions one, two and three of this subsection. In any action brought by a customer, employee, or invitee aggrieved under the authority of subsection (d) of this section, the court shall award all court costs and attorney's fees to the prevailing party.

The bill (Eng. Com. Sub. for H. B. 5232), as amended, was then ordered to third reading.

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 5349, West Virginia Truth in Food Labeling Act.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on March 6, 2024;

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

Respectfully submitted,

Ryan W. Weld,
Vice-Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5349) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration and read a second time.

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 39. TRUTH IN FOOD PRODUCT LABELING ACT.

§19-39-1. Definitions.

For purposes of this article:

(1) "Analogue product" means a food product derived by combining processed plant products, insects, or fungus with food additives to approximate the texture, flavor, appearance, or other aesthetic qualities or the chemical characteristics of any specific type of egg, egg product, fish, meat, meat food product, poultry, or poultry product.

(2) "Cell-cultured product" means a food product derived by harvesting animal cells and artificially or chemically replicating those cells in a growth medium in a laboratory to produce tissue to approximate the texture, flavor, appearance, or other aesthetic qualities or the chemical characteristics of any specific type of egg, egg product, fish, meat, meat food product, poultry, or poultry product.

(3) "Egg" has the meaning assigned by 21 U.S.C. §1033(g) and by §19-10A-2(i) of this code. The term does not include an analogue product or a cell-cultured product.

(4) "Egg product" has the meaning assigned by 21 U.S.C. §1033(f). The term does not include an analogue product or a cell-cultured product.

(5) "Fish" has the meaning assigned by 21 C.F.R. §123.3 and by §19-29-2(a) of this code. The term does not include an analogue product or a cell-cultured product.

(6) "Fishery product" has the meaning assigned by 21 C.F.R. §123.3. The term does not include an analogue product or a cell-cultured product.

(7) "Food" means any egg, egg product, fish, fishery product, meat, meat food product, poultry, or poultry product, but does not include any analogue product or cell-cultured product.

(8) "Food product" means any analogue product or cell-cultured product, but does not include any egg, egg product, fish, fishery product, meat, meat product, poultry, or poultry product.

(8) "Meat" has the meaning assigned by 9 C.F.R. §301.2 and by §19-29-2(d) of this code. The term does not include an analogue product or a cell-cultured product.

(9) "Meat food product" has the meaning assigned by 21 U.S.C. §601(j). The term does not include an analogue product or a cell-cultured product.

(10) "Poultry" has the meaning assigned by 21 U.S.C. §453(e). The term does not include an analogue product or a cell-cultured product.

(11) "Poultry product" has the meaning assigned by 21 U.S.C. §453(f). The term does not include an analogue product or a cell-cultured product.

§19-39-2. Misbranded food.

(a) A food product is misbranded:

(1) If its labeling is false or misleading in any manner, or fails to otherwise conform with the requirements of this article;

(2) If, in the case of a food product to which 21 U.S.C. §343 applies, its advertising is false or misleading in a material respect or its labeling is in violation of 21 U.S.C. §343;

(2) If it is offered for sale under the name of a food;

(3) If it is an imitation of a food, unless its label bears, in prominent type, the word "imitation" and immediately before or after the name of the food imitated;

(4) If it is an analogue product, unless its label bears in prominent type immediately before or after the name of the product one of the following:

(A) "Analogue";

(B) "Meatless";

(C) "Plant-based";

(D) "Made from plants"; or

(E) A similar, accurate qualifying term or disclaimer intended to clearly communicate to a consumer the contents of the product;

(5) If it is a cell-cultured product, unless its label bears in prominent type immediately before or after the name of the product using one of the following:

(A) "Cell-cultured";

(B) "Lab-grown"; or

(C) A similar, accurate qualifying term or disclaimer intended to clearly communicate to a consumer the contents of the product;

(6) If its container is made, formed, or filled in a manner that is misleading;

(7) If in package form, unless it bears a label containing:

(A) The name and place of business of the manufacturer, packer, or distributor; and

(B) An accurate statement, located on the principal display panel of the label, of the quantity of the contents in terms of weight, measure, or numerical count: *Provided*, that under this subsection, reasonable variations may be permitted and exemptions as to small packages may be established by rule;

(8) If any word, statement, or other information required by or under the authority of this chapter to appear on the label or labeling is not prominently placed on the label or labeling with such conspicuousness, as compared with other words, statements, designs, or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(9) If it purports to be or is represented as a food or food product for which a definition and standard of identity has been prescribed by federal law or as otherwise provided by this chapter, unless:

(A) It conforms to such definition and standard; and

(B) Its label bears the name of the food or food product specified in the definition and standard, and, in so far as may be required by those regulations or rules, the common names of ingredients, other than spices, flavoring, and coloring, present in such food or food product;

(10) If it purports to be or is represented as:

(A) A food or food product for which a standard of quality has been prescribed by federal regulations or department rules as provided under this chapter, and its quality falls below such standard unless its label bears, in such manner and form as those regulations or rules specify, a statement that it falls below such standard; or

(B) A food or food product for which a standard or standards of fill of container have been prescribed by federal regulations or department rules, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as those regulations or rules specify, a statement that it falls below such standard;

(11) Unless its label bears:

(A) The common or usual name of the food product, if any, and

(B) In case it is fabricated from two or more ingredients, the common or usual name of each such ingredient, and if the food product purports to be a beverage containing vegetable or fruit juice, a statement with appropriate prominence on the information panel of the total percentage of the fruit or vegetable juice contained in the food; except that spices, flavorings, and colors not required to be certified under 21 U.S.C. §379e, other than those sold as such, may be designated

as spices, flavorings, and colors, without naming each: *Provided*, That to the extent that compliance with the requirements of this paragraph is impractical or results in deception or unfair competition, exemptions shall be established by department rules;

(12) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the commissioner determines to be, and by rule prescribed, as necessary in order to fully inform purchasers as to its value for such uses;

(13) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact: *Provided*, That, to the extent that compliance with the requirements of this subdivision is impracticable, exemptions shall be established by department rules. The provisions of this subdivision, §29-39-2(9) of this code, and §29-39-2(11) of this code with respect to artificial coloring do not apply in the case of butter, cheese, and ice cream;

(14) If it is a raw agricultural commodity that is the produce of the soil and bears or contains a pesticide chemical applied after harvest, unless the shipping container of the commodity bears labeling that declares the presence of the chemical in or on the commodity and the common or usual name and the function of the chemical, except that the declaration is not required while the commodity, after removal from the shipping container, is being held or displayed for sale at retail out of the container in accordance with the custom of the trade;

(15) If it is a product intended as an ingredient of another food or food product and if used according to the directions of the purveyor will result in the final food or food product being adulterated or misbranded;

(16) If it is a color additive, unless its packaging and labeling are in conformity with the packaging and labeling requirements applicable to the color additive as may be contained in regulations issued under 21 U.S.C. §379e;

(17) If its packaging or labeling is in violation of an applicable regulation issued under 15 U.S.C. §1472 and 15 U.S.C. §1473, the Poison Prevention Packaging Act of 1970;

(18) If it is a food product intended for human consumption and is offered for sale, unless its label or labeling bears nutrition information that provides:

(A) The serving size that is an amount customarily consumed and that is expressed in a common household measure that is appropriate to the food product; or

(B) If the use of the food product is not typically expressed in a serving size, the common household unit of measure that expresses the serving size of the food product;

(C) The number of servings or other units of measure per container;

(D) The total number of calories in each serving size or other unit of measure that are:

(i) Derived from any source; and

(ii) Derived from fat;

(E) The amount of total fat, saturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugar, dietary fiber, and total protein contained in each serving size or other unit of measure; and

(F) Any vitamin, mineral, or other nutrient required to be placed on the label and labeling of food or food product under 21 U.S.C. §343; or

(G) If it is a food product distributed at retail in bulk display cases, or a food product received in bulk containers, unless it has nutrition labeling prescribed by the commissioner; and

(H) If the commissioner determines it is necessary, nutrition labeling will be mandatory for raw fruits, vegetables, and fish, including freshwater or marine finfish, crustaceans, mollusks including shellfish, amphibians, and other forms of aquatic animal life;

(22) If it is a food product intended for human consumption and is offered for sale, and a claim is made on the label, labeling, or retail display relating to the nutrient content or a nutritional quality of the food product to a specific disease or condition of the human body, except as permitted by 21 U.S.C. §360ee; or

(23) If it is a food product intended for human consumption and its label, labeling, and retail display do not comply with the requirements of 21 U.S.C. §360ee pertaining to nutrient content and health claims.

(b) The provisions of §29-39-2(a)(18) of this code do not apply to a food product:

(1) That is served in restaurants or other establishments in which food or food product is served for immediate human consumption or that is sold for sale or use in those establishments;

(2) That is processed and prepared primarily in a retail establishment, that is ready for human consumption, that is of the type described in subdivision (1) of this subsection, that is offered for sale to consumers but not for immediate human consumption in the establishment, and that is not offered for sale outside the establishment;

(3) That is an infant formula subject to 21 U.S.C. §350a;

(4) That is a medical food as defined in 21 U.S.C. §360ee;

(5) If the commissioner determines by rule that compliance with §29-39-29(a)(18) of this code is impracticable because the package of the food product is too small to comply with the requirements of that subdivision and if the label of that food product does not contain any nutrition information;

(6) If the commissioner determines that a food product contains insignificant amounts of all the nutrients required by §19-39-2(18) of this code to be listed on the label or labeling of food products as long as the label, labeling, or advertising of the food product does not make any claim with respect to the nutritional value of the food product: *Provided*, That if the commissioner determines that a food product contains insignificant amounts of more than half the nutrients required by §19-39-2(18) of this code to be in the label or labeling of the food product, the amounts of those nutrients shall be stated in a simplified form prescribed by the commissioner; or

(7) If a food product is sold by a food distributor, as long as the food distributor principally sells the food product to restaurants or other establishments in which the food product is served for immediate human consumption and the food distributor does not manufacture, process, or repackage the food product it sells.

(c) If a food product is subject to 21 U.S.C. §343, the food product shall comply with §29-39-2(18) of this code in a manner prescribed by rule.

(d) If a person offers a food product for sale and has annual gross sales made or business done in sales to consumers that is not more than \$500,000, or has annual gross sales made or business done in sales of the food product to consumers that is not more than \$50,000, the requirements of this section do not apply.

§19-39-3. Rulemaking; duplication or conflict with federal law.

(a) The commissioner may propose emergency rules and rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to implement the provisions of this article, which may include, but are not limited to:

(1) Inspection requirements;

(2) Any other labeling information necessary to ensure that a misbranded food product will not have false, misleading, or inaccurate labeling and that the public will be informed of the manner of handling required to maintain the food product in a wholesome condition;

(3) Violations of this article and administrative fines or forfeitures therefor;

(4) Procedures for administrative enforcement of violations of this article; and

(5) Procedures for appeals of proceedings under this article.

(b) In the event any provision of this article duplicates or conflicts with federal law or regulation, that provision under this article shall not apply and the federal law or regulation controls.

Senator Smith requested a ruling from the Chair as to whether he should be excused from voting under Rule 43 of the Rules of the Senate.

The Chair replied that any impact on Senator Smith would be as a member of a class of persons and that he would be required to vote.

The question being on the adoption of Senator Trump's amendment to the bill, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 5349), as amended, was then ordered to third reading.

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 5668, Creating the Responsible Gaming and Research Act.

And has amended same.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on March 6, 2024;

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

Respectfully submitted,

Ryan W. Weld,
Vice Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5668) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration and read a second time.

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

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

ARTICLE. 22. STATE LOTTERY ACT.

§29-22-30. Responsible Gaming and Research and Industry Development Act; gaming data research and analysis for scholarly purposes; higher education curriculum development; preparation of report.

(a) Short Title – The provisions of this section may be cited as "The Responsible Gaming and Research and Industry Development Act."

(b)(1) For the purposes of research only, West Virginia University shall be permitted to analyze transactional data and metrics of the type collected and maintained by the West Virginia Lottery as of March 1, 2024, related to gaming operations conducted in the state. For purposes of this section, "transactional data and metrics" refers to items such as demographic data, usage data, utilization of responsible gaming features, account suspension, complaints and financial information, including deposits, withdrawals, bonus usage, balance statements and bet-level data, as determined in the sole discretion of the West Virginia Lottery.

(2) Data provided by the West Virginia Lottery to West Virginia University for research purposes pursuant to this section is:

(A) To be transmitted in an anonymized manner by the West Virginia Lottery to West Virginia University, through hashing or other means, and excluding all personally identifiable information;

(B) Not a public record; and

(C) Is exempt from public inspection and copying under the West Virginia Freedom of Information Act, §29B-1-1 et seq. of this code.

(3) The university, upon receiving data, shall not disclose the data provided to this section to any person, except:

(A) For the purpose of conducting the research described in this section;

(B) As part of a peer-reviewed research report; or

(C) To gaming operators pursuant to a written request delivered to the West Virginia Lottery

(c) West Virginia University shall develop a new program or alter or expand existing programs to include courses, training, certificates, initiatives or other methods designated to foster innovation in gaming technology development, and prepare students for careers in racing, gaming, gaming operations, hospitality management, guest relations, entertainment, and other amenities typically offered in conjunction with gaming operations.

(d) Commencing on January 1, 2026, and continuing annually thereafter, the State Lottery Commission, or a successor agency or agencies, shall annually cause a comprehensive report to be prepared and distributed to the Joint Committee on Government and Finance on the impact of casino, video lottery, iGaming, racing, iLottery, and sports wagering on players and on the state's economy, innovation in gaming technologies and gaming operations resulting from West Virginia University's research authorized under this section, curriculum developed to educate future leaders in the state's gaming and racing industries, and policy proposals developed by the West Virginia Lottery from the research authorized under this section. The report shall be prepared and distributed with the cooperation of West Virginia University.

The bill (Eng. Com. Sub. for H. B. 5668), as amended, was then ordered to third reading.

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

Your Committee on Rules has had under consideration

Eng. House Bill 5694, Relating to the Firearms Industry Nondiscrimination Act.

With amendments from the Committee on Government Organization pending;

And has also amended same.

Now on second reading, having been referred to the Committee on Rules on March 5, 2024;

And reports the same back with the recommendation that it do pass as last amended by the Committee on Rules.

Respectfully submitted,

Craig Blair,
Chair ex officio.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 5694) contained in the preceding report from the Committee on Rules was taken up for immediate consideration and read a second time.

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

Filed Conference Committee Reports

The Clerk announced the following conference committee report had been filed at 6:05 p.m. today:

Eng. Senate Bill 219, Relating to Uniform Controlled Substances 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. Senate Bill 687, Clarifying Legislative Auditor's scope of authority.

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 by striking out the current article 2 heading and inserting in lieu thereof a new article 2 heading, to read as follows:

"ARTICLE 2. LEGISLATIVE AUDITOR; POWERS; FUNCTIONS; ~~DUTIES~~; COMPENSATION."

On page 2, section 4-2-4, line 1, by striking out the entire section and inserting in lieu thereof a new section 4-2-4, to read as follows:

"§4-2-4. Duties Powers of Auditor; filing reports."

(a) ~~It is the duty of the~~ The Legislative Auditor shall have the following powers, which he or she may exercise as directed by the President of the Senate or the Speaker of the House of Delegates:

(1) ~~to~~ To compile fiscal information for the Senate and the House of Delegates;

(2) ~~to~~ To make ~~a continuous~~ an audit and analysis of the state budget, revenues, and expenditures during and between sessions of the Legislature;

(3) ~~to~~ To make post audits of the revenues and expenditures of the spending units of the state government; ~~at least once every two years, if practicable~~

(4) ~~to~~ To report any misapplication of state funds or erroneous, extravagant, or unlawful expenditures by any spending unit; and

(5) ~~to~~ To ascertain facts and ~~to~~ make recommendations to the Legislature concerning post-audit findings, the revenues and expenditures of the state, and of the organization and functions of the state and its spending units.

(b) In the exercise of these powers, as directed by the President of the Senate or the Speaker of the House of Delegates, the Legislative Auditor shall have the authority, by such means as are necessary, to require any person holding office in the state government or employed by the state to allow the Legislative Auditor to inspect the properties, equipment, facilities, and records of the various spending units, either before or after estimates are submitted, and before, during, and after sessions of the Legislature. Refusal by any person or the state government entity to allow

such inspection shall be reported by the Legislative Auditor to the committee, the President of the Senate, or the Speaker of the House of Delegates.

~~(b)-(c)~~ The Legislative Auditor may collect, and the ~~department, agency or board~~ spending unit shall pay, any or all of the costs associated with conducting the post audits from the ~~department, agency or board~~ spending unit being audited, when necessary and desirable. The Legislative Auditor shall render to the ~~department, agency or board~~ spending unit liable for the costs a statement of the costs as soon after the costs were incurred as practicable, and it is the duty of the ~~department, agency or board~~ spending unit to pay promptly in the manner that other claims and accounts are paid. All money received by the Legislative Auditor from this source shall be expended only for the purpose of covering the costs associated with such services, unless otherwise directed by the Legislature.

~~(c)~~ A copy of each report of audit when completed and certified shall be filed in the office of the Department of Finance and Administration as a public record and a copy shall be filed with the Attorney General for any action he or she may consider necessary.

(d) Upon completion of a post audit, the Legislative Auditor shall report his or her findings and recommendations to the Legislature's Post Audit Subcommittee and, after presentation, publish the report on the Post Audit Division website.

(e) The Legislative Auditor shall conduct all examinations and audits and may not use external auditing firms or entities to conduct them except as otherwise directed by the President of the Senate or the Speaker of the House of Delegates."

On page 5, section 4-10-3, line 7, after the word "Senate" by striking out the remainder of the sentence and inserting in lieu thereof the following words ", the Speaker of the House of Delegates, or by recommendation of the joint standing committee pursuant to the provisions of this article."

On page 8, section 4-10-7, line 4, after the word "Senate" by striking out the remainder of the sentence and inserting in lieu thereof the following words ", the Speaker of the House of Delegates, or by recommendation of the joint standing committee."

And,

On page 11, section 4-10-10, line 26, after the word "Senate" by striking out the remainder of the sentence and inserting in lieu thereof the following words ", the Speaker of the House of Delegates, or by recommendation of the joint standing committee."

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

Engrossed Senate Bill 687, as amended by the House of Delegates, was then put upon its passage.

On this question, the yeas were: Barrett, Clements, Deeds, Jeffries, Nelson, Oliverio, Phillips, Queen, Swope, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—15.

The nays were: Azinger, Caputo, Chapman, Hamilton, Hunt, Karnes, Martin, Maynard, Plymale, Roberts, Rucker, Smith, Stover, Stuart, Taylor, and Woelfel—16.

Absent: Boley, Grady, and Maroney—3.

So, a majority of all the members elected to the Senate not having voted in the affirmative, the President declared the bill (Eng. S. B. 687) rejected.

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 155, Creating Violent Crime Prevention Act.

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

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

On page 1, section 61-7-18, line 8-9, by striking the words "a charge brought upon" and inserting "the conviction of" in lieu thereof.;

And,

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

Eng. Senate Bill 155—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-7-18, relating to the creation of the Violent Crime Prevention Act; and requiring law enforcement to submit ballistics data to the National Integrated Ballistic Information Network for alleged use of firearm in connection with convictions for certain crimes.

On motion of Senator Takubo, the Senate refused to concur in the foregoing House amendments to the bill (Eng. S. B. 155) and requested the House of Delegates to recede therefrom.

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

On motion of Senator Takubo, at 6:10 p.m., the Senate recessed for 15 minutes.

The Senate reconvened at 6:45 p.m.

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

Eng. Senate Bill 687, Clarifying Legislative Auditor's scope of authority.

The vote thereon having been reconsidered,

The question again being "Shall Engrossed Senate Bill 687 pass?"

On the passage of the bill, the yeas were: Azinger, Barrett, Clements, Deeds, Hunt, Jeffries, Maynard, Nelson, Oliverio, Phillips, Queen, Roberts, Smith, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woodrum, and Blair (Mr. President)—21.

The nays were: Caputo, Hamilton, Karnes, Martin, Plymale, Stover, and Woelfel—7.

Absent: Boley, Chapman, Grady, Maroney, Rucker, and Stuart—6.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 687) passed with its title.

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

The Senate proceeded to the thirteenth order of business.

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were added as co-sponsors to the following resolutions on March 6, 2024:

Senate Resolution 68: Senators Caputo and Hamilton;

And,

Senate Resolution 69: Senators Caputo and Hamilton.

Pending announcement of a meeting of the Committee on Rules,

On motion of Senator Takubo, at 6:48 p.m., the Senate adjourned until tomorrow, Friday, March 8, 2024, at 10 a.m.

SENATE CALENDAR

**Friday, March 08, 2024
10:00 AM**

UNFINISHED BUSINESS

S. R. 70 - Memorializing life of Heather Nicole Miller

S. R. 71 - Congratulating Kerri-Anne Cook on becoming first female golfer to win WVSSAC AA golf tournament

THIRD READING

Eng. Com. Sub. for H. B. 4110 - Authorizing certain miscellaneous agencies and boards to promulgate legislative rules

Eng. H. B. 4292 - Providing for enhanced damages for non-payment of royalties due from oil, natural gas, or natural gas liquids production - (Com. amend. and title amend. pending) - (With right to amend)

Eng. H. B. 4297 - Law Enforcement Officers Safety Act - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4320 - Relating to access for minor children's medical records - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4350 - Relating to appointment of candidates after filing period

Eng. Com. Sub. for H. B. 4399 - Creating the equitable right to expungement - (Com. title amend. pending)

Eng. H. B. 4700 - Banning certain persons from sport wagering activities - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4753 - Relating to providing health insurance coverage concerning biomarker testing - (Com. amends. and title amend. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 4786 - Delivery Network Company (DNC) Insurance Model Act - (Com. title amend. pending)

Eng. H. B. 4793 - Relating to distilled liquor

Eng. Com. Sub. for H. B. 4837 - Clarifying the duty of banks to retain and procure records - (Com. title amend. pending)

Eng. H. B. 4863 - Patriotic Access to Students in Schools Act - (Com. amend. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 4880 - Relating to personal income tax social security exemption - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4883 - Relating to increasing annual salaries of certain employees of the state - (Com. amend. and title amend. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 4911 - Relating to the sale of raw milk - (Com. title amend. pending)

Eng. H. B. 4945 - Relating generally to the Hope Scholarship Program - (Com. amend. and title amend. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 4951 - To facilitate the interstate practice of School Psychology in educational or school settings - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4956 - Creating the Oral Health and Cancer Rights Act - (Com. amends. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 4975 - Relating to establishing a foster parent information system - (Com. amend. and title amend. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 4999 - Creating exception to spousal privilege

Eng. Com. Sub. for H. B. 5084 - Require retailers to verify identification and age upon purchase of vape products - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 5105 - To eliminate the vaccine requirements for public virtual schools.

Eng. Com. Sub. for H. B. 5158 - Relating to making technical corrections to the special education code - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 5162 - Establish a program to promote creation and expansion of registered apprenticeship programs - (Com. amend. and title amend. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 5232 - The Business Liability Protection Act - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 5238 - Mandating that all courts provide adjudication for juvenile offenders for traffic violations to the Division of Motor Vehicles

Eng. H. B. 5252 - Requiring certain minimum experience for the director or coordinator of services class title involving school transportation. - (Com. title amend. pending)

Eng. H. B. 5257 - Relating generally to allowing the Supreme Court of Appeals discretion to create uniform pay scales for all levels of judicial support staff. - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 5262 - Relating generally to teacher's bill of rights - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 5287 - Relating generally to traffic safety - (Com. amend. and title amend. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 5349 - West Virginia Truth in Food Labeling Act

Eng. H. B. 5430 - Relating to per diem compensation and expenses of newly elected or appointed judicial officers receiving education and training prior to taking the oath of office. - (Com. amend. and title amend. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 5435 - Establishing the registered apprenticeship to associate of applied science program to be administered by the Council for Community and Technical College Education - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 5510 - Clarify law regarding the crime of witness tampering - (Com. title amend. pending)

- Eng. H. B. 5548 - Relating to modifying requirements imposed on any owner, operator, or manager within a tourism development project - (Com. amend. pending) - (With right to amend)
- Eng. Com. Sub. for H. B. 5553 - To provide and change graduation requirements and change duties relating to academic content standards - (Com. amend. pending) - (With right to amend)
- Eng. Com. Sub. for H. B. 5561 - Relating to permitting the electronic execution of trusts. - (Com. title amend. pending)
- Eng. Com. Sub. for H. B. 5583 - Permitting the Commissioner of the Division of Highways to issue a special permit to operate or move a vehicle or combination of vehicles of a size or weight of vehicles or nondivisible load exceeding the maximum specified - (Com. title amend. pending)
- Eng. Com. Sub. for H. B. 5668 - Creating the Responsible Gaming and Research Act - (Com. title amend. pending)
- Eng. H. B. 5694 - Relating to the Firearms Industry Nondiscrimination Act - (Com. amend. and title amend. pending) - (With right to amend)
- Eng. H. J. R. 21 - Amending the Constitution to prohibit persons not United States citizens from voting in any election held within this state
- Eng. Com. Sub. for H. J. R. 28 - Protection from medically-assisted suicide or euthanasia in West Virginia Amendment - (Com. amend. pending) - (With right to amend)

ANNOUNCED SENATE COMMITTEE MEETINGS

Regular Session 2024

Friday, March 8, 2024

9:45 a.m.

Rules

(Room 219M)