

WEST VIRGINIA LEGISLATURE

SENATE JOURNAL

EIGHTY-SEVENTH LEGISLATURE
REGULAR SESSION, 2025
FIFTY-EIGHTH DAY

Charleston, West Virginia, Thursday, April 10, 2025

The Senate met at 10:48 a.m.

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

Prayer was offered by the Reverend Matt Friend, Director of Spiritual Care, Charleston Area Medical Center, Charleston, West Virginia.

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

Pending the reading of the Journal of Wednesday, April 9, 2025,

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

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

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 Senate amendments to the House of Delegates amendment to, and the passage as amended with its Senate amended title, to take effect from passage, of

Eng. Senate Bill 650, Relating to full-time interventionists.

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 861, Updating references to reflect consolidation of Information Services and Communications Division into Office of Technology.

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

Eng. Senate Bill 862, Repealing antiquated language related to Voluntary Gilding Dome Check-Off Program.

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

Eng. Senate Bill 863, Removing reference to Information Services and Communications Division.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amended title, passage as amended, to take effect July 1, 2025, of

Eng. Com. Sub. for House Bill 2013, Transfer of employees to classified exempt service.

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 2067, West Virginia Firearms Liability Clarification Act.

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

Eng. House Bill 3522—A Bill supplementing and amending Chapter 11, Acts of the Legislature, Regular Session, 2024, known as the budget bill, in Title II from the appropriations of public moneys out of the Treasury from the balance remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Arts Culture and History – Division of Culture and History, fund 0293, fiscal year 2025, organization 0432, by supplementing and amending the appropriations for the fiscal year ending June 30, 2025, by adding a new item of appropriation.

At the request of Senator Martin, unanimous consent being granted, reference of the bill to a committee was dispensed with, and it was taken up for immediate consideration, read a first time, and ordered to second reading.

On motion of Senator Martin, the constitutional rule requiring a bill to be read on three separate days was suspended by a vote of four fifths of the members present, taken by yeas and nays.

On suspending the constitutional rule, the yeas were: Azinger, Barrett, Bartlett, Boley, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Stuart, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

The bill was read a second time and ordered to third reading.

Engrossed House Bill 3522 was then read a third time and put upon its passage.

Pending discussion,

The question being "Shall Engrossed House Bill 3522 pass?"

On the passage of the bill, the yeas were: Azinger, Barrett, Bartlett, Boley, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Stuart, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 3522) passed with its title.

Senator Martin moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Bartlett, Boley, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Helton, Jeffries, Morris, Oliverio, Phillips, Queen, Roberts, Rucker, Stuart, Takubo, Tarr, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—29.

The nays were: Hart, Martin, Maynard, Rose, and Taylor—5.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 3522) takes effect from passage.

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

Executive Communications

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



Patrick Morrisey
Office of the Governor

April 9, 2025

Executive Message 3
2025 Regular Session

The Honorable Randy Smith
President, West Virginia Senate
State Capitol, Rm 229M
Charleston, WV 25305

Dear Mr. President:

Pursuant to the provisions of section 20, article 1, chapter 5 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; FY2024 Annual Report

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

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

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

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

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

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

Administration, West Virginia Department of; State Building Commission Fund Month Ending October 2024

Administration, West Virginia Department of; State Building Commission Fund Month Ending November 2024

Administration, West Virginia Department of; Shared Services Section Cost Analysis and Report

Administration, West Virginia Department of; State Building Commission Fund Month End of January 2025

Administration, West Virginia Department of; State Building Commission Fund Month End of February 2025

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Agricultural Land Protection Authority, West Virginia; West Virginia Agricultural Land Protection Authority Report

Agriculture, West Virginia Department of; West Virginia Farm-to-Food Bank Tax Credit Tax Credit Review Report Years Ended December 31, 2022, and 2023

Architects, West Virginia Board of; Annual Report FY2024 & FY2023

Attorney General, West Virginia Office of the; Eightieth Biennial Report and Official Opinions of the Attorney General of the State of West Virginia for the Fiscal Years Beginning July 1, 2022 and Ending June 30, 2024

Attorney General, West Virginia Office of the; Annual Report 2024

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

City of Welch; First Semi-Annual Progress Report of 2024

City of Welch; Second Semi-Annual Progress Report of 2024

Concord University; Annual Foundation Investment Report

Consolidated Public Retirement Board, West Virginia; West Virginia State Police Disability Experience Annual Report Fiscal Year 2024

Corrections & Rehabilitation, West Virginia Division of; Annual Report FY2024

Dentistry, West Virginia Board of; Report of the Biennium for Fiscal Years 2023 & 2024

Fire Marshal & State Fire Commission, West Virginia State; FY 2024 Annual Report

Insurance Commissioner, West Virginia Offices of the; CY2023 Annual Report

Insurance Commissioner, West Virginia Offices of the; State Agency Workers' Compensation (SAWC) Annual Report FY 2024

Insurance Commissioner, West Virginia Offices of the; 2024 Annual Medical Malpractice Report

Insurance Commissioner, West Virginia Offices of the; West Virginia Office of Consumer Advocate Offices of the WV Insurance Commissioner 2024 Annual Report

Legislative Claims Commission, West Virginia; Report of the Legislative Claims Commission 2024

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending February 29, 2024

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending March 31, 2024

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

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending May 31, 2024

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending June 30, 2024

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending July 31, 2024

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending August 31, 2024

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending September 30, 2024

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending October 31, 2024

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending November 30, 2024

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending December 31, 2024

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending January 31, 2025

Lottery, West Virginia; Annual Comprehensive Financial Report Fiscal Years Ended June 30, 2024 and 2023

Medicine, West Virginia Board of; Annual Report July 1, 2021-June 30, 2023

Multimodal Transportation Facilities - Public Transit Section, West Virginia Department of Transportation/Division of; 2023 Annual Safety Status Report

Natural Resources, West Virginia Division of Natural Resources; Annual Report 2023-2024

Occupational Therapy, West Virginia Board of; Annual Report FY 2023-FY 2024

Osteopathic Medicine Foundation, Inc., West Virginia School of; Statements of Cash Flows for the Years Ended

Potomac River Basin, Interstate Commission on the; Eighty Third Financial Statement for the period of October 1, 2022 to September 30, 2023

Real Estate Appraiser Licensing and Certification Board, West Virginia; Annual Report Fiscal Years 2023 and 2024

Resiliency Office, West Virginia State, Annual Report 2024

Respiratory Care, West Virginia Board of; Annual Report July 1, 2023-June 30, 2024

Revenue, West Virginia Department of; Public Employees Insurance Reserve Fund Report FY 2024

State Board of Registration for Professional Engineers of West Virginia; FY2024 Annual Report

State Tax Department, West Virginia; Report to Governor and Joint Committee on Government and Finance for Tax Year 2025 September 2025

State Treasurer, West Virginia Office of the; Cash Management Improvement Act Quarterly Report

State Treasurer, West Virginia Office of the; Cash Management Improvement Act Quarterly Report

State Treasurer, West Virginia Office of the; Cash Management Improvement Act Quarterly Report

State Treasurer, West Virginia Office of the; Cash Management Improvement Act Quarterly Report

Tax Division, West Virginia; West Virginia Tax Expenditure Study for 2025

Treasury Investments, West Virginia Board of; Operating Report February 2024

Treasury Investments, West Virginia Board of; Operating Report March 2024

Treasury Investments, West Virginia Board of; Operating Report April 2024

Treasury Investments, West Virginia Board of; Operating Report June 2024
Treasury Investments, West Virginia Board of; Operating Report July 2024
Treasury Investments, West Virginia Board of; Audited Financial Statements with Other Financial Information
Year Ended June 30, 2024
Treasury Investments, West Virginia Board of; Operating Report August 2024
Treasury Investments, West Virginia Board of; Operating Report September 2024
Treasury Investments, West Virginia Board of; Operating Report October 2024
Treasury Investments, West Virginia Board of; Annual Comprehensive Financial Report Fiscal Year Ended
June 30, 2024
Treasury Investments, West Virginia Board of; Operating Report November 2024
Treasury Investments, West Virginia Board of; Operating Report December 2024
Treasury Investments, West Virginia Board of; Operating Report January 2025
Treasury Investments, West Virginia Board of; Operating Report February 2025
Veterinary Medicine, West Virginia Board of; Biennium Report 2023 & 2024
Water Development Authority, West Virginia; Fiscal Year 2024 Annual Report
Water Sanitation Commission, Ohio River Valley; Annual Report 2024
West Virginia State Police; 2023-2024 Annual Report

Sincerely,



Patrick Morrisey
Governor

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

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



Patrick Morrisey
Office of the Governor

April 9, 2025

EXECUTIVE MESSAGE NO. 4
2025 REGULAR SESSION

The Honorable Randy Smith
President, West Virginia Senate
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 January 13, 2025, through April 9, 2025.

Sincerely,


Patrick Morrisey
Governor

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

Senator Smith (Mr. President) next laid before the Senate the following proclamation from His Excellency, the Governor, extending this current legislative session until and including the thirteenth day of April, 2025, 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 February two thousand twenty-five; and

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

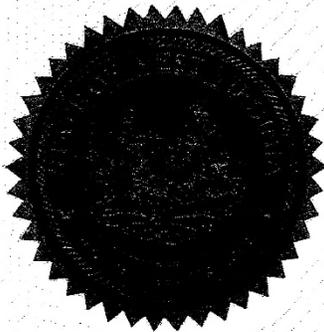
WHEREAS, Article VI, Section 51 of the Constitution of West Virginia sets forth the obligations of the Governor and the Legislature relating to the preparation and enactment of the Budget Bill; and

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 ninth day of April, two thousand twenty-five;

NOW, THEREFORE, I, PATRICK MORRISEY, 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-five regular session of the Legislature for an additional period not to exceed one day, through and including the thirteenth day of April, two thousand twenty-five; 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.



DONE at the Capitol in the City of Charleston, State of West Virginia, on this the Ninth Day of April, in the Year of our Lord, Two Thousand Twenty-Five, and in the One Hundred Sixty-Second Year of the State.

Patrick Morrisey
GOVERNOR

By the Governor

Krist Warner
SECRETARY OF STATE

The Senate proceeded to the sixth order of business.

Senator Smith (Mr. President) offered the following resolution:

Senate Resolution 49—Recognizing May 8, 2025, as World Red Cross Day and Red Crescent Day at the Legislature.

Which, under the rules, lies over one day.

The Senate proceeded to the eighth order of business.

Eng. House Bill 2120, Relating to forms and disclosures to the Ethics Commission.

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, Bartlett, Boley, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Stuart, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2120) passed.

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

Eng. House Bill 2120—A Bill to amend and reenact §6B-2-1, §6B-2-2, §6B-2-12, §6B-3-1, §6B-3-2, §6B-3-4, §6B-3-5, §6B-3-7, and §6B-3-9 of the Code of West Virginia, 1931, as amended, relating to modifying certain provisions regarding governmental ethics; modifying certain Ethics Commission duties and authorities; requiring a commission member to recuse himself or herself from certain decisions under certain circumstances; modifying certain rule-making requirements; requiring Ethics Commission develop certain electronic registration and reporting system by date certain and establishing criteria and functionality for same; requiring Ethics Commission provide certain information and resources on its website for public and lobbyist use; modifying certain lobbying registration requirements; modifying certain lobbying reporting requirements and increasing the number of required lobbying activity reports per year; and modifying the penalty provisions related to violations of statutory provisions governing lobbyists.

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

Eng. Com. Sub. for Com. Sub. for House Bill 2164, To allow for public and private schools in West Virginia to employ security personnel.

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

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

Eng. Com. Sub. for Com. Sub. for House Bill 2167, Relating to public charter schools code provisions.

On third reading, coming up in regular order, with the unreported Education committee amendment pending, and with the right having been granted on yesterday, Wednesday, April 9, 2025, for further amendments to be received on third reading, was read a third time.

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

On motion of Senator Grady, 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 5G. PUBLIC CHARTER SCHOOLS.

§18-5G-3. Public charter school criteria, governance structure and statutory compliance requirements; applicable federal and state laws.

(a) Public charter schools authorized pursuant to this article shall meet the following general criteria:

(1) Are part of the state's system of public schools and are subject to general supervision by the West Virginia Board of Education for meeting the student performance standards required of other public school students under §18-2E-5(d) and (e) of this code;

(2) Are subject to the oversight of the school's authorizer for operating in accordance with its approved charter contract and for meeting the terms and performance standards established in the charter contract;

(3) Are not home school-based;

(4) Are not affiliated with or espouse any specific religious denomination, organization, sect, or belief and do not promote or engage in any religious practices in their educational program, admissions, employment policies, or operations;

(5) Are not affiliated with any organized group whose espoused beliefs attack or malign an entire class of people, typically for immutable characteristics, as identified through listings of such groups as may be made by the U. S. Department of Justice, the Federal Bureau of Investigation, or officials having similar jurisdiction in this state;

(6) Are public schools to which parents or legal guardians choose to send their child or children;

(7) Do not charge full-time tuition and may only charge such tuition or fees as may be imposed by noncharter public schools in this state, such as for part-time Hope Scholarship enrollment or for participation in student activities.

(8) Have no requirements that would exclude any child from enrollment who would not be excluded at a noncharter public school.

(b) A public charter school authorized pursuant to this article shall be governed by a board that meets the requirements established in §18-5G-7 of this code and:

(1) Has autonomy over key decisions, including, but not limited to, decisions concerning finance, personnel, scheduling, curriculum, and instruction except as provided in this article;

(2) Has no power to levy taxes;

(3) Operates in pursuit of a specific set of educational objectives as defined in its charter contract;

(4) Provides a program of public education that:

(A) Includes one or more of the following: Prekindergarten and any grade or grades from kindergarten to grade 12 including any associated post-secondary embedded credit, dual credit, advanced placement, internship, and industry or workforce credential programs that the public charter school chooses to incorporate into its programs;

(B) May include in its mission a specific focus on students with special needs, including, but not limited to, at-risk students, English language learners, students with severe disciplinary problems at a noncharter public school, or students involved with the juvenile justice system; and

(C) May include a specific academic approach or theme including, but not limited to, approaches or themes such as STEM education, mastery-based education, early college, or fine and performing arts;

(5) Provides programs and services to a student with a disability in accordance with the student's individualized education program and all federal and state laws, regulations, rules and policies. A charter school shall deliver the services directly or contract with a county board or another provider to deliver the services as set forth in its charter contract;

(6) Is eligible to participate in state-sponsored or district-sponsored athletic and academic interscholastic leagues, competitions, awards, scholarships, and recognition programs for students, educators, administrators, and schools to the same extent as noncharter public schools;

(7) Employs its own personnel as employees of the public charter school and is ultimately responsible for processing employee paychecks, managing its employees' participation in the applicable retirement system, and managing its employees' participation in insurance plans: *Provided*, That nothing in this subdivision prohibits the public charter school from contracting with another person or entity to employ personnel or to perform services relating to managing its employees' participation in the retirement system or insurance plan. A county board may not require any employee of its school system to be employed in a public charter school. A county board may not harass, threaten, discipline, discharge, retaliate, or in any manner discriminate against any school system employee involved directly or indirectly with an application to establish a public charter school as authorized under this section. All personnel in a public charter school who were previously employed by the county board shall continue to accrue seniority with the county board in the same manner that they would accrue seniority if employed in a noncharter public school in the county for purposes of employment in noncharter public schools; and

(8) Is responsible for establishing a staffing plan that includes the requisite qualifications and any associated certification and/or licensure necessary for teachers and other instructional staff to be employed at the public charter school and for verifying that these requirements are met.

(c) A public charter school authorized pursuant to this article is exempt from all statutes and rules applicable to a noncharter public school or board of education except the following:

(1) All federal laws and authorities applicable to noncharter public schools in this state including, but not limited to, the same federal nutrition standards, the same civil rights, disability rights and health, life and safety requirements applicable to noncharter public schools in this state;

(2) The provisions of §29B-1-1 *et seq.* of this code relating to freedom of information and the provisions of §6-9A-1 *et seq.* of this code relating to open governmental proceedings;

(3) The same immunization requirements applicable to noncharter public schools;

(4) The same compulsory school attendance requirements applicable to noncharter public schools.

(A) When a parent or guardian withdraws a student from a public charter school and enrolls the child in a public school district of that county, the school district of the student's county of residence becomes responsible to track the student for all purposes.

(B) When a parent or guardian withdraws a student from a public charter school and enrolls the child in another public charter school, home school, private school, learning pod, microschool, or out-of-state school, the receiving school or district becomes responsible to track the student for all purposes: *Provided*, That the public charter school from which the student is withdrawing provides the attendance director of the student's county of residence notification of withdrawal from the charter school by phone, electronically, or in writing. The written notification shall include, but is not limited to, the student's name, WVEIS identification number, parent/guardian contact information, and the anticipated or actual withdrawal date.

(5) The same minimum number of days or an equivalent amount of instructional time per year as required of noncharter public school students under §18-5-45 of this code;

(6) The same student assessment requirements applicable to noncharter public schools in this state, but only to the extent that will allow the state board to measure the performance of public charter school students pursuant to §18-2E-5(d) and (e) of this code. Nothing precludes a public charter school from establishing additional student assessment measures that go beyond state requirements. Public charter school teachers who are not certified or licensed in the State shall be permitted to proctor state assessments: *Provided*, That the teacher has successfully completed the annual training to serve as proctor and the charter school maintains a list of all staff who have successfully completed that annual training.

(7) The Student Data Accessibility, Transparency and Accountability Act pursuant to §18-2-5h of this code;

(8) Use of the electronic education information system established by the West Virginia Department of Education for the purpose of reporting required information;

(9) Reporting information on student and school performance to parents, policy-makers, and the general public in the same manner as noncharter public schools utilizing the electronic format established by the West Virginia Department of Education. Nothing precludes a public charter school from utilizing additional measures for reporting information on student and school performance that go beyond state requirements;

(10) All applicable accounting and financial reporting requirements as prescribed for public schools, including adherence to generally accepted accounting principles. A public charter school shall annually engage an external auditor to perform an independent audit of the school's finances. The public charter school shall submit the audit to its authorizer and to the state superintendent of schools within nine months of the end of the fiscal year for which the audit is performed;

(11) A criminal history check pursuant to §18A-3-10 of this code for any staff person that would be required if the person was employed in a noncharter public school, unless a criminal history check has already been completed for that staff person pursuant to that section. Governing board members and other public charter school personnel are subject to criminal history record checks and fingerprinting requirements applicable to noncharter public schools in this state. Contractors and service providers or their employees are prohibited from making direct, unaccompanied contact with students and from access to school grounds unaccompanied when students are present if it cannot be verified that the contractors, service providers or employees have not previously been convicted of a qualifying offense pursuant to §18-5-15c of this code;

(12) The same zoning rules for its facilities that apply to noncharter public schools in this state;

(13) The same building codes, regulations and fees for its facilities that apply to noncharter public schools in this state, including any inspections required for noncharter public schools under this chapter and the West Virginia State Fire Marshal for inspection and issuance of a certificate of occupancy for any facility used by the public charter school; and

(14) The same student transportation safety laws applicable to public schools when transportation is provided.

§18-5G-4. West Virginia Board of Education; powers and duties for implementation, general supervision and support of public charter schools.

(a) The state board along with the West Virginia Public Charter School Board established in §18-5G-15 of this code shall consult with nationally recognized charter school organizations and establish and maintain a catalogue of best practices for public charter schools applicable for all applicants, authorizers, governing board members, and administrators that are consistent with this article and nationally recognized principles and professional standards for quality public charter school authorizing and governance in all major areas of authorizing and governance responsibility in the following areas:

- (1) Organizational capacity and infrastructure;
- (2) Solicitation and evaluation of charter applications;
- (3) A framework to guide the development of charter contracts;
- (4) Performance contracting including a performance framework;

- (5) Providing transparency and avoiding all conflicts of interest;
- (6) Ongoing public charter school oversight and evaluation; and
- (7) Charter approval and renewal decision-making;

(b) The state board is responsible for exercising, in accordance with this article, the following powers and duties with respect to the oversight and authorization of public charter schools:

(1) Provide forms to promote the quality and ease of use for authorizers to solicit applications for public charter schools, for applicants to complete applications, and for establishing quality charter contracts that include a framework for performance standards. The forms shall be available for use and solicitations made not later than the beginning of February, 2020. The forms shall include an application deadline of August 31st of the year prior to the beginning of operations for the proposed school year, or April 30th of the proposed school year in the case of a conversion public charter school or a program conversion public charter school. No public charter school may begin operation prior to the beginning of the proposed school year ~~following the previous year August application~~;

(2) Provide training programs for public charter school applicants, administrators and governing board members, as applicable, that include, but are not limited to:

(i) Pre-application training programs and forms to assist in the development of high quality public charter school applications;

(ii) The required components and the necessary information of the public charter school application and the charter contract as set forth in this article;

(iii) The public charter school board's statutory role and responsibilities;

(iv) Public charter school employment policies and practices; and

(v) Authorizer responsibilities for public charter school contract oversight and performance evaluation;

(3) Receive and expend appropriate gifts, grants and donations of any kind from any public or private entity to carry out the purposes of this act, subject to all lawful terms and conditions under which the gifts, grants or donations are given;

(4) Apply for any federal funds that may be available for the implementation of public charter school programs;

(5) Establish reporting requirements that enable the state board to monitor the performance and legal compliance of authorizers and public charter schools;

(6) Establish a framework and procedures for interactions between public charter schools, public noncharter schools and county boards of education to facilitate cooperation for shared services, training and information and to ensure the prompt transfer of student records, including IEP's, so as to minimize the interruption of a student's education when transferring between noncharter public schools and public charter schools; and

(7) Submit to the Governor and the Legislature an annual report within 60 days of the end of each school year summarizing:

(A) The student performance of all operating public charter schools; and

(B) The authorization status of all public charter schools within the last school year, identifying all public charter schools as:

(i) Application pending;

(ii) Application denied and reasons for denial;

(iii) Application approved, but not yet operating;

(iv) Operating and years of operation;

(v) Renewed and years of operation;

(vi) Terminated;

(vii) Closed;

(viii) Never opened; and

(ix) Any successful innovations applied in authorized public charter schools which may be replicated in other schools. The report shall provide information about how noncharter public schools may implement these innovations.

(c) The state board shall be the authorizer of a public charter school when a county board or boards approve the application for a public charter school and requests the state board to perform the authorizer duties and responsibilities or when an application to form a public charter school or to renew a charter contract is submitted from an applicant within a county in which the state board has intervened and limited the power of the county board to act pursuant to §18-2E-5 of this code.

§18-5G-7. Public Charter school governing board.

(a) To ensure compliance with this article, a public charter school shall be administered by a governing board accountable to the authorizer as set forth in the charter contract. A public charter school governing board shall consist of no fewer than five members elected or selected in a manner specified in the charter application, including at least the following:

(1) Two parents of students attending the public charter school operating under the governing board; and

~~(2)~~ Two members who reside in the community served by the public charter school.

(b) Members of the governing board shall:

~~(A)~~ (1) Not be an employee of the public charter school administered by the governing board;

~~(B)~~ (2) Not be an employee of an education service provider that provides services to the public charter school;

~~(C)~~ (3) File a full disclosure report to the authorizer identifying potential conflicts of interest, relationships with management organizations, and relationships with family members who are employed by the public charter school or have other business dealings with the school, the management organization of the school, or any other public charter school;

~~(D)~~ (4) Collectively possess expertise in leadership, curriculum and instruction, law, and finance; and

~~(E)~~ (5) Be considered an officer of a school district under the provisions of §6-6-7 of this code and removal from office shall be in accordance with the provisions of that section or by a vote of the governing board.

(c) The public charter school governing board shall:

(1) Operate under the oversight of its authorizer in accordance with its charter contract;

(2) As a public corporate body, have the powers necessary for carrying out the terms of its charter contract, including, but not limited to the power to:

(A) Receive and disburse funds for school purposes;

(B) Secure appropriate insurance and enter into contracts and leases;

(C) Contract with an education service provider, so long as the governing board retains final oversight and authority over the school;

(D) Pledge, assign, or encumber its assets to be used as collateral for loans or extensions of credit;

(E) Solicit and accept any gifts or grants for school purposes, subject to applicable laws and the terms of its charter; and

(F) Acquire real property for use as its facilities or facilities from public or private sources;

(3) Enroll students in the public charter school pursuant to §18-5G-11 of this code;

(4) Require any education service provider contracted with the governing board to provide a monthly detailed budget to the board; and

(5) Provide programs and services to a student with a disability in accordance with the student's individualized education program and all federal and state laws, rules, and regulations. A public charter school shall deliver the services directly or contract with another provider to deliver the services.

(d) A public charter school authorized under this article may:

(1) Negotiate and contract with its authorizer or any third party for the use, operation, and maintenance of a building and grounds, liability insurance, and the provision of any service, activity, or undertaking that the public charter school is required to perform in order to carry out

the educational program described in its charter contract. Any services for which a public charter school contracts with a school district shall be provided by the district at cost and shall be negotiated as a separate agreement after final charter contract negotiations;

- (2) Sue and be sued in its own name;
- (3) Own, rent, or lease its space;
- (4) Participate in cocurricular activities to the same extent as noncharter public schools; and
- (5) Participate in extracurricular activities to the same extent as noncharter public schools.

(e) The public charter school governing board is responsible for the operation of its public charter school, including, but not limited to, ensuring compliance with the public charter school criteria, governance and statutory compliance set forth §18-5G-3 of this code, the preparation of an annual budget, contracting for services, school curriculum, personnel matters, and achieving the objectives and goals of the public charter school's program.

(f) The public charter school governing board shall comply with the provisions of §29B-1-1 *et seq.* of this code relating to freedom of information and the provisions of §6-9A-1 *et seq.* of this code relating to open governmental proceedings.

(g) Notwithstanding anything else in this Code, when a state institution of higher education is an applicant and after its application is approved by an authorizer, the governing board of the public charter school may be an administrative unit of the state institution of higher education, and the governing board may enter into the charter contract on behalf of the state institution of higher education.

§18-5G-14a. Alternative high-risk population public charter schools.

(a) Alternative high-risk population public charter schools may be authorized and funded pursuant to this article. To be eligible for an alternative high-risk population public charter school, the school must have an unduplicated count of at least 70 percent of their total enrollment, upon first entry to the school, comprised of high-risk students and obtain approval from the Charter School Board certifying the school meets the criteria. "High risk" students include the following:

- (1) Students who have been expelled;
- (2) Students who have been suspended more than 10 days in a school year;
- (3) Wards of the court or dependents of the court;
- (4) Recovered dropouts;
- (5) Students who are habitually truant;
- (6) Students who have been retained more than once in kindergarten through grade eight;
- (7) Students who are credit deficient;

(8) Students who have a high-level transiency such as being enrolled in more than two schools during the past academic year or have changed secondary schools more than two times since entering high school;

(9) Foster youth;

(10) Homeless youth; and

(11) Students who need greater flexibility in scheduling or have circumstances which would benefit from this type of schooling.

(b) The state board shall promulgate a rule pursuant to the provisions of §29A-3B-1 et seq. of this code setting forth requirements for alternative high-risk population charter school funding.

Engrossed Committee Substitute for Committee Substitute for House Bill 2167, as just amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Bartlett, Boley, Chapman, Charnock, Clements, Deeds, Fuller, Grady, Hamilton, Helton, Jeffries, Martin, Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Stuart, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—32.

The nays were: Garcia and Hart—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for H. B. 2167) passed.

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

Eng. Com. Sub. for Com. Sub. for House Bill 2167—A Bill to amend and reenact §18-5G-3, §18-5G-4, and §18-5G-7 of the Code of West Virginia, 1931, as amended; and to amend the code by adding a new section, designated §18-5G-14a, relating to providing that public charter schools may not charge full-time tuition and may only charge such tuition or fees as may be imposed by noncharter public schools in this state, such as for part-time Hope Scholarship enrollment or for participation in student activities; allowing public charter schools to employ personnel to perform services relating to managing its employees' participation in the retirement system or insurance plan; assigning responsibility for tracking the student when a parent or guardian withdraws the student from a public charter school and imposing notification of withdraw requirement on public charter school in certain instances; providing that public charter school teachers who are not certified or licensed are permitted to proctor state assessment under certain conditions; providing for a different application deadline in the case of a conversion public charter school or a program conversion public charter school; allowing a public charter school governing board member to be removed by a vote of the governing board; allowing alternative high-risk population public charter schools to be authorized and funded under public charter school article; providing eligibility requirements to be an alternative high-risk population public charter school; providing for which students qualify to be high-risk; and requiring state board rule setting forth requirements for funding.

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

Eng. House Bill 2402, Relating to providing access to medical records; providing access to a minor's medical record.

On third reading, coming up in regular order, with the unreported Health and Human Resources committee amendment pending, and with the right having been granted on yesterday, Wednesday, April 9, 2025, for further amendments to be received on third reading, was read a third time.

At the request of Senator Chapman, as chair of the Committee on Health and Human Resources, and by unanimous consent, the unreported Health and Human Resources committee amendment to the bill was withdrawn.

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

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

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 29. HEALTH CARE RECORDS.

§16-29-1. Copies of health care records to be furnished to patients.

(a) ~~Any licensed, certified or registered~~ A health care provider so licensed, certified or registered under the laws of this state shall, upon the written request of a patient, his or her personal representative, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and any rules promulgated pursuant to the act, and his or her authorized agent or authorized representative, within no more than thirty days from the receipt of the request, furnish a copy, in the form of a paper copy or, if requested and if the provider routinely stores records electronically and has the ability to so provide, a copy in an electronic format including, but not limited to, a downloadable format through a secure web portal, a copy saved upon a computer disc, an electronically mailed copy or a copy saved upon a portable memory device of all or a portion of the patient's record to the patient, his or her personal representative, or authorized agent or authorized representative subject to the following exceptions:

(1) In the case of a patient receiving treatment, ~~for psychiatric or psychological problems~~, a summary of the record shall be made available to the patient, personal representative, or his or her authorized agent or authorized representative following termination of the treatment. ~~program.~~

(2) The furnishing of a copy, as requested, of the reports of x-ray examinations, electrocardiograms and other diagnostic procedures shall be deemed to comply with the provisions of this article.

(b) ~~Nothing in this article shall be construed to require a health care provider responsible for diagnosis, treatment or administering health care services in the case of minors for birth control, prenatal care, drug rehabilitation or related services or venereal disease according to any provision of this code, to release patient records of such diagnosis, treatment or provision of health care as aforesaid to a parent or guardian, without prior written consent therefor from the patient,~~

~~nor shall anything in this article be construed to apply to persons regulated under the provisions of chapter eighteen of this code or the rules and regulations established thereunder.~~

~~(e)~~ This article does not apply to records subpoenaed or otherwise requested through court process, except for the fee provisions in §16-29-2 of this code, which do apply to subpoenaed records.

~~(d)~~ (c) The provisions of this article may be enforced by a patient, personal representative, authorized agent or authorized representative. ~~and any~~ A health care provider found to be in violation of this article shall pay any attorney fees and costs, including court costs incurred in the course of such enforcement.

~~(e) Nothing in this article shall be construed to apply to health care records maintained by health care providers governed by the AIDS-related Medical Testing and Records Confidentiality Act under the provisions of article three-c of this chapter.~~

§16-29-3. Access to minor's records.

(a) A parent, guardian, foster parent or kinship placement may not be denied access to the health records of their minor child unless otherwise ordered by a court or pursuant to subsection (b) of this section.

(b) A parent is not permitted to access the health records of that parent's minor child if:

(1) The minor child has graduated high school or equivalent;

(2) The minor child is emancipated; or

(3) The minor child is married.

(c) Except as provided in subsection (b) of this section, no release, authorization, nor any form of permission from or by the minor child shall be required or requested as a prerequisite for the parent or legal guardian to obtain the medical records.

Following discussion,

The question being on the adoption of Senator Chapman's amendment to the bill, the same was put and prevailed.

Engrossed House Bill 2402, as just amended, was then put upon its passage.

Pending discussion,

The question being "Shall Engrossed House Bill 2402 pass?"

On the passage of the bill, the yeas were: Azinger, Barrett, Bartlett, Boley, Chapman, Charnock, Clements, Deeds, Fuller, Grady, Hamilton, Hart, Helton, Jeffries, Martin, Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Stuart, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woodrum, and Smith (Mr. President)—32.

The nays were: Garcia and Woelfel—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2402) passed.

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

Eng. House Bill 2402—A Bill to amend and reenact §16-29-1 of the Code of West Virginia, 1931, as amended; and to amend the code by adding a new section, designated §16-29-3, relating to providing access to medical records; providing access to a summary of medical records; providing access to a minor's medical records; removing exemptions for records governed by the AIDS related Medical Testing and Records Confidentiality Act; and providing exemptions for access to a minor's medical records.

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

Eng. House Bill 2479, Relating to Management and control of county authority vested in board.

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, Bartlett, Boley, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Stuart, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2479) passed.

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

Eng. House Bill 2479—A Bill to amend and reenact §7-12-3 of the Code of West Virginia, 1931, as amended, relating to management and control of county authority vested in a board; and reducing minimum number of members of county economic development authority.

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 2491, Relating to conditions on holding online raffles.

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: Barrett, Boley, Chapman, Charnock, Clements, Fuller, Garcia, Hamilton, Jeffries, Morris, Oliverio, Phillips, Queen, Rucker, Takubo, Tarr, Thorne, Weld, Woelfel, Woodrum, and Smith (Mr. President)—21.

The nays were: Azinger, Bartlett, Deeds, Grady, Hart, Helton, Martin, Maynard, Roberts, Rose, Stuart, Taylor, and Willis—13.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2491) 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 2528, To permit students in Christian schools at the elementary and middle school level to participate in county level sport tournaments.

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, Bartlett, Boley, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Stuart, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2528) passed.

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

Eng. Com. Sub. for House Bill 2528—A Bill to amend and reenact §18-2-25 of the Code of West Virginia, 1931, as amended, relating to authorizing elementary and middle school students enrolled in any private, parochial, or church school or school of a religious order or other nonpublic school to participate in county athletic tournaments under certain circumstances.

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 2576, NIL Protection Act.

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

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

Eng. Com. Sub. for House Bill 2595, Non Profit Athletics Act.

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

At the request of Senator Martin, and by unanimous consent, further consideration of the bill was deferred until the conclusion of bills on today's third reading calendar, following consideration of Engrossed Committee Substitute for House Bill 2576, already placed in that position.

Eng. House Bill 2742, Relating to creating limited waiver from certificate of public convenience and necessity requirement for certain water or sewer services projects.

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, Bartlett, Boley, Chapman, Charnock, Clements, Deeds, Fuller, Grady, Hamilton, Hart, Helton, Jeffries, Martin, Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Stuart, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woodrum, and Smith (Mr. President)—32.

The nays were: Garcia and Woelfel—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2742) passed with its title.

Senator Martin moved that the bill take effect from passage.

On this question, the yeas were: Barrett, Bartlett, Boley, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Helton, Jeffries, Morris, Oliverio, Phillips, Queen, Roberts, Rucker, Stuart, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woodrum, and Smith (Mr. President)—28.

The nays were: Azinger, Hart, Martin, Maynard, Rose, and Woelfel—6.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 2742) takes effect from passage.

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

Eng. Com. Sub. for House Bill 2755, To provide that the West Virginia Board of Education may promulgate rules or policies to be submitted to the Legislature for review.

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 2755 pass?"

On the passage of the bill, the yeas were: Azinger, Barrett, Bartlett, Chapman, Charnock, Fuller, Hart, Helton, Martin, Maynard, Roberts, Rose, Rucker, Stuart, Tarr, Taylor, Thorne, Willis, and Smith (Mr. President)—19.

The nays were: Boley, Clements, Deeds, Garcia, Grady, Hamilton, Jeffries, Morris, Oliverio, Phillips, Queen, Takubo, Weld, Woelfel, and Woodrum—15.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2755) passed.

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

Eng. Com. Sub. for House Bill 2755—A Bill to amend and reenact §29A-3B-1, §29A-3B-8, § 29A-3B-9, §29A-3B-10, and §29A-3B-11 Code of West Virginia, 1931, as amended, relating to requiring the State Board of Education to submit newly promulgated rules to the Legislature through the Legislative Oversight Commission on Education Accountability; allowing the Legislature to approve, amend, or reject, in whole or in part, these rules in a manner prescribed by general law and pursuant to this article; adjusting the time frames for the State Board of Education to submit emergency rules to the Legislative Oversight Commission on Education Accountability; and providing for the expiration of those emergency rules if notice is not timely filed with the committee.

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

Eng. House Bill 2776, Requiring Department of Health to report positive Alpha Gal tests to CDC.

On third reading, coming up in regular order, with the unreported Health and Human Resources committee amendment pending, and with the right having been granted on April 8, 2025, for further amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Martin, and by unanimous consent, further consideration of the bill was deferred until the conclusion of bills on today's third reading calendar, following consideration of Engrossed Committee Substitute for House Bill 2595, already placed in that position.

Eng. Com. Sub. for House Bill 2880, Relating to parent resource navigators.

On third reading, coming up in regular order, with the unreported Health and Human Resources committee amendment pending, and with the right having been granted on yesterday, Wednesday, April 9, 2025, for further amendments to be received on third reading, was read a third time.

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

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

CHAPTER 16B. INSPECTOR GENERAL.

ARTICLE 22. PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS.

§16B-22-1. Definitions.

As used in the article:

"Critical incident" means an occurrence of any of the following:

(1) Self-harm or a suicide emergency;

(2) A restraint, seclusion, or emergency safety intervention occurring at the program whether medical attention is or is not required;

(3) A denial or unreasonable medical delay of required medical attention to the child in the program;

(4) An admittance or a transport of a child in the program to or from a medical facility;

(5) An incident or allegation of abuse or harm to a child while in the program;

(6) A use of force, coercion, or deception in transporting a child to or from the program, unless the program did not conduct or pay for the transport;

(7) A police report or investigation involving a child or an individual who has or had access to the program;

(8) A physical condition of the program's facility that jeopardizes the health, safety, or well-being of a child; or

(9) Any additional occurrence or condition that the Director defines as a critical incident.

"Director" means the director of the Office of Health Facility Licensure and Certification or his or her designee.

"Direct access" means that an individual has or likely will have person-to-person spoken or physical contact with or access to a program participant.

"Inspector General" means the Inspector General of the Office of the Inspector General as described in §16B-2-1 of this code, or his or her designee.

"License" means a written document issued by the department that the license holder has complied with this part and the applicable standards and rules for programs.

"Licensee" means the holder of a license issued by the department in accordance with the provisions of this article.

"Office of Health Facilities Licensure and Certification" means the West Virginia Office of Health Facility Licensure and Certification within the Office of the Inspector General.

"Person associated with the program" means any owner, partner, member, employee, or contractor providing professional or occupational services to a program.

"Program" means each location of a facility or program operated by a public or private entity that, with respect to one or more youth who are unrelated to the owner or operator of the facility or program, in a residential environment including, but not limited to:

(1) A program with a wilderness or outdoor experience, expedition, or intervention;

(2) A bootcamp experience or other experience designed to simulate characteristics of basic military training or correctional regimes; or

(3) An education or therapeutic boarding school.

The term does not include: recreational programs such as Boy Scouts, Girl Scouts, or 4-H clubs; organizations, boarding schools, or residential schools with a sole focus on academics; residential training or vocational programs with a sole focus on education and vocational training; youth camps with a focus on recreation and faith-related activities; an organization, boarding school, or residential school that is an adjunct ministry of a church; or any programs operated pursuant to §15-1B-24 of this code.

"Program participant" means any adolescent to whom services are being provided by the program.

§16B-22-2. Programs to obtain license.

The Inspector General shall designate the Director of the Office of Health Facilities Licensure and Certification to enforce the provisions of this article, except as otherwise stated.

No person, partnership, association, or corporation, or any local governmental unit or any division, department, board, or agency thereof may operate a program unless the operation has been approved and annually licensed by the director in accordance with the provisions of this article and the rules lawfully promulgated hereunder.

§16B-22-3. Licensure requirements.

(a) The director shall require applicants and licensees to submit a set of fingerprints for each person associated with the program who has direct access to program participants for the purpose of conducting a criminal and child protection background check according to §16B-15-1 et seq. of this code.

(b) The director shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code that pertain to ensuring the health and safety of program participants, including:

(1) A procedure for a licensed program to report the use of a chemical, physical, mechanical, or environmental restraint or seclusion to the department within one business day after the day on which the use of the chemical, physical, mechanical, or environmental restraint or seclusion occurs;

(2) Guidelines for written policies and procedures of the licensed program, including policies and procedures on suicide prevention and for implementation of the requirements and restrictions in subsections (c) and (d) of this section;

(3) A procedure for the department to review and approve the licensed program's policies and procedures;

(4) A procedure for submitting a complaint about a licensed program to the department and law enforcement and a requirement that each licensed program publicly post information that

describes how to submit a complaint about the licensed program to the department and law enforcement;

(5) Establish a licensure and renewal fee; and

(6) A procedure for responding to critical incidents.

(c) A licensed program may not:

(1) Use physical discipline or the threat of physical discipline as a punishment, deterrent, incentive, or to gain compliance;

(2) Deprive a youth of basic necessity or inherent right, including education;

(3) Admit a youth who is under the age approved in the licensure or has a condition not allowed to be treated under the licensure; or

(4) Sexually abuse, exploit, or harass an enrolled youth.

(d) A licensed program shall:

(1) Allow a parent or guardian to remove a youth from the licensed program; and

(2) Unless otherwise prohibited by law or court order, facilitate weekly confidential and unsupervised video communication between a youth and the youth's parents, guardians, or foster parents.

(e) A licensed program shall provide a fixed number telephone to the child abuse hotline operated by the Department of Human Services that is readily available to enrolled participants 24 hours a day.

§16B-22-4. Inspector General to establish legislative rules.

The Inspector General shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* and §16B-22-3(b) of this code not in conflict with any provision of this article, as he or she finds necessary in order to ensure adequate care and accommodations for consumers of programs.

§16B-22-5. Suspension; revocation.

(a) The director, in consultation with the Inspector General, may suspend or revoke a license issued hereunder if the provisions of this article or of the rules are violated.

(b) Before any such license is suspended or revoked, written notice shall be given the licensee, stating the grounds of the complaint, and the date, time, and place set for the hearing on the complaint, which date may not be less than 30 days from the time notice is given. The notice shall be sent by registered mail to the licensee at the address where the program concerned is located. The licensee shall be entitled to be represented by legal counsel at the hearing.

(c) If a license is revoked as herein provided, a new application for a license shall be considered by the director, in consultation with the Inspector General, if, when, and after the

conditions upon which revocation was based have been corrected and evidence of this fact has been furnished. A new license shall then be granted after proper inspection has been made and all provisions of this article and rules promulgated hereunder have been satisfied.

(d) All of the pertinent provisions of §29A-5-1 et seq. of this code shall apply to and govern any hearing authorized and required by the provisions of this article and the administrative procedure in connection with and following any such hearing, with like effect as if the provisions of §29A-5-1 et seq. of this code were set forth in extenso in this section.

(e) Any applicant or licensee who is dissatisfied with the decision of the Board of Review as a result of the hearing provided in this section may, within 30 days after receiving notice of the decision, appeal to the West Virginia Intermediate Court of Appeals for judicial review of the decision.

(f) The court may affirm, modify, or reverse the decision of the Board of Review and either the applicant, or licensee, or the Inspector General may appeal from the court's decision to the Supreme Court of Appeals.

§16B-22-6. Violations; penalties; civil monetary penalty; injunctive relief.

(a) Any person, partnership, association, or corporation, and any local governmental unit or any division, department, board, or agency thereof establishing, conducting, managing, or operating a program without first obtaining a license therefor as herein provided, or violating any provisions of this article or any legislative rule lawfully promulgated thereunder, is guilty of a misdemeanor and, upon conviction thereof, shall be punished for the first offense by a fine of not more than \$1,500, with confinement in the county jail for a period of not more than 90 days, or both fined and confined. Each day of a continuing violation after conviction shall be considered a separate offense.

(b) The Director, in consultation with the Inspector General, may deny the provider's application for licensure or licensure renewal; modify or revoke a license; or order any admission ban or reduction in consumer census for one or more of the following reasons:

(1) The provider fails to submit an adequate plan of correction without formally and timely notifying the director that the provider intends to exercise its due process rights of appeal;

(2) The director makes a determination that fraud or other illegal action has been committed;

(3) The provider violates federal, state, or local law relating to building, health, fire, safety, sanitation, or zoning; or is noncompliant with payment of workers' compensation or employment security taxes, and fails to remedy such violation given sufficient notice;

(4) The provider conducts practices which jeopardize the health, safety, welfare, or clinical treatment of consumer;

(5) The provider fails or refuses to make records related to compliance with this rule available within a reasonable period of time as requested by the Director; or

(6) The provider fails or refuses to provide access to its service locations within a reasonable period of time as requested by the Director.

(c) Where the operation of the provider clearly constitutes an immediate danger of serious harm to consumers served by the provider, the Director, in consultation with the Inspector General, may issue an order of closure terminating operation of the provider's program license clearly giving rise to the immediate danger of serious harm. A provider appealing such a closure order does not stay enforcement of the closure order.

(d) If the program conducts a practice which jeopardizes the health, safety, welfare, or clinical treatment of consumers, which such practices clearly give rise to imminent danger of serious harm or the immediate risk or danger of serious harm, the Director, in consultation with the Inspector General, may impose a civil monetary penalty not to exceed \$10,000 with criteria to be developed in rulemaking.

(e) Notwithstanding the existence or pursuit of any other remedy, the Inspector General shall, in the manner provided by law, maintain an action in the name of the state for an injunction against any person, partnership, association, or corporation, to restrain or prevent the establishment, conduct, management, or operation of any program or violation of any provision of this article without first obtaining a license in the manner required by this article.

(f) The Inspector General may also seek injunctive relief if the establishment, conduct, management, or operation of any provider, whether licensed or not, jeopardizes the health, safety, or welfare of all of its consumers.

CHAPTER 49. CHILD WELFARE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§49-1-201. Definitions related, but not limited to, child abuse and neglect.

When used in this chapter, terms defined in this section have the meanings ascribed to them that relate to, but are not limited to, child abuse and neglect, except in those instances where a different meaning is provided or the context in which the word is used clearly indicates that a different meaning is intended.

"Abandonment" means any conduct that demonstrates the settled purpose to forego the duties and parental responsibilities to the child;

"Abused child" means:

(1) A child whose health or welfare is being harmed or threatened by:

(A) A parent, guardian, or custodian who knowingly or intentionally inflicts, attempts to inflict, or knowingly allows another person to inflict, physical injury or mental or emotional injury upon the child or another child in the home. Physical injury may include an injury to the child as a result of excessive corporal punishment;

(B) Sexual abuse or sexual exploitation;

(C) The sale or attempted sale of a child by a parent, guardian, or custodian in violation of §61-2-14h of this code;

(D) Domestic violence as defined in §48-27-202 of this code; or

(E) Human trafficking or attempted human trafficking in violation of §61-14-2 of this code.

(2) A child conceived as a result of sexual assault, as that term is defined in this section, or as a result of the violation of a criminal law of another jurisdiction which has the same essential elements: *Provided*, That no victim of sexual assault may be determined to be an abusive parent as that term is defined in this section, based upon being a victim of sexual assault.

"Abusing parent" means a parent, guardian, or other custodian, regardless of his or her age, whose conduct has been adjudicated by the court to constitute child abuse or neglect as alleged in the petition charging child abuse or neglect.

"Battered parent" for the purposes of §49-4-601 *et seq.* of this code means a respondent parent, guardian, or other custodian who has been adjudicated by the court to have not condoned the abuse or neglect and has not been able to stop the abuse or neglect of the child or children due to being the victim of domestic violence as defined by §48-27-202 of this code, which was perpetrated by the same person or persons determined to have abused or neglected the child or children.

"Child abuse and neglect" or "child abuse or neglect" means any act or omission that creates an abused child or a neglected child as those terms are defined in this section.

"Child abuse and neglect services" means social services which are directed toward:

(A) Protecting and promoting the welfare of children who are abused or neglected;

(B) Identifying, preventing, and remedying conditions which cause child abuse and neglect;

(C) Preventing the unnecessary removal of children from their families by identifying family problems and assisting families in resolving problems which could lead to a removal of children and a breakup of the family;

(D) In cases where children have been removed from their families, providing time-limited reunification services to the children and the families so as to reunify those children with their families, or some portion of the families;

(E) Placing children in suitable adoptive homes when reunifying the children with their families, or some portion of the families, is not possible or appropriate; and

(F) Assuring the adequate care of children or juveniles who have been placed in the custody of the department or third parties.

"Condition requiring emergency medical treatment" means a condition which, if left untreated for a period of a few hours, may result in permanent physical damage; that condition includes, but is not limited to, profuse or arterial bleeding, dislocation or fracture, unconsciousness, and evidence of ingestion of significant amounts of a poisonous substance.

"Imminent danger to the physical well-being of the child" means an emergency situation in which the welfare or the life of the child is threatened. These conditions may include an emergency situation when there is reasonable cause to believe that any child in the home is or has been sexually abused or sexually exploited, or reasonable cause to believe that the following conditions threaten the health, life, or safety of any child in the home:

(A) Nonaccidental trauma inflicted by a parent, guardian, custodian, sibling, babysitter, or other caretaker;

(B) A combination of physical and other signs indicating a pattern of abuse which may be medically diagnosed as battered child syndrome;

(C) Nutritional deprivation;

(D) Abandonment by the parent, guardian, or custodian;

(E) Inadequate treatment of serious illness or disease;

(F) Substantial emotional injury inflicted by a parent, guardian, or custodian;

(G) Sale or attempted sale of the child by the parent, guardian, or custodian;

(H) The parent, guardian, or custodian's abuse of alcohol or drugs or other controlled substance as defined in §60A-1-101 of this code, has impaired his or her parenting skills to a degree as to pose an imminent risk to a child's health or safety; or

(I) Any other condition that threatens the health, life or safety of any child in the home.

"Neglected child" means a child:

(A) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care, or education, when that refusal, failure, or inability is not due primarily to a lack of financial means on the part of the parent, guardian, or custodian;

(B) Who is presently without necessary food, clothing, shelter, medical care, education, or supervision because of the disappearance or absence of the child's parent or custodian; or

(C) "Neglected child" does not mean a child whose education is conducted within the provisions of §18-8-1 *et seq.* of this code.

"Parent Resource Navigator" means an individual established through the Court Improvement Program (CIP) or Public Defender Services (PDS) model who is assisting a parent or parents through requirements to be unified or reunified with their child or children.

"Petitioner or copetitioner" means the department or any reputable person who files a child abuse or neglect petition pursuant to §49-4-601 *et seq.* of this code.

"Permanency plan" means the part of the case plan which is designed to achieve a permanent home for the child in the least restrictive setting available.

"Respondent" means all parents, guardians, and custodians identified in the child abuse and neglect petition who are not petitioners or copetitioners.

"Sexual abuse" means:

(A) Sexual intercourse, sexual intrusion, sexual contact, or conduct proscribed by §61-8c-3 of this code, which a parent, guardian, or custodian engages in, attempts to engage in, or knowingly

procures another person to engage in, with a child notwithstanding the fact that for a child who is less than 16 years of age, the child may have willingly participated in that conduct or the child may have suffered no apparent physical, mental, or emotional injury as a result of that conduct or, for a child 16 years of age or older, the child may have consented to that conduct or the child may have suffered no apparent physical injury or mental, or emotional injury as a result of that conduct;

(B) Any conduct where a parent, guardian, or custodian displays his or her sex organs to a child, or procures another person to display his or her sex organs to a child, for the purpose of gratifying the sexual desire of the parent, guardian, or custodian, of the person making that display, or of the child, or for the purpose of affronting or alarming the child; or

(C) Any of the offenses proscribed in §61-8b-7, §61-8b-8, or §61-8b-9 of this code.

"Sexual assault" means any of the offenses proscribed in §61-8b-3, §61-8b-4, or §61-8b-5 of this code.

"Sexual contact" means sexual contact as that term is defined in §61-8b-1 of this code.

"Sexual exploitation" means an act where:

(A) A parent, custodian, or guardian, whether for financial gain or not, persuades, induces, entices, or coerces a child to engage in sexually explicit conduct as that term is defined in §61-8c-1 of this code;

(B) A parent, guardian, or custodian persuades, induces, entices, or coerces a child to display his or her sex organs for the sexual gratification of the parent, guardian, custodian, or a third person, or to display his or her sex organs under circumstances in which the parent, guardian, or custodian knows that the display is likely to be observed by others who would be affronted or alarmed; or

(C) A parent, guardian, or custodian knowingly maintains or makes available a child for the purpose of engaging the child in commercial sexual activity in violation of §61-14-5 of this code.

"Sexual intercourse" means sexual intercourse as that term is defined in §61-8b-1 of this code.

"Sexual intrusion" means sexual intrusion as that term is defined in §61-8b-1 of this code.

"Serious physical abuse" means bodily injury which creates a substantial risk of death, causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-802a. Information to be provided at the outset of a child protective services investigation.

(a) Notwithstanding any other provision to the contrary, immediately upon initiating an investigation of a parent or other person having legal custody of a child, the department shall, upon first contact with the individual, provide the individual with a copy of A Parent's Guide to Working with Child Protective Services (Guide).

(b) The Guide shall include a short and plain statement to include, but not be limited to, the following:

- (1) Steps that the department will take to investigate signs of abuse and neglect;
- (2) Steps that may need to be taken to make a safer or healthier home for the child;
- (3) An overview of the court process;
- (4) The confidentiality of maltreatment reports and case appeals;
- (5) Child visitation; and
- (6) Case appeals.

§49-2-809. Reporting procedures.

~~(a) Reports of child abuse and neglect pursuant to this article shall be made immediately to the department of child protective services by a method established by the Bureau for Social Services: *Provided*, That if the method for reporting is web-based, the Bureau for Social Services shall maintain a system for addressing emergency situations that require immediate attention and shall be followed by a written report within 48 hours if so requested by the receiving agency. The Bureau for Social Services shall establish and maintain a 24-hour, seven-day-a-week telephone number to receive calls reporting suspected or known child abuse or neglect. Reports of child abuse and neglect pursuant to this article shall be made immediately to the Bureau for Social Services. Reports of child abuse and neglect shall be made to the Bureau of Social Services via a 24-hour, seven-day-a week hotline (centralized intake) that shall be maintained by the Bureau of Social Services to receive calls reporting suspected or known child abuse or neglect or such reports may be made via web-based reporting (email, electronic fax, fillable form, or other electronic form) that sends the reports to a live person to handle the reports immediately. Both systems shall give the reporter a specific case identifier immediately upon making a report.~~

(b) If a report of child abuse and neglect is made in any fashion other than specified in subsection (a) of this section, then Bureau of Social Services is still required to act upon such report as if the report were made to centralized intake.

~~(b) The department shall have a redundancy for its system in the event of an outage to receive reports. This redundancy system shall be transparent, meaning that it shall allow for reporting in the same means as if the outage had not occurred and no time delay shall occur from when the outage occurs to when the redundancy system begins to operate. This redundancy system shall be operational no later than July 1, 2023. If the department contends that it currently has a redundancy system, it shall describe the system, provide an operational date for the system, and explain why calls to centralized intake were unanswered to the Joint Committee on Government and Finance by July 1, 2023.~~

(c) A copy of any report of serious physical abuse, sexual abuse, or assault shall be forwarded by the department to the appropriate law-enforcement agency, the prosecuting attorney, or the coroner or medical examiner's office. All reports under this article are confidential. Reports of known or suspected institutional child abuse or neglect shall be made and received as all other reports made pursuant to this article.

(d) The department shall annually submit a report in an electronic format, via the legislative webpage, on July 1 to the Joint Committee on Government and Finance, which shall contain: How many calls were made to centralized intake on a per county basis, how many calls were referred to centralized intake on a per county basis, how many calls were screened out centralized intake on a per county basis, and the time from referral to investigation on a per county basis.

(e) All reports made to centralized intake by email, fax, fillable form, or other electronic form from a reporter, shall be retained in the Comprehensive Child Welfare Information System in its original format for at least 12 months.

(f) Audio files recorded from reports made to centralized intake shall be retained in the Comprehensive Child Welfare Information System for at least 12 months.

(g) Any such person receiving a report pursuant to subsection (b) of this section shall make a written record in the Comprehensive Child Welfare Information system detailing the report and retain that record in an appropriate format for a period of at least 12 months.

ARTICLE 4. COURT ACTIONS.

§49-4-405. Multidisciplinary treatment planning process involving child abuse and neglect; team membership; duties; reports; admissions.

(a) Within 30 days of the initiation of a judicial proceeding pursuant to part six of this article, the department shall convene a multidisciplinary treatment team to assess, plan, and implement a comprehensive, individualized service plan for children who are victims of abuse or neglect and their families. The multidisciplinary team shall obtain and utilize any assessments for the children or the adult respondents that it deems necessary to assist in the development of that plan.

(b) In a case initiated pursuant to part six of this article, the treatment team consists of:

(1) The child or family's case manager in the department;

(2) The adult respondent or respondents;

(3) The child's parent or parents, guardians, any copetitioners, custodial relatives of the child, foster or preadoptive parents;

(4) Any attorney representing an adult respondent or other member of the treatment team;

(5) The child's counsel or the guardian ad litem;

(6) The prosecuting attorney or his or her designee;

(7) A member of a child advocacy center when the child has been processed through the child advocacy center program or programs or it is otherwise appropriate that a member of the child advocacy center participate;

(8) Any court-appointed special advocate assigned to a case;

(9) Any other person entitled to notice and the right to be heard;

(10) An appropriate school official;

(11) A parent resource navigator;

~~(44)~~ (12) The managed care case coordinator; and

~~(42)~~ (13) Any other person or agency representative who may assist in providing recommendations for the particular needs of the child and family, including domestic violence service providers.

The child may participate in multidisciplinary treatment team meetings if the child's participation is deemed appropriate by the multidisciplinary treatment team. Unless otherwise ordered by the court, a party whose parental rights have been terminated and his or her attorney may not be given notice of a multidisciplinary treatment team meeting and ~~does~~ do not have the right to participate in any treatment team meeting.

(c) Prior to disposition in each case in which a treatment planning team has been convened, the team shall advise the court as to the types of services the team has determined are needed and the type of placement, if any, which will best serve the needs of the child. If the team determines that an out-of-home placement will best serve the needs of the child, the team shall first consider placement with appropriate relatives then with foster care homes, facilities, or programs located within the state. The team may only recommend placement in an out-of-state facility if it concludes, after considering the best interests and overall needs of the child, that there are no available and suitable in-state facilities which can satisfactorily meet the specific needs of the child.

(d) The multidisciplinary treatment team shall submit written reports to the court as required by the rules governing this type of proceeding or by the court and shall meet as often as deemed necessary but at least every three months until the case is dismissed from the docket of the court. The multidisciplinary treatment team shall be available for status conferences and hearings as required by the court.

(e) If a respondent or copetitioner admits the underlying allegations of child abuse or neglect, or both abuse and neglect, in the multidisciplinary treatment planning process, his or her statements may not be used in any subsequent criminal proceeding against him or her, except for perjury or false swearing.

ARTICLE 5. RECORD KEEPING AND DATABASE.

§49-5-101. Confidentiality of records; non-release of records; exceptions; penalties.

(a) Except as otherwise provided in this chapter or by order of the court, all records and information concerning a child or juvenile which are maintained by the Division of Corrections and Rehabilitation, the Department of Human Services, a child agency or facility, or court or law-enforcement agency, are confidential and may not be released or disclosed to anyone, including any federal or state agency.

(b) Notwithstanding the provisions of subsection (a) of this section or any other provision of this code to the contrary, records concerning a child or juvenile, except adoption records and records disclosing the identity of a person making a complaint of child abuse or neglect, may be made available:

(1) Where otherwise authorized by this chapter;

(2) To:

(A) The child;

(B) A parent whose parental rights have not been terminated;

(C) The attorney of the child or parent; and

(D) The Juvenile Justice Commission and its' designees acting in the course of their official duties;

(3) With the written consent of the child or of someone authorized to act on the child's behalf; and

(4) Pursuant to an order of a court of record: *Provided*, That the court shall review the record or records for relevancy and materiality to the issues in the proceeding and safety and may issue an order to limit the examination and use of the records or any part thereof.

(c) In addition to those persons or entities to whom information may be disclosed under subsection (b) of this section, information related to child abuse or neglect proceedings, except information relating to the identity of the person reporting or making a complaint of child abuse or neglect, shall be made available upon request to:

(1) Federal, state, or local government entities, or any agent of those entities, including law-enforcement agencies and prosecuting attorneys, having a need for that information in order to carry out its responsibilities under law to protect children from abuse and neglect;

(2) The child fatality review team;

(3) Child abuse citizen review panels;

(4) Multidisciplinary investigative and treatment teams; or

(5) A grand jury, circuit court, or family court, upon a finding that information in the records is necessary for the determination of an issue before the grand jury, circuit court, or family court; and

(6) The West Virginia Crime Victims Compensation Fund and its designees acting in the course of their official duties.

(d) Information related to proceedings involving child abuse or neglect, or both, including information related to the identity of the person reporting or making a complaint of child abuse or neglect, or both, shall be made available, upon request, to the Foster Care Ombudsman, or his or her designee: *Provided*, That such request is made in the course of their official duties pursuant to §16B-16-1 *et seq.* of this code.

~~(d)~~ (e) If there is a child fatality or near fatality due to child abuse and neglect, information relating to a fatality or near fatality shall be made public by the Department of Human Services and provided to the entities described in subsection (c) of this section and to the Critical Incident Review Team as established in §61-12B-1 *et seq.* of this code: all under the circumstances described in that subsection: *Provided*, That information released by the Department of Human

Services pursuant to this subsection may not include the identity of a person reporting or making a complaint of child abuse or neglect except when such information and records are released to the Foster Care Ombudsman or his or her designee acting in the course of their official duties, the identity of a person reporting or making a complaint of child abuse or neglect may be included: Provided, however, That the Foster Care Ombudsman or his or her designee is acting in the course of their official duties pursuant to §16B-16-1 et seq. of this code. For purposes of this subsection, "near fatality" means any medical condition of the child which is certified by the attending physician to be life-threatening.

~~(e)~~ (f) Except in juvenile proceedings which are transferred to criminal proceedings, law-enforcement records and files concerning a child or juvenile shall be kept separate from the records and files of adults and not included within the court files. Law-enforcement records and files concerning a child or juvenile shall only be open to inspection pursuant to §49-5-103 of this code.

~~(f)~~ (g) Any person who willfully violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or confined in jail for not more than six months, or both fined and confined. A person convicted of violating this section is also liable for damages in the amount of \$300, or actual damages, whichever is greater.

~~(g)~~ (h) Notwithstanding the provisions of this section, or any other provision of this code to the contrary, the name and identity of any juvenile adjudicated or convicted of a violent or felonious crime shall be made available to the public;

~~(h)~~ (i)(1) Notwithstanding the provisions of this section or any other provision of this code to the contrary, the Division of Corrections and Rehabilitation may provide access to, and the confidential use of, a treatment plan, court records, or other records of a juvenile to an agency in another state which:

(A) Performs the same functions in that state that are performed by the Division of Corrections and Rehabilitation in this state;

(B) Has a reciprocal agreement with this state; and

(C) Has legal custody of the juvenile.

(2) A record which is shared under this subsection may only provide information which is relevant to the supervision, care, custody, and treatment of the juvenile;

(3) The Division of Corrections and Rehabilitation may enter into reciprocal agreements with other states and propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code to implement this subsection; and

(4) Other than the authorization explicitly given in this subsection, this subsection may not be construed to enlarge or restrict access to juvenile records as provided elsewhere in this code.

~~(i)~~ (j) The records subject to disclosure pursuant to subsection (b) of this section may not include a recorded/videotaped interview, as defined in §62-6B-2(6) of this code, the disclosure of which is exclusively subject to §62-6B-6 of this code.

~~(j)~~ (k) Notwithstanding the provisions of subsection (a) of this section, records in the possession of the Division of Corrections and Rehabilitation declared to be confidential by the provisions of subsection (a) of this section may be published and disclosed for use in an employee grievance if the disclosure is done in compliance with subsections ~~(k), (l), and (m)~~ (l), (m), and (n) of this section.

~~(k)~~ (l) Records or information declared confidential by the provisions of this section may not be released for use in a grievance proceeding except:

(1) Upon written motion of a party; and

(2) Upon an order of the Public Employee's Grievance Board entered after an in-camera hearing as to the relevance of the record or information.

~~(j)~~ (m) If production of confidential records or information is disclosed to a grievant, his or her counsel or representative, pursuant to subsection ~~(k)~~ (l) of this section:

(1) The division shall ensure that written records or information is redacted of all identifying information of any juvenile which is not relevant to the resolution of the grievance;

(2) Relevant video and audio records may be disclosed without redaction; and

(3) Records or other information released to a grievant or his or her counsel or representative pursuant to subsection ~~(k)~~ (l) of this section may only be used for purposes of his or her grievance proceeding and may not be disclosed, published, copied, or distributed for any other purpose, and upon the conclusion of the grievance procedure, returned to the Division of Corrections and Rehabilitation.

~~(m)~~ (n) If a grievant or the Division of Corrections and Rehabilitation seek judicial review of a decision of the Public Employee's Grievance Board, the relevant confidential records disclosed and used in the grievance proceeding may be used in the appeal proceeding upon entry of an order by the circuit court, and the order shall contain a provision limiting disclosure or publication of the records or information to purposes necessary to the proceeding and prohibiting unauthorized use and reproduction.

~~(n)~~ (o) Nothing in this section may be construed to abrogate the provisions of §29B-1-1 *et seq.* of this code.

~~(o)~~ (p) When requested, A a child placing-agency or a residential childcare and treatment facility ~~may~~ shall disclose otherwise confidential information to other child-placing agencies or residential childcare and treatment facilities when making referrals or providing services on behalf of the child. This information shall be maintained in the same manner as provided in this code.

~~(p)~~ (q) The department shall provide electronic access to information required to perform an adoption to child-placing agencies as necessary to complete the adoption.

~~(q)~~ (r) A child-placing agency completing adoption as a contractor on behalf of the department shall have access to secure records from vital statistics and other pertinent record holders.

(s) The Bureau for Medical Services and the Bureau for Social Services shall provide electronic access to a child's medical records taken into their custody to the managed care organization, the child-placing agency, and the person having temporary custody of the child.

ARTICLE 11. SYSTEM REPORTING.

§49-11-101. Systemic reporting transparency; ~~rulemaking.~~

(a) The commissioner shall ~~change~~ update the existing child welfare data dashboard by July 1, 2023, October 1, 2025, and shall update the child welfare data dashboard monthly thereafter to report on system-wide issues including, but not limited to, system-level performance indicators, intake hotline performance indicators, field investigation performance indicators, open case performance indicators, out-of-home placement performance indicators, and federally mandated performance indicators including, but not limited to, time to first contact to all children, information on children in non-placement or temporary lodging status.

(b) The Commissioner shall update the existing child welfare data dashboard with information on child fatality and near fatality information related to those cases subject to review by the Critical Incident Review Team as set forth in §61-12B-1 *et seq.* of this code within 48 hours of a child fatality or near fatality. With respect to child fatality or near fatality information, the Department of Human Services shall report the following variables: the county of residence, the date of the incident, the child's sex, the child's age, and the child's race/ethnicity. The data dashboard shall provide a link to the final report of the Critical Incident Review Team within 24 hours of its completion. The Commissioner shall send a notification, within 24 hours of child fatalities or near fatalities, to the Office of Inspector General to enable it to convene a meeting of the Critical Incident Review Team.

(c) The child welfare data dashboard shall include workforce information including, but not limited to, the number of child protective services staff that have been hired but who have not completed training, the number and vacancies of adoption workers, and the number and vacancies of home finders.

(d) Starting October 1, 2025, the data reported on the child welfare data dashboard shall be represented as a point in time number and trended over time. Beginning October 1, 2025, the data shall be saved in a way to allow public users to search the dashboard yearly by reporting date, and by county. The Department of Human Services may apply data suppression in order to protect individual identification as necessary.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 12B. CRITICAL INCIDENT REVIEW TEAM.

§61-12B-1. Purpose.

The Critical Incident Review Team is created for the purpose of reviewing fatalities and near fatalities involving children involved in the child welfare system and making recommendations to identify effective prevention and intervention processes to decrease preventable child fatalities and near fatalities in the child welfare system.

§61-12B-2. Definitions.

As used in this article:

"Epidemiological analysis" means an analysis of demographic factors related to the child's fatality or near fatality including, but not limited to, an analysis of the following factors: the date of birth of the child; the sex of the child; the county of the child's residence; the race/ethnicity of the child; the date the child suffered the fatality or near fatality; the type of maltreatment; the cause of the fatality or near fatality; whether the agency had any contact, and if so, how many times, with the child or a member of the child's family or household before the fatality or near fatality; and maltreater demographic information.

"Known case" means any Child Protective Services case or youth services case in the Comprehensive Child Welfare Information System or a case assessed by Child Protective Services, youth services, or a contracted vendor;

"Near fatality" means any medical condition of the child which is certified by the attending physician to be life threatening. It shall also include incidents that have been found to have created a substantial risk of death or serious bodily injury to the child.

§61-12B-3. Creation of the Critical Incident Review Team and composition of members.

(a) The Critical Incident Review Team is created under the Office of the Inspector General and is a multidisciplinary team created to oversee and coordinate the examination, review, and assessment of:

(1) The fatality or near fatality of a child in the custody of the Department of Human Services;

(2) The fatality or near fatality of a child who has a known case with the Department of Human Services or who is the immediate family member or a member of a household of a person with a known case with the Department of Human Services; and

(3) The fatality or near fatality of a child whose identity has been brought to the attention of the Department of Human Services through a centralized intake report, regardless of whether the report was accepted for an investigation.

(b) The Critical Incident Review Team shall consist of the following members:

(1) The Commissioner of the Bureau for Social Services, or his or her designee, who is to serve as the chairperson, and is responsible for calling and coordinating meetings of the Critical Incident Review Team;

(2) The Director of the Division of Planning and Quality Improvement;

(3) The Deputy Commissioner of the Bureau for Social Services;

(4) A representative from the Office of Field Support, Programs and Resource Development, Planning and Research, or the Office of Field Operations;

(5) The social services manager for any district having a history with the child or his or her family or any household member that is the subject of the critical incident review;

(6) The Foster Care Ombudsman, or his or her designee;

(7) A representative of the West Virginia Supreme Court of Appeals, Division of Children Services;

(8) A representative from the Prosecuting Attorney's Institute;

(9) The Superintendent of the West Virginia State Police or his or her designee;

(10) A member of the West Virginia Senate, appointed by the President of the Senate, who shall serve as an ex officio member; and

(11) A member of the West Virginia House of Delegates, appointed by the Speaker of the House, who shall serve as an ex officio member.

(c) Each member shall serve without additional compensation and may not be reimbursed for any expenses incurred in the discharge of his or her duties under the provisions of this article.

(d) The Critical Incident Review Team may seek guidance and opinion regarding any matter under review from outside experts in any related field. At any such time, the Critical Incident Review Team shall require that all appropriate privacy requirements required in this article are in place.

§61-12B-4. Responsibilities of the Critical Incident Review Team.

(a) The Critical Incident Review Team shall:

(1) The team shall meet at least quarterly: *Provided*, That in the event of a fatality or near fatality, the team shall meet within 10 days of such fatality or near fatality to conduct the review required by this article;

(2) Review and analyze all fatalities and near fatalities as required by this article;

(3) Ascertain and document the trends, patterns, and risk factors associated with the fatalities and near fatalities evaluated;

(4) Provide statistical information and an epidemiological analysis regarding the causes of fatalities and near fatalities as specified in this article;

(5) Establish standard procedures for the handling of the critical incident review;

(6) Establish processes and protocols for the review and analysis of fatalities and near fatalities of those who were not suffering from mortal diseases shortly before fatality;

(7) Establish processes and protocols to ensure confidentiality of records obtained by the Critical Incident Review Team; and

(8) Seek additional expert guidance as necessary to complete a review of any fatality or near fatality evaluated.

(b) The team is prohibited from the following:

(1) Contacting a witness or witnesses to take testimony from individuals involved in the investigation of a fatality; or

(2) Otherwise take any action which impedes an ongoing law enforcement investigation.

§61-12B-5. Reporting of the Critical Incident Review Team.

(a)(1) The Critical Incident Review Team shall submit an initial report within 30 days of the fatality or near fatality to the Legislative Oversight Commission on Health and Human Resources Accountability with updated reports every 90 days.

(2) Any initial reports submitted mid-year and any other updated reports to be made shall be compiled into a final report to be submitted to the Legislative Oversight Commission on Health and Human Resources Accountability which shall be submitted no later than December 1 each year.

(b) The report is to include statistical information and an epidemiological analysis concerning cases reviewed during the year, trends and patterns concerning these cases, and the team's recommendations to reduce the number of fatalities and near fatalities that occur in this state.

(c) The Critical Incident Review Team may provide reporting to child residential facilities to inform their internal peer review activities. Such information shall be deemed confidential and shall be used only for peer review purposes.

§61-12B-6. Access to information; other agencies of government required to cooperate.

(a) Notwithstanding any other provision of this code to the contrary, the Critical Incident Review Team may request information and records as necessary to carry out its responsibilities. Records and information that may be requested under this section include:

(1) Medical, dental, and mental health records;

(2) Substance abuse records to the extent allowed by federal law; and

(3) Information and records maintained by any state, federal, or local government agency.

(b) State, county, and local government agencies shall provide the Critical Incident Review Team with any information requested in writing by the team.

§61-12B-7. Confidentiality.

(a) Proceedings and records of the Critical Incident Review Team established pursuant to this article are confidential and are not subject to discovery, subpoena, or the introduction into evidence in any civil or criminal proceeding. This section does not limit or restrict the right to discover or use in any civil or criminal proceeding anything that is available from another source and entirely independent of the proceedings of the team.

(b) Members of the Critical Incident Review Team may not be questioned in any civil or criminal proceeding regarding information presented or opinions formed as a result of a meeting of the team. This subsection does not prevent a member of a team from testifying to information obtained independently of the team which is public information.

(c) Proceedings and records of the Critical Incident Review Team established by the team are exempt from disclosure under the Freedom of Information Act as provided in §29B-1-1 et seq. of this code.

(d) Notwithstanding any other provision to the contrary, the Critical Incident Review Team shall prepare a compilation of data to be shared, on an annual basis or more often as requested or needed, with the Centers for Disease Control and Prevention to study child fatalities or near fatalities.

(e) Information shall be maintained by the Critical Incident Review Team in a confidential manner compliant with the Health Insurance Portability and Accountability Act of 1996.

On motion of Senator Rucker, the following amendment to the Health and Human Resources committee amendment to the bill (Eng. Com. Sub. for H. B. 2880) was reported by the Clerk:

On page 3, section 3, line 15, by striking out the words "and approve".

Following discussion,

The question being on the adoption of Senator Rucker's amendment to the Health and Human Resources committee amendment to the bill, the same was put and prevailed.

The question now being on the adoption of the Health and Human Resource committee amendment to the bill, as amended.

Following discussion,

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

Engrossed Committee Substitute for House Bill 2880, as just amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Bartlett, Boley, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—33.

The nays were: Stuart—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2880) passed.

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

Eng. Com. Sub. for House Bill 2880—A Bill to amend and reenact §49-1-201, §49-2-809, §49-4-405, §49-5-101, and §49-11-101 of the Code of West Virginia, 1931, as amended; to amend the code by adding a new article, designated, §16B-22-1, §16B-22-2, §16B-22-3, §16B-22-4, §16B-22-5, and §16B-22-6; to amend the code by adding a new section, designated §49-2-802a;

and to amend the code by adding a new article, designated, §61-12B-1, §61-12B-2, §61-12B-3, §61-12B-4, §61-12B-5, §61-12B-6, and §61-12B-7, relating to child welfare; defining terms; regulating private adolescent residential or outdoor programs; requiring licensure; setting forth licensure requirements; requiring rulemaking; permitting suspension of license; permitting revocation of license; permitting criminal penalties for violation; permitting fines for violation; permitting injunctive relief; requiring information to be provided at outset of investigation; stating form of centralized intake reporting procedures; including parent resource navigators within multidisciplinary teams; permitting the foster care ombudsman to access information related to child abuse and neglect proceedings; requiring the Bureau for Medical Services and the Bureau for Social Services to provide electronic access to various persons; requiring updates to the child welfare dashboard; establishing the Critical Incident Review Team; setting forth composition of members; setting forth the responsibilities of the Critical Incident Review Team; setting forth the reporting requirements of the Critical Incident review team; requiring cooperation with Critical Incident Team; and setting forth confidentiality of information.

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

Eng. House Bill 2942, Administration of the West Virginia Department of Environmental Protection Design-Build Pilot 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, Bartlett, Boley, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Stuart, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2942) passed.

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

Eng. House Bill 2942—A Bill to amend and reenact §22-34-2 and §22-34-5 of the Code of West Virginia, 1931, as amended, related to the administration of the West Virginia Department of Environmental Protection Design-Build Pilot Program; extending and revising the sunset provision to December 31, 2027; and increasing from \$50 million to \$75 million the maximum aggregate value of all ongoing design-build projects that can be active at any time.

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

Eng. House Bill 3000, Relating to agency changes and updates to the West Virginia Commercial Feed Law.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Bartlett, Boley, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, Maynard, Morris, Oliverio, Phillips, Queen, Rose, Rucker, Stuart, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—33.

The nays were: None.

Absent: Roberts—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. 3000) passed.

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

Eng. Com. Sub. for House Bill 3000—A Bill to amend and reenact §19-14-2, §19-14-5, §19-14-10, and §19-14-14, of the Code of West Virginia, 1931, as amended; and to amend the code by adding a new section, designated §19-14-17, relating to West Virginia commercial feed law; updating definitions; removing sunset date for deposit of pet food registration fee into spay neuter assistance fund; clarifying changes to feed adulteration standards; authorizing Commissioner of Agriculture of State of West Virginia to promulgate regulations that adopt certain regulations under Federal Food, Drug, and Cosmetic Act; clarifying prohibited acts; and providing severability clause.

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 3133, Permitting counties and municipalities to enter into memoranda of understanding for demolition of dilapidated structures.

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, Bartlett, Boley, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Stuart, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 3133) passed with its title.

Senator Martin moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Bartlett, Boley, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Stuart, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 3133) takes effect from passage.

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

Eng. Com. Sub. for House Bill 3144, Wireless Infrastructure and Facilities Siting and Co-location.

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, Bartlett, Boley, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Stuart, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 3144) 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 3179, Funding for failing public utilities.

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, Bartlett, Boley, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Stuart, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 3179) passed with its title.

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

Eng. House Bill 3187, Relating to the West Virginia Task Force on Artificial Intelligence.

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, Bartlett, Boley, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin,

Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Stuart, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3187) passed with its title.

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

Eng. House Bill 3272, Relating to eviction proceedings.

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, Bartlett, Boley, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Stuart, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3272) passed.

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

Eng. House Bill 3272—A Bill to amend and reenact §55-3A-1 of the Code of West Virginia, 1931, as amended, relating to eviction proceedings; requiring hearing to be scheduled upon filing the petition; permitting tenants to file and serve written defense to eviction petition within five days of the tenant's receipt of notice of petition; and providing that the hearing shall be scheduled five to 10 judicial days following filing of the petition.

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

Eng. House Bill 3274, Relating to reports of circuit court proceedings.

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, Bartlett, Boley, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, Maynard, Morris, Oliverio, Phillips, Roberts, Rose, Rucker, Stuart, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—33.

The nays were: Queen—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3274) passed with its title.

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

Eng. House Bill 3275, Update timing for appeals.

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, Bartlett, Boley, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Helton, Jeffries, Martin, Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Stuart, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—33.

The nays were: Hart—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3275) passed with its title.

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

Eng. House Bill 3373, To extend and revise the sunset provision in the Tourism Development Act to December 31, 2030.

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, Bartlett, Boley, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Helton, Jeffries, Martin, Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Stuart, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—33.

The nays were: Hart—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3373) passed.

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

Eng. House Bill 3373—A Bill to amend and reenact §5B-2E-11 of the Code of West Virginia, 1931, as amended, relating to extending the sunset date for tourism development projects to January 1, 2031; and modifying the title of the affected state agency.

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 3440, Relating generally to removing and repealing obsolete provisions under the purview of the State Treasurer's Office.

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

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

Eng. Com. Sub. for House Bill 3444, Relating to inflammation of the eyes of newborns.

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 3444 pass?"

On the passage of the bill, the yeas were: Azinger, Barrett, Bartlett, Chapman, Charnock, Fuller, Hart, Helton, Jeffries, Martin, Maynard, Roberts, Rose, Rucker, Taylor, Thorne, Willis, and Smith (Mr. President)—18.

The nays were: Boley, Clements, Deeds, Garcia, Grady, Hamilton, Morris, Oliverio, Phillips, Queen, Takubo, Tarr, Weld, Woelfel, and Woodrum—15.

Absent: Stuart—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. 3444) passed with its title.

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

Eng. House Bill 3515, Relating to appointment of officers of the West Virginia State Police.

On third reading, coming up in regular order, with the right having been granted on yesterday, Wednesday, April 9, 2025, for amendments to be received on third reading, was read a third time.

There being no amendments offered,

Engrossed House Bill 3515 was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Bartlett, Boley, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Stuart, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3515) passed with its title.

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

On motion of Senator Martin, at 12:08 p.m., the Senate recessed until 2 p.m. today.

The Senate reconvened at 2:41 p.m.

On motion of Senator Martin, at 2:41 p.m., the Senate recessed until 3 p.m. today.

The Senate reconvened at 3:24 p.m. and, at the request of Senator Martin, and by unanimous consent, returned to the third order of business.

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

Eng. Com. Sub. for Senate Bill 198, Prohibiting creation, production, distribution, or possession of artificially generated child pornography.

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

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

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

"ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-28a. Nonconsensual disclosure of private intimate images; definitions; and penalties.

(a) As used in this section:

(1) "Disclose" means to publish, publicly display, distribute, deliver, circulate or disseminate by any means, including, but not limited to, electronic transmission.

(2) "Image" means a photograph, videotape, motion picture film, digital recording or any product of any mechanical or electronic recording process or device that can preserve, for later viewing, a visual image.

(3) "Intimate parts" means a person's genitalia, pubic area, anus or female post-pubescent breasts.

(4) To "publicly disclose" means to disclose an image to one or more persons other than those persons whom the person depicted understood would view the image at the time it was captured.

(5) "Fabricated intimate image" means an image of an identifiable depicted individual that was created by the use of artificial intelligence or other computer technology capable of processing and interpreting specific data inputs and depicts computer-generated intimate parts or the intimate parts of another human being as the intimate parts of the depicted individual.

(b) No person may knowingly and intentionally disclose, cause to be disclosed or threaten to disclose, with the intent to harass, intimidate, threaten, humiliate, embarrass, or coerce, a fabricated intimate image of another or an image of another which shows the intimate parts of the depicted person or shows the depicted person engaged in sexually explicit conduct which was captured under circumstances where the person depicted had a reasonable expectation that the image would not be publicly disclosed.

(c)(1) A person convicted of a violation of subsection (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than one year, fined not less than \$1,000 nor more than \$5,000, or both confined and fined.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, a person convicted of a second or subsequent violation of subsection (b) of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not more than three years, fined not less than \$2,500 nor more than \$10,000, or both imprisoned and fined.

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

(1) Images disclosed with the prior written consent of the person depicted;

(2) Images depicting the person voluntarily exposing himself or herself in a public or commercial setting; or

(3) Disclosures made through the reporting of illegal conduct or the lawful and common practices of law enforcement, criminal reporting, legal proceeding or medical treatment.

(e) Nothing in this section shall be construed to impose liability on the provider of an interactive computer service as defined by 47 U. S. C. §230(f)(2), an information service as defined by 47 U. S. C. §153(24), or telecommunications service as defined by 47 U. S. C. §153(53), for content provided by another person.

ARTICLE 8C. FILMING OF SEXUALLY EXPLICIT CONDUCT OF MINORS.

§61-8C-1. Definitions.

(a) For the purposes of this article:

~~(a)~~ (1) "Minor" means any child under ~~eighteen~~ 18 years of age.

~~(b)~~ (2) "Knowledge" means knowing or having reasonable cause to know which warrants further inspection or inquiry.

~~(c)~~ (3) "Sexually explicit conduct" includes any of the following, whether actually performed or simulated:

~~(1)~~ (A) Genital to genital intercourse;

~~(2)~~ (B) Fellatio;

~~(3)~~ (C) Cunnilingus;

~~(4)~~ (D) Anal intercourse;

~~(5)~~ (E) Oral to anal intercourse;

~~(6)~~ (F) Bestiality;

~~(7)~~ (G) Masturbation;

~~(8)~~ (H) Sadoomasochistic abuse, including, but not limited to, flagellation, torture, or bondage;

~~(9)~~ (I) Excretory functions in a sexual context; or

~~(10)~~ (J) Exhibition of the genitals, pubic, or rectal areas of any person in a sexual context.

~~(d)~~ (4) "Person" means an individual, partnership, firm, association, corporation, or other legal entity: Provided, That this term does not apply to the provider of an interactive computer service as defined by 47 U. S. C. §230(f)(2), an information service as defined by 47 U. S. C. §153(24), or telecommunications service as defined by 47 U. S. C. §153(53), for content provided by another person.

(5) "Visual portrayal" means:

(A) A photograph;

(B) A motion picture;

(C) A digital image;

(D) A digital video recording;

(E) Any other mechanical or electronic recording process or device that can preserve, for later viewing, a visual image of a person that includes, but is not limited to, computers, cellphones, personal digital assistance, and other digital storage or transmitting devices; or

(F) Any media listed in this subdivision which was created, generated, or otherwise produced, in whole or in part, by any manner of manipulation, including, but not limited to, artificial intelligence.

(6) "Computer-generated child pornography" means:

(A) Any visual portrayal of an identifiable minor that has been created, adapted, or modified to depict the minor as engaging in sexually explicit conduct; or

(B) Any visual portrayal that appears to depict a minor engaged in sexually explicit conduct if the visual portrayal is:

(i) Created by the use of artificial intelligence or other computer technology capable of processing and interpreting specific data inputs to create a visual portrayal; and

(ii) Indistinguishable from a minor.

(7) "Identifiable minor" means any visual portrayal that depicts a minor who is identifiable from the matter itself or from information displayed with or otherwise connected to the matter, and that was created or altered by the use of artificial intelligence or other computer technology capable of processing and interpreting specific data inputs to depict the minor.

(8) "Indistinguishable" as used with respect to a visual portrayal, means virtually indistinguishable, in that the visual portrayal is such that an ordinary person viewing the visual portrayal would conclude that the visual portrayal is of an actual minor engaged in sexually explicit

conduct. This definition does not apply to visual portrayals that are drawings, cartoons, sculptures, or paintings depicting minors or adults.

(b) Nothing in this article shall be construed to include a visual portrayal of an actual and identifiable person who was not a minor at the time the visual portrayal was created.

§61-8C-2. Use of minors in filming sexually explicit conduct prohibited; penalty.

(a) Any person who causes or knowingly permits, uses, persuades, induces, entices or coerces such minor to engage in or uses such minor to do or assist in any sexually explicit conduct ~~shall be is~~ guilty of a felony when such person has knowledge that any such ~~the~~ act is being ~~photographed or filmed~~ used to create a visual portrayal. Upon conviction thereof, such person shall be fined not more than \$10,000 or imprisoned in the penitentiary not more than ~~ten~~ 10 years, or both fined and imprisoned.

(b) Any person who ~~photographs or films such~~ creates a visual portrayal of a minor engaging in any sexually explicit conduct ~~shall be is~~ guilty of a felony, and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned in the penitentiary not more than ~~ten~~ 10 years, or both fined and imprisoned.

(c) Any parent, legal guardian, or person having custody and control of a minor, who ~~photographs or films~~ creates a visual portrayal of such minor in any sexually explicit conduct or causes or knowingly permits, uses, persuades, induces, entices, or coerces such minor child to engage in or assist in any sexually explicit act ~~shall be is~~ guilty of a felony when such person has knowledge that any such act ~~may be photographed or filmed~~ is used to create a visual portrayal. Upon conviction thereof, such person shall be fined not more than \$10,000 or imprisoned in the penitentiary not more than ~~ten~~ 10 years, or both fined and imprisoned.

(d) It is not a defense under this section that the minor depicted has attained the age of at least 18 years old at the time of investigation and/or prosecution, as long as the visual portrayal of the minor used was originally taken or captured when the subject was less than 18 years of age.

(e) It is not a defense under this section that the minor depicted is deceased at the time of investigation and/or prosecution, regardless of whether the minor depicted had attained the age of 18 years of age at the time of his or her death.

§61-8C-3. Distribution and exhibiting of material depicting minors engaged in sexually explicit conduct or computer-generated child pornography prohibited; penalty.

(a) Any person who, knowingly and willfully, sends or causes to be sent or distributes, exhibits, possesses, electronically accesses with intent to view or displays or transports any ~~material visually portraying~~ visual portrayal of a minor engaged in any sexually explicit conduct or computer-generated child pornography is guilty of a felony.

~~(b) It is not a defense to this section that a minor subject's identity and/or age cannot be ascertained. It is sufficient that the material visually portrays a minor, regardless of whether the subject's age is represented to be less than age 18 years old.~~

"(b) It is sufficient for purposes of this section that the material visually portrays a minor, regardless of whether the subject's age is represented to be less than age 18 years old or whether the minor subject's actual identity can be ascertained.

~~(c) It is not a defense under this section that the visual portrayal was created, in whole or in part, by digital manipulation, artificial intelligence, or any other means.~~

"(c) A visual portrayal created in whole or in part by digital manipulation, artificial intelligence, or any other means may satisfy the requirements of this section.

(d) It is not a defense under this section that the minor depicted has attained the age of at least 18 years old at the time of investigation and/or prosecution, as long as the visual portrayal of the minor was originally taken or captured when the subject was under the age of 18 years of age.

(e) It is not a defense under this section that the minor depicted is deceased at the time of investigation and/or prosecution, regardless of whether the minor depicted had attained the age of at least 18 years of age at the time of his or her death.

~~(b)~~ (f) Any person who violates the provisions of subsection (a) of this section when the conduct involves ~~more than~~ fifty 50 or fewer images shall, upon conviction, be imprisoned in a state correctional facility for not ~~more~~ less than two years nor more than five years or fined not more than ~~\$2,000~~ \$5,000 or both.

~~(c)~~ (g) Any person who violates the provisions of subsection (a) of this section when the conduct involves more than ~~fifty 50~~ but fewer than ~~six hundred 300~~ images shall, upon conviction, be imprisoned in a state correctional facility for not less than ~~two~~ three nor more than ~~ten~~ 15 years or fined not more than ~~\$5,000~~ \$10,000, or both.

~~(d)~~ (h) Notwithstanding the provisions of subsections (b) and (c) of this section, any person who violates the provisions of subsection (a) of this section when the conduct involves ~~six hundred 300~~ or more images or depicts violence against a child or a child engaging in bestiality shall, upon conviction, be imprisoned in a state correctional facility for not less than five nor more than ~~fifteen~~ 20 years or fined not more than \$25,000, or both.

~~(e)~~ (i) For purposes of this section each video clip, movie, or similar recording of five minutes or less shall constitute ~~seventy-five~~ 100 images. A video clip, movie or similar recording of a duration longer than five minutes shall ~~be deemed to constitute~~ constitutes ~~seventy-five~~ 100 images for every two minutes in length it exceeds five minutes.

§61-8C-3a. Prohibiting child erotica; penalties.

(a) Any person age ~~eighteen~~ 18 or over who knowingly and intentionally produces, possesses, displays or distributes, in any form, any visual portrayals of minors who are partially clothed, where the visual portrayals are: (1) Unrelated to the sale of a commercially available legal product; and (2) used for purely prurient purposes, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than one year or fined not more than \$1,000, or both confined and fined.

(b) As used in this section only:

(1) "Purely prurient purposes" means for the specific purpose of sexual gratification or sexual arousal from viewing the visual portrayals prohibited by this section; and

(2) "Commercially available" means for sale to the general public.

~~(3) A "minor" is a child under the age of sixteen years, or a person who is sixteen years of age or older but less than eighteen years old and who is mentally defective or mentally incapacitated.~~

§61-8C-3b. Prohibiting juveniles from manufacturing, possessing, and distributing nude or partially nude images of minors; creating exemptions; declaring a violation to be an act of juvenile delinquency; and providing for the punishment thereof.

(a) Any minor who intentionally possesses, creates, produces, distributes, presents, transmits, posts, exchanges, or otherwise disseminates any computer-generated child pornography or a visual portrayal of another minor posing in an inappropriate sexual manner or who distributes, presents, transmits, posts, exchanges, or otherwise disseminates a visual portrayal of himself or herself posing in an inappropriate sexual manner is guilty of an act of delinquency and, upon adjudication, disposition may be made by the circuit court pursuant to the provisions of §49-4-701 through §49-4-725 of this code.

(b) As used in this section, "posing in an inappropriate sexual manner" means exhibition of a bare female breast, female or male genitalia, pubic, or rectal areas of a minor for purposes of sexual gratification.

~~(1) "Posing in an inappropriate sexual manner" means exhibition of a bare female breast, female or male genitalia, pubic, or rectal areas of a minor for purposes of sexual titillation.~~

~~(2) "Visual portrayal" means:~~

~~(A) A photograph;~~

~~(B) A motion picture;~~

~~(C) A digital image;~~

~~(D) A digital video recording; or~~

~~(E) Any other mechanical or electronic recording process or device that can preserve, for later viewing, a visual image of a person that includes, but is not limited to, computers, cellphones, personal digital assistance, and other digital storage or transmitting devices;~~

(c) It shall be an affirmative defense to an alleged violation of this section that a minor charged with possession of the prohibited visual ~~depiction~~ portrayal did neither solicit its receipt nor distribute, transmit, or present it to another person by any means.

(d) Notwithstanding the provisions of §15-12-1 *et seq.* of this code, an adjudication of delinquency under the provisions of this section shall not subject the minor to the requirements of that article and chapter.

§61-8C-3c. Confidentiality; exemption from prosecution.

(a) Nothing in this article shall be construed to prevent the lawful investigation and/or prosecution of the criminal offenses described in this article: *Provided*, That prohibited media or visual portrayal described in this article shall not be published to the public at any time.

(b) It does not constitute an offense of the crimes set forth in this article when the following persons possess or distribute prohibited media or material, or visual portrayal while acting in the performance of their official duties:

(1) Law enforcement officials, including those entities with specialized investigatory experience with whom law enforcement agencies regularly contract for the purpose of providing investigatory services and assistance;

(2) Prosecuting attorneys;

(3) Attorneys acting as officers of the court and while acting in the performance of their official duties;

(4) Judges and magistrates;

(5) Jurors hearing a case involving an alleged violation of offenses in this article;

(6) Support personnel for the persons listed in this section; and

(7) Any person acting in accordance and in compliance with a valid order issued by a circuit court of this state or the Supreme Court of Appeals.

(c) The Supreme Court of Appeals is hereby requested to promulgate such rules, protocols, and forms which are necessary to regulate access to, use, and handling of prohibited media and visual portrayals described in this article, giving due consideration to the privacy rights of victims and the due process rights of defendants in criminal proceedings.

(d)(1) Any person not listed in subsection (b) of this section who, in the course and scope of employment or business, views an image or images on a computer or electronic device that is or appears to be material visually portraying a minor engaged in any sexually explicit conduct shall immediately report the discovery of the image or images to a local or state law enforcement agency or the Cyber Tipline at the National Center for Missing and Exploited Children. The report must include the name and address of the owner or person claiming a right to possession of the computer or electronic device, if known, and as permitted by federal law. For purposes of this subdivision, such reporting may include furnishing the law enforcement officer with any image, information, or data that the person reasonably believes to be evidence of material visually portraying a minor engaged in any sexually explicit conduct, transmission of material visually portraying a minor engaged in any sexually explicit conduct, or an image, information, or data that is harmful to minors.

(2) Except in a case of willful or wanton misconduct, compliance with subdivision (1) of this subsection is an affirmative defense to an alleged violation of this section."

And,

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

Eng. Com. Sub. for Senate Bill 198—A Bill to amend and reenact §61-8-28a, §61-8C-1, §61-8C-2, §61-8C-3, §61-8C-3a, and §61-8C-3b of the Code of West Virginia, 1931, as amended; and to amend the code by adding thereto a new section, designated §61-8C-3c, relating to unlawful computer-generated images; creating definitions relating to intimate images; clarifying the offense of nonconsensual disclosure of intimate images includes certain fabricated intimate images; creating criminal offenses for nonconsensual disclosure of fabricated intimate images; clarifying the definitions relating to filming sexually explicit conduct of minors; creating definitions relating to filming sexually explicit conduct of minors; creating definitions relating to computer-generated child pornography; clarifying certain exemptions for the definitions relating to computer-generated child pornography; amending the article for consistent use of defined terms; clarifying facts or circumstances applicable to liability for offenses involving filming sexually explicit conduct of minors; creating criminal offenses for computer-generated child pornography; increasing certain penalties for distribution and exhibiting of material depicting minors engaged in sexually explicit conduct or computer-generated child pornography; reducing the number of images required for prosecution of certain offenses relating to distribution and exhibiting of material depicting minors engaged in sexually explicit conduct or computer-generated child pornography; clarifying the number of images attributable to certain video clips, movies, or similar recordings; clarifying that certain acts involving computer-generated child pornography may be acts of delinquency for minors; creating confidentiality provisions for restricted materials used for prosecution of offenses; clarifying the groups of persons to whom the criminal prohibitions related to child pornography are inapplicable when such persons are performing their official or employment duties; requesting the Supreme Court of Appeals to promulgate certain rules; authorizing mandatory reporting of certain individuals who observe images appearing to be a minor engaged in sexually explicit conduct on electronic devices; creating an affirmative defense for persons complying with the mandatory reporting requirements; creating criminal penalties; and making technical and stylistic corrections.

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

Engrossed Committee Substitute for Senate Bill 198, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Bartlett, Boley, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Stuart, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—33.

The nays were: None.

Absent: Takubo—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 198) 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 amendment by that body, passage as amended with its House of Delegates amended title, to take effect from passage, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Senate Bill 325, Authorizing Department of Health to promulgate legislative rules.

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

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

On page 9, line 11, by inserting the following:

"On page 6, by adding two new subdivisions, designated as subdivision 6.5.7. and 6.5.8. to read as follows:

6.5.7. Disclose and list any other healthcare facility and recovery residence owned or managed by the applicant in any state in the United States;

6.5.8. Disclose whether the applicant is part of any lawsuit or regulatory action in any state in the United States related to patient care, human trafficking, labor exploitation, or financial misconduct.;

On page 9, after subsection 6.16., by inserting two new subsections, designated as 6.17. and 6.18. to read as follows:

6.17. Upon discharge of a resident, the recovery residence shall provide to the discharged resident a link or QR code for the resident to be able to complete an exit survey in a form to be prescribed by the Office of Health Facility Licensure and Certification.

6.18. The Office of Health Facility Licensure and Certification, the certifying agency, and the West Virginia Fusion Center may refer complaints and information received among each other and with law enforcement and criminal justice support agencies, as appropriate.;

And,

On page 10, line 52, by inserting the following:

"(c) The Legislature directs the Department of Human Services to amend the legislative rule filed in the State Register on May 11, 2021, authorized under the authority of §49-2-121 of this code, relating to the Department of Human Services (child placing agencies licensure, 78 CSR 02), is authorized with the amendment set forth below:

On page 1, subsection 1.5. by striking out the number "2026" and inserting in lieu thereof the number "2031";

On page 29, by striking out all of paragraph 13.2.1.b.;

And,

Renumbering the remaining paragraphs accordingly.";

And,

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

Eng. Com. Sub. for Senate Bill 325—A Bill to amend and reenact §64-5-1 *et seq.* and §64-5A-1 *et seq.* of the Code of West Virginia, 1931, as amended; and to amend the code by adding a new article, designated §64-5B-1, relating to authorizing certain agencies of the Department of Health, Department of Human Services, and the Office of Inspector General to promulgate legislative rules; authorizing the rules as filed and as modified by the Legislative Rule-Making Review Committee and as amended by the Legislature; directing certain agencies of the Department of Health to amend current legislative rules; authorizing the Department of Health to promulgate a legislative rule relating to public water systems; authorizing the Department of Health to promulgate a legislative rule relating to statewide trauma and emergency care system; authorizing the Department of Health to promulgate a legislative rule relating to fatality and mortality review team; authorizing the Department of Health to promulgate a legislative rule relating to vital statistics; authorizing the Department of Health to promulgate a legislative rule relating to emergency medical services; authorizing the Department of Health to promulgate a legislative rule relating to the Primary Care Support Program; authorizing the Department of Health to promulgate a legislative rule relating to the general provisions of the Medical Cannabis Program; authorizing the Department of Health to promulgate a legislative rule relating to growers and processors of the Medical Cannabis Program; authorizing the Department of Health to promulgate a legislative rule relating to laboratories of the Medical Cannabis Program; authorizing the Department of Health to promulgate a legislative rule relating to dispensaries of the Medical Cannabis Program; authorizing the Department of Health to promulgate a legislative rule relating to the Safe Harbor Letter for the Medical Cannabis Program; authorizing the Department of Health to promulgate a legislative rule relating to critical access hospitals; directing the Department of Health to amend a legislative rule relating to sewage treatment and collection system design standards; authorizing the Department of Human Services to promulgate a legislative rule relating to the Recovery Residence Certification and Accreditation Program; authorizing the Department of Human Services to promulgate a legislative rule relating to the pilot program for drug screening of applicants for cash assistance; directing the Department of Human Services to amend a legislative rule relating to child placing agencies licensure; authorizing the Office of Inspector General to promulgate a legislative rule relating to hospital licensure; and authorizing the Office of Inspector General to promulgate a legislative rule relating to Behavioral Health Centers Licensure.

On motion of Senator Martin, the following amendment to the House of Delegates amendments to the bill (Eng. Com. Sub. for S. B. 325) was reported by the Clerk and adopted:

On page 9, subsection (b), by striking out lines 3-17 and inserting in lieu thereof the following:

On page 6, subdivision 6.5.5., by striking out the word "and";

On page 6, after subdivision 6.5.6., by adding two new subdivisions, designated as subdivision 6.5.7. and 6.5.8. to read as follows:

6.5.7. Disclose and list any other healthcare facility and recovery residence owned or managed by the applicant in any state in the United States; and

6.5.8. Disclose whether the applicant is part of any lawsuit or regulatory action in any state in the United States related to patient care, human trafficking, labor exploitation, or financial misconduct.;

On page 9, after subsection 6.16., by inserting two new subsections, designated as subsection 6.17. and subsection 6.18. to read as follows:

6.17. Resident Exit Survey

6.17.1. Upon discharge of a resident, the recovery residence shall provide to the discharged resident a link or QR code for the resident to be able to complete an exit survey in a form to be prescribed by the Office of Health Facility Licensure and Certification.

6.18. Referral of Complaints

6.18.1. The Office of Health Facility Licensure and Certification, the certifying agency, and the West Virginia Fusion Center may refer complaints and information received among each other and with law enforcement and criminal justice support agencies, as appropriate.;

And,

By renumbering the remaining subsections.

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

Engrossed Committee Substitute for Senate Bill 325, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Bartlett, Boley, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Stuart, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—33.

The nays were: None.

Absent: Takubo—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 325) passed with its House of Delegates amended title.

Senator Martin moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Bartlett, Boley, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Stuart, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—33.

The nays were: None.

Absent: Takubo—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. 325) takes effect from passage.

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

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

Eng. Com. Sub. for Senate Bill 617, Discouraging gang activity.

On motion of Senator Martin, 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 2, lines 2 through 5, by striking subdivision (1) in its entirety and inserting in lieu thereof the following:

(1) "Gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its activities the commission of one or more qualifying offenses, and whose members engage in or have engaged in qualifying offenses.;

And,

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

Eng. Com. Sub. for Senate Bill 617—A Bill to amend and reenact §61-13-1, §61-13-2, and §61-13-3 of the Code of West Virginia, 1931, as amended, relating to organized criminal enterprises; amending the findings to include gangs and gang activity; creating a definition of gang; adding gang activity to offenses punishable by this section; adding certain qualifying offenses to be subject to the Anti-Organized Criminal Enterprise Act; clarifying that certain offenses are separate and distinct crimes; creating criminal penalties; and making technical corrections.

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

Engrossed Committee Substitute for Senate Bill 617, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Bartlett, Boley, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Stuart, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—33.

The nays were: None.

Absent: Takubo—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 617) 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 concurrence by that body in the Senate amendments, as amended by the House of Delegates, passage as amended with its Senate amended title, and requested the concurrence of the Senate in the House of Delegates amendments to the Senate amendments, as to

Eng. Com. Sub. for House Bill 2411, To provide and change graduation requirements and change duties relating to academic content standards.

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

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

On page 6, section 9, line 126, by striking out the words "or science credit";

And,

Page 6, section 9, line 128 by striking out "or a high school science course, as applicable,".

On motion of Senator Martin, the following amendment to the House of Delegates amendments to the Senate amendments to the bill (Eng. Com. Sub. for H. B. 2411) was reported by the Clerk and adopted:

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

Eng. Com. Sub. for House Bill 2411—A Bill to amend and reenact §18-2-9 of the Code of West Virginia, 1931, as amended, relating to requiring all West Virginia high school students to pass a minimum of one credit of computer science; defining computer science; allowing computer science credit to be earned in grades eight through twelve; establishing requirements for the classes; allowing computer science credit to substitute for one math credit or one personalized education plan credit; requiring the computer science credit to be approved for one credit in career technical education if the credit is relevant to the program of study; requiring computer science course if used to fulfil a math credit to be denoted as the equivalent of a high school math course on the student's transcript for certain purpose; requiring West Virginia Board of Education rules detailing how certain credit fulfillment is to be granted; requiring West Virginia Board of Education to make available to all public schools a list of course options that can meet the requirements for this computer science credit; and allowing the West Virginia Board of Education to adopt rules to administer the computer science credit provisions.

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

Engrossed Committee Substitute for House Bill 2411, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Bartlett, Boley, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Stuart, Tarr, Taylor, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—31.

The nays were: Rucker and Thorne—2.

Absent: Takubo—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2411) passed with its Senate amended title.

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

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

Eng. Com. Sub. for House Bill 2123, Modifying the criminal penalties imposed on a parent, guardian or custodian for child abuse.

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

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

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

Eng. Com. Sub. for House Bill 2123—A Bill to amend and reenact §61-8D-3 and §61-8D-4 of the Code of West Virginia, 1931, as amended, all relating to modifying the criminal penalties imposed on a parent, guardian, custodian, or person in a position of trust in relation to a child for child abuse resulting in bodily injury, serious bodily injury, child abuse causing substantial risk of death or serious bodily injury; providing that a prior conviction under this section subjects a person to increased penalties; and providing a definition for a prior conviction; and also relating to modifying the criminal penalties imposed on a parent, guardian, custodian, or person in a position of trust in relation to a child for child neglect resulting in bodily injury, serious bodily injury, and child neglect causing substantial risk of death or serious bodily injury; providing that a prior conviction under this section subjects a person to increased penalties; and providing a definition for a prior conviction.

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

Engrossed Committee Substitute for House Bill 2123, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Bartlett, Boley, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin,

Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Stuart, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—33.

The nays were: None.

Absent: Takubo—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2123) passed with its House of Delegates amended title.

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

The Senate proceeded to the fourth order of business.

Senator Stuart, 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 2347, Relating generally to the creation of mental hygiene regions by the Supreme Court of Appeals.

And has amended same.

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

Respectfully submitted,

Mike Stuart,
Chair.

At the request of Senator Martin, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2347) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Stuart, 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 2451, To facilitate the creation of home-based businesses.

And has amended same.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on April 8, 2025;

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

Respectfully submitted,

Mike Stuart,
Chair.

At the request of Senator Martin, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2451) 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:

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

ARTICLE 40. HOME BASED BUSINESSES.

§8-40-1. Definitions.

(a) "Goods" means any merchandise, equipment, products, supplies, or materials.

(b) "Home-based business" means any business for the manufacture, provision, or sale of goods or services that is owned and operated by the owner or tenant of a residential dwelling

where the commercial activity takes place inside a residential dwelling and the commercial activities:

(1) Are limited to the sale of lawful goods and services;

(2) Do not generate on-street parking or a substantial increase in traffic through the residential area; and

(3) Do not have signage visible from the street.

§8-40-2. Permitted use.

(a) The use of a residential dwelling for a home-based business is a permitted use, except that this permission does not supersede or abrogate any of the following:

(1) Any deed restriction, covenant, or agreement restricting the use of land; or

(2) Any deed, by-law, or other document applicable to a common interest ownership community.

§8-40-3. Reasonable regulations.

(a) A municipality may establish reasonable regulations on a home-based business where the regulation is rationally related to a legitimate government interest including, but not limited to, any of the following purposes:

(1) The protection of the public health and safety, as defined in this code, including rules and regulations related to fire and building codes, health and sanitation, transportation, or traffic control, solid or hazardous waste, pollution, and noise control.

(2) Ensuring that the business activity is:

(A) Compatible with residential use of the property and surrounding residential use;

(B) Secondary to the use as a residential dwelling; or

(C) Complying with state and federal law and paying applicable taxes.

(3) Limiting or prohibiting the use of a home-based business that engages in any of the following activities:

(A) Selling illegal drugs or products containing alcohol or tobacco;

(B) Operating a sober living home;

(C) Selling pornography or otherwise obscene material;

(D) Operating a vape shop; or

(E) Operating a commercial establishment where nude or topless dancing occurs.

§8-40-4. Limited conditions.

(a) A municipality shall not require a person as a condition of operating a home-based business to:

(1) Rezone the property for commercial use;

(2) Install or equip fire sprinklers in a single-family detached residential dwelling or any residential dwelling with not more than two dwelling units; or

(3) Obtain a license or permit that is not otherwise required for a similarly situated business.

§8-40-5. Review.

In any proceeding alleging that a municipal regulation violates §8-40-3 or §8-40-4 of this code, the municipality that enacted the regulation shall be required to establish that the regulation complies with the provisions of this article.

On motion of Senator Queen, the following amendments to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 2451) were reported by the Clerk and considered simultaneously:

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

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

§8-13-4. Municipal license and tax thereon when state license required.

(a) Whenever anything, for which a state license is required, is to be done within the corporate limits of any municipality, the governing body shall have plenary power and authority, unless prohibited by general law, to require a municipal license and for the use of the municipality to impose a reasonable tax which may not exceed the amount of the state license tax. Upon proper application for a municipal license and payment of the prescribed reasonable tax by any person who has a valid and subsisting state license, the municipal license shall be issued.

(b) Except where a business license tax or fee has been established by the West Virginia Code, the governing body of a municipality may, in lieu of the provisions of subsection (a), enact an ordinance creating an annual general municipal business license for anything which requires a state license that is done within the corporate limits of a municipality, the tax for which may not exceed ~~twenty~~ 20 dollars.

(c) Notwithstanding any other provision of law to the contrary, no municipal license shall be required for an independent contractor or sole proprietor who does not maintain a permanent physical location within the municipalities city limits, which includes any business with under \$10,000 in revenue.

§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 §11-13-2e 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) A municipality shall not impose its business and occupation or privilege tax on any business with a revenue below \$10,000 annually.

~~(2)~~(3) 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.

And,

On page three, after line three by inserting the following:

ARTICLE 41. SMALL BUSINESS PROTECTION ACT.

§8-41-1. Short title.

This article may be cited as the Small Business Protection Act.

§8-41-2. Intent and legislative findings.

(a) It is the legislative intent and purpose of the Small Business Protection Act to improve state rulemaking by creating procedures to analyze the availability of more flexible regulatory approaches for small businesses.

(b) The legislature finds that:

(1) A vibrant and growing small business sector is critical to creating jobs in a dynamic economy. Increased hiring in West Virginia's small businesses creates higher wages and better outcomes for West Virginia's citizens and families;

(2) Small businesses bear a disproportionate share of regulatory costs and burdens. Increased regulatory costs decrease the amount of capital that small businesses have to create new jobs;

(3) Fundamental changes that are needed in the regulatory and enforcement culture of state agencies to make them more responsive to small business can be made without compromising the statutory missions of the agencies;

(4) When adopting rules to protect the health, safety, and economic welfare of West Virginia, state agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on small employers;

(5) Uniform regulatory and reporting requirements can impose unnecessary and disproportionately burdensome demands, including legal, accounting, and consulting costs upon small businesses with limited resources;

(6) The failure to recognize differences in the scale and resources of regulated businesses can adversely affect competition in the marketplace, discourage innovation, and restrict improvements in productivity;

(7) Unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;

(8) The practice of treating all regulated businesses as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental, and economic welfare legislation;

(9) Alternative regulatory approaches which do not conflict with the stated objective of applicable statutes may be available to minimize the significant economic impact of rules on small businesses;

(10) Prior to the adoption of regulations, the process by which state regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, to examine the impact of proposed and existing rules on such businesses, and to review the continued need for existing rules;

(11) Regulations affect small businesses differently than their larger counterparts. According to the United States Small Business Administration, evidence indicates that regulatory requirements at the federal and state level tend to create disproportionately heavier burdens for small businesses, putting them at a disadvantage relative to their larger competitors. Reasons that small businesses are at a disadvantage include the following:

(A) The cost of regulations is higher relative to available resources. The cost of regulations per employee is higher for businesses with fewer employees; and

(B) The cost per employee for the smallest businesses is typically one or more times greater than the equivalent cost for the largest businesses.

(12) Making small businesses aware of proposed state regulations prior to implementation is key to creating an effective partnership between state agencies and small businesses.

(c) Nothing in the Small Business Protection Act shall be interpreted or construed to limit the ability of an agency to propose rules.

CHAPTER 11. TAXATION.

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-3. Business registration certificate required; tax levied; exemption from registration; exemption from tax; penalty.

(a) *Registration required.* — No person shall, without a business registration certificate, engage in or prosecute, in the State of West Virginia, any business activity without first obtaining a business registration certificate from the Tax Commissioner of the State of West Virginia. Additionally, before beginning business in this state, such person:

(1) If a transient vendor, shall comply with the provisions of sections ~~twenty~~ 20 through ~~twenty-five~~ 25 of this article.

(2) If a collection agency, shall comply with the provisions of ~~article sixteen, chapter forty-seven~~ §47-16-1 et seq. of this code.

(3) If an employment agency, shall comply with the provisions of ~~article two, chapter twenty-one~~ §21-2-1 et seq. of this code.

(4) If selling drug paraphernalia, as defined in ~~section three, article nineteen, chapter forty-seven~~ §47-19-3 of this code, shall comply with the provisions of ~~article nineteen, chapter forty-seven~~ §47-19-1 et seq. of this code.

Persons engaging in or prosecuting other business activities in this state may also be subject to other provisions of this code which they must satisfy before commencing or while engaging in a business activity in this state.

(b) *Tax levied.* — The business registration tax hereby levied shall be \$15 for each annual business registration certificate: *Provided*, That for registration periods beginning on or after July 1, 1999, the business registration tax shall be \$30, except as otherwise provided in this article: *Provided, however*, That after June 30, 2010, the business registration tax shall be \$30.00 for each business registration certificate, including business registration certificates granted upon application after cessation of a business, or after suspension, revocation, cancellation or lapse of a prior business registration certificate.

(1) A separate business registration certificate is required for each fixed business location from which property or services are offered for sale or lease to the public as a class, or to a limited portion of the public; or at which customer accounts may be opened, closed or serviced.

(2) A separate business registration certificate is not required for each coin-operated machine. A separate certificate is required for each location from which making coin-operated machines available to the public is itself a business activity.

(3) A business that sells tangible personal property or services from or out of one or more vehicles needs a separate business registration certificate for each fixed location in this state from or out of which business is conducted. A copy of its business registration certificate shall be carried in each vehicle and publicly displayed while business is conducted from or out of the vehicle.

(4) A business registration certificate is required by subsection (a) of this section for every person engaging in purposeful revenue generating activity in this state. If that activity is one for which an employment agency license or a collection agency license or a license to sell drug paraphernalia is required and no other business activity is conducted by that person at each business location for which the employment agency license or collection agency license or license to sell drug paraphernalia is issued, then only that license is required for each such activity conducted by the licensee at each business location. However, if, in addition to the activity for which each license is issued, some other business activity is conducted by the licensee at such business location, a separate business registration certificate is required to conduct the nonlicensed activity.

(c) *Exemption from registration.* — Any person engaging in or prosecuting business activity in this state:

(1) Who is not required by law to collect or withhold a tax administered under article ten of this chapter; and

(2) Who does not claim exemption from payment of taxes imposed by articles fifteen and fifteen-a of this chapter, shall be exempt from both registration and payment of the tax imposed by this article, if such person had gross income from business activity of \$4,000 or less during that person's tax year for state income tax purposes immediately preceding the registration period for which a registration certificate is otherwise required by this article.

(d) *Exemptions from payment of tax.* — Any person engaging in or prosecuting any business activity in this state who is required by law to collect or withhold any tax administered under article ten of this chapter; or who claims exemption from payment of the taxes imposed by articles fifteen and fifteen-a of this chapter, shall be required to obtain a business registration certificate, as herein before provided, but shall be exempt from payment of the tax levied by subsection (b) of this section, if such person is:

(1) A person who had ~~gross income from business activity of \$4,000~~ net income of \$10,000 or less during that person's tax year for state income tax purposes immediately preceding the registration period for which a registration certificate is required under this article.

(2) An organization which qualifies, or would qualify, for exemption from federal income taxes under section 501 of the Internal Revenue Code of 1986, as amended.

(3) This state, or a political subdivision thereof, selling tangible personal property, admissions or services, when those activities compete with or may compete with the activities of another person.

(4) The United States, or an agency or instrumentality thereof, which is exempt from taxation by the states.

(5) A person engaged in the business of agriculture and farming: *Provided*, That no producer or grower selling products of the farm, garden or dairy and not included within the definition of business under subsection (a), section two of this article shall be required to obtain a business registration certificate or pay the business registration tax.

(6) A foreign retailer who is not a "retailer engaging in business in this state" as defined in section one, article fifteen-a of this chapter, who enters into an agreement with the Tax Commissioner to voluntarily collect and remit use tax on sales to West Virginia customers.

(e) *Money penalty.* — Any person required to obtain a business registration certificate under this section, who is exempt from payment of the tax, as provided in subsection (d) of this section, who does not obtain a registration certificate shall, in lieu of paying the penalty imposed by section nine of this article, pay a penalty of \$15 for each business location for which a certificate is needed: *Provided*, That application for business registration is made and the applicable money penalty tendered to the Tax Commissioner within ~~fifteen~~ 15 days after such person receives written notice from the Tax Commissioner that such person is required to obtain a business registration certificate.

Following discussion,

The question being on the adoption of Senator Queen's amendments 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. 2451), as amended, was then ordered to third reading.

Senator Stuart, 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 2710, Truth in Giving.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on April 9, 2025;

And reports the same back with the recommendation that it do pass; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Mike Stuart,
Chair.

The bill, under the original double committee reference, was then referred to the Committee on Finance.

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

Your Committee on the Judiciary has had under consideration

Eng. House Bill 3162, Providing that causes of action under Chapter 46A of the Code of West Virginia survive the death of the party.

With an amendment from the Committee on Banking and Insurance 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 April 9, 2025;

And reports the same back with the recommendation that it do pass as last amended by the Committee on the Judiciary.

Respectfully submitted,

Mike Stuart,
Chair.

At the request of Senator Martin, unanimous consent being granted, the bill (Eng. H. B. 3162) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration and read a second time.

At the request of Senator 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:

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT

AND PROTECTION ACT.

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-122. Definitions.

For the purposes of this section and sections one hundred twenty-three, one hundred twenty-four, one hundred twenty-five, one hundred twenty-six, one hundred twenty-seven, one hundred twenty-eight, one hundred twenty-nine and one hundred twenty-nine-a of this article, the following terms shall have the following meanings:

(a) "Consumer" means any natural person obligated or allegedly obligated to pay any debt and includes any duly appointed personal representative of the estate of a natural person obligated or allegedly obligated to pay any debt.

(b) "Claim" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or service which is the subject of the transaction is primarily for personal, family or household purposes, whether or not such obligation has been reduced to judgment.

(c) "Debt collection" means any action, conduct or practice of soliciting claims for collection or in the collection of claims owed or due or alleged to be owed or due by a consumer.

(d) "Debt collector" means any person or organization engaging directly or indirectly in debt collection. The term includes any person or organization who sells or offers to sell forms which are, or are represented to be, a collection system, device or scheme, and are intended or calculated to be used to collect claims. The term excludes attorneys representing creditors provided the attorneys are licensed in West Virginia or otherwise authorized to practice law in the state of West Virginia and handling claims and collections in their own name as an employee, partner, member, shareholder or owner of a law firm and not operating a collection agency under the management of a person who is not a licensed attorney.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-8a. Actions which survive; limitations; law governing such actions.

(a) In addition to the causes of action which survive at common law, causes of action for injuries to property, real or personal, ~~or~~ injuries to the person and not resulting in death, ~~or for~~ deceit or fraud, or any violations of §46A-1-101 et. seq. of this code, also shall survive; and such actions may be brought notwithstanding the death of the person entitled to recover or the death of the person liable.

(b) If any ~~such~~ action is begun during the lifetime of the injured party, and within the period of time permissible under the applicable statute of limitations as provided by §55-2-1 et seq. of this code and §55-2A-1 et seq. of this code, (either against the wrongdoer or his or her personal representative), and ~~such~~ the injured party dies pending the action it may be revived in favor of the personal representative of ~~such~~ the injured party and prosecuted to judgment and execution against the wrongdoer or ~~his or her~~ personal representative.

(c) If the injured party dies before having begun ~~any such~~ an action and it is not at the time of his or her death barred by the applicable statute of limitations under the provisions of §55-2-1 et seq. of this code and §55-2A-1 et seq. of this code ~~such~~ the action may be begun by the personal representative of the injured party against the wrongdoer or ~~his or her~~ personal representative and prosecuted to judgment and execution against the wrongdoer or his or her personal representative. Any ~~such~~ action shall be instituted within the same period of time that would have been applicable had the injured party not died.

(d) If ~~any such~~ an action mentioned in the ~~preceding~~ subsections (a), (b) and/or (c) of this section shall have been begun against the wrongdoer and he or she dies during the pendency thereof, it may be revived against the personal representative of the wrongdoer and prosecuted to judgment and execution.

(e) The applicable provisions of §56-8-1 *et seq.* of this code shall govern the actions hereinabove mentioned, with reference to their abatement, revival, discontinuance, reinstatement, and substitution of parties.

(f) Nothing contained in this section shall be construed to extend the time within which an action for any other tort shall be brought, nor to give the right to assign a claim for a tort not otherwise assignable.

The bill (Eng. H. B. 3162), as amended, was then ordered to third reading.

Senator Stuart, 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 3164, Requiring registered sex offenders pay annual fee.

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

Respectfully submitted,

Mike Stuart,
Chair.

At the request of Senator Martin, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 3164) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Stuart, 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 3294, Enacting the Bank Protections for Eligible Adults from Financial Exploitation Act.

And has amended same.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on April 9, 2025;

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

Respectfully submitted,

Mike Stuart,
Chair.

At the request of Senator Martin, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 3294) 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 2C. BANKING AND FINANCIAL SERVICES PROVIDER PROTECTIONS FOR ELIGIBLE ADULTS FROM FINANCIAL EXPLOITATION.

§31A-2C-1. Short title.

This article may be cited as Banking and Financial Services Provider Protections for Eligible Adults from Financial Exploitation.

§31A-2C-2. Legislative findings, purpose, and intent.

(a) The Legislature recognizes that depository institutions, broker-dealers, and investment advisers have duties imposed by law and by contract to conduct customer-directed transactions in a timely manner and in accordance with their customers' instructions.

(b) The Legislature recognizes that customers are increasingly being induced to authorize transactions that are not in their interest.

(c) It is the intent of the Legislature to:

(1) Ensure that eligible adults have ready access to their funds;

(2) Provide depository institutions with the tools and protections to intervene in customer-directed transactions when, in their discretion, the transaction presents potential significant risk of harm to the customer, including providing broker-dealers and investment advisers acting in accordance with actions traditionally associated with those committed by depository institutions, and not in contradiction with any of the duties and protections described in §32-6-601 *et seq.* of this code of those same tools; and

(3) Provide designated state agencies with the tools and information to investigate potential financial exploitation.

(d) The Legislature does not intend to create a duty for depository institutions, broker-dealers, and investment advisers to contravene the valid instructions of their customers and nothing in this chapter creates such a duty.

§31A-2C-3. Definitions.

As used in this article, the following terms and phrases have the following meanings:

"Associated third party" means an individual:

(1) Who is a parent, spouse, adult child, sibling, or other family member of an eligible adult whom a depository institution, broker-dealer, and/or investment adviser believes is closely associated with the eligible adult;

(2) Whom an eligible adult authorizes the depository institution, broker-dealer, and/or investment adviser to contact;

(3) Who is a co-owner, additional authorized signatory, or beneficiary on an eligible adult's account or an agent under a power of attorney; or

(4) Who is an attorney, trustee, conservator, or other fiduciary whom a court or a government agency selects to manage some or all of the financial affairs of the eligible adult.

"Account" means any of the following:

(1) A contract of deposit of funds between the depositor and a depository institution and:

(A) The account is a consumer account owned by an eligible adult, whether individually or with one or more other persons;

(B) An eligible adult is a beneficiary of the conservatorship account or guardianship account;
or

(C) The account is a line of credit owned by an eligible adult, whether individually or with one or more other persons.

(2) Any account of a broker-dealer or investment adviser for which a client or customer has the authority to transact business.

"Broker-dealer" has the same meaning as defined in §32-4-401 of this code.

"Depository institution" has the same meaning as defined in §31-17A-2 of this code.

"Designated state agency" means the entity responsible for receiving reports of alleged or suspected maltreatment or financial exploitation of an eligible adult including the West Virginia Department of Human Services' Bureau for Social Services and the West Virginia Attorney General.

"Eligible adult" means:

(1) A person 65 years of age or older or a person subject to §9-6-1 et seq. of this code; or

(2) A person 18 years or older who:

(A) Has a substantial mental or functional impairment that significantly interferes with his or her ability to make financial decisions or for whom a conservator has been appointed under state law; and

(B) The depository institution, broker-dealer, and/or investment adviser has actual knowledge that the person has an appointed guardian under state law.

"Financial exploitation" means:

(1) The wrongful or unauthorized taking, withholding, appropriation, expenditure, or use of money, assets, or property owned by an eligible adult; or

(2) An act or omission taken by a person, including through the use of a power of attorney, guardianship, trustee, or conservatorship of an eligible adult, to:

(A) Obtain control, through deception, intimidation, or undue influence, over the eligible adult's money, assets, or property to deprive the eligible adult of the ownership, use, benefit, or possession of the eligible adult's money, assets, or property; or

(B) Convert money, assets, or property of the eligible adult to deprive the eligible adult of the ownership, use, benefit, or possession of the eligible adult's money, assets, or property.

"Investment adviser" has the same meaning as defined in §32-4-401 of this code.

§31A-2C-4. Government disclosures.

(a) Any depository institution and/or its employees who believe that financial exploitation of an eligible adult has occurred, may have been attempted, or is being attempted, shall promptly notify a designated state agency; and

(b) Any broker-dealer or investment adviser, and/or their employees, acting in accordance with actions traditionally associated with those committed by depository institutions, and not in contradiction with any of the duties and protections described in §32-6-601 *et seq.* of this code shall also promptly notify a designated state agency.

§31A-2C-5. Authority to delay, refuse, or prevent certain activities.

(a) When, based on information they have individually observed or information they have received from a government agency or a law-enforcement agency, a depository institution, or a broker-dealer or investment adviser acting in accordance with actions traditionally associated with those committed by depository institutions, and not in contradiction with any of the duties and protections described in §32-6-601 *et seq.* of this code and/or their employees, believe that financial exploitation of an eligible adult may have occurred, has been attempted, is occurring, or is being attempted, the depository institution, broker-dealer, investment adviser, and/or their employees may, but are not required to:

(1) Delay or refuse one or more transactions with or involving the eligible adult;

(2) Delay or refuse to permit the withdrawal or disbursement of funds contained in the eligible adult's account;

(3) Prevent a change in ownership of the eligible adult's account;

(4) Prevent a transfer of funds from the eligible adult's account to an account owned wholly or partially by another person;

(5) Refuse to comply with instructions given to the depository institution, broker-dealer, or investment adviser by an agent or a person acting for or with an agent under a power of attorney signed or purported to have been signed by the eligible adult; or

(6) Prevent the designation or change the designation of beneficiaries to receive any property, benefit, or contract rights for an eligible adult at death.

(b) A depository institution, broker-dealer, investment adviser, and/or their employees are not required to act under subsection (a) of this section when provided with information alleging that

financial exploitation may have occurred, may have been attempted, is occurring, or is being attempted, but may use their sole discretion to determine whether or not to act under subsection (a) of this section based on the information available to them at the time.

(c) The authority to delay a transaction set forth in subsection (a) of this section expires upon the sooner of:

(1) Fifteen business days after the date on which the depository institution, broker-dealer, and/or investment adviser first acted under subsection (a) of this section;

(2) When the depository institution, broker-dealer, and/or investment adviser is satisfied in its sole discretion that the transaction or act will not likely result in financial exploitation of the eligible adult; or

(3) Upon an order of a court of competent jurisdiction directing the release of funds.

(d) Notwithstanding any other law to the contrary, the refusal to engage in a transaction as authorized under subsection (a) of this section may not constitute the wrongful dishonor of an item under §46-4-1 *et seq.* of this code.

(e) A reasonable belief that payment of a check will facilitate the financial exploitation of an eligible adult constitutes reasonable grounds to doubt the collectability of the item for purposes of the federal Check Clearing for the 21st Century Act, 12 U.S.C. § 5001 *et seq.*, the federal Expedited Funds Availability Act, 12 U.S.C. § 4001 *et seq.*, and 12 C.F.R. part 229. Nothing herein, however, requires depository institutions, broker-dealers, investment advisers, and/or their employees, to review the checks of eligible adults.

(f) A delay or refusal to complete a funds transfer request as authorized under subsection (a) of this section does not violate §46-4A-101 *et seq.* of this code: *Provided*, That if a transaction is delayed under subsection (a) of this section, the payment order is not considered as received until the hold is removed and the depository institution and/or broker-dealer submits the payment order for processing. Funds transfer and payment order have the same meanings as defined in §46-4A-101 *et seq.* of this code.

§31A-2C-6. Third-party notifications.

(a) A depository institution, broker-dealer, investment adviser, and/or their employees may notify an associated third party, if any, if the depository institution, broker-dealer, investment adviser, or their employees believe that the financial exploitation of the eligible adult is occurring, has or may have occurred, is being attempted, or has been or may have been attempted.

(b) A depository institution, broker-dealer, investment adviser, and/or their employees, may choose not to notify an associated third party as described in subsection (a) of this section, if the depository institution, broker-dealer, investment adviser, or employees believe that the third party is, may be, or may have been engaged in the financial exploitation of the eligible adult.

(c) When providing information under subsection (a) of this section, a depository institution, broker-dealer, investment adviser, and/or their employees may limit the information provided to disclosing their suspicion that the eligible adult may be a victim or target of financial exploitation.

(d) Any disclosure under subsection (a) of this section is exempt from coverage by state privacy laws and/or requirements.

§31A-2C-7. No private cause of action.

Compliance with this article shall not serve as the basis for a private cause of action against any depository institution, broker-dealer, investment advisor, or their employees unless there is clear and convincing evidence that these persons did not act in good faith.

The bill (Eng. Com. Sub. for H. B. 3294), as amended, was then ordered to third reading.

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

Your Committee on the Judiciary has had under consideration

Eng. House Bill 3434, Relating to the controlled substance schedules and to clean-up errors identified in the code sections.

Now on second reading, having been read a first time and rereferred to the Committee on Judiciary on April 8, 2025;

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

Respectfully submitted,

Mike Stuart,
Chair.

At the request of Senator Martin, unanimous consent being granted, the bill (Eng. H. B. 3434) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a second time, and ordered to third reading.

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

Your Committee on the Judiciary has had under consideration

Eng. House Bill 3503, Relating to regulation by counties, municipalities, and political subdivisions of commercial horticulture under the Water Pollution Control Act.

And has amended same.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on April 8, 2025;

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

Respectfully submitted,

Mike Stuart,
Chair.

At the request of Senator Martin, unanimous consent being granted, the bill (Eng. H. B. 3503) 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:

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

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-31. State pre-emption in favor of commercial horticulture under the Water Pollution Control Act.

(a) Notwithstanding the provisions of Chapter 7, Chapter 7A, Chapter 8, and Chapter 8A of the West Virginia Code or the West Virginia Code of State Rules promulgated thereunder to the contrary, no county, municipality, or political subdivision may prohibit, regulate, permit, or license commercial horticulture by adopting any charter, law, rule, regulation, ordinance, or zoning provision concerning the size, placement, location, or operation of commercial horticulture within the subject matter of the Water Pollution Control Act, as provided in §22-11-1 *et seq.* of this code, and all such provisions in charters, laws, rules, regulations, ordinances, or zoning provisions are hereby invalid and unenforceable.

(b) No county, municipality, or political subdivision may bring a cause of action against a commercial horticulture operation for any activity within the subject matter of said Water Pollution Control Act, if the commercial horticulture operation is in material compliance of the Water Pollution Control Act, its rules, and federal laws and regulations.

On motion of Senator Rucker, the following amendment to the Judiciary committee amendment to the bill (Eng. H. B. 3503) was reported by the Clerk:

On page 13, section 1, following line 12, by inserting the following:

(c) Any ordinance of a political subdivision of this state may not be more stringent than any federal or state rule, regulation, program, or permitting regime.

Following discussion,

The question being on the adoption of Senator Rucker'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. H. B. 3503), as amended, was then ordered to third reading.

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

Your Committee on the Judiciary has had under consideration

Eng. House Bill 3504, Relating to protecting critical infrastructure; and defining terms.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on April 9, 2025;

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

Respectfully submitted,

Mike Stuart,
Chair.

At the request of Senator Martin, unanimous consent being granted, the bill (Eng. H. B. 3504) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a second time, and ordered to third reading.

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

Your Committee on the Judiciary has had under consideration

Eng. House Bill 3513, Relating to standards of liability and insurance requirements in certain civil actions.

And has amended same.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on April 9, 2025;

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

Respectfully submitted,

Mike Stuart,
Chair.

At the request of Senator Martin, unanimous consent being granted, the bill (Eng. H. B. 3513) 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 7. LICENSES TO PRIVATE CLUBS.

§60-7-12b. Liability of intoxicated persons; liability of persons or licensees for knowingly unlawful sales; rebuttable presumptions and exceptions.

(a) Notwithstanding any other provision of this article to the contrary, a licensee or person acting on the licensee's behalf who sells, furnishes, or serves an alcoholic beverage to a person

is not thereby liable in a civil action for damages for injury, death, or damage caused by or resulting from the impairment or intoxication of the person who was furnished the alcoholic beverage, including injury or death to other individuals, unless either of the following circumstances apply:

(1) The licensee or person acting on the licensee's behalf knowingly sells, furnishes, or serves alcoholic beverages to a person who is not of lawful drinking age; or

(2) The licensee or person acting on the licensee's behalf knowingly sells, furnishes, or serves alcoholic beverages to a person who was visibly intoxicated at the time the alcoholic beverage was furnished.

(b) Where either of the circumstances set forth in §60-7-12b(a) of this code are met by a preponderance of the evidence, a person or licensee may become liable for injury or damage caused by or resulting from the intoxication of the person when the sale, furnishing, or serving of alcoholic beverages to the person is the proximate cause of the injury or damage.

(c) In determining whether the sale, furnishing, or serving of alcoholic beverages to a person not of legal drinking age is done knowingly, as provided in §60-7-12b(a)(1) of this code, a rebuttable presumption that the alcoholic beverages were not sold, furnished, or served knowingly exists if:

(1) The person selling, furnishing, or serving alcoholic beverages has installed a transaction scan device on its licensed premises and can demonstrate that it requires each employee, servant, or agent to verify the age of any individual to whom alcoholic beverages have been furnished; or,

(2) The person selling, furnishing, or serving alcoholic beverages can demonstrate that it requires each employee, servant, or agent to verify the age of any individual to whom an alcoholic beverage is sold by providing evidence:

(A) That it has developed a written policy which requires each employee, servant, or agent to verify the age of each individual to whom an alcoholic beverage will be sold, furnished, or given away;

(B) That it has communicated this policy to each employee, servant, or agent; and

(C) That it monitors the actions of its employees, servants, or agents regarding the sale, furnishing, or provision without charge of any alcoholic beverage and that it has taken corrective action for any discovered noncompliance with this policy.

(d) For purposes of this section, an intoxicated person of lawful drinking age operating a motor vehicle, an executor or administrator of the intoxicated motor vehicle operator's estate, any person voluntarily riding in a motor vehicle operated by a person known to be intoxicated, or an executor or administrator of any person voluntarily riding in a motor vehicle operated by a person known to be intoxicated, do not have a private cause of action against any licensee, person acting on the licensee's behalf, or owner or lessor of any building of a licensee, for injuries to his or her person or property arising from the actions of the intoxicated driver.

(e) For any cause of action brought pursuant to this section against a licensee or person acting on the licensee's behalf that maintains liquor liability insurance in an amount not less than \$1

million per occurrence and at least \$2 million in the aggregate, a verdict of past medical expenses is limited to \$1 million, and an award of punitive damages may not exceed two times the amount of compensatory damages awarded.

(f) For purposes of this section, these terms are defined as follows:

"Alcoholic beverage" includes alcohol, beer, including nonintoxicating beer and nonintoxicating craft beer, wine, spirits and any other liquid or solid capable of being used as a beverage.

"Knowing" or "knowingly" means knew or should have known under a totality of the circumstances.

"Transaction scan device" means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information enclosed on the magnetic strip or bar code of a driver's license or other government-issued identity card.

"Visible intoxication" or "visibly intoxicated" means actual evidence of a person's action or series of actions that present objective signs of intoxication. A person's blood alcohol content or the number of alcoholic beverages a person consumes do not constitute prima facie evidence to establish that a person is visibly intoxicated within the meaning of this section but may be admissible as relevant evidence of the person's intoxication.

(g) Notwithstanding any other effective date to the contrary, the amendments to this article, enacted during the 2025 regular legislative session, apply to all cases filed on or after August 1, 2025.

§60-7-12c. Liability of owners or lessors for gross negligence.

(a) A person, and an executor or administrator of the person's estate, who suffers personal injury, death, or property damage as a result of the actions of an intoxicated person do not have a private cause of action against an owner or lessor who rents their building or premises to a licensee or person acting on the licensee's behalf against whom a private cause of action may be brought under §60-7-12b of this code, except when:

(1) The owner and the licensee are the same person, and the licensee violated a provision of §60-7-12b of this code; or

(2) There is clear and convincing evidence that the owner or lessor acted willfully, wantonly, or with gross negligence with respect to the renting of the owner or lessor's building or premises to a licensee or person acting on a licensee's behalf against whom a private cause of action has been brought.

(b) For any cause of action brought under this section in which the trier of fact has determined that punitive damages are to be awarded, the limitations on punitive damages provided in §55-7-29 of this code apply.

(c) Notwithstanding any other effective date to the contrary, the amendments to this article, enacted during the 2025 regular legislative session, apply to all cases filed on or after August 1, 2025.

The bill (Eng. H. B. 3513), as amended, was then ordered to third reading.

On motion of Senator Martin, at 4:11 p.m., the Senate recessed until 5 p.m. today.

The Senate reconvened at 5:45 p.m. and again proceeded to the eighth order of business.

The end of today's third reading calendar having been reached, the Senate proceeded to the consideration of

Eng. Com. Sub. for House Bill 2576, NIL Protection Act.

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

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

Consideration of Engrossed Committee Substitute for House Bill 2576 having been concluded, the Senate proceeded to the consideration of

Eng. Com. Sub. for House Bill 2595, Non Profit Athletics Act.

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

At the request of Senator Martin, and by unanimous consent, further consideration of the bill was deferred until the conclusion of bills on today's second reading calendar, following consideration of Engrossed Committee Substitute for House Bill 2576, already placed in that position.

Consideration of Engrossed Committee Substitute for House Bill 2595 having been concluded, the Senate proceeded to the consideration of

Eng. House Bill 2776, Requiring Department of Health to report positive Alpha Gal tests to CDC.

On third reading, coming up in deferred order, with the unreported Health and Human Resources committee amendment pending, and with the right having been granted on April 8, 2025, for further amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Chapman, as chair of the Committee on Health and Human Resources, and by unanimous consent, the unreported Health and Human Resources committee amendment to the bill was withdrawn.

On motion of Senator Chapman, 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 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-4. Proposal of rules by the secretary.

(a) The secretary may propose legislative rules in accordance with the provisions of §29A-3-1 *et seq.* of this code that include:

(1) Land usage endangering the public health: *Provided*, That no rules may be promulgated or enforced restricting the subdivision or development of any parcel of land within which the individual tracts, lots, or parcels exceed two acres each in total surface area and which individual tracts, lots, or parcels have an average frontage of not less than 150 feet even though the total surface area of the tract, lot, or parcel equals or exceeds two acres in total surface area, and which tracts are sold, leased, or utilized only as single-family dwelling units. Notwithstanding the provisions of this subsection, nothing in this section may be construed to abate the authority of the department to:

(A) Restrict the subdivision or development of a tract for any more intense or higher density occupancy than a single-family dwelling unit;

(B) Propose or enforce rules applicable to single-family dwelling units for single-family dwelling unit sanitary sewerage disposal systems; or

(C) Restrict any subdivision or development which might endanger the public health, the sanitary condition of streams, or sources of water supply;

(2) The sanitary condition of all institutions and schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops, factories, labor camps, all other places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption and places where trades or industries are conducted;

(3) Occupational and industrial health hazards, the sanitary conditions of streams, sources of water supply, sewerage facilities, and plumbing systems and the qualifications of personnel connected with any of those facilities, without regard to whether the supplies or systems are publicly or privately owned; and the design of all water systems, plumbing systems, sewerage systems, sewage treatment plants, excreta disposal methods, and swimming pools in this state, whether publicly or privately owned: *Provided*, That the secretary may not promulgate rules that require a public water supply system or business to have backflow prevention assemblies inspected more frequently than once in five years for a low-hazard system, which is defined as a hazard that could cause aesthetic problems or have a detrimental secondary effect on the quality of the public potable water supply: *Provided, however*, That a high-hazard system, which is defined as a hazard that is conducive to the introduction of waterborne disease organisms or harmful chemical, physical, or radioactive substances into a public water system and that presents an unreasonable risk to health, shall be inspected annually;

(4) Safe drinking water, including:

(A) The maximum contaminant levels to which all public water systems must conform in order to prevent adverse effects on the health of individuals and, if appropriate, treatment techniques that reduce the contaminant or contaminants to a level which will not adversely affect the health of the consumer. The rule shall contain provisions to protect and prevent contamination of wellheads and well fields used by public water supplies so that contaminants do not reach a level that would adversely affect the health of the consumer;

(B) The minimum requirements for: sampling and testing; system operation; public notification by a public water system on being granted a variance or exemption, or upon failure to comply with specific requirements of this section and rules promulgated under this section; record keeping; laboratory certification; as well as procedures and conditions for granting variances and exemptions to public water systems from state public water systems rules; and

(C) The requirements covering the production and distribution of bottled drinking water and may establish requirements governing the taste, odor, appearance, and other consumer acceptability parameters of drinking water;

(5) Food and drug standards, including cleanliness, proscription of additives, proscription of sale, and other requirements in accordance with §16-7-1 *et seq.* of this code as are necessary to protect the health of the citizens of this state;

(6) The training and examination requirements for emergency medical service attendants and emergency medical care technician-paramedics; the designation of the health care facilities, health care services, and the industries and occupations in the state that must have emergency medical service attendants and emergency medical care technician-paramedics employed; and the availability, communications, and equipment requirements with respect to emergency medical service attendants and to emergency medical care technician-paramedics. Any regulation of emergency medical service attendants and emergency medical care technician-paramedics may not exceed the provisions of §16-4C-1 *et seq.* of this code;

(7) The health and sanitary conditions of establishments commonly referred to as bed and breakfast inns. For purposes of this article, "bed and breakfast inn" means an establishment providing sleeping accommodations and, at a minimum, a breakfast for a fee. The secretary may not require an owner of a bed and breakfast providing sleeping accommodations of six or fewer rooms to install a restaurant-style or commercial food service facility. The secretary may not require an owner of a bed and breakfast providing sleeping accommodations of more than six rooms to install a restaurant-type or commercial food service facility if the entire bed and breakfast inn or those rooms numbering above six are used on an aggregate of two weeks or less per year;

(8) Fees for services provided by the Bureau for Public Health including, but not limited to, laboratory service fees, environmental health service fees, health facility fees, and permit fees;

(9) The collection of data on health status, the health system, and the costs of health care;

(10) The distribution of state aid to local health departments and basic public health services funds in accordance with:

(A) Base allocation amount for each county;

(B) Establishment and administration of an emergency fund of no more than two percent of the total annual funds of which unused amounts are to be distributed back to local boards of health at the end of each fiscal year;

(C) A calculation of funds utilized for state support of local health departments;

(D) Distribution of remaining funds on a per capita weighted population approach which factors coefficients for poverty, health status, population density, and health department interventions for each county and a coefficient which encourages counties to merge in the provision of public health services; and

(E) The provisions of this subdivision are in effect until the performance standard funding formula is created and established by legislative rule.

(b) The secretary shall propose legislative rules in accordance with the provisions of §29A-3-1 et seq. of this code to include alpha-gal syndrome on the list of diseases that shall be required to be reported to the Centers for Disease Control and Prevention (CDC).

~~(b)(c)~~ The secretary shall may not review any repair or modernization of equipment at a public pool facility as long as such activity does not change the scope of the facility or its current use and such activity does not exceed \$25,000 in planned cost.

§16-1-9a. Regulation of public water systems.

(a) The ~~commissioner~~ secretary shall regulate public water systems as prescribed in this section.

(b) The ~~commissioner~~ secretary shall establish by legislative rule, in accordance with §29A-3-1 et seq. of this code:

(1) The maximum contaminant levels to which all public water systems shall conform in order to prevent adverse effects on the health of individuals;

(2) Treatment techniques that reduce the contaminant or contaminants to a level which will not adversely affect the health of the consumer;

(3) Provisions to protect and prevent contamination of wellheads and well fields used by public water supplies so that contaminants do not reach a level that would adversely affect the health of the consumer;

(4) Minimum requirements for:

(A) Sampling and testing;

(B) System operation;

(C) Public notification by a public water system on being granted a variance or exemption or upon failure to comply with specific requirements of this section and regulations promulgated under this section;

(D) Recordkeeping;

(E) Laboratory certification; and

(F) Procedures and conditions for granting variances and exemptions to public water systems from state public water systems' regulations;

(5) Requirements covering the production and distribution of bottled drinking water;

(6) Requirements governing the taste, odor, appearance, and other consumer acceptability parameters of drinking water;

(7) Any requirements for a water supply system the ~~commissioner~~ secretary determines is are necessary to be equipped with a backflow prevention assembly, and all maintenance activities must be documented and provided to the ~~commissioner~~ secretary upon request: Provided, That the secretary may not require inspection more frequently than once in five years for a low-hazard

system, which is defined as a hazard that could cause aesthetic problems or have a detrimental secondary effect on the quality of the public potable water supply: *Provided, however,* That a high-hazard system, which is defined as a hazard that is conducive to the introduction of waterborne disease organisms, or harmful chemical, physical, or radioactive substances into a public water system, and that presents an unreasonable risk to health, shall be inspected annually; and Secretary

(8) Any other requirement the ~~commissioner~~ secretary finds necessary to effectuate the provisions of this article.

(c) The ~~commissioner~~ secretary, or his or her authorized representative or designee, may enter any part of a public water system, whether or not the system is in violation of a legal requirement, for the purpose of inspecting, sampling, or testing and shall be furnished records or information reasonably required for a complete inspection.

(d) The ~~commissioner~~ secretary, or his or her authorized representative or designee, may conduct an evaluation necessary to assure the public water system meets federal safe drinking water requirements. The public water system shall provide a written response to the commissioner within 30 days of receipt of the evaluation by the public water system, addressing corrective actions to be taken as a result of the evaluation.

(e)(1) Any individual or entity who violates any provision of this article, or any of the rules or orders issued pursuant to this article, is liable for a civil penalty not less than \$1,000 nor more than \$5,000. Each day's violation shall constitute a separate offense.

(2) For a willful violation of a provision of this article, or of any of the rules or orders issued under this article, an individual or entity shall be subject to a civil penalty of not more than \$10,000 and each day's violation shall be grounds for a separate penalty.

(3) Civil penalties are payable to the ~~commissioner~~ secretary. All moneys collected under this section shall be deposited into a restricted account known as the Safe Drinking Water Fund. All moneys deposited into the fund shall be used by the ~~commissioner~~ secretary to provide technical assistance to public water systems.

(f) The ~~commissioner~~ secretary, or his or her authorized representative or designee, may also seek injunctive relief in the circuit court of the county in which all or part of the public water system is located for threatened or continuing violations.

(g) By July 1, 2020, a public water system supplying water to the public within the state shall immediately, but in no instance later than six hours, report the occurrence and the lifting of each advisory to local departments of health and to local office of emergency management 911 answering point.

(h) By January 1, 2022, a public water system shall make available to interested customers boiled water advisories promptly through a text or a voice alert mass notification system.

Following discussion,

The question being on the adoption of Senator Chapman's amendment to the bill, the same was put and prevailed.

Engrossed House Bill 2776, as just amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Stuart, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woodrum, and Smith (Mr. President)—32.

The nays were: None.

Absent: Boley and Woelfel—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2776) passed.

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

Eng. House Bill 2776—A Bill amend and reenact §16-1-4 and §16-1-9a of the Code of West Virginia, 1931, as amended, relating to the State Public Health System; requiring the Secretary of the Department of Health to propose legislative rules to include alpha-gal syndrome on the list of diseases that shall be required to be reported to the Centers for Disease Control and Prevention (CDC); creating two classifications of backflow prevention assemblies; replacing references to the commissioner with the Secretary of the Department of Health; providing that the Secretary of the Department of Health may not require low-hazard backflow prevention assemblies to be inspected more frequently than once in five years; and providing that high-hazard backflow prevention assemblies shall be inspected annually.

Senator Martin moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Stuart, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woodrum, and Smith (Mr. President)—32.

The nays were: None.

Absent: Boley and Woelfel—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 2776) takes effect from passage.

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

The Senate proceeded to the ninth order of business.

Eng. Com. Sub. for House Bill 2014, Certified Microgrid Program.

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

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

Eng. Com. Sub. for House Bill 2054, Relating to liability of vendors in private farmers markets.

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 1, after the enacting clause, but striking out everything after the enacting clause and inserting in lieu thereof the following:

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 4. LICENSES.

§60-4-3a. Distillery, mini-distillery, and micro-distillery license to manufacture and sell.

(a) *Sales of liquor.* — An operator of a distillery, mini-distillery, or micro-distillery may offer liquor for retail sale to customers from the distillery, mini-distillery, or micro-distillery for consumption off-premises only. Except for samples offered pursuant to §60-6-1 of this code, customers may not consume any liquor on the premises of the distillery, mini-distillery, or micro-distillery, except for a distillery, mini-distillery, or micro-distillery that obtains a private manufacturer club license set forth in §60-7-1 *et seq.* of this code, and a Class A retail dealer license set forth in §11-16-1 *et seq.* of the code: *Provided*, That a licensed distillery, mini-distillery, or micro-distillery may offer samples of alcoholic liquors as authorized by this subsection when alcoholic liquors are manufactured by that licensed distillery, mini-distillery, or micro-distillery for consumption on the licensed premises. Notwithstanding any other provision of law to the contrary, a licensed distillery, mini-distillery, or micro-distillery may sell, furnish, and serve alcoholic liquors when licensed accordingly beginning at 6:00 a.m. unless otherwise determined by the residents of the county pursuant to §7-1-3ss of this code.

(b) *Retail on-premises and off-premises consumption sales.* — Every licensed distillery, mini-distillery, or micro-distillery shall comply with the provisions of §60-3A-9, §60-3A-11, §60-3A-13, §60-3A-16, §60-3A-17, §60-3A-18, §60-3A-19, §60-3A-22, §60-3A-23, §60-3A-24, §60-3A-25, and §60-3A-26 of this code, and the provisions of §60-3-1 *et seq.*, §60-4-1 *et seq.*, and §60-7-1 *et seq.* of this code, applicable to liquor retailers, and distillers. In the interest of promoting tourism throughout the state, every licensed distillery, mini-distillery, or micro-distillery manufacturing liquor in this state is authorized, with a limited off-site retail privilege at private fairs and festivals, for on-premises consumption sales served by the drink or glass, and off-premises consumption sales by the bottle of only the licensed distillery, mini-distillery, or micro-distillery's sealed liquor. At least five days prior to an approved private fair and festival, an authorized distillery, mini-distillery, or micro-distillery shall provide a copy of a written agreement to sell only liquor manufactured by the licensed distillery, mini-distillery, or micro-distillery at the private fair and festival's licensed premises. If approved, an authorized distillery, mini-distillery, or micro-distillery may conduct on-premises and off-premises consumption sales of its liquor from a designated booth at the private fair and festival as set forth in §60-7-8a of this code. All authorized and

approved distilleries, mini-distilleries, and micro-distilleries' off-premises consumption sales shall comply with all retail requirements in §60-3A-1 *et seq.* of this code, and specifically §60-3A-17 of this code with respect to all markups, taxes, and fees and also all retail requirements of §60-7-1 *et seq.* of this code when applicable. Additionally, every authorized distillery, mini-distillery, and micro-distillery may provide samples to patrons who are 21 years of age and older and who are not intoxicated. The liquor samples of the licensed distillery, mini-distillery, or micro-distillery's product on any sampling day shall not exceed:

~~(1) Three separate and individual sample servings per customer verified to be 21 years of age or older; and~~

~~(2) Six six ounces in total volume. Samples may be mixed with each other or with non-alcoholic liquids as long as the total amount of the liquor sampled does not exceed six ounces.~~

(c) *Payment of taxes and fees.* — The distillery, mini-distillery, or micro-distillery shall pay all taxes and fees required of licensed retailers and meet applicable licensing provisions as required by this chapter and by rule of the commissioner, except for payments of the wholesale markup percentage and the handling fee provided by rule of the commissioner: *Provided*, That all liquor for sale to customers from the distillery, mini-distillery, or micro-distillery for off-premises consumption is subject of a five percent wholesale markup fee and an 80 cents per case bailment fee to be paid to the commissioner: *Provided, however*, That liquor sold by the distillery, mini-distillery, or micro-distillery shall not be priced less than the price set by the commissioner pursuant §60-3A-17 of this code.

(d) *Payments to market zone retailers.* — Each distillery, mini-distillery, or micro-distillery shall submit to the commissioner two percent of the gross sales price of each retail liquor sale for the value of all sales at the distillery, mini-distillery, or micro-distillery each month. Any sales by a distillery, mini-distillery, or micro-distillery at a private fair and festival are treated as occurring on their licensed premises for purposes of this market zone calculation. This collection shall be distributed by the commissioner, at least quarterly, to each market zone retailer located in the distillery, mini-distillery, or micro-distillery's market zone, proportionate to each market zone retailer's annual gross prior years pretax value sales. The maximum amount of market zone payments that a distillery, mini-distillery, or micro-distillery shall submit to the commissioner is \$15,000 per annum.

(e) *Limitations on licensees.* — A distillery, mini-distillery, or micro-distillery may not produce more than 50,000 gallons per calendar year. The commissioner may issue more than one distillery, mini-distillery, or micro-distillery license to a single person or entity and a person may hold both a distillery and a mini-distillery license. The owners of a licensed distillery, mini-distillery, or micro-distillery may operate a winery, farm winery, brewery, or as a resident brewer as otherwise specified in the code.

(f) *Building code and tax classification.* — Notwithstanding any provision of this code to the contrary, the mere addition of a distillery, mini-distillery, or micro-distillery licensed under this article on a property does not change the nature or use of the property which otherwise qualifies as agricultural use for building code and property tax classification purposes.

(g) A political subdivision of this state may not regulate any of the following activities of a distillery, mini-distillery, or micro-distillery licensed and operating in accordance with this section:

(1) The on-premises sale, tasting, or consumption of liquor during business hours set forth in §60-7-12 of this code;

(2) The storage, warehousing, and wholesaling of liquor in accordance with the rules of the commissioner and federal law or regulations; or

(3) The sale of liquor related items including but not limited to the sale of pre-packaged food not requiring kitchen preparation that are incidental to the sale of liquor and on-premises consumption.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

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

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

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

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

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

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

(5) "Private club" means any corporation or unincorporated association which either:

(A) Belongs to or is affiliated with a nationally recognized fraternal or veterans' organization which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises to which are admitted only duly-elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which maintains in the building or on the premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests;

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

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

with related equipment and employs a sufficient number of persons for serving meals to members and their guests; or

(D) Is organized for legitimate purposes and owns or leases a building or other delimited premises in any state, county, or municipal park, or at any airport, in which a club has been established, to which are admitted only duly-elected and approved dues-paying members in good standing and their guests while in the company of a member and to which the general public is not admitted, and which maintains in connection with the club a suitable kitchen and dining facility and related equipment and employs a sufficient number of persons for serving meals in the club to the members and their guests.

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

(i) Have at least 50 members;

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

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

(iv) Use an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 21 who are in the private bakery are not sold items containing alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, or wine. A person under 21 years of age may enter the shop and purchase other items not containing alcoholic liquors; and

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

~~(7)~~ "Private cigar shop" means an applicant for a private club or licensed private club licensee that has a primary function of operating a cigar shop for sales of premium cigars for consumption on or off the licensed premises. Where permitted by law, indoor on-premises cigar consumption is permitted with a limited food menu, which may be met by using a private caterer, for members and guests while the private club applicant or licensee is selling and serving liquor, wine, or

nonintoxicating beer or nonintoxicating craft beer for on-premises consumption. Further, the applicant or licensee shall:

(A) Have at least 50 members;

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

(C) Maintain, at any one time, not less than a food inventory capable of being prepared in the private club bar's kitchen or have on hand at least \$150 in food provided by a private caterer. In calculating the food inventory, the commissioner shall include ~~television dinners~~, bags of chips or similar products, microwavable food or meals, frozen meals, pre-packaged foods, or canned prepared foods;

(D) Use an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 21 who are in the private club bar are accompanied by a parent or legal guardian, and if a person under 21 years of age is not accompanied by a parent or legal guardian, refuse to admit that person ~~may not be admitted~~ as a guest; and

(E) Meet and ~~is~~ be subject to all other private club requirements.

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

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

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

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

(D) Only use its employees, independent contractors, or volunteers to sell and serve alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer who have received certified training in verifying the legal identification, the age of a purchasing person, and the signs of visible, noticeable, and physical intoxication;

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

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

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

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

(iv) A floorplan of the unlicensed private venue to comprise the private catering premises, which shall only include spaces in buildings or rooms of an unlicensed private venue where the private caterer has control of the space for a set time period and where the space safely accounts for the ingress and egress of the stated members and guests who will be attending the private catering event at the catering premises. The unlicensed private venue's floorplan during the set time period as stated in the contract shall comprise the private caterer's licensed premises, which is authorized for the lawful sale, service, and consumption of alcoholic liquors, nonintoxicating beer and nonintoxicating craft beer, and wine throughout the licensed private catering premises: *Provided*, That the unlicensed private venue shall: (I) Be inside a building or structure; (II) have other facilities to prepare and serve food and alcohol; (III) have adequate restrooms and sufficient building facilities for the number of members and guests expected to attend the private catering event; and (IV) otherwise be in compliance with health, fire, safety, and zoning requirements;

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

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

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

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

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

(A) Has at least 100 members;

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

(C) Maintains, at any one time, a food inventory capable of being prepared in the private club bar's kitchen. In calculating the food inventory, the commissioner shall include ~~television dinners~~, bags of chips or similar products, microwavable food or meals, frozen meals, prepackaged foods, or canned prepared foods;

(D) Uses an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 18 who are in the private club bar are accompanied by a parent or

legal guardian. If a person under 18 years of age is not accompanied by a parent or legal guardian that person may not be admitted as a guest; and

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

~~(40)~~ "Private food truck" means an applicant for a private club, licensed private club licensee, or licensed private manufacturer's club licensee that has a primary function of operating a food preparation business using an industrial truck, van, or trailer to prepare food and meals for sale at various locations within the state while using a propane or electric generator powered kitchen. The private food truck applicant shall obtain county or municipal approval to operate a private food truck for food and liquor, wine, hard cider, and nonintoxicating beer or nonintoxicating craft beer sales and service, while providing a food menu for members and guests. The private food truck applicant shall:

(A) Have at least 10 members;

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

(C) Maintain, at any one time, not less than \$200 of food inventory that is fit for human consumption and capable of being prepared and served from the private food truck's kitchen during all hours of operation;

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

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

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

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

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

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

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

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

(L) Use an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 21 who are in the private club bar are not permitted to be served any alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, or wine but may be permitted to purchase food or other items;

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

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

(14) "Private club restaurant" means an applicant for a private club or licensed private club licensee that has a primary function of using the licensed premises as a restaurant for serving freshly prepared meals and dining in the restaurant area. The private club restaurant may have a bar area separate from or commingled within the restaurant where seating requirements for members and guests are met by including the restaurant area. The applicant for a private club restaurant license is an applicant which:

(A) Has at least 100 members;

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

(C) Maintains, at any one time, fresh food capable of being prepared in the private club restaurant's full kitchen. In calculating the food inventory, the commissioner may not include ~~television dinners~~, bags of chips or similar products, microwavable meals, frozen meals, pre-packaged foods, or canned prepared foods;

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

(E) May uncork and serve members and guests up to two bottles of wine that a member purchased from a wine retailer, wine specialty shop, an applicable winery or farm winery when licensed for retail sales, or a licensed wine direct shipper when the purchase is for personal use

and, not for resale. The licensee may charge a corkage fee of up to \$10 dollars per bottle. In no event may a member or a group of members and guests exceed two sealed bottles or containers of wine to carry onto the licensed premises for uncorking and serving by the private club restaurant and for personal consumption by the member and guests. A member or guest may cork and reseal any unconsumed wine bottles as provided in §60-8-3 (j) of this code and the legislative rules for carrying unconsumed wine off the licensed premises;

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

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

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

(A) Has at least 100 members;

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

(C) Operates a restaurant and full kitchen with ovens, four-burner ranges, a refrigerator, or freezer, or some combination of a refrigerator and freezer, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves food: *Provided*, That a licensee required by the provisions of this code to serve food on premises in order to lawfully serve alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, wine, or hard cider may meet the requirement of having on-premises food preparation facilities by, during all hours alcoholic liquors, beer, wine, and hard cider are offered for sale or sampling, having on-site an operating food truck or other portable kitchen: *Provided, however*, That the approval of the commissioner and the appropriate health department is required to operate as allowed by subsection (a) of this section;

(D) Maintains, at any one time fresh food capable of being prepared in the private manufacturer club's full kitchen. In calculating the food inventory, the commissioner may include ~~television dinners~~, bags of chips or similar products, microwavable meals, frozen meals, pre-packaged foods, or canned prepared foods;

(E) Owns or leases, controls, operates, and uses space which is contiguous, bounded, or fenced real property sufficient to safely operate the licensed premises that would be listed on the licensee's floorplan and may be used for large events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(F) Lists the entire property from paragraph (E) of this subdivision and all adjoining buildings and structures on the private manufacturer club's floorplan that would comprise the licensed

premises, which would be authorized for the lawful sale, service, and consumption of alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, hard cider, and wine throughout the licensed premises, whether these activities were conducted in a building or structure or outdoors while on the private manufacturer club's licensed premises, and as noted on the private manufacturer club's floorplan;

(G) Identifies a person, persons, an entity, or entities who or which have the right, title, and ownership or lease interest in the real property, buildings, and structures located on the proposed licensed premises;

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

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

~~(13)~~ "Private fair and festival" means an applicant for a private club or a licensed private club licensee meeting the requirements of §60-7-8a of this code for a temporary event, and the criteria set forth in this subdivision which:

(A) Has at least 100 members;

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

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

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

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

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

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

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

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

(A) Has at least 2,000 members;

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

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

(D) Maintains, at any one time, fresh food capable of being prepared in the private hotel's full kitchen. In calculating the food inventory, the commissioner may not include microwavable, frozen, or canned foods;

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

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

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

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

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

(J) May provide members and guests who are verified by proper form of identification to be 21 years of age or older to have secure access via key or key card to an in-room mini-bar in their rented short-term accommodation; the mini-bar may be a small refrigerator not in excess of 1.6 cubic feet for the sale of nonintoxicating beer or nonintoxicating craft beer, wine, hard cider, and liquor sold from the original sealed container, and the refrigerator may contain: (i) Any combination of 12 fluid ounce cans or bottles not exceeding 72 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; (ii) any combination of cans or bottles of wine or hard cider not exceeding 750 ml of wine or hard cider; (iii) liquor in bottles sized from 50 ml, 100 ml, and 200 ml, with any combination of those liquor bottles not exceeding 750 ml; and (iv) any combination of canned or packaged food valued at least \$50. All markups, fees, and taxes shall be charged on the sale of nonintoxicating beer, nonintoxicating craft beer, wine, liquor, and hard cider. All nonintoxicating beer or nonintoxicating craft beer available for sale shall be purchased from the licensed distributor in the area where licensed. All wine or hard cider available for sale shall be purchased from a licensed wine distributor or authorized farm winery. All liquor available for sale shall be purchased from the licensed retail liquor outlet in the market zone of the licensed premises. The mini-bar shall be checked daily and replenished as needed to benefit the member and guest.

~~(15)~~ "Private resort hotel" means an applicant for a private club or licensed private club licensee which:

(A) Has at least 5,000 members;

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

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

(D) Maintains, at any one time, fresh food capable of being prepared in the private resort hotel's full kitchen. In calculating the food inventory, the commissioner may not include microwavable, frozen, or canned foods;

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

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

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

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

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

(J) May have a separately licensed resident brewer with a brewpub license inner-connected via a walkway, doorway, or entryway, all as determined and approved by the commissioner, for limited access during permitted hours of operation for tours and samples at the resident brewery; and

(K) May provide members and guests who are verified by proper form of identification to be 21 years of age or older to have access via key or key card to an in-room mini-bar in their rented short-term accommodation. The mini-bar may be a small refrigerator not in excess of 3.2 cubic feet for the sale of nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, and liquor sold from the original sealed container, and the refrigerator may contain: (i) Any combination of 12 fluid ounce cans or bottles not exceeding 144 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; (ii) any combination of cans or bottles of wine or hard cider not exceeding one and a half liters of wine or hard cider; (iii) liquor in bottles sized from 50 ml, 100 ml, 200 ml, and 375 ml with any combination of such liquor bottles not exceeding one and a half liters; and (iv) any combination of canned or packaged food ~~valued at least \$100~~. All markups, fees, and taxes shall be charged on the sale of nonintoxicating beer, nonintoxicating craft beer, hard cider, wine, and liquor. All nonintoxicating beer or nonintoxicating craft beer available for sale shall be purchased from the licensed distributor in the area where licensed. All wine or hard cider available for sale shall be purchased from a licensed wine distributor or authorized farm winery. All liquor available for sale shall be purchased from the licensed retail liquor outlet in the

market zone of the licensed premises. The mini-bar shall be checked daily and replenished as needed to benefit the member and guest.

~~(16)~~ "Private golf club" means an applicant for a private club or licensed private club licensee which:

(A) Has at least 100 members;

(B) Maintains at least one 18-hole golf course with separate and distinct golf playing holes, not reusing nine golf playing holes to comprise the 18 golf playing holes, and a clubhouse;

(C) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and serves freshly prepared food at least 15 hours per week;

(D) Owns or leases, controls, operates, and uses acreage amounting to at least 80 contiguous acres of bounded or fenced real property which would be listed on the private golf club's floorplan and could be used for golfing events and large contracted-for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(E) Lists the entire property from paragraph (D) of this subsection and all adjoining buildings and structures on the private golf club's floorplan comprising the licensed premises which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer, wine, hard cider, or nonintoxicating craft beer throughout the licensed premises whether these activities ~~were~~ are conducted in a building or structure or outdoors while on the private golf club's licensed premises;

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

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

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

~~(17)~~ "Private nine-hole golf course" means an applicant for a private club or licensed private club licensee which:

(A) Has at least 50 members;

(B) Maintains at least one nine-hole golf course with separate and distinct golf playing holes;

(C) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and serves freshly prepared food at least 15 hours per week;

(D) Owns or leases, controls, operates, and uses acreage amounting to at least 30 contiguous acres of bounded or fenced real property which would be listed on the private nine-hole golf course's floorplan and could be used for golfing events and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(E) Lists the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private nine-hole golf course's floorplan comprising the licensed premises which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and

nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private nine-hole golf course's licensed premises;

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

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

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

~~(18)~~ "Private tennis club" means an applicant for a private club or licensed private club licensee which:

(A) Has at least 100 members;

(B) Maintains at least four separate and distinct tennis courts, either indoor or outdoor, and a clubhouse or similar facility;

(C) Has a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises which is capable of serving freshly prepared food;

(D) Owns or leases, controls, operates, and uses acreage amounting to at least two contiguous acres of bounded or fenced real property which would be listed on the private tennis club's floorplan and could be used for tennis events and large events such as weddings, reunions, conferences, tournaments, meetings, and sporting or recreational events;

(E) Lists the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private tennis club's floorplan comprising the licensed premises which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private tennis club's licensed premises;

(F) Has identified a person, persons, an entity, or entities who or which has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(G) Meets and is subject to all other private club requirements; and

(H) Uses an age verification system approved by the commissioner.

~~(19)~~ "Private college sports stadium" means an applicant for a private club or licensed private club licensee that operates a college or university stadium or coliseum for Division I, II, or III sports and that involves a college, public or private, or university that is a member of the National Collegiate Athletic Association, or its successor, and uses the facility for football, basketball, baseball, soccer, or other Division I, II, or III sports, reserved weddings, reunions, conferences, meetings, or other special events and does not maintain daily or regular operating hours as a bar or restaurant. The licensee may sell alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer when conducting or temporarily hosting non-collegiate sporting events. This license may be issued in the name of the National Collegiate Athletic Association Division I, II, or III college or university or the name of the primary food and beverage vendor under contract with

that college or university. All alcohol sales shall take place within the confines of the college or university stadium: *Provided*, That any outside area approved for alcohol sales and nonintoxicating beer or nonintoxicating craft beer shall be surrounded by a fence or other barrier prohibiting entry except upon the college or university's express permission, and under the conditions and restrictions established by the college or university, so that the alcohol sales area is closed in order to prevent entry and access by the general public. Further the applicant shall:

(A) Have at least 100 members;

(B) Maintain an open-air or enclosed stadium or coliseum venue primarily used for sporting events, such as football, basketball, baseball, soccer, or other Division I, II, or III sports, and also weddings, reunions, conferences, meetings, or other events where parties shall reserve the college stadium venue in advance of the event;

(C) Operate a restaurant and full kitchen with ovens and equipment that is equivalent or greater than a private club restaurant, as determined by the commissioner, on the licensed premises that is capable of serving freshly prepared food or meals to its stated members, guests, and patrons who will be attending the event at the private college sports stadium;

(D) Own or lease, control, operate, and use acreage amounting to at least two contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the private college stadium's floorplan and could be used for contracted-for temporary non-collegiate sporting events, group-type weddings, reunions, conferences, meetings, or other events;

(E) List the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private college sports stadium's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private college sports stadium's licensed premises and as noted on the private college sports stadium's floorplan;

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

(G) Meet and be subject to all other private club requirements; and

(H) Use an age verification system approved by the commissioner.

~~(20)~~ "Private professional sports stadium" means an applicant for a private club or licensed private club licensee that is only open for professional sporting events when the events are affiliated with or sponsored by a professional sporting association, reserved weddings, reunions, conferences, meetings, or other special events and does not maintain daily or regular operating hours as a bar or restaurant. The licensee may not sell alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer when conducting or hosting non-professional sporting events, and further the applicant shall:

(A) Have at least 1,000 members;

(B) Maintain an open-air or enclosed stadium venue primarily used for sporting events, such as football, baseball, soccer, auto racing, or other professional sports, and also weddings, reunions, conferences, meetings, or other events where parties reserve the stadium venue in advance of the event;

(C) Operate a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises which is capable of serving freshly prepared food or meals to serve its stated members, guests, and patrons who will be attending the event at the private professional sports stadium;

(D) Own or lease, control, operate, and use acreage amounting to at least three contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the professional sports stadium's floorplan and could be used for contracted- for professional sporting events, group-type weddings, reunions, conferences, meetings, or other events;

(E) List the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private professional sports stadium's floorplan comprising the licensed premises which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private professional sports stadium's licensed premises;

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

(G) Meet and be subject to all other private club requirements; and

(H) Use an age verification system approved by the commissioner.

~~(24)~~ "Private farmers market" means an applicant for a private club or licensed private club licensee that operates as an association of bars, restaurants, and retailers who sell West Virginia-made products among other products, and other stores who open primarily during daytime hours of 6:00 a.m. to 6:00 p.m., but may operate in the day or evenings for special events where the sale of food and alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer may occur for on-premises consumption, such as reserved weddings, reserved dinners, pairing events, tasting events, reunions, conferences, meetings, or other special events and does not maintain daily or regular operating hours as a bar or restaurant. All businesses that are members of the association shall agree in writing to be liable and responsible for all sales, service, furnishing, tendering, and consumption of alcoholic liquors, nonintoxicating beer, nonintoxicating craft beer, wine, and hard cider occurring on the entire licensed premises of the private farmer's market, including indoor and outdoor bounded areas, ~~and further, the~~ The applicant shall also:

(A) Have at least 100 members;

(B) Have one or more members operating a private club restaurant and full kitchen with ovens, four-burner ranges, a refrigerator or freezer or some combination of a refrigerator and freezer, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serve freshly prepared food at least 15 hours per week;

(C) Have one or more members operating a private club restaurant who maintain, at any one time, fresh food capable of being prepared for events conducted at the private farmers market in the private club restaurant's full kitchen. In calculating the food inventory, the commissioner may not include ~~television dinners~~, bags of chips or similar products, microwavable meals, frozen meals, pre-packaged foods, or canned prepared foods;

(D) Have an association that owns or leases, controls, operates, and uses acreage amounting to more than one acre, which is contiguous acreage of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for large contracted-for reserved weddings, reserved dinners, pairing events, tasting events, reunions, conferences, meetings, or other special events;

(E) Have an association that lists in the application for licensure the entire property and all adjoining buildings and structures on the private farmers market's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private farmers market's licensed premises and as noted on the private farmers market's floorplan;

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

(G) Have at least two separate and unrelated vendors applying for the license and certifying that all vendors in the association have agreed to the liability responsibility associated with a private farmers market license;

(H) Only use its employees, independent contractors, or volunteers to purchase, sell, furnish, or serve liquor, wine, nonintoxicating beer or nonintoxicating craft beer;

(I) Provide adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the private farmers market;

~~(J) Provide a copy of a written agreement between all the vendors of the association that is executed by all vendors stating that each vendor is jointly and severally liable for any violations of this chapter committed during the event~~

~~(K)~~ (J) Provide a security plan indicating all vendor points of service, entrances, and exits in order to verify members', patrons', and guests' ages, to verify whether a member, patron, or guest is intoxicated, and to provide for the public health and safety of members, patrons, and guests;

~~(L)~~ (K) Use an age verification system approved by the commissioner; and

~~(M)~~ (L) Meet and be subject to all other private club requirements.

~~(22)~~ "Private wedding venue or barn" means an applicant for a private club or licensed private club licensee that is only open for reserved weddings, reunions, conferences, meetings, or other events and does not maintain daily or regular operating hours, and which:

(A) Has at least 25 members;

(B) Maintains a venue, facility, barn, or pavilion primarily used for weddings, reunions, conferences, meetings, or other events where parties reserve or contract for the venue, facility, barn, or pavilion in advance of the event;

(C) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises that is capable of serving freshly prepared food, or engages a food caterer to provide adequate freshly prepared food or meals to serve its stated members, guests, and patrons who will be attending the event at the private wedding venue or barn. The applicant or licensee shall provide written documentation including a list of food caterers or written agreements regarding any food catering operations to the commissioner prior to approval of a food catering event;

(D) Owns or leases, controls, operates, and uses space sufficient to safely operate the licensed premises. The applicant or licensee shall verify that, the property is not less than two acres and is remotely located, subject to the commissioner's approval. The bounded or fenced real property may be listed on the private wedding venue's or barn's floorplan and may be used for large events such as weddings, reunions, conferences, meetings, or other events;

(E) Lists the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private wedding venue or barn's floorplan that would comprise the licensed premises and which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private wedding venue or barn's licensed premises;

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

(G) Meets and is subject to all other private club requirements; and

(H) Uses an age verification system approved by the commissioner.

~~(23)~~ "Private multi-sport complex" means an applicant for a private club or licensed private club licensee that is open for multiple sports events to be played at the complex facilities, reserved weddings, concerts, reunions, conferences, meetings, or other special events, and which:

(A) Has at least 100 members;

(B) Maintains an open-air multi-sport complex primarily for use for sporting events, such as baseball, soccer, basketball, tennis, frisbee, or other sports, but may also conduct weddings, concerts, reunions, conferences, meetings, or other events where parties reserve ~~the~~ parts of the sports complex in advance of the sporting or other event;

(C) Operates a restaurant and full kitchen with ovens in the licensee's main facility, as determined by the commissioner, on the licensed premises which is capable of serving freshly prepared food, or meals to ~~serve~~ its stated members, guests, and patrons who will be attending the event at the private multi-sport complex. A licensee may contract with temporary food vendors or food trucks for food sales only, but not on a permanent basis, in areas of the multi-sport complex not readily accessible by the main facility;

(D) Maintains, at any one time, fresh food capable of being prepared in the private multi-sport complex's full kitchen. In calculating the food inventory, the commissioner may not include ~~television dinners~~, bags of chips or similar products, microwavable meals, frozen meals, prepackaged foods, or canned prepared foods;

(E) Owns or leases, controls, operates, and uses acreage amounting to at least 50 contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the private multi-sport complex's floorplan and could be used for contracted-for sporting events, group-type weddings, concerts, reunions, conferences, meetings, or other events;

(F) Lists the entire property from paragraph (E) of this subdivision and all adjoining buildings and structures on the private multi-sport complex's floorplan which would comprise the licensed premises, and which would be authorized for the lawful sales, service, and consumption of alcoholic liquors, nonintoxicating beer, nonintoxicating craft beer, and hard cider throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private multi-sport complex's licensed premises, ~~and~~ as noted on the private multi-sport complex's floorplan. The licensee may sell alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer from a golf cart or food truck owned or leased by the licensee and also operated by the licensee when the golf cart or food truck is located on the private multi-sport complex's licensed premises;

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

(H) Meets and is subject to all other private club requirements; and

(I) Uses an age verification system approved by the commissioner.

~~(24)~~ "Private coliseum or center" means an applicant for a private club or licensed private club licensee that is open for various events including, but not limited to, musical concerts, bands, sporting events, monster trucks, sports entertainment events, circuses, expos, hobby events, tradeshow, health events, reserved weddings, reunions, retreats, conventions, conferences, meetings, or other special events. The licensee may not sell alcoholic liquors, nonintoxicating beer or wine when conducting or hosting events focused on patrons who are less than 21 years of age, ~~and further the~~. The applicant shall also:

(A) Have at least 5,000 members;

(B) Maintain an enclosed coliseum or center venue with at least 80,000 square feet of event space primarily used for events where parties reserve the coliseum or center venue in advance of the event;

(C) Operate a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and be capable of serving freshly prepared food or meals to its stated members, guests, and patrons who will be attending events at the private coliseum or center;

(D) Own or lease, control, operate, and use acreage amounting to at least two contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the private coliseum or center's floorplan and could be used for contracted-for events, or a private fair and festival, as authorized by the commissioner per dual licensing requirements as set forth in §60-7-2a of this code;

(E) List the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private coliseum or center's floorplan comprising the licensed premises which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on private coliseum or center's licensed premises;

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

(G) Meet and be subject to all other private club requirements; and

(H) Use an age verification system approved by the commissioner.

~~(25)~~ "Private food court" means an applicant who qualifies for a private club restaurant or licensed private club restaurant ~~licensee~~ license that operates in a facility within a licensed premises with one licensed floorplan that includes an association of other inter-connected licensed private club restaurants or unlicensed restaurants that operate legally without alcohol sales, where all businesses that are licensed members of the association have agreed in writing to be liable and responsible for all sales, service, furnishing, tendering, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer occurring on the entire licensed premises of the private food court, ~~and further the~~. The applicant shall also:

(A) Have at least 100 members;

(B) Have at least one member of its association who qualifies for a private club restaurant containing a full kitchen with ovens, four-burner ranges, a refrigerator or freezer or some combination of a refrigerator and freezer, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and be capable of serving freshly prepared food at least 15 hours per week in the private food court;

(C) Have at least one member of its association who qualifies for a private club restaurant license who maintains, at any one time, fresh food capable of being prepared in the private club restaurant's full kitchen. ~~and in~~ In calculating the food inventory the commissioner may not include ~~television dinners,~~ bags of chips or similar products, microwavable meals, frozen meals, pre-packaged foods, or canned prepared foods;

(D) Have an association that owns or leases, controls, operates, and uses a facility that meets requirements of this article, and the entire facility is listed on the licensee's floorplan as its licensed premises;

(E) Have an association that lists in the application for licensure the entire facility and any inter-connected and adjoining structures on the private food court's floorplan which would compromise the licensed premises, and which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure while on the private food court's licensed premises ~~and~~ as noted on the private food court's licensed floorplan;

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

(G) Have at least one separate and unrelated business applying for the license and certifying that all licensed businesses in the association have agreed to the liability responsibility associated with a private food court license;

(H) Only use its employees, independent contractors, or volunteers to purchase, sell, furnish, or serve liquor, wine, nonintoxicating beer or nonintoxicating craft beer;

(I) Provide adequate restroom facilities, whether permanent or portable, to serve the stated members, patrons, and guests who will be attending the private food court;

~~(J) Provide a copy of a written agreement between all the vendors of the association that is executed by all businesses stating that each licensed vendor is jointly and severally liable for any violations of this chapter committed on the licensed premises~~

~~(K)~~ (J) Provide a security plan indicating all businesses who will be selling and serving alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer, list non-licensees who will be selling and serving food, list all entrances, and list all exits, provide a plan to verify the ages of members, patrons, and guests, a plan to verify whether a member, patron, or guest is intoxicated, and a plan to provide for the public health and safety of members, patrons, and guests;

~~(L)~~ (K) Use an age verification system approved by the commissioner; and

~~(M)~~ (L) Meet and be subject to all other private club requirements.

The Division of Natural Resources, the authority governing any county or municipal park, or any county commission, municipality, other governmental entity, public corporation, or public authority operating any park or airport may lease, as lessor, a building or portion thereof or other limited premises in any park or airport to any corporation or unincorporated association for the establishment of a private club pursuant to this article.

§60-7-3. Sale of alcoholic liquors and nonintoxicating beer by licensee authorized.

(a) Notwithstanding any other provisions of this code to the contrary, licensees ~~are hereby authorized to~~ may sell, tender, and serve alcoholic liquors by the drink and as otherwise authorized by the provisions of §60-1-1 *et seq.*, §60-8-1 *et seq.*, and §60-8A-1 *et seq.* of this code, other than in sealed packages, for consumption on the premises of the licensees, to their members and their guests in accordance with the provisions of this article, rules of the commissioner and as authorized under §60-6-8 of this code. The licensees may keep and maintain on their premises a supply of those lawfully acquired alcoholic liquors in such quantities as may be appropriate for the conduct of their operations ~~thereof~~.

(b) Authorization for use of self-pour automated systems for nonintoxicating beer, hard cider, and wine.

(1) A licensee authorized pursuant to this article to sell alcoholic liquor and/or nonintoxicating beer, hard cider, or wine for on-premises consumption may use a self-pour automated system that, upon activation of a payment card by the licensee, may be operated to dispense nonintoxicating beer, hard cider, and wine to the following: (A) An employee of the licensee who is authorized by law to serve alcoholic beverages, or (B) a person whom the licensee has verified to be 21 years of age or older who displays a government-issued identification card that matches

the name on the payment card. The verification that a person is 21 years of age or older shall be recorded by the licensee or an employee of the licensee.

(2) A self-pour automated system authorized by subsection (a) of this section may not dispense a serving of more than (1) 32 ounces of nonintoxicating beer, (2) 32 ounces of hard cider, or (3) 10 ounces of wine, before the payment card is reactivated by the licensee or an employee of the licensee.

§60-7-8c. Special license for a multi-vendor private fair and festival; license fee and application; license subject to provisions of article; exception.

(a) There is hereby created a special license designated Class S3 private multivendor fair and festival license for the retail sale of liquor, wine, nonintoxicating beer, and nonintoxicating craft beer for on-premises consumption at an event where multiple vendors shall share liability and responsibility, and apply for ~~this~~ the license. Each vendor may temporarily purchase, sell, furnish, or serve liquor, wine, nonintoxicating beer, and nonintoxicating craft beer as provided in this section.

(b) To be eligible for the license authorized by subsection (a) of this section, the private multivendor fair and festival or other event shall:

(1) Be sponsored, endorsed, or approved by the governing body or its designee of the county or municipality in which the private multivendor fair and festival or other event is located;

(2) Jointly apply to the commissioner for the special license at least 15 days prior to the private fair, festival, or other event;

(3) Pay a nonrefundable nonprorated license fee of \$500 per event that may be divided among all the vendors attending the event;

(4) Be approved by the commissioner to operate the private multivendor fair, festival, or other event;

(5) Be limited to no more than 15 consecutive days;

(6) Have at least two separate and unrelated vendors applying for the license and certifying that at least 100 members will be in attendance;

(7) Freshly prepare and provide food or meals, or engage a food vendor to prepare and provide adequate freshly prepared food or meals to serve its stated members and guests who will be attending the temporary festival, fair, or other event, and provide any written documentation or agreements ~~of the~~ with a food caterer to the commissioner prior to approval of the license;

(8) Only use its employees, independent contractors, or volunteers to purchase, sell, furnish, or serve liquor, wine, nonintoxicating beer, or nonintoxicating craft beer;

(9) Provide adequate restroom facilities, whether permanent or portable, to serve the stated members, patrons, and guests who will be attending the private multi-vendor festival, fair, or other event;

~~(10) Provide an executed agreement between the vendors and/or food caterers stating that each vendor is jointly and severally liable for any improper acts or conduct committed during the multi-vendor festival or fair event~~

~~(14)~~ (10) Provide a security plan indicating all vendor points of service, entrances, and exits in order to verify members', patrons', and guests' ages, and whether a member, patron, or guest is intoxicated, to provide for the public health and safety of members, patrons, and guests;

~~(12)~~ (11) Provide a floorplan for the proposed premises with one defined and bounded indoor and/or outdoor area to safely account for the ingress and egress of stated members, patrons, and guests who will be attending the festival, fair, or other event, and the floorplan that would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of liquor, wine, nonintoxicating beer, or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure, or outdoors while on the licensed premises and as noted on the floorplan;

~~(13)~~ (12) Meet and be subject to all other private club requirements; and

~~(14)~~ (13) Use an age verification system approved by the commissioner.

(c) Nonintoxicating beer and nonintoxicating craft beer sold, furnished, tendered, or served pursuant to the license created by this section shall be purchased from the licensed distributor that services the area in which the private multi-vendor fair and festival will be held or from a resident brewer acting in a limited capacity as a distributor, in accordance with §11-16-1 *et seq.* of this code.

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

(e) Liquor sold, furnished, tendered, or served pursuant to the license created by this section shall be purchased from a licensed retail liquor outlet in the market zone or contiguous market zone where the private multi-vendor fair or festival will be held, all in accordance with §60-3A-1 *et seq.* of this code.

(f) A licensee authorized by this section may use bona fide employees, independent contractors, or volunteers to sell, furnish, tender, or serve the liquor, wine, nonintoxicating beer, or nonintoxicating craft beer; *Provided*, That the licensee shall train all employees, independent contractors, or volunteers to verify legal identification and to verify signs of intoxication.

(g) Licensed representatives of a brewer, resident brewer, beer distributor, wine distributor, wine supplier, winery, farm winery, distillery, mini-distillery, micro-distillery, and liquor brokers may attend a private multi-vendor festival or fair and discuss their respective products but may not engage in the selling, furnishing, tendering, or serving of any liquor, wine, nonintoxicating beer, or nonintoxicating craft beer.

(h) A licensee licensed under this section is subject to all other provisions of this article and the rules and orders of the commissioner: *Provided*, That the commissioner may, by rule or order, allow certain waivers or exceptions with respect to those provisions, rules, or orders as required by the circumstances of each private multi-vendor fair and festival. The commissioner may revoke or suspend immediately any license issued under this section prior to any notice or hearing,

notwithstanding §60-7-13a of this code: *Provided, however,* That under no circumstances may the provisions of §60-7-12 of this code be waived or an exception granted with respect thereto.

§60-7-8d. Where private clubs may sell and serve alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer.

(a) With prior approval of the commissioner, a private club licensee may sell, serve, and furnish alcoholic liquor and, if ~~also~~ licensed to also sell, serve, and furnish nonintoxicating beer or nonintoxicating craft beer to be consumed on premises in a legally demarcated area which may include a temporary private outdoor dining area or temporary private outdoor street dining area. A temporary private outdoor street dining area shall be approved by the municipal government or county commission in which the licensee operates. The commissioner shall develop and make available an application form to facilitate the purposes of this subsection.

(b) The private club licensee shall submit to the commissioner: (1) the municipal or county approval of the private outdoor dining area or private outdoor street dining area; and, (2) a revised floorplan requesting to sell alcoholic liquors, and when licensed, for nonintoxicating beer or nonintoxicating craft beer, ~~then nonintoxicating beer or nonintoxicating craft beer,~~ subject to the commissioner's requirements, in an approved and bounded outdoor area. The approved and bounded area need not be adjacent to the licensee's licensed premises, but in close proximity, for private outdoor street dining or private outdoor dining. For purposes of this subsection, "close proximity" means an available area within 300 feet of a licensee's licensed premises and under the licensee's control and with right of ingress and egress.

(c) This private outdoor dining or private outdoor street dining may be operated in conjunction with a private wine outdoor dining or private wine outdoor street dining area set forth in §60-8-32a of this code and nonintoxicating beer or nonintoxicating craft beer outdoor dining or outdoor street dining set forth in §11-16-9 of this code.

(d) For purposes of this section, private outdoor dining and private outdoor street dining include dining areas that are:

(1) Outside and not served by an HVAC system for air handling services and use outside air;

(2) Open to the air; and

(3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally approve a partial enclosure with up to three temporary or fixed walls.

Any area where seating is incorporated inside a permanent building with ambient air through HVAC is not considered outdoor dining pursuant to this subsection.

(e) A private club restaurant or a private manufacturer club licensed for craft cocktail growler sales ~~must~~ shall provide food or a meal along with sealed craft cocktail growler sales as set forth in this article to a patron who is (i) in-person or in-vehicle while picking up food or a meal, or (ii) in-person having dined on food or a meal, and (iii) has ordered a sealed craft cocktail growler ~~order-to-go~~, subject to verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

§60-7-8e. Private club restaurant or private manufacturer club licensee's authority to sell craft cocktail growlers.

(a) *Legislative findings.* — The Legislature hereby finds that it is in the public interest to regulate, control, and support the brewing, manufacturing, distribution, sale, consumption, transportation, and storage of liquor and its industry in this state to protect the public health, welfare, and safety of the citizens of this state and promote hospitality and tourism. Therefore, this section authorizes a licensed private club restaurant or private manufacturer club, to have certain abilities to promote the sale of liquor manufactured in this state for the benefit of the citizens of this state, the state's growing distilling industry, and the state's hospitality and tourism industry, all of which are vital components for the state's economy.

(b) *Sales of craft cocktail growlers.* — A licensed private club restaurant or private manufacturer club ~~is authorized~~ may under a current and valid license ~~and that~~ meets the requirements of this section may offer a craft cocktail growler in the ratio of up to one fluid ounce of liquor to four fluid ounces of nonalcoholic beverages or mixers, not to exceed 128 fluid ounces for the entire beverage in the craft cocktail growler, for retail sale to patrons from their licensed premises in a sealed craft cocktail growler for personal consumption only off of the licensed premises. Prior to the sale, the licensee shall verify in-person, using proper identification, that any patron purchasing the craft cocktail growler is 21 years of age or older and that the patron is not visibly or noticeably intoxicated. There ~~shall be~~ is a \$100 non-prorated, non-refundable annual fee to sell craft cocktail growlers.

(c) *Retail sales.* — Every licensee licensed under this section shall comply with all the provisions of this chapter as applicable to retail sale of liquor at retail liquor outlets, shall comply with markup specified in §60-3A-17(e)(2) of this code when conducting sealed craft cocktail growler sales, and ~~shall be~~ is subject to all applicable requirements and penalties in this article.

(d) *Payment of taxes.* — Every licensee licensed under this section shall pay all sales taxes required of retail liquor outlets, in addition to any other taxes required, and meet any applicable licensing provisions as required by this chapter and by rule of the commissioner.

(e) *Advertising.* — Every licensee licensed under this section may only advertise a particular brand or brands of liquor manufactured by a distillery, mini-distillery, or micro-distillery upon written approval from the distillery, mini-distillery, micro-distillery, or an authorized and licensed broker to the licensee. Advertisements may not encourage intemperance or target minors.

(f) *Craft cocktail growler defined.* — For purposes of this chapter, "Craft Cocktail Growler" means a container or jug that is made of glass, ceramic, metal, plastic, or other material approved by the commissioner, that may be no larger than 128 fluid ounces in size and must be capable of being securely sealed. The growler ~~is utilized~~ may be used by an authorized licensee for purposes of off-premises sales only of liquor and a nonalcoholic mixer or beverage for personal consumption not on a licensed premise. Notwithstanding any other provision of this code to the contrary, a securely sealed craft cocktail growler is not an open container under state and local law. A craft cocktail growler with a broken seal is an open container under state and local law unless it is located in an area of the motor vehicle physically separated from the passenger compartment. A craft cocktail growler is not an original container of liquor, but once sanitized, filled, properly sealed, and sold, all as set forth in this article, is a sealed container.

~~(h)~~ (g) *Craft cocktail growler requirements.* — A licensee licensed under this section ~~must~~ shall prevent patrons from accessing the secure area where the filling of the craft cocktail or craft

~~cocktail growler~~ occurs or to fill a craft cocktail growler. A licensee licensed under this section ~~must~~ shall sanitize, fill, securely seal, and label any craft cocktail growler prior to its sale. A licensee licensed under this section may refill a craft cocktail growler subject to the requirements of this section. A licensee licensed under this section shall visually inspect any craft cocktail growler before filling or refilling it. A licensee licensed under this section may not fill or refill any craft cocktail growler that appears to be cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container. For purposes of this article, a secure sealing means using a tamper-evident seal, such as: (1) A plastic heat shrink wrap band, strip, or sleeve extending around the cap or lid of craft cocktail growler to form a seal that must be broken when the container is opened; or (2) A screw top cap or lid that breaks apart when the craft cocktail growler is opened.

(j) ~~(h)~~ *Craft cocktail growler labeling.* — A licensee licensed under this section selling craft cocktail growlers shall affix a conspicuous label on all sold and securely sealed craft cocktail growlers listing the name of the licensee selling the craft cocktail growler, the brand of the liquor in the craft cocktail growler, the type of craft cocktail or name of the craft cocktail, the alcohol content by volume of the liquor in the craft cocktail growler, and the date the craft cocktail growler was filled or refilled, ~~and, all.~~ All labeling on the craft cocktail growler shall be consistent with all federal labeling and warning requirements.

(j) ~~(i)~~ *Craft cocktail growler sanitation.* — A licensee licensed under this section shall clean and sanitize all craft cocktail growlers he or she fills or refills in accordance with all state and county health requirements prior to its sealing. In addition, the licensee licensed under this section shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipe lines, barrel tubes, and any other related equipment used to fill or refill craft cocktail growlers. Failure to comply with this subsection may result in penalties under this article: *Provided, That*, if the reuse or refilling of a craft cocktail growler would violate federal law such craft cocktail growler ~~must~~ may only be used one-time, for one filling, and shall be discarded after the one-time use.

(k) ~~(j)~~ *Pre-mixing of craft cocktail.* — A licensee licensed under this section may pre-mix the nonalcoholic beverages or mixers in the advance of a craft cocktail growler purchase and sealing, and add the liquor, as set forth in this section, upon a member or guest's purchase of a craft cocktail growler. A licensee licensed under this section ~~must~~ shall dispose of any expired premixed nonalcoholic beverages or mixers pursuant to Bureau for Public Health requirements when such premixed nonalcoholic beverages or mixers are no longer fit for human consumption. A licensee authorized under §60-6-8(7) of this code may use a premixed beverage meeting the requirements ~~therein~~ of that section and is also subject to the requirements of this section for a craft cocktail growler.

(j) ~~(k)~~ *Limitations on licensees.* — A licensee licensed under this section shall not sell craft cocktail growlers to other licensees, but only to its members and guests. A licensee licensed under this section ~~must~~ shall provide food or a meal along with one sealed craft cocktail growler to a patron who is in-person or in-vehicle while picking up food or a meal, or who dined in-person on food or a meal and has ordered and a sealed craft cocktail growler ~~order-to-go~~, subject to verification that the purchasing person is 21 years of age or older, and not visibly or noticeably intoxicated, and as otherwise specified in this article. A licensee licensed under this section may only sell one sealed craft cocktail growler to a patron ~~who has not been consuming alcoholic liquors or nonintoxicating beer on its licensed premises~~ or one craft cocktail growler per food or meal in the order delivered per §60-7-8f of this code. A licensee licensed under this section shall be subject to the applicable penalties under this article for violations of this article.

~~(m)~~ (l) *Rules.* — The commissioner, in consultation with the Bureau for Public Health, may to propose legislative rules concerning sanitation for legislative approval, pursuant to §29A-3-1 *et seq.* of this code, to implement the purposes of this section.

§60-7-8g. Special permit for a qualified permit holder in a private outdoor designated area; license fee and application; license subject to provisions of article.

(a) There is hereby created a special permit, designated Class S4, for the sale of liquor, wine, nonintoxicating beer, and nonintoxicating craft beer in a private outdoor designated area that has been approved by a municipality pursuant to §8-12-26 of this code. Each Class S4 permittee may sell, furnish, or serve liquor, wine, nonintoxicating beer, and nonintoxicating craft beer as provided in this section.

(b) Definitions:

(1) "Private outdoor designated area" means public property that has become a legally demarcated area established by a municipal ordinance as set forth in §8-12-26 of this code for the consumption of liquor, wine, nonintoxicating beer, and nonintoxicating craft beer.

(2) "Qualified permit holder" means the holder of ~~a Class A, Class B, or Class S2 license issued under this article that elects to operate within a private outdoor designated area, and a Class S4 special permit pursuant to §60-7-1 *et seq.* of this code~~ any of the following:

(i) A Class A private club type license or Class S2 or Class S3 license issued under this article;

(ii) A Class A tavern or brewpub license or Class S or Class S1 license issued under §11-16-1 *et seq.* of this code;

(iii) A Class A private wine restaurant, private wine bed and breakfast, or private wine spa license issued under §60-8-1 *et seq.* of this code;

(iv) A Class A hard cider license issued under §60-8A-1 *et seq.* of this code: or

(v) A Class S4N permit issued under §60-7-8h of this code.

(c) To be eligible for the special Class S4 permit authorized by subsection (a) of this section, the qualified permit holder shall:

(1) Operate in a private outdoor designated area created by municipal ordinance as set forth in §8-12-26 of this code, and provide the commissioner a copy of the certified ordinance from the municipality;

(2) Apply to the commissioner for the special permit prior to operating in an approved private outdoor designated area on an application provided by the commissioner;

(3) Pay a nonrefundable non-prorated annual special permit fee of \$100 to the commissioner: Provided, That this fee does not apply to qualified permit holders with a Class S1, Class S2, or Class S3 license, which are subject only to the applicable fees in §11-16-1 *et seq.* and §60-7-1 *et seq.* of this code;

(4) Be in compliance with all state and federal laws and be in good standing with the commissioner;

(5) Be approved by the municipality to operate in the private outdoor designated area;

(6) Provide the days and hours of operation in the private outdoor designated area;

(7) Provide, in conjunction with the municipality, adequate restroom facilities, whether permanent or portable, to serve the members, patrons, and guests who will be attending the private outdoor designated area;

(8) Provide a security plan for the private outdoor designated area indicating: All qualified permit holders' licensed premises where alcohol will be served in approved non-glass containers; all entrances and exits in order to verify members', patrons', and guests' ages, and to assess whether a member, patron, or guest is under 21 years of age or intoxicated; and a plan to provide for the public health and safety of members, patrons, and guests;

(9) Provide a floorplan for the private outdoor designated area indicating a legally demarcated area that is bounded or ~~utilizes~~ uses signage to safely account for the ingress and egress of members, patrons, and guests who will be within the private outdoor designated area and also be permitted to carry liquor, wine, nonintoxicating beer, and nonintoxicating craft beer on and off of the qualified permit holders' licensed premises and within the private outdoor designated area when contained in an approved non-glass container: Provided, That customers within the private outdoor designated area may carry alcoholic beverages purchased from any holder of a Class S4 or S4N permit and served in an approved non-glass container into and out of, and consume the beverages within, the establishment of any other holder of a Class S4 or S4N permit within the applicable private outdoor designated area. The private outdoor designated area's floorplan does comprise a separate licensed premises authorized only for the lawful consumption of liquor, wine, nonintoxicating beer, or nonintoxicating craft beer throughout the licensed premises when lawfully purchased from a qualified permit holder;

(10) Meet and be subject to all other applicable license requirements;

(11) Provide a plan to prevent members, guests, and patrons from bringing, consuming, or selling alcohol not in an approved non-glass container in the private outdoor designated area; and

(12) Use an age verification system approved by the commissioner.

(d) Notwithstanding the requirement to acquire a Class S4 or S4N permit to operate within a private outdoor designated area set forth in §60-7-8g(c) of this code, the holder of a Class S, Class S1, Class S2, or Class S3 license may participate in a private outdoor designated area on the premises of a Class S4 or S4N permit holder if that Class S4 or S4N permit holder grants permission, in writing, for the Class S, Class S1, Class S2, or Class S3 licensee to participate. A Class S, Class S1, Class S2, or Class S3 licensee may not participate in a private outdoor designated area pursuant to such written permission unless it has first met all applicable permit and fee requirements found in §11-16-1 et seq. and §60-7-1 et seq. of this code.

~~(d)~~(e) As set forth in §8-12-26 of this code a municipality may, by ordinance, establish a private outdoor designated area where the municipality may zone, set requirements, and establish conditions for safe operation of a private outdoor designated area by qualified permit holders.

~~(e)~~(f) A municipality ~~shall be~~ is responsible for the enforcement of any criminal violations occurring in a private outdoor designated area and shall report such violations to the commissioner for a determination of any violation of §11-16-1 et seq. and chapter 60 of this code.

~~(f)~~(g) The commissioner shall enforce any violations of §11-16-1 et seq. and ~~chapter 60 §60-1-1 et seq.~~ of this code committed by individual qualified permit holders against their permit and Class A, Class B, or Class S2 any other current license issued by the commissioner to the qualified permit holder alleged to be in violation.

~~(g)~~(h) A qualified permit holder that is separately authorized for an outdoor dining area or sidewalk dining area may continue to operate those areas in conjunction with the private outdoor designated area subject to the commissioner's requirements. Notwithstanding any other section of the code, a private outdoor designated area is authorized to simultaneously host multiple qualified permit holders as defined in §60-7-1 et seq. of the code.

~~(h)~~(i) A licensee permitted under this section is subject to all other provisions of ~~this~~ the article under which the licensee's license is issued, as well as to ~~and~~ the rules and orders of the commissioner: *Provided*, That the commissioner may, by rule or order, allow certain waivers or exceptions with respect to those provisions, rules, or orders as required by the circumstances of ~~for~~ the operation of qualified permit holders in each private outdoor designated area. The commissioner may revoke or suspend immediately any permit issued under this section prior to any notice or hearing, notwithstanding §60-7-13a of this code: *Provided, however*, That under no circumstances may the provisions of §60-7-12 of this code be waived or an exception granted with respect thereto.

§60-7-8h. Special permit for a qualified non-profit permit holder in a private outdoor designated area; license fee and application; license subject to provisions of article.

(a) There is hereby created a special permit, designated Class S4N, for the sale of liquor, wine, nonintoxicating beer, and nonintoxicating craft beer in a private outdoor designated area that has been approved by a municipality pursuant to §8-12-26 of this code by qualified non-profit corporate entities organized pursuant to §31E-1-1 et seq. of this code. Each Class S4N permittee may sell, furnish, or serve liquor, wine, nonintoxicating beer, and nonintoxicating craft beer as provided in this section.

(b) Definitions:

Except as set forth in this section, the definitions of §60-7-8g of this code also apply to this section.

"Qualified non-profit permit holder" means a non-profit corporate entity organized pursuant to §31E-1-1 et seq. of this code that elects to operate its events solely within a private outdoor designated area, and who has applied and been approved for a Class S4N special permit pursuant to §60-7-1 et seq. of this code.

(c) To be eligible for the special S4N permit authorized by subsection (a) of this section, the qualified non-profit permit holder shall:

(1) Have an approved outdoor location that operates solely in a private outdoor designated area created by a municipal ordinance as set forth in §8-12-26 of this code, provide the commissioner a copy of the certified ordinance from the municipality, and operate only on dates designated within the dates of operation for the private outdoor designated area;

(2) Apply to the commissioner for the special S4N permit prior to operating in an approved private outdoor designated area on an application provided by the commissioner which will provide verification of non-profit corporate status with the West Virginia Secretary of State;

(3) Pay a one-time, nonrefundable non-prorated annual special permit fee of \$1,500 to the commissioner: *Provided*, That in the first year following the effective date of this section, this special permit fee may be pro-rated for the period between effective date and June 30 of that year. The one-time permit covers as many approved events that can be held during the permit annual time period;

(4) Be in compliance with all state and federal laws and be in good standing with the commissioner;

(5) Provide the dates, days, and hours of operation of all events to be held in the private outdoor designated area between July 1 of the application year and June 30 of the year following the application year within the dates of operation of the private outdoor designated area within that timeframe: *Provided*, That the S4N permit applicant may list future dates within the permit annual time period as to be determined so long as the qualified non-profit permit holder notifies the commissioner of the specific future event dates not later than 60 days prior to the event.

(d) The commissioner shall enforce any violations of §11-16-1 *et seq.* and §60-1-1 *et seq.* of this code committed by qualified non-profit permit holders against their permit and their Class A, Class B, Class S, Class S1, Class S2 or Class S3 license.

ARTICLE 8. SALE OF WINES.

§60-8-2. Definitions.

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

"Commissioner" or "commission" means the West Virginia Alcohol Beverage Control Commissioner.

"Distributor" means any person whose principal place of business is within the State of West Virginia who makes purchases from a supplier to sell or distribute wine to retailers, grocery stores, private wine bed and breakfasts, private wine restaurants, private wine spas, private clubs, or wine specialty shops and that sells or distributes nonfortified dessert wine, port, sherry, and Madeira wines to wine specialty shops, private wine restaurants, private clubs, or retailers under authority of this article and maintains a warehouse in this state for the distribution of wine. For the purpose of a distributor only, the term "person" means and includes an individual, firm, trust, partnership, limited partnership, limited liability company, association, or corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee or other persons in active control of the activities of the trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or violations of this article, notwithstanding the liability of trustees in §44D-10-1 *et seq.* of this code.

"Fortified wine" means any wine to which brandy or other alcohol has been added where the alcohol content by volume does not exceed 24 percent, and includes nonfortified dessert wines where the alcohol content by volume is greater than 17 percent and does not exceed 24 percent.

"Grocery store" means any retail establishment, commonly known as a grocery store, supermarket, delicatessen, caterer, or party supply store, where food, food products, and supplies

for the table are sold for consumption off the premises with average monthly sales (exclusive of sales of wine) of not less than \$500 and an average monthly inventory (exclusive of inventory of wine) of not less than \$500. The term "grocery store" also includes and means a separate and segregated portion of any other retail store which is dedicated solely to the sale of food, food products, and supplies for the table for consumption off the premises with average monthly sales with respect to the separate or segregated portion, exclusive of sales of wine, of not less than \$500 and an average monthly inventory, exclusive of inventory of wine, of not less than \$500.

"Hard Cider" means a type of wine that is derived primarily from the fermentation of apples, pears, peaches, honey, or another fruit, or from apple, pear, peach, or another fruit juice concentrate and water; contains no more than 0.64 grams of carbon dioxide per 100 milliliters; contains at least one half of one percent and less than 12 and one-half percent alcohol by volume; and is advertised, labeled, offered for sale, or sold, as hard cider or cider containing alcohol, and not as wine, wine product, or as a substitute for wine.

"Hard Cider Distributor" means any person whose principal place of business is within the State of West Virginia who makes purchases from a supplier to sell or distribute hard cider, but not other types of wine, to retailers, grocery stores, private wine bed and breakfasts, private wine restaurants, private wine spas, private clubs, or wine specialty shops under authority of this code and maintains a warehouse in this state for the distribution of hard cider, but not other types of wine. For the purpose of a hard cider distributor, the term "person" means and includes an individual, firm, trust, partnership, limited partnership, limited liability company, association, or corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee, or any other person or persons in active control of the activities of the trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or violations of this article, notwithstanding the liability of trustees in §44D-10-1 *et seq.* of this code.

"Licensee" means the holder of a license granted under the provisions of this article.

"Nonfortified dessert wine" means a wine that is a dessert wine to which brandy or other alcohol has not been added, and which has an alcohol content by volume of at least 15.6 percent and less than or equal to 17 percent.

"Person" means and includes an individual, firm, partnership, limited partnership, limited liability company, association, or corporation.

"Private wine bed and breakfast" means any business with the sole purpose of providing, in a residential or country setting, a hotel, motel, inn, or other such establishment properly zoned as to its municipality or local ordinances, lodging and meals to its customers in the course of their stay at the establishment, which business also: (1) Is a partnership, limited partnership, corporation, unincorporated association, or other business entity which as part of its general business purpose provides meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve wine to its members and their guests when the sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member and does not admit the general public.

"Private wine restaurant" means a restaurant which: (1) Is a partnership, limited partnership, corporation, unincorporated association, or other business entity which has, as its principal purpose, the business of serving meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve wine to its members and their guests when the sale accompanies

the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member and does not admit the general public. Private clubs that meet the private wine restaurant requirements in this definition shall be considered private wine restaurants: *Provided*, That, a private wine restaurant shall have at least two restrooms: *Provided, however*, That the two restroom requirement may be waived by a written waiver provided from a local health department to the commissioner: *And provided further*, That a private wine restaurant located in an historic building may also be relieved of the two restroom requirement if a historic association or district with jurisdiction over a historic building provides a written waiver of the requirement to the commissioner: *And provided further*, That in no event shall a private wine restaurant have less than one restroom. *And provided further*, That a winery or farm winery holding a private wine restaurant license or a multi-capacity winery or farm winery license is not subject to the food service requirements of this subdivision.

"Private wine spa" means any business with the sole purpose of providing commercial facilities devoted especially to health, fitness, weight loss, beauty, therapeutic services, and relaxation, and may also be a licensed massage parlor or a salon with licensed beauticians or stylists, which business also: (1) Is a partnership, limited partnership, corporation, unincorporated association, or other business entity which as part of its general business purpose provides meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve up to two glasses of wine to its members and their guests when the sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member, and does not admit the general public.

"Retailer" means any person licensed to sell wine at retail to the public at his or her established place of business for off-premises consumption and who is licensed to do so under authority of this article.

"Supplier" means any manufacturer, producer, processor, winery, farm winery, national distributor, or other supplier of wine who sells or offers to sell or solicits or negotiates the sale of wine to any licensed West Virginia distributor.

"Table wine" means a wine with an alcohol content by volume between 0.5 percent and 15.5 percent.

"Tax" includes within its meaning interest, additions to tax, and penalties.

"Taxpayer" means any person liable for any tax, interest, additions to tax, or penalty under the provisions of this article, and any person claiming a refund of tax.

"Varietal wine" means any wine labeled according to the grape variety from which the wine is made.

"Vintage wine" or "vintage-dated wine" means wines from which the grapes used to produce the wine are harvested during a particular year, or wines produced from the grapes of a particular harvest in a particular region of production.

"Wine" means any alcoholic beverage obtained by the natural fermentation of the natural content of grapes, other fruits, or honey or other agricultural products containing sugar to which no alcohol has been added and includes table wine, hard cider, nonfortified dessert wine, wine coolers, and other similar wine-based beverages. Fortified wine and any product defined as or contained within the definition of nonintoxicating beer under the provisions of §11-16-1 *et seq.*, of this code are excluded from this definition of wine.

"Wine specialty shop" means a retailer who deals principally in the sale of table wine, nonfortified dessert wines, wine accessories, and food or foodstuffs normally associated with wine and: (1) Who maintains a representative number of wines for sale in his or her inventory which are designated by label as varietal wine, vintage, generic, and/or according to region of production and the inventory shall contain not less than 15 percent vintage or vintage-dated wine by actual bottle count; and (2) who, any other provisions of this code to the contrary notwithstanding, may maintain an inventory of port, sherry, and Madeira wines having an alcoholic content of not more than ~~22~~ 24 percent alcohol by volume and which have been matured in wooden barrels or casks. All wine available for sale shall be for off-premises consumption except where wine tasting or wine sampling is separately authorized by this code.

§60-8-32a. Where wine may be sold and consumed for on-premises consumption.

(a) With prior approval of the commissioner, a Class A wine licensee may sell, serve, and furnish wine for on premises consumption in a legally demarcated area which may include a temporary private wine outdoor dining area or a temporary private wine outdoor street dining area. A temporary private wine outdoor street area shall be approved by the municipal government or county commission in which the licensee operates. The commissioner shall develop and make available an application form to facilitate the purposes of this subsection.

(b) The Class A wine licensee shall submit to a municipality or county commission for the approval of the private wine outdoor dining area or private wine outdoor street dining area and submit to the municipality or county commission a revised floorplan requesting to sell wine, subject to the commissioner's requirements, in an approved and bounded outdoor area. For private wine outdoor street dining or private wine outdoor dining the approved and bounded outdoor area need not be adjacent to the licensee's licensed premises, but in close proximity and under the licensee's control and with right of ingress and egress. For purposes of this section, "close proximity," means an available area within 300 feet of the licensee's licensed premises.

(c) This private wine outdoor dining or private wine outdoor street dining may be operated in conjunction with a private outdoor dining or private outdoor street dining area set forth in §60-7-8d of this code, and nonintoxicating beer or nonintoxicating craft beer outdoor dining or outdoor street dining set forth in §11-16-9 of this code.

(d) For purposes of this section, "private wine outdoor dining and private wine outdoor street dining" include dining areas that are:

(1) Outside and not served by an HVAC system for air handling services and use outside air;

(2) Open to the air; and

(3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally approve a partial enclosure with up to three temporary or fixed walls.

Any areas where seating is incorporated inside a permanent building with ambient air through HVAC is not considered outdoor dining pursuant to this subsection.

(e) Class A licensees licensed for on-premises sales shall provide food, which may be pre-packaged food not requiring kitchen preparation, or a meal along with sealed wine in the original container or a sealed wine growler sales and service as set forth in this section and in §60-8-3 of this code, to a patron who is (i) in-person or in-vehicle while picking up food and sealed wine in the original containers or sealed wine growlers ordered-to-go, or (ii) in-person to a patron who dined on food or a meal and has ordered sealed wine in the original containers of sealed wine

growlers to-go subject to verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

(f) West Virginia farm wineries possessing a Class A license may serve and sell wine by the glass or by the bottle in accordance with §60-4-3b and §60-8-32a of this code.

The bill (Eng. Com. Sub. for H. B. 2054), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2066, Creating a crime for the destruction of first responder equipment.

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. CRIMES AGAINST PROPERTY.

§61-3-60. Damage, destruction, or theft of equipment used by emergency responders; criminal penalties.

(a) Any person who knowingly and willfully damages, destroys, or commits the larceny of any equipment, or personal property, owned or operated by the state, a county or a municipality of this state, a volunteer fire department of this state, or a private entity that has contracted with the state or a county or municipality of the state for the performance of emergency response duties, that is used by emergency responders in the performance of emergency response duties, whether that equipment or personal property is in use or maintained in a garage or other building, structure, or location, and that action thereby creates a substantial risk of bodily injury or actual bodily injury to another person, results in property loss to any person served by the emergency responder, or results in the interruption of service by emergency responders to the public, is guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000, or imprisoned in a state correctional facility not less than one nor more than three years, or both fined and imprisoned.

(b) The offense established by this section shall be in addition to and a separate and distinct offense from any other offense set forth in this code.

(c) For purposes of this section:

(1) "Emergency responder" has the same meaning as that term is defined in §5H-1-2 of this code and shall additionally include any entity of a political subdivision of the state providing emergency services pursuant to the provisions of §15-5-8 of this code and any county commission, political subdivision, or county 911 public safety answering point.

(2) "Emergency response duties" has the same meaning as that term is defined in §5H-1-2 of this code and shall additionally include disaster response activities and emergency services as those terms are defined in §15-5-2 of this code and activities of a county commission, political subdivision, or county 911 public safety answering point in providing emergency responder services.

The bill (Eng. Com. Sub. for H. B. 2066), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2121, Deceased Disabled Veteran Real Property Exemption for Widowed Spouses.

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

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

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

ARTICLE 13MM. WEST VIRGINIA PROPERTY TAX ADJUSTMENT ACT.

§11-13MM-2. Definitions.

(a) *General.* — When used in this article, or in the administration of this article, terms defined in subsection (b) of this section have the meanings ascribed to them by this section unless a different meaning is clearly required by the context in which the term is used.

(b) *Terms defined.* —

(1) "Ad valorem property tax" means and is limited to the West Virginia ad valorem property tax.

(2) "Business" means any activity taxable under article §11-12-1 *et seq.* of this code, which is engaged in by any person in this State.

(3) "Disabled veteran taxpayer" means a person given an honorable discharge ~~discharge~~ from any branch of the armed services of the United States and who is considered at least 90 percent totally and permanently disabled due solely to service-connected disabilities by the United States Department of Veterans Affairs.

(4) "Eligible motor vehicle" means a motor vehicle on which the ad valorem property tax has been paid for the taxable year by the eligible taxpayer, and which is a motor vehicle as defined in this article.

(5) "Eligible widowed spouse" means the unmarried surviving spouse of a disabled veteran taxpayer who had previously received the disabled veteran real property tax credit authorized by §11-13MM-4 of this code.

(~~5~~6) "Flow-through entity," "conduit entity," or "pass through entity" means an S Corporation, partnership, limited partnership, limited liability partnership, or limited liability company. The term "flow-through entity," "conduit entity," or "pass through entity" includes a publicly traded partnership as that term is defined in section 7704 of the Internal Revenue Code that has equity securities registered with the Securities and Exchange Commission under section 12 of Title I of the Securities Exchange Act of 1934, 15 U.S.C. § 781: *Provided*, That a publicly traded partnership as defined in section 7704 of the Internal Revenue Code having equity securities registered with the Securities and Exchange Commission under section 12 of Title I of the Securities Exchange Act of 1934, 15 U.S.C. § 781, and any other person or entity that is treated as a C corporation for federal income tax purposes, shall be treated as a corporation taxable under article §11-24-1 *et seq.* of this code for purposes of this article.

(67) "Motor Vehicle" means the following class of vehicles defined in §17A-10-1 of this code: Class A, Class B, Class G, Class H, Class T, Class V, Class X, and all-terrain vehicles and utility terrain vehicles as defined in §20-15-2 of this code.

(78) "Person" means and includes an individual, a trust, estate, partnership, pass through entity, association, company, or corporation.

(89) "Personal property" shall have the same meaning as in §11-5-1 *et seq.* of this code: *Provided:* That, for the purposes of this article, the term "personal property" shall not include a working interest in any oil, natural gas, or natural gas liquid producing property or any property of a public service company.

(910) "Personal property taxes paid" means the aggregate of regular levies, excess levies, and bond levies extended against personal property that are paid during the calendar year and determined after any application of any discount for early payment of taxes. "Personal property taxes paid" does not include any untimely ad valorem property tax paid, or any payment of delinquent ad valorem property tax, or payment of "back tax" ad valorem property taxes, or any penalty or interest for late payment of property taxes.

(1011) "Public service company" means a corporation or other business entity which delivers services considered essential to the public interest that are regulated by the applicable federal or state regulatory body, including, but not limited to, businesses furnishing electricity, natural gas, telecommunications, and water, and those transporting personal property or passengers, including, but not limited to, airlines, railroads, trucking, and bus companies, and which are centrally assessed by the state for property tax purposes.

(1112) "Real property taxes paid" means the aggregate of regular levies, excess levies, and bond levies that are paid during the calendar year and determined after any application of any discount for early payment of taxes. "Real property taxes paid" does not include any untimely ad valorem property tax paid, or any payment of delinquent ad valorem property tax, or payment of "back tax" ad valorem property taxes, or any penalty or interest for late payment of property taxes.

§11-13MM-4. Disabled veteran and eligible widowed spouse of a disabled veteran real property tax credit.

(a) *Credit allowed.* — ~~Disabled veterans~~ A disabled veteran taxpayer or eligible widowed spouse may receive a tax credit against the tax imposed under §11-21-1 *et seq.* of this code in the amount of West Virginia ad valorem property tax timely paid on his or her homestead during the personal income taxable year.

(b) *Amount of credit.* — Any ~~homeowner taxpayer~~ taxpayer meeting the definition of a disabled veteran taxpayer or eligible widowed spouse under this article shall be allowed a refundable credit against the taxes imposed by §11-21-1 *et seq.* of this code equal to the amount of West Virginia ad valorem real property taxes timely paid a county sheriff on a homestead which is used or occupied exclusively for residential purposes, as those terms are defined in §11-6B-2, during the personal income taxable year: *Provided,* That in no case shall any credit be allowed under this article for any untimely real property tax paid, or any payment of delinquent real property tax, or payment of "back tax" real property taxes.

(c) *Application of credit against personal income tax.* — The amount of credit allowed under this section shall be taken against the personal income tax liability, imposed by article §11-21-1 *et seq.* of this code, of the ~~eligible taxpayer~~ disabled veteran taxpayer or eligible widowed spouse.

(d) *Refundable portion of annual credit allowance.* — If ~~the~~ annual tax credit allowed under this article exceeds the amount of personal income tax subject to offset under this article in any taxable year, the ~~eligible taxpayer~~ disabled veteran taxpayer or eligible widowed spouse may claim, for that taxable year, the excess amount as a refundable tax credit.

(e) *Termination of tax credit.* — Any tax credit approved in accordance with the provisions of this section shall terminate immediately when any of the following events occur:

(1) The death of the ~~owner of the property~~ disabled veteran taxpayer for which the tax credit was authorized; Provided, That an eligible widowed spouse may continue to receive the tax credit until his or her death or remarriage;

(2) The sale of the property for which the tax credit was approved; or

(3) A determination by the assessor that the property for which the tax credit was approved no longer qualifies for the tax credit in accordance with the provisions of this section.

(f) *Forms and instructions.* — The Tax Commissioner shall prescribe and supply all necessary instructions and forms for administration of this section.

The bill (Eng. Com. Sub. for H. B. 2121), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2267, Authorizing Department of Revenue 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 and adopted:

On page 2, section 1, after line 3, by adding the following:

On page 24, by striking out all of paragraph 3.2.1.a., and inserting in lieu thereof a new paragraph 3.2.1.a. to read as follows:

3.2.1.a. That is located on any college campus, state university campus, or branch thereof, unless it is located in an on-campus structure listed on the National Register of Historic Places located within a designated National Historic Landmark District or such private club type is located upon the premises of a National Collegiate Athletic Association, or its successor, approved Division I, II, or III sports stadium used for revenue generating sports by a college or university on its campus and no classes are held at the sports stadium or at a private college sports stadium.

And,.

The following amendments to the bill (Eng. Com. Sub. for H. B. 2267), from the Committee on Finance, were next reported by the Clerk and considered simultaneously:

On page 2, section 1, after line 3, by adding the following:

On page 13, paragraph 2.30.9, after the words "(iv) canned or packaged food valued at least" by deleting "\$100" and inserting in lieu thereof "\$50".

And,

On page 14, paragraph 2.31.10, after the words "(iv) canned or packaged food valued at least" by deleting "\$100" and inserting in lieu thereof "\$50".

And,

On page 37, subsection 3.4.12.e, line six, following the words "commissioner's requirements" and the period, by inserting a new sentence to read as follows: "Furthermore, where a municipality has authorized sidewalk dining areas by ordinance, a qualified permit holder has obtained a sidewalk dining permit from the municipality and the Commissioner, and additionally the municipality has authorized by ordinance that a qualified permit holder in the PODA may provide for the lawful sale, service, and tendering of alcohol (such alcohol as authorized for sale by the licensee's license) from an approved sidewalk dining area in approved PODA cups to patrons, and the qualified permit holder has added the sidewalk dining area or areas as a part of its WVABCA floorplan comprising its licensed premises, then such qualified permit holder may conduct such lawful sales, service, and tendering of alcohol (such alcohol as authorized for sale by the licensee's license) from the sidewalk dining area or areas without the dining requirement for such to-go alcoholic beverage sales."

And,

On page 34, subparagraph 3.4.7.c by striking out "2.22.5" and inserting in lieu thereof "2.25.5".

And,

On page 39, paragraph 4.2.3, after the word "A" by inserting the word "valid".

And,

On page 39, paragraph 4.2.3 by deleting the word "card".

And,

On page 39, paragraph 4.2.4, after the word "A" by inserting the word "valid".

And,

On page 39, paragraph 4.5.5 by striking out the word "The" and inserting in lieu thereof the words "In each public restroom the".

And,

On page 40, subsection 4.8, after the words "cleared of all members and guests" by inserting the words "one hour and".

And,

On page 48, subparagraph 5.1.1.h by striking out the words "in a position where the primary responsibility for such employment is to sell, furnish, tender, serve, or give nonintoxicating beer, wine, or alcoholic liquors to any person;" and inserting in lieu thereof the words "in any capacity that includes, even incidentally, the selling, furnishing, tendering, serving, or giving of nonintoxicating beer, wine, or alcoholic liquors to any person;".

At the request of Senator Barrett, as chair of the Committee on Finance, and by unanimous consent, the Finance committee amendment to the bill (Eng. Com. Sub. for H. B. 2267) was withdrawn.

At the request of Senator Martin, and by unanimous consent, further consideration of the bill was deferred until the conclusion of bills on today's second reading calendar, following consideration of Engrossed Committee Substitute for House Bill 2595, already placed in that position.

Eng. House Bill 2344, Relating generally to traffic safety.

Having been read a second time on yesterday, Wednesday, April 9, 2025, and now coming up in regular order with the Transportation and Infrastructure committee amendment (*shown in the Senate Journal of that day, pages 49 and 50*) pending, was reported by the Clerk.

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

The bill (Eng. H. B. 2344), as amended, was then ordered to third reading.

Eng. Com. Sub. for Com. Sub. for House Bill 2349, To offer long-acting reversible contraception to patients receiving methadone and suboxone at the treatment facility for the methadone and suboxone.

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

Eng. Com. Sub. for House Bill 2351, Relating to compensation for panel attorneys.

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

At the request of Senator Martin, 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. House Bill 2358, Relating to postmortem examinations.

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:

On page 1, section 10, line 9, by striking out "request" and inserting the word "decedent".

The bill (Eng. H. B. 2358), as amended, was then ordered to third reading.

Eng. House Bill 2511, Relating to charitable bingo and alcohol sales and consumption while such bingo is taking places.

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 20. CHARITABLE BINGO.

§47-20-2. Definitions.

For purposes of this article, unless specified otherwise:

(a) "Bingo" means the game wherein participants pay consideration for the use of one or more paper or virtual cards bearing several rows of numbers in which no two cards played in any one game contain the same sequence or pattern. When the game commences, numbers are selected by chance, one by one, and announced. The players cover or mark those numbers announced as they appear on the card or cards which they are using. The player who first announces that he or she has covered a predetermined sequence or pattern which had been preannounced for that game is, upon verification that he or she has covered the predetermined sequence or pattern, declared the winner of that game. Bingo, as authorized by this article, may be operated and played virtually over the Internet using an online bingo software system or web application.

(b) "Bingo occasion" or "occasion" means a single gathering or session at which a series of one or more successive bingo games is conducted by a single licensee.

(c) "Charitable or public service activity or endeavor" means any bona fide activity or endeavor which directly benefits a number of people by:

(1) Assisting them to establish themselves in life as contributing members of society through education or religion;

(2) Relieving them from disease, distress, suffering, constraint, or the effects of poverty;

(3) Increasing their comprehension of, and devotion to, the principles upon which this nation was founded and to the principles of good citizenship;

(4) Making them aware of, or educating them about, issues of public concern so long as the activity or endeavor is not aimed at influencing legislation or supporting or participating in the campaign of any candidate for public office;

(5) By lessening the burdens borne by government or voluntarily supporting, augmenting, or supplementing services which government would normally render to the people;

(6) Providing or supporting nonprofit community activities for youth, senior citizens, or the disabled; or

(7) Providing or supporting nonprofit cultural or artistic activities.

(d) "Charitable or public service organization" means a bona fide, not-for-profit, tax-exempt, benevolent, educational, philanthropic, humane, patriotic, civic, religious, fraternal, or eleemosynary incorporated or unincorporated association or organization; or a volunteer fire department, rescue unit, or other similar volunteer community service organization or association;

but does not include any nonprofit association or organization, whether incorporated or not, which is organized primarily for the purposes of influencing legislation or supporting or promoting the campaign of any candidate for public office.

An organization or association is tax-exempt if it is, and has received from the Internal Revenue Service a determination letter that is currently in effect stating that the organization is, exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the Internal Revenue Code.

(e) "Commissioner" means the State Tax Commissioner.

(f) "Concession" means any stand, booth, cart, counter, or other facility, whether stationary or movable, where beverages, both alcoholic and nonalcoholic, food, snacks, cigarettes or other tobacco products, newspapers, souvenirs, or any other items are sold to patrons by an individual operating the facility. Notwithstanding anything contained in §60-7-12(a)(2) of this code to the contrary, "concession" includes beverages which are regulated by, and are subject to, the provisions of chapter 60 of this code: *Provided*, That in no case may the sale or the consumption of alcoholic beverages or nonintoxicating beer be permitted in any area where bingo is conducted: *Provided however*, That the sale or the consumption of alcoholic beverages or nonintoxicating beer may be permitted in an area where bingo is conducted on the premises of a fraternal society or veteran's organization that is:

(1) A fraternal beneficiary society that is exempt from federal income tax under section 501(c)(8) of the Internal Revenue Code of 1986, as amended;

(2) A domestic fraternal society that is exempt from federal income tax under section 501(c)(10) of the Internal Revenue Code of 1986, as amended;

(3) A veterans' organization that is exempt from federal income tax under section 501(c)(19) of the Internal Revenue Code of 1986, as amended; or

(4) A volunteer fire department, as defined in §11-13JJ-2 of this code.

(g) "Conduct" means to direct the actual playing of a bingo game by activities including, but not limited to, handing out bingo cards, collecting fees, drawing the numbers, announcing the numbers, posting the numbers, verifying winners, and awarding prizes.

(h) "Expend net proceeds for charitable or public service purposes" means to devote the net proceeds of a bingo occasion or occasions to a qualified recipient organization or as otherwise provided by this article and approved by the commissioner pursuant to §47-20-15 of this code.

(i) "Gross proceeds" means all moneys collected or received from the conduct of bingo at all bingo occasions held by a licensee during a license period; this term ~~shall not be considered to~~ does not include any moneys collected or received from the sale of concessions at bingo occasions.

(j) "Joint bingo occasion" means a single gathering or session at which a series of one or more successive bingo games is conducted by two or more licensees.

(k) "Licensee" means any organization or association granted an annual, limited occasion, or state fair bingo license pursuant to the provisions of this article.

(l) "Net proceeds" means all moneys collected or received from all the conduct of bingo at bingo occasions held by a licensee during a license period after payment of expenses authorized by §47-20-10, §47-20-13, §47-20-15, and §47-20-22 of this code; this term ~~shall not be considered to~~ does not include moneys collected or received from the sale of concessions at bingo occasions.

(m) "Person" means any individual, association, society, incorporated or unincorporated organization, firm, partnership, or other nongovernmental entity or institution.

(n) "Patron" means any individual who attends a bingo occasion other than an individual who is participating in the conduct of the occasion or in the operation of any concession, whether or not the individual is charged an entrance fee or plays any bingo games.

(o) "Qualified recipient organization" means any bona fide, not-for-profit, tax-exempt, as defined in subdivision (d) of this subsection, incorporated or unincorporated association or organization which is organized and functions exclusively to directly benefit a number of people as provided in paragraphs (1) through (7), inclusive, subdivision (c) of this subsection. "Qualified recipient organization" includes, without limitation, any licensee which is organized and functions exclusively as provided in this subdivision.

(p) "Venue" means the location in which bingo occasions are held.

The bill (Eng. H. B. 2511), as amended, was then ordered to third reading.

Eng. House Bill 2575, Relating to the establishment of a full-time Dementia Services Director position.

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

The following amendments to the bill, from the Committee on Health and Human Resources, were reported by the Clerk, considered simultaneously, and adopted:

On page 1, section 9, by striking out all of subdivision (3) and inserting in lieu thereof a new subdivision (3), to read as follows:

(3) Evaluate all applicable state government services and make recommendations to increase efficiency and improve the quality of care in residential and home and community-based settings;

And,

On page 1, section 9, by striking out all of subdivision (5) and inserting in lieu thereof a new subdivision (5), to read as follows:

(5) Evaluate information and resources affecting West Virginians living with dementia and their caregivers, including;

The bill (Eng. H. B. 2575), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2634, To double the criminal penalty for anyone found guilty of sexual assault on a minor.

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 8B. SEXUAL OFFENSES.

§61-8B-5. Sexual assault in the third degree.

(a) A person is guilty of sexual assault in the third degree when:

(1) The person engages in sexual intercourse or sexual intrusion with another person who is mentally defective or mentally incapacitated; or

(2) The person, ~~being~~ is 16 years old or more and engages in sexual intercourse or sexual intrusion with another person who is less than 16 years old and who is at least four years younger than the defendant.

(b) Any person violating the provisions of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than ~~one year~~ two years nor more than ~~five~~ 10 years, or fined not more than ~~\$40,000~~ \$20,000 and imprisoned in a state correctional facility not less than ~~one year~~ two years nor more than ~~five~~ 10 years.

§61-8B-9. Sexual abuse in the third degree.

(a) A person is guilty of sexual abuse in the third degree when he or she subjects another person to sexual contact without the latter's consent, when ~~such~~ the lack of consent is due to the victim's incapacity to consent by reason of being less than 16 years old.

(b) In any prosecution under this section it is a defense that:

(1) The defendant was less than 16 years old; or

(2) The defendant was less than four years older than the victim.

(c) Any person who violates the provisions of this section ~~shall be~~ is guilty of a ~~misdemeanor~~ felony, and, upon conviction thereof, shall be ~~confined~~ imprisoned in the ~~county jail~~ a state correctional facility not more ~~less~~ than ~~ninety days~~ one year nor more than ~~three years~~, or fined not more than ~~\$500~~ \$1,000 and ~~confined~~ imprisoned in the ~~county jail~~ a state correctional facility not more ~~less~~ than ~~ninety days~~ one year nor more than ~~three years~~.

ARTICLE 8D. CHILD ABUSE.

§61-8D-5. Sexual abuse by a parent, guardian, custodian or person in a position of trust to a child; parent, guardian, custodian or person in a position of trust allowing sexual abuse to be inflicted upon a child; failing to report sexual assault or abuse upon a child; displaying of sex organs by a parent, guardian, or custodian; penalties.

(a) In addition to any other offenses set forth in this code, the Legislature hereby declares a separate and distinct offense under this subsection, as follows: If any parent, guardian, or custodian of or other person in a position of trust in relation to a child under his or her care, custody, or control, ~~shall engage~~ engages in or attempt to engage in sexual exploitation of, or in

sexual intercourse, sexual intrusion or sexual contact with, a child under his or her care, custody or control, notwithstanding the fact that the child may have willingly participated in such conduct, or the fact that the child may have consented to ~~such~~ the conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct, then such parent, guardian, custodian, or person in a position of trust shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility not less than ~~ten~~ 20 nor more than ~~twenty~~ 40 years, or fined not less than ~~\$500~~ \$1,000 nor more than ~~\$5,000~~ \$10,000 and imprisoned in a correctional facility not less than ~~ten~~ 20 years nor more than ~~twenty~~ 40 years.

(b) Any parent, guardian, custodian, or other person in a position of trust in relation to the child who knowingly procures, authorizes, or induces or attempts to procure, authorize, or induce another person to engage in or attempt to engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a child under the care, custody or control of such parent, guardian, custodian or person in a position of trust when such child is less than 16 years of age, notwithstanding the fact that the child may have willingly participated in such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct, such parent, guardian, custodian or person in a position of trust shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility not less than ~~five~~ 10 years nor more than ~~fifteen~~ 30 years, or fined not less than ~~\$1,000~~ \$2,000 nor more than ~~\$10,000~~ \$20,000 and imprisoned in a correctional facility not less than ~~five~~ 10 years nor more than ~~fifteen~~ 30 years.

(c) Any parent, guardian, custodian or other person in a position of trust in relation to the child who knowingly procures, authorizes, or induces another person to engage in or attempt to engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a child under the care, custody or control of such parent, guardian, custodian or person in a position of trust when such child is 16 years of age or older, notwithstanding the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct, then such parent, guardian, custodian or person in a position of trust shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility not less than ~~one year~~ two years nor more than ~~five~~ 10 years.

(d) The provisions of this section shall not apply to a custodian or person in a position of trust whose age exceeds the age of the child by less than four years.

§61-8D-6. Sending, distributing, exhibiting, possessing, displaying or transporting material by a parent, guardian, or custodian, or person in a position of trust, depicting a child engaged in sexually explicit conduct; penalty.

Any parent, guardian, or custodian, or person in a position of trust who, with knowledge, sends or causes to be sent, or distributes, exhibits, possesses, displays, or transports, any material visually portraying a child under his or her care, custody, or control engaged in any sexually explicit conduct, is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not more than ~~two~~ four years, and fined not less than ~~\$400~~ \$800 nor more than ~~\$4,000~~ \$8,000.

On motion of Senator Weld, the following amendments to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 2634) were reported by the Clerk, considered simultaneously, and adopted:

On page 2, section 5, line 17, after the word "age" by inserting the following words "or any age if the child is a disabled child, as defined in §61-8F-2 of this code";

And,

On page 3, section 5, line 26, after the word "induces" by inserting the words "or attempts to procure, authorize, or induce";

And,

On page 3, section 5, line 30, by striking out the words "consented to" and inserting in lieu thereof, the words "willingly participated in";

And,

On page 3, section 5, by striking out the entirety of subsection (d).

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. 2634), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2695, Raleigh and Mason Counties Economic Opportunity Development Districts.

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

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

Eng. Com. Sub. for House Bill 2718, Relating to creating a State Advisory Council on Establishing a Military College.

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

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

Eng. House Bill 2802, Relating to in-service training credits for law-enforcement officers.

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

Eng. Com. Sub. for House Bill 2836, Relating to wild animal rehabilitation permits.

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

Eng. Com. Sub. for House Bill 2961, To amend the law concerning ownership and possession of real property.

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 3A. PREVENTING FOREIGN ADVERSARIES FROM OWNING REAL ESTATE IN WEST VIRGINIA.

§37-3A-1. Ownership of real estate in West Virginia.

Except as otherwise provided in this article, any resident alien or citizen may acquire, hold, and transfer real estate in this state by deed, will, or other instrument, including in fee simple or any lesser estate.

§37-3A-2. Definitions.

As used in this article:

"Control" means the power, direct or indirect, whether or not exercised, to determine, direct, or decide important matters affecting an entity, including but not limited to through ownership of at least 20 percent of the total outstanding voting interest, board representation, the ability to appoint or remove board members, proxy voting rights, special shares, contractual arrangements, legal obligations, or other formal or informal mechanisms to act in concert.

"Controlling interest" means an ownership interest of 50 percent or more in the aggregate.

"Owned or operated in whole or in part" means:

(A) For a publicly traded company, the person or entity has the ability to control the company, access any material nonpublic technical information in the possession of the company, or exercise any other rights or involvement in substantive decision-making beyond those of a retail investor holding an equivalent ownership share;

(B) For a privately held company, the person or entity possesses any ownership interest.

"People's Republic of China" means all provinces and autonomous regions of the People's Republic of China, including the Hong Kong Special Administrative Region and the Macao Special Administrative Region, but does not include Taiwan.

"Prohibited foreign party" means:

(A) A citizen or resident of the People's Republic of China who is not a resident alien or citizen of the United States;

(B) The government of the People's Republic of China or any of its political subdivisions;

(C) Any party other than an individual or government;

(i) Created or organized under the laws of any state or foreign country; and

(ii) In which a significant interest or substantial control is held directly or indirectly by:

(I) A person described in paragraph (A) of this subdivision;

(II) A government described in paragraph (B) of this subdivision;

(III) Any combination of the above; or

(IV) An agent, trustee, fiduciary, or other entity acting on behalf of any of the foregoing;

(D) Any foreign government, entity, or individual identified by a majority of the Governor, Treasurer, Agriculture Commissioner, Auditor, Attorney General, and Secretary of State, in consultation with the Secretary of Homeland Security, as hostile to the interests of the United States or the State of West Virginia: *Provided*, That in the event of a tie, the Governor's vote shall serve as the tie-breaking vote.

"Prohibited foreign-party-controlled business" means a corporation, company, association, firm, partnership, joint-stock company, trust, estate, or other legal entity in which a controlling interest is owned or operated, in whole or in part, by a prohibited foreign party.

§37-3A-3. Prohibition on Ownership by Prohibited Foreign Parties.

(a) A prohibited foreign-party-controlled business may not acquire or own, directly or indirectly, any interest in any real estate in this state, including mineral rights.

(b) A person may not hold any interest in real estate as an agent, trustee, or fiduciary on behalf of a prohibited foreign-party-controlled business.

(c) Any interest in any real estate that is held on the effective date of this article shall be divested within six months of the effective date of this article.

§37-3A-4. Enforcement; Judicial Sale.

(a) A prohibited foreign-party-controlled business that acquires real estate in violation of this article shall divest that interest within six months of acquisition.

(b) If the business fails to divest, the Attorney General shall file a civil action in the circuit court of the county where the real estate is located.

(c) Upon a circuit court finding by a preponderance of the evidence that a violation of the provisions of this article have occurred, the circuit court shall order the real estate to be sold through judicial sale under terms and conditions that are to be set by the circuit court.

(d) Proceeds of the sale shall first be distributed to lienholders according to priority, excluding liens that remain on the real estate under the terms of the sale, and any remaining funds shall be remitted to the prohibited foreign party. Lienholders may credit bid at the sale.

(e) If there are no liens against the property, then the full proceeds shall be remitted to the prohibited foreign party.

(f) The Attorney General shall promptly file in the office of the county clerk where the real estate is located the following:

(1) A notice of the pending action in the county in which the real estate is located upon commencement of the civil action filed pursuant to this article; and

(2) Once all appellate rights have been exhausted by the parties, the circuit court's final order that directs the sale of the real estate.

§37-3A-5. Good-Faith Protections.

(a) Title to real estate is not rendered invalid or subject to divestiture solely due to a prior violation of this article by a previous owner.

(b) A person who is not subject to the prohibitions contained in this article is not required to investigate whether another person or entity is subject to the prohibitions contained in this article.

The bill (Eng. Com. Sub. for H. B. 2961), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2963, To ensure that the survivor of a merger, reorganization, purchase, or assumption of liabilities of a bank chartered by West Virginia is insured by the Federal Deposit Insurance Corporation.

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

Eng. Com. Sub. for House Bill 3014, Relating generally to liability of hospital police.

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

Eng. Com. Sub. for House Bill 3016, Photo voter ID.

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 3. ELECTIONS.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-34. Voting procedures generally; identification; assistance to voters; voting records; penalties.

(a) A person desiring to vote in an election shall, upon entering the election room, clearly state his or her name and residence to one of the poll clerks who shall thereupon announce the ~~same person's name and residence~~ in a clear and distinct tone of voice. ~~For elections occurring on or after January 1, 2018, the~~ The person desiring to vote shall present to one of the poll clerks a valid identifying document meeting the requirements of ~~subdivisions (1) or (2) of this subsection §3-1-34(a)(1) or §3-1-34(a)(2) of this code~~, and the poll clerk shall inspect and confirm that the name on the valid identifying document conforms to the name in the individual's voter registration record and that, if the valid identifying document contains a photograph, the image displayed is

truly an image of the person presenting the document. If that person is found to be duly registered as a voter at that precinct, he or she shall sign his or her name in the designated location provided at the precinct. If that person is physically or otherwise unable to sign his or her name, his or her mark shall be affixed by one of the poll clerks in the presence of the other and the name of the poll clerk affixing the voter's mark shall be indicated immediately under the affixation. ~~No~~ A ballot may not be given to the person until he or she signs his or her name on the designated location or his or her signature is affixed thereon.

(1) A document ~~shall be deemed to be~~ is a valid identifying document if it:

(A) Has been issued either by the State of West Virginia, ~~or~~ one of its ~~subsidiaries~~ political subdivisions or instrumentalities, or by the United States Government; ~~and~~

(B) Contains the name of the person desiring to vote; and

(C) Contains a photograph of the person desiring to vote: *Provided*, That a driver's license or identification card issued in accordance with §17B-2-1(f)(4) of this code that does not contain a photograph of the person desiring to vote is a valid identifying document.

(2) Notwithstanding the provisions of ~~subdivision (1) of this subsection~~ §3-1-34(a)(1) of this code, the following documents, if they contain the voter's name, shall be considered valid identifying documents, and a person desiring to vote may produce any of the following:

(A) A valid West Virginia driver's license or valid West Virginia identification card issued by the West Virginia Division of Motor Vehicles, including a driver's license or identification card issued in accordance with §17B-2-1(f)(4) of this code.

(B) A valid driver's license issued by a state other than the State of West Virginia;

(C) A valid United States passport or passport card;

(D) A valid employee identification card with a photograph of the eligible voter issued by any branch, department, agency, or entity of the United States Government or of the State of West Virginia, or by any county, municipality, board, authority, or other political subdivision of West Virginia;

(E) A valid student identification card with a photograph of the eligible voter issued by an institution of higher education in West Virginia, or a valid high school identification card issued by a West Virginia high school;

(F) A valid military identification card issued by the United States with a photograph of the person desiring to vote; or

~~(G) A valid concealed carry (pistol/revolver) permit issued by the sheriff of the county with a photograph of the person desiring to vote;~~

~~(H) A valid Medicare card or Social Security card;~~

~~(I) A valid birth certificate;~~

~~(J)~~ (G) A valid voter registration card that includes the voter's photograph issued by a county clerk in the State of West Virginia or the Secretary of State. The county clerk or the Secretary of State may not charge or collect a fee for the application or issuance of a voter registration card that includes the voter's photograph.

~~(K)~~ A valid hunting or fishing license issued by the State of West Virginia;

~~(L)~~ A valid identification card issued to the voter by the West Virginia Supplemental Nutrition Assistance (SNAP) program;

~~(M)~~ A valid identification card issued to the voter by the West Virginia Temporary Assistance for Needy Families (TANF) program;

~~(N)~~ A valid identification card issued to the voter by West Virginia Medicaid;

~~(O)~~ A valid bank card or valid debit card;

~~(P)~~ A valid utility bill issued within six months of the date of the election;

~~(Q)~~ A valid bank statement issued within six months of the date of the election; or

~~(R)~~ A valid health insurance card issued to the voter.

(3) Any expired document identified in §3-1-34(a)(2) of this code is a valid identifying document if presented by a registered voter 65 years of age or older: *Provided*, That the identifying document was not expired on the registered voter's 65th birthday.

~~(3)~~ (4) In lieu of providing a valid identifying document, as required by this section, a registered voter may be accompanied at the polling place by an adult known to the registered voter for at least six months. That adult may sign an affidavit on a form provided to clerks and poll workers by the Secretary of State, which states under oath or affirmation that the adult has known the registered voter for at least six months, and that in fact the registered voter is the same person who is present for the purpose of voting. For the affidavit to be considered valid, the adult shall present a valid identifying document with his or her name, address, and photograph.

~~(4)~~ (5) A poll worker may allow a voter, whom the poll worker has known for at least six months, to vote without presenting a valid identifying document.

~~(5)~~ (6) If the person desiring to vote is unable to furnish a valid identifying document, or if the poll clerk determines that the proof of identification presented by the voter does not qualify as a valid identifying document, the person desiring to vote shall be permitted to cast a provisional ballot after executing an affidavit affirming his or her identity pursuant to ~~paragraph (B) of this subdivision~~ §3-1-34(a)(6)(B) of this code.

(A) The provisional ballot ~~is entitled to~~ may be counted once the election authority verifies the identity of the individual by comparing that individual's signature to the current signature on file with the election authority and determines that the individual was otherwise eligible to cast a ballot at the polling place where the ballot was cast.

(B) The affidavit to be used for voting shall be substantially in the following form:

"State of West Virginia

County of.....

I do solemnly swear (or affirm) that my name is; that I reside at.....; and that I am the person listed in the precinct register under this name and at this address.

I understand that knowingly providing false information is a violation of law and subjects me to possible criminal prosecution.

.....

Signature of voter

Subscribed and affirmed before me this..... day of, 20....

.....

Name of Election Official

.....

Signature of Election Official".

~~(6)~~ (7) A voter who votes in person at a precinct polling place that is located in a building which is part of a state licensed care facility where the voter is a resident is not required to provide proof of identification as a condition before voting in an election.

~~(7)~~ (8) The person entering voter information into the centralized voter registration database shall cause the records to indicate when a voter has not presented a valid identifying document and has executed a voter identity affidavit.

~~(8)~~ (9) If a voter participating in the Address Confidentiality Program established by §48-28A-103 of this code, executes a voter identity affidavit, the program participant's residential or mailing address is subject to the confidentiality provisions of §48-28A-108 of this code and shall be used only for those statutory and administrative purposes authorized by this section.

~~(9)~~ (10) Prior to the primary and general elections to be held in calendar year 2018, The Secretary of State shall educate voters about the requirement to present a valid identifying document and develop a program to help ensure that all eligible voters are able to obtain a valid identifying document.

(b) The clerk of the county commission ~~is authorized~~ may, upon verification that the precinct at which a handicapped person is registered to vote is not handicap accessible, ~~to~~ transfer that person's registration to the nearest polling place in the county which is handicap accessible. A request by a handicapped person for a transfer of registration must be received by the county clerk no later than 30 days prior to the date of the election. A handicapped person who has not made a request for a transfer of registration at least 30 days prior to the date of the election may vote a provisional ballot at a handicap accessible polling place in the county of his or her registration. If during the canvass the county commission determines that the person had been

registered in a precinct that is not handicap accessible, the voted ballot, if otherwise valid, shall be counted. The handicapped person may vote in the precinct to which the registration was transferred only as long as the disability exists or the precinct from which the handicapped person was transferred remains inaccessible to the handicapped. To ensure confidentiality of the transferred ballot, the county clerk processing the ballot shall provide the voter with an unmarked envelope and an outer envelope designated "provisional ballot/handicapped voter". After validation of the ballot at the canvass, the outer envelope shall be destroyed and the handicapped voter's ballot shall be placed with other approved provisional ballots prior to removal of the ballot from the unmarked envelope.

(c) When the voter's signature is properly marked and the voter has presented a valid identifying document, the two poll clerks shall sign their names in the places indicated on the back of the official ballot and deliver the ballot to the voter to be voted by him or her without leaving the election room. If he or she returns the ballot spoiled to the clerks, they shall immediately mark the ballot "spoiled" and it shall be preserved and placed in a spoiled ballot envelope together with other spoiled ballots to be delivered to the board of canvassers and deliver to the voter another official ballot, signed by the clerks on the reverse side. The voter shall ~~thereupon~~ then retire alone to the booth or compartment prepared within the election room for voting purposes and there prepare his or her ballot. In voting for candidates in general and special elections, the voter shall comply with the rules and procedures prescribed in §3-6-5 of this code.

(d) ~~It is the duty of a~~ A poll clerk shall, in the presence of the other poll clerk, ~~to~~ indicate by a check mark, or by other means, inserted in the appropriate place on the registration record of each voter the fact that the voter voted in the election. In primary elections the clerk shall also insert on the registration record of each voter a distinguishing initial or initials of the political party for whose candidates the voter voted. If a person is challenged at the polls, the challenge shall be indicated by the poll clerks on the registration record, together with the name of the challenger. The subsequent removal of the challenge shall be recorded on the registration record by the clerk of the county commission.

(e) (1) ~~No~~ A voter may not receive any assistance in voting unless, by reason of blindness, disability, advanced age, or inability to read and write, that voter is unable to vote without assistance. Any voter ~~se~~ qualified to receive assistance in voting may:

(A) Declare his or her choice of candidates to an Election Commissioner of each political party who, in the presence of the voter and in the presence of each other, shall prepare the ballot for voting in the manner provided in this section and, on request, shall read to the voter the names of the candidates selected on the ballot;

(B) Require the Election Commissioners to indicate to him or her the relative position of the names of the candidates on the ballot. ~~the~~ The voter shall then retire to one of the booths or compartments to prepare his or her ballot in the manner provided in this section;

(C) Be assisted by any person of the voter's choice, other than the voter's present or former employer or agent of that employer, the officer or agent of a labor union of which the voter is a past or present member or a candidate on the ballot or an official write-in candidate; or

(D) If he or she is handicapped, vote from an automobile outside the polling place or precinct by the absentee balloting method provided in §3-3-5(e) of this code in the presence of an Election Commissioner of each political party if all of the following conditions are met:

- (i) The polling place is not handicap accessible; and
- (ii) ~~No voters are~~ Voters are not voting or waiting to vote inside the polling place.

(2) The voted ballot shall then be returned to the precinct officials and secured in a sealed envelope to be returned to the clerk of the county commission with all other election materials. The ballot shall then be tabulated using the appropriate method provided in §3-1-8 of this code as it relates to the specific voting system in use.

(3) A voter who requests assistance in voting but who is believed not to be qualified for assistance under the provisions of this section shall ~~nevertheless~~ be permitted to vote a provisional ballot with the assistance of any person ~~herein~~ authorized in this section to render assistance.

(4) One or more of the Election Commissioners or poll clerks in the precinct may challenge the ballot on the ground that the voter received assistance in voting ~~if~~ if when in his, her or their opinion the person who received assistance in voting is not so illiterate, blind, disabled or of such advanced age as to have been unable to vote without assistance. The Election Commissioner or poll clerk or commissioners or poll clerks making the challenge shall enter the challenge and the reason for such challenge on the form and in the manner prescribed or authorized by §3-3-1 *et seq.* of this code.

(5) An Election Commissioner or other person who assists a voter in voting:

(A) May not in any manner request or seek to persuade or induce the voter to vote a particular ticket or for a particular candidate or for or against any public question and ~~must~~ shall not keep or make any memorandum or entry of anything occurring within the voting booth or compartment and ~~must~~ shall not, directly or indirectly, reveal to any person the name of a candidate voted for by the voter, which ticket he or she had voted, ~~or~~ how he or she had voted on any public question, or anything occurring within the voting booth, compartment, or voting machine booth except when required by law to give testimony as to the matter in a judicial proceeding; and

(B) Shall sign a written oath or affirmation before assisting the voter on a form prescribed by the Secretary of State stating that he or she will not override the actual preference of the voter being assisted, attempt to influence the voter's choice, or mislead the voter into voting for someone other than the candidate of voter's choice. The person assisting the voter shall also swear or affirm that he or she believes that the voter is voting free of intimidation or manipulation. ~~No~~ There is no requirement that a person providing assistance to a voter is required to sign an oath or affirmation where the reason for requesting assistance is the voter's inability to vote without assistance because of blindness as defined in §5-15-3 of this code and the inability to vote without assistance because of blindness is certified in writing by a physician of the voter's choice and is on file in the office of the clerk of the county commission.

(6) In accordance with instructions issued by the Secretary of State, the clerk of the county commission shall provide a form entitled "list of assisted voters", on a form as prescribed by the Secretary of State. The commissioners shall enter the name of each voter receiving assistance in voting the ballot, together with the poll slip number of that voter and the signature of the person or the commissioner from each party who assisted the voter. If no voter has been assisted in voting, the commissioners shall make and subscribe to an oath of that fact on the list.

(f) After preparing the ballot, the voter shall fold the ballot so that the face is not exposed and the names of the poll clerks on it are seen. The voter shall announce his or her name and present his or her ballot to one of the commissioners who shall hand the ~~same~~ ballot to another commissioner, of a different political party, who shall deposit it in the ballot box if the ballot is the official one and properly signed. The Commissioner of Election may inspect every ballot before it is deposited in the ballot box to ascertain whether it is single, but without unfolding or unrolling it so as to disclose its content. When the voter has voted, he or she shall retire immediately from the election room and beyond the ~~sixty-foot~~ 60-foot limit and not return except by permission of the commissioners.

(g) Following the election, the oaths or affirmations required by this section from those assisting voters, together with the "list of assisted voters", shall be returned by the Election Commissioners to the clerk of the county commission along with the election supplies, records, and returns. The clerk of the county commission shall make the oaths, affirmations, and list available for public inspection and preserve them for a period of 22 months or until disposition is authorized or directed by the Secretary of State or court of record. The clerk may use these records to update the voter registration records in accordance with §3-2-18(d) of this code.

(h) Any person making an oath or affirmation required under the provisions of this section who knowingly swears falsely or any person who counsels, advises, aids, or abets another in the commission of false swearing under this section, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in jail for a period of not more than one year, or both fined and confined.

(i) Any Election Commissioner or poll clerk who authorizes or provides unchallenged assistance to a voter when the voter is known to the Election Commissioner or poll clerk not to require assistance in voting, is guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned in a state correctional facility for a period of not less than one year nor more than five years, or both fined and imprisoned.

The bill (Eng. Com. Sub. for H. B. 3016), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 3111, To provide pay increases to members of the judiciary.

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

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

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

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-10a. Salary of justices.

The salary of each of the justices of the Supreme Court of Appeals shall be \$95,000 per year: *Provided*, That beginning July 1, 2005, the salary of each of the justices of the Supreme Court shall be \$121,000: *Provided, however*, That beginning July 1, 2011, the annual salary of a justice of the Supreme Court shall be \$136,000: *Provided further*, That beginning July 1, 2021, the annual

salary of a justice of the Supreme Court of Appeals shall be \$142,800, and beginning July 1, 2022, the annual salary of a justice of the Supreme Court of Appeals shall be \$149,600-: Provided further, That beginning July 1, 2025, the annual salary of a justice of the Supreme Court of Appeals shall be \$154,600: And provided further, That beginning July 1, 2026, the annual salary of a justice of the Supreme Court of Appeals shall be \$159,600.

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-13. Salaries of judges of circuit courts.

The salaries of the judges of the various circuit courts shall be paid solely out of the State Treasury. No county, county commission, board of commissioners, or other political subdivision shall supplement or add to such salaries.

The annual salary of all circuit judges shall be \$90,000 per year: *Provided*, That beginning July 1, 2005, the annual salary of all circuit judges shall be \$116,000 per year: *Provided, however*, That beginning July 1, 2011, the annual salary of a circuit court judge shall be \$126,000: *Provided further*, That beginning July 1, 2021, the annual salary of a circuit judge shall be \$132,300, and beginning July 1, 2022, the annual salary of a circuit court judge shall be \$138,600-: *Provided further*, That beginning July 1, 2025, the annual salary of a circuit judge shall be \$143,600: And provided further, That beginning July 1, 2026, the annual salary of a circuit judge shall be \$148,600.

ARTICLE 2A. FAMILY COURTS.

§51-2A-6. Compensation and expenses of family court judges and their staffs.

(a) A family court judge ~~is entitled to~~ may receive as compensation for his or her services an annual salary of \$62,500: *Provided*, That beginning July 1, 2005, a family court judge ~~is entitled to~~ may receive as compensation for his or her services an annual salary of \$82,500: *Provided, however*, That beginning July 1, 2011, the annual salary of a family court judge shall be \$94,500: *Provided further*, That beginning July 1, 2020, the annual salary of a family court judge shall be \$103,950-: *Provided further*, That beginning July 1, 2025, the annual salary of a family court judge shall be \$113,950: And provided further, That beginning July 1, 2026, the annual salary of a family court judge shall be \$118,950.

(b) The secretary-clerk of the family court judge is appointed by the family court judge and serves at his or her will and pleasure. The secretary-clerk of the family court shall be paid at least twice per month by the state. The annual salary of all secretary-clerks of the family court is \$42,576. Beginning July 1, 2023, the annual salary of a family court secretary-clerk shall be \$44,876. Family court secretary-clerks may receive any general salary increase granted to state employees, whose salaries are not set by statute, expressed as a percentage increase or an across-the-board increase enacted after July 1, 2023.

(c) The family court judge may employ not more than one family case coordinator who serves at his or her will and pleasure: *Provided*, That the Supreme Court of Appeals may authorize additional family case coordinators if the workload of a circuit's family court requires extra staff support. The annual salary of the family case coordinator of the family court judge shall be established by the Administrative Director of the Supreme Court of Appeals but may not exceed \$54,576. Beginning July 1, 2023, the annual salary of a family court case coordinator shall not exceed \$56,876. Family court case coordinators may receive any general salary increase granted

to state employees, whose salaries are not set by statute, expressed as a percentage increase or an across-the-board increase enacted after July 1, 2023. If more than one family case coordinator is approved by the Supreme Court of Appeals, then the chief family court judge of that circuit shall appoint, supervise, and assign job duties for any additional family case coordinator as needed for that circuit.

(d) The sheriff or his or her designated deputy shall serve as a bailiff for a family court judge. The sheriff of each county shall serve or designate persons to serve so as to assure that a bailiff is available when a family court judge determines the same is necessary for the orderly and efficient conduct of the business of the family court.

(e) Disbursement of salaries for family court judges and members of their staffs are made by or pursuant to the order of the Director of the Administrative Office of the Supreme Court of Appeals.

(f) Family court judges and members of their staffs ~~staff~~ are allowed their actual and necessary expenses incurred in the performance of their duties. The expenses and compensation will be determined and paid by the Director of the Administrative Office of the Supreme Court of Appeals under such guidelines as he or she may prescribe, as approved by the Supreme Court of Appeals.

(g) The Supreme Court of Appeals ~~is authorized to~~ may create additional classifications of support staff that it deems necessary to adequately and efficiently staff the family courts of this state, including, but not limited to, receptionists, assistant case coordinators, and assistant secretary-clerks. The Supreme Court of Appeals may determine the authority to hire and terminate, supervise, and assign job duties for these positions pursuant to its own employment rules, policies, and procedures. The annual salary of additional support staff authorized by this section shall not exceed the regular annual salary of a secretary-clerk and shall be paid by the state on the same basis established for secretary-clerks as provided in this section.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-4. Required percentage contributions from salaries; any termination of required contributions prior to actual retirement disallowed; leased employees; military service credit; maximum allowable and qualified military service; qualifiable prosecutorial service.

(a) Every person who is now serving or shall hereafter serve as a judge of any court of record of this state shall pay into the Judges' Retirement Fund six percent of the salary received by such person out of the State Treasury: *Provided*, That when a judge becomes eligible to receive benefits from such trust fund by actual retirement, no further payment by him or her shall be required, since such employee contribution, in an equal treatment sense, ceases to be required in the other retirement systems of the state, also, only after actual retirement: *Provided, however*, That on and after January 1, 1995, every person who is then serving or shall thereafter serve as a judge of any court of record in this state shall pay into the Judges' Retirement Fund nine percent of the salary received by that person: *Provided further*, That consistent with the salary increase granted to judges of courts of record during the 2005 regular legislative session and to changes effectuated in judicial retirement by provisions enacted during the third extraordinary legislative session of 2005, on and after July 1, 2005, every person who is then serving or shall thereafter serve as a judge of any court of record in this state shall pay into the Judges' Retirement Fund ten and one-half percent of the salary received by that person: *And provided further*, That on and after July 1, 2013, except as provided in subsection (b) of this section, every person who is then

servicing or shall thereafter serve as a judge of any court of record in this state and who elects to participate in this retirement system shall pay into the Judges' Retirement Fund seven percent of the salary received. Any prior occurrence or practice to the contrary, in any way allowing discontinuance of required employee contributions prior to actual retirement under this retirement system, is rejected as erroneous and contrary to legislative intent and as violative of required equal treatment and is hereby nullified and discontinued fully, with the State Auditor to require such contribution in every instance hereafter, except where no contributions are required to be made under any of the provisions of this article.

(b) On and after July 1, 2014, every person who is serving or shall hereafter serve as a judge of any court of record of this state and who elects to participate in this retirement system shall contribute to the fund an amount determined by the board. This amount will be based on the annual actuarial valuation prepared by the State Actuary: *Provided*, That the contribution will be no less than seven percent or no more than ten and one-half percent of the participant's annual compensation.

(c) On or after July 1, 2013, and each year thereafter, the annual actuarial valuation prepared by the State Actuary for determination of all participants' contributions and the annual actuarially required contribution prepared by the State Actuary for use by the courts of this state for legislative appropriation shall be provided to the Legislature's Joint Committee on Government and Finance and the Joint Committee on Pensions and Retirement: *Provided*, That the responsibility of the courts to pay, deposit, or transfer the calculated contribution into the plan shall be placed on a contribution holiday until such time that the actual overfunded nature of the pension fund has fallen below a rate of 150 percent.

(d) An individual who is a leased employee shall not be eligible to participate in the system. For purposes of this system, a "leased employee" means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or other similar organization. If a question arises regarding the status of an individual as a leased employee, the board has the final power to decide the question.

(e) In drawing warrants for the salary checks of judges, the State Auditor shall deduct from the amount of each such salary check six percent thereof, which amount so deducted shall be credited by the Consolidated Public Retirement Board to the trust fund: *Provided*, That on or after January 1, 1995, the amount so deducted and credited shall be nine percent of each such salary check: *Provided, however*, That consistent with the salary increase granted to judges of courts of record during the 2005 regular legislative session and to changes effectuated in judicial retirement by provisions enacted during the third extraordinary legislative session of 2005, on or after July 1, 2005, the amount so deducted and credited shall be ~~ten~~ 10 and one-half percent of each such salary check: *Provided further*, That on and after July 1, 2013, except as provided in subsection (b) of this section, the amount so deducted and credited shall be seven percent of each salary check: *And provided further*, That on and after July 1, 2014, the amount so deducted and credited will be determined by the board.

(f) Any judge seeking to qualify military service to be claimed as credited service, in allowable aggregate maximum amount up to five years, shall be entitled to be awarded the same without any required payment in respect thereof to the Judges' Retirement Fund.

(g) Notwithstanding the preceding provisions of this section, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military

service" has the same meaning as in Section 414(u) of the Internal Revenue Code. The Retirement Board is authorized to determine all questions and make all decisions relating to this section and may promulgate rules relating to contributions, benefits and service credit pursuant to the authority granted to the retirement board in ~~section one, article ten-d, chapter five~~ §5-10D-1 of this code to comply with Section 414(u) of the Internal Revenue Code.

(h) Any judge holding office as such on the effective date of the amendments to this article adopted by the Legislature at its 1987 regular session who seeks to qualify service as a prosecuting attorney as credited service, which service credit must have been earned prior to the year 1987, shall be required to pay into the Judges' Retirement Fund nine percent of the annual salary which was actually received by such person as prosecuting attorney during the time such prosecutorial service was rendered prior to the year 1987 and for which credited service is being sought, together with applicable interest. No judge whose term of office shall commence after the effective date of such amendments to this article shall be eligible to claim any credit for service rendered as a prosecuting attorney as eligible service for retirement benefits under this article, nor shall any time served as a prosecutor after the year 1988 be considered as eligible service for any purposes of this article.

§51-9-6. Eligibility for and payment of benefits.

(a) Except as otherwise provided in sections five, six-d, twelve and thirteen of this article, and subject to the provisions of subsection (e) of this section, any person who is now serving, or who shall hereafter serve, as a judge of any court of record of this state and shall have served as such judge for a period of not less than sixteen full years and shall have reached the age of sixty-five years, or who has served as judge of such court or of that court and other courts of record of the state for a period of sixteen full years or more (whether continuously or not and whether said service be entirely before or after this article became effective, or partly before and partly after said date, and whether or not said judge shall be in office on the date he or she shall become eligible to benefits hereunder) and shall have reached the age of sixty-five years, or who is now serving, or who shall hereafter serve, as a judge of any court of record of this state and shall have served as such judge for a period of not less than twenty-four full years, regardless of age, shall, upon a determination and certification of his or her eligibility as provided in section nine hereof, be paid from the fund annual retirement benefits, so long as he or she shall live, in an amount equal to seventy-five percent of the annual salary of the office from which he or she has retired based upon such salary of such office and as such salary may be changed from time to time during the period of his or her retirement and the amount of his or her retirement benefits shall be based upon and be equal to seventy-five percent of the highest annual salary of such office for any one calendar year during the period of his or her retirement and shall be payable in monthly installments: *Provided*, That such retirement benefits shall be paid only after such judge has resigned as such or, for any reason other than his or her impeachment, his or her service as such has ended: *Provided, however*, That every such person seeking to retire and to receive the annual retirement benefits provided by this subsection must have served a minimum of twelve years as a sitting judge of any such court of record: *Provided further*, That every individual who is appointed or elected for the first time as judge of a court of record of this state after July 1, 2005, who subsequently seeks to retire and to receive the annual retirement benefits provided by this subsection must have served a minimum of fourteen years as a sitting judge of any court of record: *Provided further*, That any Justice of the West Virginia Supreme Court of Appeals, Intermediate Court of Appeals Judge, Circuit Court Judge, or Family Court Judge in this state appointed or elected for the first time after July 1, 2005, shall be eligible for payment of benefits under this subsection.

(b) Notwithstanding any other provisions of this article with the exception of sections twelve-a and twelve-b, any person who is now serving or who shall hereafter serve as a judge of any court of record of this state and who shall have accumulated sixteen years or more of credited service, at least twelve years of which is as a sitting judge of a court of record, and who has attained the age of sixty-two years or more but less than the age of sixty-five years, may elect to retire from his or her office and to receive the pension to which he or she would otherwise be entitled to receive at age sixty-five, but with an actuarial reduction of pension benefit to be established as a reduced annuity receivable throughout retirement: *Provided*, That every individual who is appointed or elected for the first time as judge of a court of record of this state after July 1, 2005, who subsequently seeks to retire and to receive the annual retirement benefits provided by this subsection must have served a minimum of fourteen years as a sitting judge of any court of record. The reduced percentage (less than seventy-five percent) actuarially computed, determined and established at time of retirement in respect of this reduced pension benefit shall also continue and be applicable to any subsequent new annual salary set for the office from which such judge has retired and as such salary may be changed from time to time during the period of his or her retirement.

(c) In determining eligibility for the benefits provided by this section, active full-time duty (including leaves and furloughs) in the Armed Forces of the United States shall be eligible for qualification as credited military service for the purposes of this article by any judge with twelve or more years actual service as a sitting judge of a court of record, such awardable military service to not exceed five years: *Provided*, That in determining eligibility for the benefits provided by this section for every individual who is appointed or elected for the first time as judge of a court of record of this state after July 1, 2005, active full-time duty (including leaves and furloughs) in the Armed Forces of the United States qualifies as credited service for the purposes of this article for any judge with fourteen or more years actual service as a sitting judge of a court of record of this state, the awardable military service not to exceed five years.

(d) If a judge of a court of record who is presently sitting as such on the effective date of the amendments to this section enacted by the Legislature at its regular session held in the year 1987 and who has served for a period of not less than twelve full years and has made payments into the Judges' Retirement Fund as provided in this article for each month during which he or she served as judge, following the effective date of this section, any portion of time which he or she had served as prosecuting attorney in any county in this state shall qualify as years of service, if such judge shall pay those sums required to be paid pursuant to the provisions of section four of this article: *Provided*, That any term of office as prosecuting attorney, or part thereof, commencing after December 31, 1988, shall not hereafter in any way qualify as eligible years of service under this retirement system. For purposes of this article, eligible service as a "prosecuting attorney" or as a "prosecutor" does not include any service as an assistant prosecuting attorney. The amendment to this subsection during the third extraordinary session in the year 2005 is not for the purpose of changing existing law but is intended to clarify the intent of the Legislature as to existing law regarding eligibility for benefits for service as a prosecuting attorney since its initial enactment and this clarification shall be applied retrospectively to the effective date of this section and any predecessor acts in which service as a prosecuting attorney was initially determined by statute to qualify as eligible years of service under the retirement system provided by this article.

(e) Any retirement benefit accruing under the provisions of this section shall not be paid if otherwise barred under the provisions of article ten-a, chapter five of this code.

(f) Notwithstanding any other provisions of this article, forfeitures under the system shall not be applied to increase the benefits any member would otherwise receive under the system.

§51-9-6a. Eligibility benefits; service and retirement of judges over ~~sixty-five~~ 65 years of age.

(a) Any judge of a court of record of this state who shall have served for a period of not less than eight full years after attaining the age of ~~sixty-five~~ 65 years and who shall have made payments into the Judges' Retirement Fund as provided in this article for each month during which he or she served as such judge following the effective date of this section, shall be subject to all the applicable terms and provisions of this article, not inconsistent with the provisions hereof, and shall receive retirement benefits in an amount equal to seventy-five percent of the annual salary of the office from which he or she has retired based upon such salary of such office as such salary may be changed from time to time during the period of his or her retirement and the amount of his or her retirement benefits shall be based upon and be equal to seventy-five percent of the highest annual salary of such office for any one calendar year during the period of his or her retirement and shall be payable in monthly installments. If such judge shall become incapacitated to perform his or her said duties before the expiration of his or her said term and after serving for six years thereof, and upon the acceptance of his or her resignation as in this article provided, he or she shall be paid the annual retirement benefits as herein provided so long as he or she shall live. The provisions of this section shall prevail over any language to the contrary in this article contained, except those provisions of sections twelve-a and twelve-b of this article: *Provided*, That no individual who is appointed or elected for the first time as judge of a court of record of this state after July 1, 2005, is eligible for retirement under this subsection.

(b) Any individual who is appointed or elected for the first time as a family court judge, a judge of a court of record, judge of the Intermediate Court of Appeals, or as a justice of the Supreme Court of Appeals of West Virginia, of this State after July 1, 2005, who having attained the age of 65 years, and who shall have served as a sitting judge of said court or courts for a period of not less than 12 full years, and who shall have made payments into the Judges' Retirement Fund as provided in this article for each month during which he or she served as a judge or justice, shall be eligible to receive the pension to which he or she would otherwise have been entitled to receive as if at 16 years of credited service, but with an actuarial reduction of pension benefit to be established as a reduced annuity receivable throughout retirement, and shall be paid as an annual retirement benefit as herein provided so long as he or she shall live.

§51-9-6b. Annuities for surviving spouses and surviving dependent children of judges; automatic escalation and increase of annuity benefit; proration designation by judge permitted.

(a) There shall be paid, from the fund created or continued by section two of this article, or from such funds as may be appropriated by the Legislature for such purpose, an annuity to the surviving spouse of a judge, if such judge at the time of his or her death is eligible for the retirement benefits provided by any of the provisions of this article, or who has, at death, actually served five years or more as a sitting judge of any court of record of this state, exclusive of any other service credit to which such judge may otherwise be entitled, and who dies either while in office or after resignation or retirement from office pursuant to the provisions of this article. Said annuity shall amount to ~~forty~~ 50 percent of the annual salary of the office which said judge held at his or her death or from which he or she resigned or retired. In the event said salary is increased or decreased while an annuitant is receiving the benefits hereunder, his or her annuity shall amount to ~~forty~~ 50 percent of the new salary. ~~Provided, That with respect to any individual who is appointed or elected for the first time as judge of a court of record of this state after July 1, 2005, any annuity to the surviving spouse of the judge shall be an amount equal to forty~~ 50 percent of the judge's final average salary. ~~Provided, however, That the annuitant is not entitled to an increase in benefits by virtue of any increase in the salaries of the offices of circuit court judge or Justice of the Supreme Court of Appeals.~~ The annuity granted hereunder shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month for which the annuity shall have accrued. Such annuity shall commence on the first day of the month in which said judge dies and shall, subject to the provisions of subsection

(b) of this section, terminate upon the death of the annuitant or shall terminate upon the remarriage of the annuitant.

(b) If there be no surviving spouse at the time of death of a judge who dies after serving five years or more as a sitting judge of any court of record and such judge leaves surviving him or her any dependent child or children, such dependent child or children shall receive an amount equal to twenty percent of the annual salary of the office which said judge held at the time of his or her death: *Provided*, That the total of all such annuities payable to each such child shall not exceed in the aggregate an amount equal to forty percent of such salary. Such annuity shall continue as to each such child until: (i) He or she or she attains the age of eighteen years; or (ii) attains the age of twenty-three years so long as such child remains a full-time student. The Auditor shall by legislative rule establish the criteria for determining a person's status as a full-time student within the meaning and intent of this subsection. In the event there are surviving any such judge three or more dependent children, then each such child's annuity shall be proratably reduced in order that the aggregate annuity received by all such dependent children does not exceed forty percent of such salary and the amount to be so received by any such child shall continue throughout the entire period during which each such child is eligible to receive such annuity. The provisions of this subsection shall also apply to those circumstances and situations wherein a surviving spouse of a deceased judge shall die while receiving benefits pursuant to subsection (a) of this section and who shall leave surviving dependent children of such deceased judge who would be entitled to benefits under this subsection as if they had succeeded to such annuity benefits upon the death of such judge in the first instance. In the event the salary of judges is increased or decreased while an annuitant is receiving benefits pursuant to this subsection, the annuities payable shall be likewise increased or decreased proportionately to reflect such change in salary. ~~*Provided, however,* That with respect to any individual who is appointed or elected for the first time as judge of a court of record of this state after July 1, 2005, any annuity to any children of the judge shall be calculated with respect to the judge's final average salary: *Provided further,* That the child is not entitled to an increase in benefits by virtue of any increase in the salaries of the offices of circuit court judge or Justice of the Supreme Court of Appeals.~~ The annuities granted hereunder shall accrue monthly and shall be due and payable in monthly installments on the same day as surviving spouses' benefits are required to be paid. Such annuities shall commence on the first day of the month in which any such dependent child becomes eligible for benefits hereunder and shall terminate on the last day of the month during which such eligibility ceases.

§51-9-6c. Limitations on benefit increases.

[Repealed]

§51-9-6d. Adjusted annual retirement benefit calculations.

[Repealed]

ARTICLE 11. THE WEST VIRGINIA APPELLATE REORGANIZATION ACT.

§51-11-11. Judicial compensation and benefits; expenses.

(a) The annual salary of a Judge of the Intermediate Court of Appeals is \$142,500. ~~*Provided,* That beginning July 1, 2025, the annual salary of a Judge of the Intermediate Court of Appeals shall be \$147,500: *And provided further,* That beginning July 1, 2026 the annual salary of a Judge of the Intermediate Court of Appeals shall be \$152,500.~~ The budget for the payment of compensation and expenses of Intermediate Court of Appeals judges shall be included in the appropriation for the Supreme Court of Appeals.

(b) Judges of the Intermediate Court of Appeals and staff shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties under the guidelines prescribed by the Administrative Director of the Supreme Court of Appeals.

Following discussion,

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

The bill (Eng. Com. Sub. for H. B. 3111), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 3125, To remove restrictions from teachers receiving permanent teaching licenses.

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

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

Eng. Com. Sub. for House Bill 3174, Requiring municipalities take actions when potential customers apply for water and sewer service.

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

At the request of Senator Rucker, as chair of the Committee on Government Organization, and by unanimous consent, the unreported Government Organization committee amendment to the bill was withdrawn.

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

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

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER SYSTEMS.

PART V. GRANTS, LOANS, ADVANCES AND AGREEMENTS; CUMULATIVE AUTHORITY.

§8-19-17. Grants, loans, advances and agreements.

(a) As an alternative to, or in conjunction with, the issuance of revenue bonds authorized by this article, any municipality or county commission is hereby empowered and authorized to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, or otherwise enter into agreement, including, but not limited to, agreements of indemnity, assurance or guarantee with respect to, and for the purpose of financing part or all of, the cost of acquisition, construction, establishment, extension or equipment of waterworks or electric power systems and the construction of additions, betterments and improvements to existing waterworks systems or to existing electric power systems, and for the other purposes herein authorized, from or with any authorized agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which

loans or temporary advances, including the interest thereon, or the municipality's or county's financial obligations contained in such other agreements, which need not bear interest, may be repaid out of the proceeds of bonds authorized to be issued under the provisions of this article, the revenues of or proceeds from the said waterworks system or electric power system or grants to the municipality or county commission from any agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual or from any combination of such sources of payment, and may be secured in the manner provided in §8-19-8, §8-19-9, and §8-19-16 of this article to secure bonds issued under the provisions of this article, but shall not otherwise be subject to the requirements of §8-19-11 and §8-19-12 of this article, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any agency of the state, the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual.

In no event shall any such loan or temporary advance or agreement be a general obligation of the municipality or county and such loans or temporary advances or agreements, including the interest thereon, shall be paid solely from the sources specified in this section.

(b) When potential customers apply for water or sewer service from the municipality, the municipality must determine the cost of the extension and the customer cost responsibility for the cost of the extension (customer share) in accordance with rules of the Public Service Commission. Once the cost and customer share are determined, if those potential customers wish to continue, and they, or any person or entity desiring to do so, provide an up-front customer contribution for the customer share of the extension costs, then the municipality shall extend service pursuant to the rules of the Public Service Commission. If, before continuing with the extension, the potential customers request that the municipality make application for grant funds to finance the total costs of the extension, then the potential customers, or any person or entity desiring to do so, must provide funds to cover the cost of the application, and, once provided, the municipality shall then apply through the West Virginia Infrastructure and Jobs Development Council for any available funding.

(c) Notwithstanding any other provisions of this code to the contrary, if a grant or grants are awarded that cover the total costs for a project to extend service to unserved potential customers, the municipality is required to extend service to said potential customers after the potential customers have paid any required fees, including their required contributions. Grant funds shall be used to reimburse the potential customers or any other person or entity who were contributors for any front contributions, including, but not limited to, the cost of the application, in accordance with the rules of the Public Service Commission, including the rule that reimbursements will not exceed the original amount of the customer contribution.

ARTICLE 20. COMBINED SYSTEMS.

§8-20-16. Grants, loans and advances.

(a) Any municipality is hereby empowered and authorized to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of acquisition, construction, establishment, extension, or equipment of combined systems and the construction of additions, betterments, and improvements thereto, and for the other purposes herein authorized, from any authorized agency of the state or from the United States of

America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances, including the interest thereon, may be repaid out of the proceeds of bonds authorized to be issued under the provisions of this article, the revenues of the said combined system or grants to the municipality from any agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual or from any combination of such sources of payment, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any agency of the state, the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual. Any other provisions of this article notwithstanding, interest on any loans or temporary advances may be paid from the proceeds thereof until the maturity of the notes or other negotiable instrument.

In no event shall any loan or temporary advance be a general obligation of the municipality and the loans or temporary advances, including the interest thereon, shall be paid solely from the sources specified in this section.

(b) When potential customers apply for water or sewer service from the municipality, the municipality must determine the cost of the extension and the customer cost responsibility for the cost of the extension (customer share) in accordance with rules of the Public Service Commission. Once the cost and customer share are determined, if those potential customers wish to continue, and they, or any person or entity desiring to do so, provide an up-front customer contribution for the customer share of the extension costs, then the municipality shall extend service pursuant to the rules of the Public Service Commission. If, before continuing with the extension, the potential customers request that the municipality make application for grant funds to finance the total costs of the extension, then the potential customers, or any person or entity desiring to do so, must provide funds to cover the cost of the application, and, once provided, the municipality shall then apply through the West Virginia Infrastructure and Jobs Development Council for any available funding.

(c) Notwithstanding any other provisions of this code to the contrary, if a grant or grants are awarded that cover the total costs for a project to extend service to unserved potential customers, the municipality is required to extend service to said potential customers after the potential customers have paid any required fees, including their required contributions. Grant funds shall be used to reimburse the potential customers or any other person or entity who were contributors for any front contributions, including, but not limited to, the cost of the application, in accordance with the rules of the Public Service Commission, including the rule that reimbursements will not exceed the original amount of the customer contribution.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-4. Proposal of rules by the secretary.

(a) The secretary may propose legislative rules in accordance with the provisions of §29A-3-1 *et seq.* of this code that include:

(1) Land usage endangering the public health: *Provided*, That no rules may be promulgated or enforced restricting the subdivision or development of any parcel of land within which the individual tracts, lots, or parcels exceed two acres each in total surface area and which individual

tracts, lots, or parcels have an average frontage of not less than 150 feet even though the total surface area of the tract, lot, or parcel equals or exceeds two acres in total surface area, and which tracts are sold, leased, or utilized only as single-family dwelling units. Notwithstanding the provisions of this subsection, nothing in this section may be construed to abate the authority of the department to:

(A) Restrict the subdivision or development of a tract for any more intense or higher density occupancy than a single-family dwelling unit;

(B) Propose or enforce rules applicable to single-family dwelling units for single-family dwelling unit sanitary sewerage disposal systems; or

(C) Restrict any subdivision or development which might endanger the public health, the sanitary condition of streams, or sources of water supply.

(2) The sanitary condition of all institutions and schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops, factories, labor camps, all other places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption and places where trades or industries are conducted;

(3) Occupational and industrial health hazards, the sanitary conditions of streams, sources of water supply, sewerage facilities, and plumbing systems and the qualifications of personnel connected with any of those facilities, without regard to whether the supplies or systems are publicly or privately owned; and the design of all water systems, plumbing systems, sewerage systems, sewage treatment plants, excreta disposal methods, and swimming pools in this state, whether publicly or privately owned.

(A) The secretary may not promulgate rules that require a public water supply system or business to have backflow prevention assemblies inspected more frequently than once in three years for a low-hazard system, which is defined as a hazard that could cause aesthetic problems or have a detrimental secondary effect on the quality of the public potable water supply. A high-hazard system, which is defined as a hazard that is conducive to the introduction of waterborne disease organisms, or harmful chemical, physical, or radioactive substances into a public water system, and that presents an unreasonable risk to health, shall be inspected annually.

(B) When a person applies to a political subdivision for any business activity that qualifies the person as a large-quantity user, as that term is defined in §22-26-2 of this code, the Public Service Commission shall review the activity and determine what impact the activity will have on the existing users, and may make recommendations to the political subdivision based on the determination.

(4) Safe drinking water, including:

(A) The maximum contaminant levels to which all public water systems must conform in order to prevent adverse effects on the health of individuals and, if appropriate, treatment techniques that reduce the contaminant or contaminants to a level which will not adversely affect the health of the consumer. The rule shall contain provisions to protect and prevent contamination of wellheads and well fields used by public water supplies so that contaminants do not reach a level that would adversely affect the health of the consumer;

(B) The minimum requirements for: sampling and testing; system operation; public notification by a public water system on being granted a variance or exemption, or upon failure to comply with specific requirements of this section and rules promulgated under this section; record keeping; laboratory certification; as well as procedures and conditions for granting variances and exemptions to public water systems from state public water systems rules; and

(C) The requirements covering the production and distribution of bottled drinking water and may establish requirements governing the taste, odor, appearance, and other consumer acceptability parameters of drinking water;

(5) Food and drug standards, including cleanliness, proscription of additives, proscription of sale, and other requirements in accordance with §16-7-1 *et seq.* of this code as are necessary to protect the health of the citizens of this state;

(6) The training and examination requirements for emergency medical service attendants and emergency medical care technician-paramedics; the designation of the health care facilities, health care services, and the industries and occupations in the state that must have emergency medical service attendants and emergency medical care technician-paramedics employed, and the availability, communications and equipment requirements with respect to emergency medical service attendants and to emergency medical care technician-paramedics. Any regulation of emergency medical service attendants and emergency medical care technician-paramedics may not exceed the provisions of §16-4C-1 *et seq.* of this code;

(7) The health and sanitary conditions of establishments commonly referred to as bed and breakfast inns. For purposes of this article, "bed and breakfast inn" means an establishment providing sleeping accommodations and, at a minimum, a breakfast for a fee. The secretary may not require an owner of a bed and breakfast providing sleeping accommodations of six or fewer rooms to install a restaurant-style or commercial food service facility. The secretary may not require an owner of a bed and breakfast providing sleeping accommodations of more than six rooms to install a restaurant-type or commercial food service facility if the entire bed and breakfast inn or those rooms numbering above six are used on an aggregate of two weeks or less per year;

(8) Fees for services provided by the Bureau for Public Health including, but not limited to, laboratory service fees, environmental health service fees, health facility fees, and permit fees;

(9) The collection of data on health status, the health system, and the costs of health care;

(10) The distribution of state aid to local health departments and basic public health services funds in accordance with:

(A) Base allocation amount for each county;

(B) Establishment and administration of an emergency fund of no more than two percent of the total annual funds of which unused amounts are to be distributed back to local boards of health at the end of each fiscal year;

(C) A calculation of funds utilized for state support of local health departments;

(D) Distribution of remaining funds on a per capita weighted population approach which factors coefficients for poverty, health status, population density, and health department interventions for each county and a coefficient which encourages counties to merge in the provision of public health services; and

(E) The provisions of this subdivision are in effect until the performance standard funding formula is created and established by legislative rule.

(b) The secretary shall not review any repair or modernization of equipment at a public pool facility as long as such activity does not change the scope of the facility or its current use and such activity does not exceed \$25,000 in planned cost.

§16-1-9a. Regulation of public water systems.

(a) The ~~commissioner~~ secretary shall regulate public water systems as prescribed in this section.

(b) The ~~commissioner~~ secretary shall establish by legislative rule, in accordance with §29A-3-1 *et seq.* of this code:

(1) The maximum contaminant levels to which all public water systems shall conform in order to prevent adverse effects on the health of individuals;

(2) Treatment techniques that reduce the contaminant or contaminants to a level which will not adversely affect the health of the consumer;

(3) Provisions to protect and prevent contamination of wellheads and well fields used by public water supplies so that contaminants do not reach a level that would adversely affect the health of the consumer;

(4) Minimum requirements for:

(A) Sampling and testing;

(B) System operation;

(C) Public notification by a public water system on being granted a variance or exemption or upon failure to comply with specific requirements of this section and regulations promulgated under this section;

(D) Recordkeeping;

(E) Laboratory certification; and

(F) Procedures and conditions for granting variances and exemptions to public water systems from state public water systems' regulations;

(5) Requirements covering the production and distribution of bottled drinking water;

(6) Requirements governing the taste, odor, appearance, and other consumer acceptability parameters of drinking water;

(7) Any requirements for a water supply system the commissioner determines is necessary to be equipped with a backflow prevention assembly, all maintenance activities must be documented and provided to the commissioner upon request: Provided, That the secretary may not require inspection more frequently than once in three years for a low-hazard system, which is defined as a hazard that could cause aesthetic problems or have a detrimental secondary effect on the quality of the public potable water supply: Provided, however, That a high-hazard system, which

is defined as a hazard that is conducive to the introduction of waterborne disease organisms, or harmful chemical, physical, or radioactive substances into a public water system, and that presents an unreasonable risk to health, shall be inspected annually; and Secretary

(8) Any other requirement the ~~commissioner~~ secretary finds necessary to effectuate the provisions of this article.

(c) The ~~commissioner~~ secretary, or his or her authorized representative or designee, may enter any part of a public water system, whether or not the system is in violation of a legal requirement, for the purpose of inspecting, sampling, or testing and shall be furnished records or information reasonably required for a complete inspection.

(d) The ~~commissioner~~ secretary, or his or her authorized representative or designee, may conduct an evaluation necessary to assure the public water system meets federal safe drinking water requirements. The public water system shall provide a written response to the commissioner within 30 days of receipt of the evaluation by the public water system, addressing corrective actions to be taken as a result of the evaluation.

(e)(1) Any individual or entity who violates any provision of this article, or any of the rules or orders issued pursuant to this article, is liable for a civil penalty not less than \$1,000 nor more than \$5,000. Each day's violation shall constitute a separate offense.

(2) For a willful violation of a provision of this article, or of any of the rules or orders issued under this article, an individual or entity shall be subject to a civil penalty of not more than \$10,000 and each day's violation shall be grounds for a separate penalty.

(3) Civil penalties are payable to the ~~commissioner~~ secretary. All moneys collected under this section shall be deposited into a restricted account known as the Safe Drinking Water Fund. All moneys deposited into the fund shall be used by the ~~commissioner~~ secretary to provide technical assistance to public water systems.

(f) The ~~commissioner~~ secretary, or his or her authorized representative or designee, may also seek injunctive relief in the circuit court of the county in which all or part of the public water system is located for threatened or continuing violations.

(g) By July 1, 2020, a public water system supplying water to the public within the state shall immediately, but in no instance later than six hours, report the occurrence and the lifting of each advisory to local departments of health and to local office of emergency management 911 answering point.

(h) By January 1, 2022, a public water system shall make available to interested customers boiled water advisories promptly through a text or a voice alert mass notification system.

ARTICLE 13. SEWAGE WORKS AND STORMWATER WORKS.

§16-13-22a. Grants, loans and advances.

(a) Any municipality is authorized and empowered to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of acquisition or construction of said sewage works and the construction of betterments and improvements thereto, and for the other purposes herein authorized, from any authorized agency of the state or

from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances, including the interest thereon, may be repaid out of the proceeds of bonds authorized to be issued under the provisions of this article, the revenues of the said sewage works or grants to the municipality from any agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual or from any combination of such sources of payment, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any agency of the state, the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual. Any other provisions of this article to the contrary notwithstanding, interest on any such loans or temporary advances may be paid from the proceeds thereof until the maturity of such notes or other negotiable instrument.

In no event shall any such loan or temporary advance be a general obligation of the municipality and such loans or temporary advances, including the interest thereon, shall be paid solely from the sources specified in this section.

(b) When potential customers apply for water or sewer service from the municipality, the municipality must determine the cost of the extension and the customer cost responsibility for the cost of the extension (customer share) in accordance with rules of the Public Service Commission. Once the cost and customer share are determined, if those potential customers wish to continue, and they, or any person or entity desiring to do so, provide an up-front customer contribution for the customer share of the extension costs, then the municipality shall extend service pursuant to the rules of the Public Service Commission. If, before continuing with the extension, the potential customers request that the municipality make application for grant funds to finance the total costs of the extension, then the potential customers, or any person or entity desiring to do so, must provide funds to cover the cost of the application, and, once provided, the municipality shall then apply through the West Virginia Infrastructure and Jobs Development Council for any available funding.

(c) Notwithstanding any other provisions of this code to the contrary, if a grant or grants are awarded that cover the total costs for a project to extend service to unserved potential customers, the municipality is required to extend service to said potential customers after the potential customers have paid any required fees, including their required contributions. Grant funds shall be used to reimburse the potential customers or any other person or entity who were contributors for any front contributions, including, but not limited to, the cost of the application, in accordance with the rules of the Public Service Commission, including the rule that reimbursements will not exceed the original amount of the customer contribution.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-24. Acceptance of loans, grants or temporary advances.

(a) Any public service district created pursuant to the provisions of this article is authorized and empowered to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of construction or acquisition of water systems, sewage systems, stormwater systems or stormwater management systems or gas facilities, or all of these, and the other purposes herein authorized, from any authorized agency or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances, including the interest thereon, may be repaid out of the proceeds of the bonds authorized to be

issued under the provisions of this article, the revenues of the said water system, sewage system, stormwater system or associated stormwater management system or gas facilities, or grants to the public service district from any authorized agency or from the United States of America or any federal or public agency or department of the United States or from any private agency, corporation or individual or from any combination of such sources of payment, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any authorized agency or the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual. Any other provisions of this article to the contrary notwithstanding, interest on any such loans or temporary advances may be paid from the proceeds thereof until the maturity of such notes or other negotiable instrument.

(b) When potential customers apply for water or sewer service from the public service district, the public service district must determine the cost of the extension and the customer cost responsibility for the cost of the extension (customer share) in accordance with rules of the Public Service Commission. Once the cost and customer share are determined, if those potential customers wish to continue, and they, or any person or entity desiring to do so, provide an up-front customer contribution for the customer share of the extension costs, then the public service district shall extend service pursuant to the rules of the Public Service Commission. If, before continuing with the extension, the potential customers request that the public service district make application for grant funds to finance the total costs of the extension, then the potential customers, or any person or entity desiring to do so, must provide funds to cover the cost of the application, and, once provided, the public service district shall then apply through the West Virginia Infrastructure and Jobs Development Council for any available funding.

(c) Notwithstanding any other provisions of this code to the contrary, if a grant or grants are awarded that cover the total costs for a project to extend service to unserved potential customers, the public service district is required to extend service to said potential customers after the potential customers have paid any required fees, including their required contributions. Grant funds shall be used to reimburse the potential customers or any other person or entity who were contributors for any front contributions, including, but not limited to, the cost of the application, in accordance with the rules of the Public Service Commission, including the rule that reimbursements will not exceed the original amount of the customer contribution.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 26. WATER RESOURCES PROTECTION ACT.

§22-26-8. State Water Resources Management Plan; powers and duty of secretary.

(a) The secretary shall oversee the development of a State Water Resources Management Plan to be completed no later than November 30, 2013. The plan shall be reviewed and revised as needed after its initial adoption. The plan shall be developed with the cooperation and involvement of local and state agencies with regulatory, research or other functions relating to water resources including, but not limited to, those agencies and institutions of higher education set forth in section three of this article and a representative of large-quantity users. The State Water Resources Management Plan shall be developed utilizing the information obtained pursuant to said section and any other relevant information available to the secretary.

(b) The secretary shall develop definitions for use in the State Water Resources Management Plan for terms that are defined differently by various state and federal governmental entities as well as other terms necessary for implementation of this article.

(c) The secretary shall continue to develop and obtain the following:

(1) An inventory of the surface water resources of each region of this state, including an identification of the boundaries of significant watersheds and an estimate of the safe yield of sources for consumptive and nonconsumptive uses during periods of normal conditions and drought.

(2) A listing of each consumptive or nonconsumptive withdrawal by a large-quantity user, including the amount of water used, location of the water resources, the nature of the use, location of each intake and discharge point by longitude and latitude where available and, if the use involves more than one watershed or basin, the watersheds or basins involved and the amount transferred.

(3) A plan for the development of the infrastructure necessary to identify the groundwater resources of each region of this state, including an identification of aquifers and groundwater basins and an assessment of their safe yield, prime recharge areas, recharge capacity, consumptive limits and relationship to stream base flows.

(4) After consulting with the appropriate state and federal agencies, assess and project the existing and future nonconsumptive use needs of the water resources required to serve areas with important or unique natural, scenic, environmental or recreational values of national, regional, local or statewide significance, including national and state parks; designated wild, scenic and recreational rivers; national and state wildlife refuges; and the habitats of federal and state endangered or threatened species.

(5) Assessment and projection of existing and future consumptive use demands.

(6) Identification of potential problems with water availability or conflicts among water uses and users including, but not limited to, the following:

(A) A discussion of any area of concern regarding historical or current conditions that indicate a low-flow condition or where a drought or flood has occurred or is likely to occur that threatens the beneficial use of the surface water or groundwater in the area; and

(B) Current or potential in-stream or off-stream uses that contribute to or are likely to exacerbate natural low-flow conditions to the detriment of the water resources.

(7) Establish criteria for designation of critical water planning areas comprising any significant hydrologic unit where existing or future demands exceed or threaten to exceed the safe yield of available water resources.

(8) An assessment of the current and future capabilities of public water supply agencies and private water supply companies to provide an adequate quantity and quality of water to their service areas.

(9) An assessment of floodplain and stormwater management problems.

(10) Efforts to improve data collection, reporting and water monitoring where prior reports have found deficiencies.

(11) A process for identifying projects and practices that are being, or have been, implemented by water users that reduce the amount of consumptive use, improve efficiency in water use, provide for reuse and recycling of water, increase the supply or storage of water or preserve or increase groundwater recharge and a recommended process for providing appropriate positive

recognition of those projects or practices in actions, programs, policies, projects or management activities.

(12) An assessment of both structural and nonstructural alternatives to address identified water availability problems, adverse impacts on water uses or conflicts between water users, including potential actions to develop additional or alternative supplies, conservation measures and management techniques.

(13) A review and evaluation of statutes, rules, policies and institutional arrangements for the development, conservation, distribution and emergency management of water resources.

(14) A review and evaluation of water resources management alternatives and recommended programs, policies, institutional arrangements, projects and other provisions to meet the water resources needs of each region and of this state.

(15) Proposed methods of implementing various recommended actions, programs, policies, projects or management activities.

(d) The State Water Resources Management Plan shall consider:

(1) The interconnections and relationships between groundwater and surface water as components of a single hydrologic resource.

(2) Regional or watershed water resources needs, objectives and priorities.

(3) Federal, state and interstate water resource policies, plans, objectives and priorities, including those identified in statutes, rules, regulations, compacts, interstate agreements or comprehensive plans adopted by federal and state agencies and compact basin commissions.

(4) The needs and priorities reflected in comprehensive plans and zoning ordinances adopted by a county or municipal government.

(5) The water quantity and quality necessary to support reasonable and beneficial uses.

(6) A balancing and encouragement of multiple uses of water resources, recognizing that all water resources of this state are capable of serving multiple uses and human needs, including multiple uses of water resources for reasonable and beneficial uses.

(7) The distinctions between short-term and long-term conditions, impacts, needs and solutions to ensure appropriate and cost-effective responses to water resources issues.

(8) Application of the principle of equal and uniform treatment of all water users that are similarly situated without regard to established political boundaries.

(e) Each November, the secretary shall report to the Joint Legislative Oversight Commission on State Water Resources on the implementation of the State Water Resources Management Plan.

(f) The State Water Resources Management Plan is adopted. Persons identified as large-quantity users prior to the effective date of this subsection shall report actual monthly water withdrawals, or monthly water withdrawals by a method approved by the secretary, for the

previous calendar year by March 31 of each succeeding year. Persons identified as large-quantity users on or after the effective date of this subsection shall submit their initial annual report no later than March 31, 2016, and subsequent annual reports by March 31 of each year thereafter.

(g) Any commercial entity that withdraws groundwater in a quantity that would qualify it as a large-quantity user, as that term is defined in §22-26-2 of this code, in an area that lies primarily in karst terrain, as that term is defined in §22-6A-4 of this code, and that bottles that water for resale, directly or indirectly, shall submit to the secretary quarterly a report of the groundwater based on remote groundwater monitoring wells, which shall be installed in conjunction with the United States Geological Survey prior to any withdrawal of water and which shall be made remotely monitorable by the department, to show that the large quantity user's operations are not having a negative effect on already-existing users and uses of groundwater in that area. If at any time the quarterly reports or remote monitoring show that the large-quantity user's operations are negatively affecting already-existing users and uses of groundwater in that area, the secretary is authorized to restrict the volume of groundwater that may be withdrawn by the large quantity user's operations to an amount that remediates the negative effect on already-existing users and uses.

(h) The provisions of subsection (g) of this section do not apply to any existing commercial entities that bottle water for resale, directly or indirectly, nor to any expansion of their current operations.

At the request of Senator Martin, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 3174) was advanced to third reading with the Finance committee amendment pending and the right reserved to consider other amendments to the bill on that reading.

Eng. Com. Sub. for House Bill 3181, Allow all law enforcement officers to purchase gun upon retirement.

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

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

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

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-15. Purchase of service handgun by law-enforcement officers separating honorably.

(a) Every chief executive, law-enforcement officer, or law-enforcement official in the state who separates from his or her employing agency or ends his or her elected term of office shall be given the opportunity to purchase his or her issued service handgun at cost. The employing agency may sell the service handgun to the chief executive, law-enforcement officer, or law-enforcement official, only upon determining that the chief executive, law-enforcement officer, or law-enforcement official is separating honorably and is not the subject of any pending disciplinary complaints, investigations, or actions by the employing agency or the subcommittee.

(b) Notwithstanding the provisions of subsection (a) of this section, the employing agency may not sell a service handgun to any chief executive, law-enforcement officer, or law-enforcement official whom the employing agency:

- (1) Knows is prohibited from possessing a firearm by state or federal law;
- (2) Reasonably believes to be mentally incapacitated; or
- (3) Reasonably believes would constitute a danger to any person or the community.

(c) This section does not supersede, limit, or amend any specific provision of this code authorizing the award of a firearm to a law-enforcement officer of this state.

(d) For purposes of this section, "handgun" means a pistol or revolver as those terms are defined in §61-7-2 of this code.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-3. Carrying a deadly weapon without provisional license or other authorization by persons under ~~twenty-one~~ 18 years of age; penalties.

(a) Any person under ~~twenty-one~~ 18 years of age and not otherwise prohibited from possessing firearms under section seven of this article who carries a concealed deadly weapon, without a state license or other lawful authorization established under the provisions of this code, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 and may be imprisoned in jail for not more than 12 months for the first offense; but upon conviction of a second or subsequent offense, he or she is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than five years and fined not less than \$1,000 nor more than \$5,000.

(b) The prosecuting attorney in all cases shall ascertain whether or not the charge made by the grand jury is a first offense or is a second or subsequent offense and, if it is a second or subsequent offense, it shall be so stated in the indictment returned, and the prosecuting attorney shall introduce the record evidence before the trial court of such second or subsequent offense and may not be permitted to use discretion in introducing evidence to prove the same on the trial.

~~§61-7-6. Exceptions as to prohibitions against carrying concealed handguns for persons at least eighteen years of age and fewer than twenty-one years of age; exemptions~~ Exemptions from licensing fees.

~~(a) The provisions in section three of this article do not apply to any person at least eighteen years of age and fewer than twenty-one years of age who is:~~

- ~~(1) Carrying a deadly weapon upon his or her own premises;~~
- ~~(2) Carrying a firearm, unloaded, from the place of purchase to his or her home, residence or place of business or to a place of repair and back to his or her home, residence or place of business; or~~

~~(3) Possessing a firearm while hunting in a lawful manner or while traveling from his or her home, residence or place of business to a hunting site and returning to his or her home, residence or place of business;~~

~~(4) A member of a properly organized target shooting club authorized by law to obtain firearms by purchase or requisition from this state or from the United States for the purpose of target practice from carrying any pistol, as defined in this article, unloaded, from his or her home, residence or place of business to a place of target practice and from any place of target practice back to his or her home, residence or place of business, for using any such weapon at a place of target practice in training and improving his or her skill in the use of the weapons;~~

~~(5) A law enforcement officer or law enforcement official or chief executive as defined in section one, article twenty nine, chapter thirty of this code;~~

~~(6) An employee of the West Virginia Division of Corrections duly appointed pursuant to section eleven c, article one, chapter twenty five of this code while the employee is on duty;~~

~~(7) A member of the United States armed forces, reserve or National Guard;~~

~~(8) A resident of another state who holds a valid permit or license to possess or carry a handgun issued by a state or a political subdivision subject to the provisions and limitations set forth in section six a of this article;~~

~~(9) A federal law enforcement officer or federal police officer authorized to carry a weapon in the performance of the officer's duty; and~~

~~(10) A parole officer appointed pursuant to section fourteen, article twelve, chapter sixty-two of this code in the performance of his or her duties.~~

~~(b) The following judicial officers and prosecutors and staff are exempt from paying any application fees or licensure fees required under this article. However, they shall make application and satisfy all licensure and handgun safety and training requirements to obtain a license as set forth in section four of this article:~~

~~(1) Any justice of the Supreme Court of Appeals of West Virginia;~~

~~(2) Any circuit judge;~~

~~(3) Any retired justice or retired circuit judge designated senior status by the Supreme Court of Appeals of West Virginia;~~

~~(4) Any family court judge;~~

~~(5) Any magistrate;~~

~~(6) Any prosecuting attorney;~~

~~(7) Any assistant prosecuting attorney; or~~

~~(8) Any duly appointed investigator employed by a prosecuting attorney.~~

§61-7-7. Persons prohibited from possessing firearms; classifications; right of nonprohibited persons over ~~twenty-one~~ 18 years of age to carry concealed deadly weapons; offenses and penalties; reinstatement of rights to possess; offenses; penalties.

(a) Except as provided in this section, no person shall possess a firearm, as such is defined in §61-7-2 of this code, who:

(1) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(2) Is habitually addicted to alcohol;

(3) Is an unlawful user of or habitually addicted to any controlled substance;

(4) Has been adjudicated to be mentally incompetent or who has been involuntarily committed to a mental institution pursuant to the provisions of §27-1-1 *et seq.* of this code or in similar law of another jurisdiction: *Provided*, That once an individual has been adjudicated as a mental defective or involuntarily committed to a mental institution, he or she shall be duly notified that they are to immediately surrender any firearms in their ownership or possession: *Provided, however*, That the mental hygiene commissioner or circuit judge shall first make a determination of the appropriate public or private individual or entity to act as conservator for the surrendered property;

(5) Is an alien illegally or unlawfully in the United States;

(6) Has been discharged from the armed forces under dishonorable conditions;

(7) Is subject to a domestic violence protective order that:

(A) Was issued after a hearing of which such person received actual notice and at which such person had an opportunity to participate;

(B) Restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) By its terms explicitly prohibits the use, attempted use or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(8) Has been convicted of a misdemeanor offense of assault or battery either under the provisions of §61-2-28 of this code or the provisions of §61-2-9(b) or §61-2-9(c) of this code or a federal or state statute with the same essential elements in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense or has been convicted in any court of any jurisdiction of a comparable misdemeanor crime of domestic violence.

Any person who violates the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 or confined in the county jail for not less than 90 days nor more than one year, or both.

(b) Notwithstanding the provisions of subsection (a) of this section, any person:

(1) Who has been convicted in this state or any other jurisdiction of a felony crime of violence against the person of another or of a felony sexual offense; or

(2) Who has been convicted in this state or any other jurisdiction of a felony controlled substance offense involving a Schedule I controlled substance other than marijuana, a Schedule II or a Schedule III controlled substance as such are defined in §60A-2-204, §60A-2-205, and §60A-2-206 of this code and who possesses a firearm as such is defined in section two of this article shall be guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not more than five years or fined not more than \$5,000, or both. The provisions of subsection (f) of this section shall not apply to persons convicted of offenses referred to in this subsection or to persons convicted of a violation of this subsection.

(c) Any person may carry a concealed deadly weapon without a license therefor who is:

(1) At least ~~twenty-one~~ 18 years of age;

(2) A United States citizen or legal resident thereof;

(3) Not prohibited from possessing a firearm under the provisions of this section; and

(4) Not prohibited from possessing a firearm under the provisions of 18 U. S. C. § 922(g) or (h).

(d) As a separate and additional offense to the offense provided for in subsection (a) of this section, and in addition to any other offenses outlined in this code, and except as provided by subsection (e) of this section, any person prohibited by subsection (a) of this section from possessing a firearm who carries a concealed firearm is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not more than three years or fined not more than \$5,000, or both.

(e) As a separate and additional offense to the offense described in subsection (b) of this section, and in addition to any other offenses outlined in this code, any person prohibited by subsection (b) of this section from possessing a firearm who carries a concealed firearm is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not more than 10 years or fined not more than \$10,000, or both.

(f) Any person prohibited from possessing a firearm by the provisions of subsection (a) of this section may petition the circuit court of the county in which he or she resides to regain the ability to possess a firearm and if the court finds by clear and convincing evidence that the person is competent and capable of exercising the responsibility concomitant with the possession of a firearm, the court may enter an order allowing the person to possess a firearm if such possession would not violate any federal law: *Provided*, That a person prohibited from possessing a firearm by the provisions of subdivision (4), subsection (a) of this section may petition to regain the ability to possess a firearm in accordance with the provisions of §61-7A-5 of this code.

(g) Any person who has been convicted of an offense which disqualifies him or her from possessing a firearm by virtue of a criminal conviction whose conviction was expunged or set

aside or who subsequent thereto receives an unconditional pardon for said offense shall not be prohibited from possessing a firearm by the provisions of the section.

The bill (Eng. Com. Sub. for H. B. 3181), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 3209, To provide at least one counselor for every 250 students in public schools and public charter schools in this state.

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

Eng. House Bill 3263, Relating to providing notification of utility service disruption to its' customers.

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:

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

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-22. Service outage communication plans.

(a) Each utility shall have an outage communication plan in place to notify customers of any planned and any unexpected disruption of utility services. Such outage communication plan shall, at a minimum, include a methodology for advance notification to all affected customers for planned service disruptions, methods of communication, and notification content requirements concerning the outage, including an estimate of the duration and end of the outage.

(b) Each utility shall file its outage communication plan with the commission.

The bill (Eng. H. B. 3263), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 3297, Establishing the Washington Center for Civics, Culture, and Statesmanship at West Virginia University.

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

At the request of Senator Martin, 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 3336, Well Plugging methods.

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

Eng. Com. Sub. for House Bill 3338, Allow child witness testify remotely in situations deemed traumatic by judge.

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

Eng. House Bill 3344, Relating to the establishment of a grant program to fund the United States Food and Drug Administration's drug development trials with ibogaine.

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 and adopted:

On page 1, section 1, line 1, by striking out the words "Secretary of Health" and inserting in their place "Secretary of the Department of Human Services".

The bill (Eng. H. B. 3344), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 3411, Relating to commissions; removing the legislative members; and eliminating expired commissions.

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 7. LEGISLATIVE BUILDING COMMISSION.

§4-7-1. Definitions.

[Repealed.]

§4-7-2. Legislative building commission created; its composition; appointment of members; vacancies; election of officers; compensation and expenses of members.

[Repealed.]

§4-7-3. Powers and duties of commission generally.

[Repealed.]

§4-7-4. Commission granted power of eminent domain.

[Repealed.]

§4-7-5. Funds and expenditures of commission.

[Repealed.]

§4-7-6. Deposit and disbursement of funds of commission; security for deposits; audits.

[Repealed.]

§4-7-7. Contracts for construction of state legislative building, etc.; to be secured by bond; competitive bids required for contracts exceeding \$2,000; procedure.

[Repealed.]

§4-7-8. Management and control of state legislative building.

[Repealed.]

§4-7-9. Article not authority to create state debt.

[Repealed.]

§4-7-10. This article, article six, chapter five, and the state Constitution are only restrictions on construction, etc., of building.

[Repealed.]

§4-7-11. Severability.

[Repealed.]

ARTICLE 10. PERFORMANCE REVIEW ACT.

§4-10-3. Definitions.

As used in this article, unless the context clearly indicates a different meaning:

(a) "Agency" or "state agency" means a state governmental entity, including any bureau, department, division, commission, agency, committee, office, board, authority, subdivision, program, council, advisory body, cabinet, panel, system, task force, fund, compact, institution, survey, position, coalition or other entity in the state of West Virginia.

(b) "Agency review" means a review performed on an agency at the direction of the President of the Senate, the Speaker of the House of Delegates, or by recommendation of the joint standing committee pursuant to the provisions of this article.

(c) "Committee" means the Joint Standing Committee on Government ~~Operations~~.
Organization.

(d) "Compliance review" means a review for compliance with recommendations contained in a previous agency review or regulatory board review conducted pursuant to the provisions of this article and may include further inquiry of other issues as directed by the President, the Speaker, the committee, ~~the joint standing committee~~, or the Joint Committee on Government and Finance.

(e) "Department" means the departments created within the executive branch, headed by a secretary appointed by the Governor, as authorized by the Code of West Virginia.

(f) "Department presentation" means a presentation by a department pursuant to the provisions of this article made at the direction of the President of the Senate or the Speaker of the House of Delegates.

(g) "Division" means the Performance Evaluation and Research Division, the Post Audit Division, or any division of the Legislative Auditor's Office.

~~(h) "Joint standing committee" means the Joint Standing Committee on Government Organization.~~

(i) "Privatize" means a contract to procure the services of a private vendor to provide a service that is similar to, or in lieu of, a service provided by a state agency.

(j) "Regulatory Board" means a board that regulates professions and occupations, created under the provisions of chapter 30 of this code.

~~(k) "Regulatory Board Review" means a review performed on a regulatory board pursuant to the provisions of this article.~~

§4-10-4. Joint Committee on Government Operations.

[Repealed.]

§4-10-5. Powers and duties of the committee. ~~and joint standing committee.~~

(a) To carry out the duties set forth in this article, the committee, ~~or the joint standing committee~~, any authorized employee of the committee, ~~the joint standing committee~~, the Legislative Auditor or any employee of the division working at the direction of the committee ~~or the joint standing committee~~, shall have access, including copying, to all records of every state agency in West Virginia.

(b) When furnishing information, agencies shall provide the information in the format in which it is requested, if the request is specific as to a preferred format.

(c) The committee ~~or the joint standing committee~~ may hold public hearings in furtherance of the purposes of this article, at such times and places within the state as desired. A member of the committee ~~or the joint standing committee~~ may administer oaths to persons testifying at such hearings or meetings.

(d) The committee ~~or the joint standing committee~~ may issue a subpoena, with the signature of either cochair of the committee ~~or the joint standing committee~~ and served in the manner provided by law, to summon and compel the attendance of witnesses and their examination under oath and the production of all books, papers, documents and records necessary or convenient to be examined and used by the committee ~~or joint standing committee~~ in the performance of its duties.

(e) If any witness subpoenaed to appear at any hearing or meeting refuses or fails to appear or to answer questions put to him or her, or refuses or fails to produce books, papers, documents or records within his or her control when the same are demanded, the committee ~~or the joint standing committee~~, in its discretion, may enforce obedience to its subpoena by attachment, fine or imprisonment, as provided in article one of this chapter, or may report the facts to the circuit court of Kanawha County or any other court of competent jurisdiction and the court shall compel obedience to the subpoena as though it had been issued by the court.

(f) Witnesses subpoenaed to attend hearings or meetings pursuant to the provisions of this article, except officers or employees of the state, shall be allowed the same mileage and per diem as is allowed witnesses before any petit jury.

(g) The committee ~~or the joint standing committee~~, subject to the approval of the Joint Committee on Government and Finance, may employ such persons as it considers necessary to carry out the duties and responsibilities under this article and may contract for outside expertise in conducting reviews.

(h) The committee ~~or the joint standing committee~~ may collect, and the agency or regulatory board shall promptly pay, the costs associated with conducting the reviews performed under this article, upon presentation of a statement for the costs incurred. All money received by the committee ~~or the joint standing committee~~ from this source shall be expended only for the purpose of covering the costs associated with such services, unless otherwise directed by the Legislature.

§4-10-6. Department presentation; timing and scope.

(a) At the direction of the President of the Senate or the Speaker of the House of Delegates, and upon notification from the division, a department shall prepare and make a presentation to the ~~joint standing committee~~ and the committee. The purpose of the presentation is to inform the Legislature as to the programs, activities, and financial situation of the department and to update and amend any information previously presented to the ~~joint standing committee~~ or committee pursuant to this section. The presentation shall include:

- (1) A departmental chart designating each agency under the purview of the department;
- (2) An analysis of the department's internal performance measures and self-assessment systems; and
- (3) For each agency under the purview of the department, the following:
 - (A) The mission, goals, and functions of the agency;
 - (B) The statutory or other legal authority under which the agency operates;
 - (C) The number of employees of the agency for the immediate past 10 years;
 - (D) The budget for the agency for the immediate past 10 years;
 - (E) Any potential or actual loss of revenue due to operations, changes in law, or any other reason;
 - (F) The extent to which the agency has operated in the public interest;
 - (G) The extent to which the agency has complied with state personnel practices, including affirmative action requirements;
 - (H) The extent to which the agency has encouraged public participation in the making of its rules and decisions and has encouraged interested persons to report to it on the impact of its rules and decisions on the effectiveness, economy, and availability of services that it has provided;

(I) The efficiency with which public inquiries or complaints regarding the activities of the agency have been processed and resolved;

(J) The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency to better serve the interests of the public and to comply with the factors enumerated in this subsection; and

(K) A recommendation as to whether the agency should be continued, consolidated, or terminated.

§4-10-7. Agency review.

(a) The division shall conduct agency reviews of one or more state agencies each year. An agency review shall be conducted of each state agency at least once every 15 years. An agency review may be conducted more frequently than once in 15 years and may be conducted in the discretion, and at the direction, of the President of the Senate, the Speaker of the House of Delegates, or by recommendation of the joint standing committee.

(b) The agency review may include, but is not limited to:

(1) An identification and description of the agency under review;

(2) The number of employees of the agency for the immediate past 10 years;

(3) The budget for the agency for the immediate past 10 years;

(4) Whether the agency is effectively and efficiently carrying out its statutory duties or exercising its legal authority;

(5) Whether the activities of the agency duplicate or overlap with those of other agencies and, if so, how these activities could be consolidated;

(6) A cost-benefit analysis, as described in subsection (d) of this section, on state services that are privatized or contemplated to be privatized;

(7) An assessment of the utilization of information technology systems within the agency, including interagency and intra-agency communications;

(8) An analysis of any issues raised by any presentation by the department under whose purview the agency falls made pursuant to the provisions of this article;

(9) An analysis of any other issues as the committee, ~~the joint standing committee~~, the President of the Senate, or the Speaker of the House of Delegates may direct; and

(10) A recommendation as to whether the agency under review should be continued, consolidated, or terminated.

(c) An agency may be subject to a compliance review pursuant to the provisions of this article.

(d) A cost-benefit analysis authorized by this section may include:

(1) The tangible benefits of privatizing the service;

(2) Any legal impediments that may limit or prevent privatization of the service;

(3) The availability of multiple qualified and competitive private vendors; and

(4) A cost comparison, including total fixed and variable, direct and indirect, costs of the current governmental operation and the private vendor contract.

§4-10-9. Regulatory board review.

(a) The division shall conduct regulatory board reviews on each regulatory board to ascertain if there is a need for the continuation, consolidation, or termination of the regulatory board as one of its duties.

(b) A regulatory board review shall be performed on each regulatory board at least once every 12 years. A regulatory board may be subject to a compliance review pursuant to the provisions of this article.

(c) When a new regulatory board is created, a date for a regulatory board review shall be included in the act that creates the board, within 12 years of the effective date of the act.

(d) The regulatory board review may include:

(1) Whether the board complies with the policies and provisions of chapter 30 of this code and other applicable laws and rules;

(2) Whether the board follows a disciplinary procedure which observes due process rights and protects the public interest;

(3) Whether the basis or facts that necessitated the initial licensing or regulation of a profession or occupation have changed, or other conditions have arisen that would warrant increased or decreased regulation;

(4) Whether the composition of the board adequately represents the public interest and whether the board encourages public participation in its decisions rather than participation only by the industry and individuals it regulates;

(5) Whether statutory changes are necessary to improve board operations to enhance the public interest;

(6) An analysis of any other issues the committee, ~~the joint standing committee~~, the President of the Senate, the Speaker of the House of Delegates, or by recommendation of the joint standing committee.

(7) A recommendation as to whether the regulatory board under review should be continued, consolidated, or terminated.

§4-10-11. Compliance review.

(a) After an agency review or a regulatory board review, if the committee ~~or the joint standing committee~~ finds that an agency or a regulatory board needs further review, then the committee ~~or the joint standing committee~~ may request a compliance review.

(b) If the committee ~~or the joint standing committee~~ requests a compliance review for an agency or a regulatory board, then it must state, in writing, the specific reasons for the compliance review and its expected completion date.

§4-10-13. Disposition of agency or regulatory board assets, equipment and records after termination.

(a) On or before June 30 of the wind-up year, the terminated agency or regulatory board shall file a written statement with the Secretary of the Department of Administration and the division describing the disposition of its funds, assets, equipment and records.

(b) The division shall review the statement of the terminated agency or regulatory board and report the results of its review to the committee. ~~and the joint standing committee.~~

(c) Any unexpended funds of the terminated agency or regulatory board shall revert to the fund from which they were appropriated or, if that fund is abolished, to the General Revenue Fund.

(d) All remaining assets and equipment of a terminated agency or regulatory board shall be transferred to the secretary of the department of which it was a part or to the state agency for surplus property in the Department of Administration.

(e) The records of a terminated agency or regulatory board shall be deposited with the Department of Administration.

ARTICLE 13. WEST VIRGINIA SESQUICENTENNIAL OF THE AMERICAN CIVIL WAR COMMISSION AND FUND.

§4-13-1. Findings; West Virginia Sesquicentennial of the American Civil War Commission established; purpose.

[Repealed.]

§4-13-2. Membership; terms; filling vacancies; election of chair and vice chair.

[Repealed.]

§4-13-3. Expense reimbursement.

[Repealed.]

§4-13-4. Quorum; meetings.

[Repealed.]

§4-13-5. Advisory council.

[Repealed.]

§4-13-6. Powers; duties; limitation on duration of contracts.

[Repealed.]

§4-13-7. Termination of the commission.

[Repealed.]

ARTICLE 14. LEGISLATIVE OVERSIGHT COMMISSION ON DEPARTMENT OF TRANSPORTATION ACCOUNTABILITY.

§4-14-1. Findings, purpose and intent.

(a) The Legislature hereby finds and declares that:

(1) Investment in infrastructure is crucial to the well-being of West Virginians and West Virginia businesses;

(2) The state must spend funds wisely on infrastructure in order to get the best return on investment and must make long-term plans for investment;

(3) The federal government is an unpredictable and unreliable partner in providing consistent funding for infrastructure investment;

(4) The Legislature directed a Division of Highways performance and efficiency audit in 2015; and

(5) In order to maintain proper oversight to ensure that sufficient transportation planning is made, funds are spent wisely and efficiently, and the Department of Transportation is functioning appropriately, it shall report to the Legislative Oversight Commission on Department of Transportation Accountability. ~~is hereby created.~~

(b) It is the intent of the Legislature that all actions taken pursuant to the provisions of this article by the Legislature and the Department of Transportation serve the following core set of principles:

(1) That all Department of Transportation infrastructure investments be coordinated to maximize efficiencies and minimize cost thereby addressing the needs of the citizens more effectively;

(2) That communication be facilitated among the various agencies within the Department of Transportation and between the department and the Legislature;

(3) That policy changes, not made by legislative rule, be discussed with the commission for purposes of coordinating those policies with stated goals;

(4) That programs or policies implemented in accordance with federal mandates be communicated to the commission;

(5) That in developing and implementing programs with private or federal grant moneys, the various agencies communicate their efforts to the commission to ensure and facilitate future state funding; and

(6) That any Department of Transportation agencies exempted from rule-making review by federal or state statutes advise the commission of program changes which may affect infrastructure investment in West Virginia.

§4-14-2. Definitions.

As used in this article:

(1) "Agency" means each agency, authority, board, committee, commission or division of the Department of Transportation;

(2) "Commission" means the Legislative Oversight Commission on Transportation Accountability; ~~as created in section three of this article;~~ and

(3) "Department" means the Department of Transportation.

§4-14-3. Creation of a Legislative Oversight Commission on Department of Transportation Accountability.

(a) There is hereby created a joint commission of the Legislature known as the Legislative Oversight Commission on Department of Transportation Accountability. The commission shall be composed of an equal number of senators and delegates, as appointed by the President of the Senate and the Speaker of the House of Delegates. ~~seven members of the Senate appointed by the President of the Senate and seven members of the House of Delegates appointed by the Speaker of the House of Delegates. No more than four of the seven members appointed by the President of the Senate and the Speaker of the House of Delegates, respectively, may be members of the same political party. In addition, the President of the Senate and Speaker of the House of Delegates shall be *ex officio* nonvoting members of the commission. The co-chairs of the commission shall be the chair of the Senate Transportation and Infrastructure Committee and the chair of the House Roads and Transportation Committee. At least one of the Senate appointees and at least one of the House of Delegates appointees shall be a member of the committee on finance of the Senate and House of Delegates, respectively. The members shall serve until their successors shall have been appointed as heretofore provided.~~

(b) Members of the commission shall receive such compensation and expenses as provided in article two-a, chapter four of this code, subject to the approval by the Joint Committee on Government and Finance. ~~Such expenses and all other expenses including those incurred in the employment of legal, technical, investigative, clerical, stenographic, advisory and other personnel shall be paid from an appropriation to be made expressly for the Legislative Oversight Commission on Department of Transportation Accountability: *Provided*, That if no such appropriation be made, such expenses shall be paid from the appropriation under Fund No. 0175 for Joint Expenses created pursuant to the provisions of said chapter: *Provided, however*, That no expense of any kind payable under the account for joint expenses shall be incurred unless first approved by the Joint Committee on Government and Finance.~~

(c) ~~The commission shall meet at any time both during sessions of the Legislature and in the interim or as often as may be necessary.~~

(d) ~~The President of the Senate and Speaker of the House of Delegates shall assign such staff as may be deemed necessary to aid the commission in carrying out the provisions of this article.~~

ARTICLE 15. JOINT LEGISLATIVE COMMITTEE ON FLOODING.

§4-15-1. Establishing a Joint Legislative Committee on Flooding.

[Repealed.]

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF
THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

ARTICLE 24. WEST VIRGINIA FOREST MANAGEMENT REVIEW COMMISSION.

§5-24-3. Commission continued; composition; appointment of members.

The West Virginia Forest Management Review Commission ~~heretofore created~~ is hereby continued for the purposes set forth in this article. This commission shall be comprised of an equal number of senators and delegates, as appointed by the President of the Senate and the Speaker of the House of Delegates, and five members from the West Virginia Senate, a cochairman and four members to be appointed by the Senate president, and five members of the House of Delegates, a cochairman and four members to be appointed by the speaker; four members to be representatives from the commercial forest industry in the state, and three members of the public-at-large. The ~~seven nonlegislative~~ members shall be appointed by the Governor, with the advice and consent of the Senate. ~~Two members shall be appointed to serve a term of two years; three members shall be appointed to serve a term of four years; and two members shall be appointed to serve a term of six years.~~ The successor of each such appointed member shall be appointed for an overlapping term of six years, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which the predecessor was appointed shall be appointed only to the remainder of such term. Each board member shall serve until the appointment of his or her successor.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.**ARTICLE 2B. WEST VIRGINIA WORKFORCE INVESTMENT ACT.****§5B-2B-2. Definitions.**

As used in this article, the following terms have the following meanings, unless the context clearly indicates otherwise:

"Board" means the West Virginia Workforce Development Board.

"Commission" or "Legislative Oversight Commission" means the Legislative Oversight Commission on Workforce Investment for Economic Development. ~~created pursuant to section seven of this article.~~

"Local area" means a local workforce investment area.

"Local board" means a local workforce development board.

"Team" means the workforce investment interagency collaborative team.

"WIOA" means the Workforce Innovation and Opportunity Act, 29 U. S. C. §3101, *et seq.*

§5B-2B-4a. Report to Legislature.

[Repealed.]

§5B-2B-7. Legislative oversight commission on workforce investment for economic development.

[Repealed.]

ARTICLE 3. WEST VIRGINIA ECONOMIC DEVELOPMENT STRATEGY: A VISION SHARED.**§5B-3-2. ~~Creation of the~~ The Joint Commission on Economic Development.**

(a) ~~The joint commission on economic development is hereby established. The commission shall be comprised of an equal number of senators and delegates, as appointed by the President of the Senate and the Speaker of the House of Delegates. The commission shall be composed of not more than twenty-four members as follows:~~

- ~~(1) The chairs of the Senate and House of Delegates finance committees;~~
- ~~(2) The chairs of the Senate and House of Delegates judiciary committees;~~
- ~~(3) The chairs of the Senate and House of Delegates education committees;~~

~~(4) Not more than nine additional members of the Senate appointed by the President of the Senate, with at least one member representing health; and~~

~~(5) Not more than nine additional members of the House of Delegates appointed by the Speaker of the House of Delegates, with at least one member representing health.~~

~~(b) Any vacancies occurring in the membership of the commission shall be filled in the same manner as the original appointment for the position being vacated. The vacancy shall not affect the power of the remaining members to perform the duties of the commission.~~

~~(c)~~ The commission may explore how West Virginia can:

(1) Invest in systems that build workforce skills and promote lifelong learning to ensure a competitive workforce;

(2) Enhance the infrastructure, communications and transportation needed to support the knowledge-based industries and electronic commerce;

(3) Reorganize government to deliver services more efficiently, using technology, privatization and partnerships with the private sector;

(4) Align state tax systems to meet the demands of the twenty-first century economy;

(5) Develop more uniform regulatory and tax systems to reduce complexity, eliminate market distortions and better protect consumers;

(6) Support entrepreneurs by streamlining business regulations, providing timely decisions and assisting firms in their search for venture capital;

(7) Promote university policies that encourage research and development and build intellectual infrastructure;

(8) Address quality-of-life concerns to attract new businesses and workers; and

(9) Accomplish the goals set forth in this article and any other goal related to economic development or workforce investment that the commission considers important.

~~(d)~~(b) The commission may propose legislation necessary to accomplish its goals.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**ARTICLE 6D. WEST VIRGINIA ENTERPRISE RESOURCE PLANNING BOARD.****§12-6D-4. Steering Committee created; powers and authority.**

[Repealed.]

CHAPTER 15. PUBLIC SAFETY.**ARTICLE 9C. WEST VIRGINIA SENTENCING COMMISSION.****§15-9C-1. Legislative findings.**

[Repealed.]

§15-9C-2. Creation of Sentencing Commission; purpose; composition.

[Repealed.]

§15-9C-3. Powers and duties of the commission.

[Repealed.]

§15-9C-4. Objectives of the commission.

[Repealed.]

§15-9C-5. Recommendations to Legislature.

[Repealed.]

§15-9C-6. Sunset.

[Repealed.]

CHAPTER 16. PUBLIC HEALTH.**ARTICLE 29E. LEGISLATIVE OVERSIGHT COMMISSION ON HEALTH AND HUMAN RESOURCES ACCOUNTABILITY.****§16-29E-4. Creation of a Legislative Oversight commission on health and human resources accountability.**

[Repealed.]

CHAPTER 17. ROADS AND HIGHWAYS.**ARTICLE 2B. TOLL ROAD STUDY COMMISSION.****§17-2B-1. Legislative findings and purposes.**

[Repealed.]

§17-2B-2. Toll road study commission created; composition; appointment of members; chairman.

[Repealed.]

§17-2B-3. Compensation and expenses of commission members; expenses of commission.

[Repealed.]

§17-2B-4. Powers and duties of the commission.

[Repealed.]

§17-2B-5. Meetings of the commission; quorum.

[Repealed.]

§17-2B-6. Interpretation of article; termination of commission.

[Repealed.]

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 14. MISCELLANEOUS.

§18B-14-1. Select committee on outcomes-based funding models in higher education.

[Repealed.]

§18B-14-9. Legislative findings; establishment of study committee; membership; recommendations on higher education facilities.

[Repealed.]

CHAPTER 21. LABOR

ARTICLE 5E. EQUAL PAY FOR EQUAL WORK FOR STATE EMPLOYEES.

§21-5E-1. Legislative findings and purpose.

[Repealed.]

§21-5E-2. Definitions.

[Repealed.]

§21-5E-3. Discrimination between sexes in payment of wages for work of comparable character prohibited.

[Repealed.]

§21-5E-4. Employee's right of action against employer.

[Repealed.]

§21-5E-5. Establishment of the Equal Pay Commission; appointment of members.

[Repealed.]

§21-5E-6. Commission's duties; promulgation of rules.

[Repealed.]

CHAPTER 22. ENVIRONMENTAL RESOURCES.**ARTICLE 26. WATER RESOURCES PROTECTION ACT.****§22-26-5. Joint Legislative Oversight Commission on State Water Resources.**

[Repealed.]

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**ARTICLE 1B. COMMISSION ON INTERSTATE COOPERATION.****§29-1B-1. Senate committee on interstate cooperation.**

[Repealed.]

§29-1B-2. House committee on interstate cooperation.

[Repealed.]

§29-1B-3. West Virginia commission on interstate cooperation.

[Repealed.]

§29-1B-4. Terms of Senate and House committees.

[Repealed.]

§29-1B-5. Function of commission.

[Repealed.]

§29-1B-6. Commission may establish delegations and committees.

[Repealed.]

§29-1B-7. Names of committees and commission.

[Repealed.]

CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES ACT.

ARTICLE 3A. HIGHER EDUCATION RULE MAKING.

§29A-3A-11. Creation of a legislative oversight commission on education accountability.

(a) There is hereby created a joint commission of the Legislature known as the Legislative Oversight Commission on Education Accountability to review all legislative rules of the agency and other rules as the commission deems appropriate. The commission shall be composed of an equal number of senator and delegates, as appointed by the President of the Senate and the Speaker of the House of Delegates. ~~six members of the Senate appointed by the President of the Senate and six members of the House of Delegates appointed by the Speaker of the House of Delegates. No more than five of the six members appointed by the President of the Senate and the Speaker of the House of Delegates, respectively, may be members of the same political party. In addition, the President of the Senate and the Speaker of the House of Delegates shall be ex officio nonvoting members of the commission and shall designate the co chairs. At least one of the Senate members and one of the House members shall be members of the committee on education of the Senate and House, respectively, and at least one of the Senate members and at least one of the House members shall be a member of the committee on finance of the Senate and House, respectively. The members shall serve until their successors have been appointed as heretofore provided. Members of the commission shall receive compensation and expenses as provided in §4-2A-1 *et seq.* of this code, subject to approval of the Joint Committee on Government and Finance. ~~Those expenses and all other expenses, including those incurred in the employment of legal, technical, investigative, clerical, stenographic, advisory, and other personnel shall be paid from an appropriation to be made expressly for the Legislative Oversight Commission on Education Accountability, but if no such appropriation is made, the expenses shall be paid from the appropriation under "Account No. 103 for Joint Expenses", but no expense of any kind whatever payable under the account for joint expenses shall be incurred unless first approved by the Joint Committee on Government and Finance. The commission shall meet at any time, both during sessions of the Legislature and in the interim.~~~~

(b) The commission may adopt rules of procedure as it considers necessary for the submission, presentation, and consideration of rules.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-26. Legislative oversight committee.

[Repealed.]

The bill (Eng. Com. Sub. for H. B. 3411), as amended, was then ordered to third reading.

Eng. House Bill 3412, Relating to exemptions from disclosure of certain records; and exempting the legislative branch if it adopts its own rules.

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 1. PUBLIC RECORDS.

§29B-1-1. Declaration of policy.

Pursuant to the fundamental philosophy of the American Constitutional form of representative government which holds to the principle that government is the servant of the people, and not the master of them, it is hereby declared to be the public policy of the State of West Virginia that all persons are, unless otherwise expressly provided by law, entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments of government they have created. To that end, the provisions of this article ~~shall be liberally construed with the view of carrying~~ carry out the above declaration of public policy.

§29B-1-2. Definitions.

As used in this article:

~~(1)~~ "Custodian" means the elected or appointed official charged with administering a public body.

~~(2)~~ "Law-enforcement officer" ~~shall have~~ has the same definition as this term is defined in W.Va. Code §30-29-1 of this code. ~~Provided, That~~ For purposes of this article, "law-enforcement officer" shall additionally include those individuals defined as "chief executive" in ~~W.Va. Code §30-29-1 of this code~~ and "campus police officer" in §18B-4-5 of this code.

~~(3)~~ "Person" includes any natural person, corporation, partnership, firm, or association.

"Private, personal information" includes any:

(1) Personal financial data and banking information;

(2) Personal telephone number, including, but not limited to, home and mobile phone numbers;

(3) Personal email address;

(4) Personal identification number, including, but not limited to, Social Security number and driver's license number;

(5) Date of birth;

(6) Residential address;

(7) Marital status and former legal name;

(8) Calendar, journal, note, and diary entry containing any personal thought or opinion;

(9) Personal electronic device, including all data contained in the device and cloud storage;
and

(10) Personnel, medical and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

~~(4)~~ "Public body" means every executive state officer, agency, department, including the executive, legislative, and judicial departments, ~~division, bureau, board and commission divisions, bureaus, boards, and commissions~~; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other body which is created by state or local authority or which is primarily funded by the state or local authority.

~~(5)~~ "Public record" includes any writing containing information prepared or received by a public body, ~~the content or context of which~~ judged either by content or context, relates to the conduct of the public's business. Public record does not include private, personal information.

~~(6)~~ "Writing" includes any books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics.

~~(7)~~ "Publicly-administered utility enterprise" includes electric power generation, transmission, and distribution systems; water supply and distribution systems; wastewater, including stormwater collection, treatment, and disposal systems of all types; public transportation systems; solid waste collection and disposal systems and facilities; or other public entity providing utility services, excluding airports, which are owned or administered by a governmental entity.

§29B-1-3. Inspection and copying of public record; requests of Freedom of Information Act requests registry.

(a) Every person has a right to inspect or copy any public record of a public body in this state, except as otherwise expressly provided by §29B-1-4 of this code.

(b) A request to inspect or copy any public record of a public body shall be made directly to the custodian of such public record.

(c) The custodian of any public records, unless otherwise expressly provided by statute, shall furnish proper and reasonable opportunities for inspection and examination of the records in his or her office and reasonable facilities for making memoranda or abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them. The custodian of the records may make reasonable rules and regulations necessary for the protection of the records and to prevent interference with the regular discharge of his or her duties. If the records requested exist in magnetic, electronic, or computer form, the custodian of the records shall make copies available on magnetic or electronic media, if so requested.

(d) All requests for information must state with reasonable specificity the information sought. The custodian, upon demand for records made under this statute, shall as soon as is practicable but within a maximum of ~~five~~ 14 days, not including Saturdays, Sundays, or legal holidays:

(1) Furnish copies of the requested information;

(2) Advise the person making the request of the time and place at which he or she may inspect and copy the materials; or

(3) Deny the request stating in writing the reasons for such denial. A denial shall indicate that the responsibility of the custodian of any public records or public body to produce the requested records or documents is at an end, and shall afford the person requesting them the opportunity to institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.

(e) The public body may establish fees reasonably calculated to reimburse it for its actual cost in making reproductions of records. A public body may ~~not~~ charge a reasonable search or retrieval fee ~~or otherwise seek reimbursement~~ based on a man-hour basis as part of costs associated with making reproduction of records.

(f) The Secretary of State shall maintain an electronic data base of notices of requests as required by §29B-1-3a of this code. The database shall be made available to the public via the Internet and shall list each freedom of information request received and the outcome of the request. The Secretary of State shall provide on the website a form for use by a public body to report the results of the freedom of information request, providing the nature of the request and the public body's response thereto, whether the request was granted, and if not, the exemption asserted under §29B-1-4 of this code to deny the request.

§29B-1-3a. Reports to Secretary of State by public bodies.

(a) ~~Beginning January 1, 2016~~ Each public body that ~~is in receipt of~~ receives a freedom of information request in accordance with the provisions of §29B-1-3 of this article shall provide information to the Secretary of State relating to, at a minimum, the nature of the request, the nature of the public body's response, the time-frame that was necessary to comply in full with the request, and the amount of ~~reimbursement~~ charged to the requester for the freedom of information request. ~~Provided, That~~ The public body ~~shall~~ may not provide to the Secretary of State the public records that were the subject of the ~~FOIA~~ request.

(b) Pursuant to §29A-3-1 *et seq.* of this code, the Secretary of State shall propose rules and emergency rules for legislative approval relating to the creation and maintenance of a ~~publically~~ publicly accessible database available on the Secretary of State's website; the establishment of forms and procedures for submission of information to the Secretary of State by the public body; and for other procedures and policies consistent with this section.

§29B-1-4. Exemptions.

(a) ~~There is a presumption of public accessibility to all public records, subject only to~~ The following categories of information ~~which~~ are specifically exempt from disclosure under this article:

(1) Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors;

~~(2) Information of a personal nature such as that kept in a personal, medical, or similar file, if the public disclosure of the information would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in this particular instance: *Provided*, That this article does not preclude an individual from inspecting or copying his or her own personal, medical, or similar file subject to attorney-client privilege, attorney communications for the purpose of providing legal assistance and decision making, and attorney work product, including, but not limited to, notes, journals, research, correspondence, reports, or memoranda to the extent that each contains an attorney's thoughts, opinions, theories, conclusions, or advisory or deliberative material;~~

(3) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination;

(4)(A) Records of law-enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law enforcement; and

(B) Records identifying motor vehicles used, and the agencies using them, for undercover investigation activities conducted by state law-enforcement agencies or other agencies that are authorized by this code to use undercover or unmarked vehicles;

(5) Information specifically exempted from disclosure by statute;

(6) Records, archives, documents, or manuscripts describing the location of undeveloped historic, prehistoric, archaeological, paleontological, and battlefield sites or constituting gifts to any public body upon which the donor has attached restrictions on usage or the handling of which could irreparably damage the record, archive, document, or manuscript;

(7) Information contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions, except those reports which are by law required to be published in newspapers;

(8) Internal information or memoranda; or letters received or prepared by any public body; deliberative or preliminary information; or records that are prepared for internal advisory or decision-making purposes that would not be disclosed in the normal course of business in their current form or stage of a process to individuals in another office, section, department, or unit of similar nature within the same public body;

(9) Records assembled, prepared, or maintained to prevent, mitigate, or respond to terrorist acts or the threat of terrorist acts, the public disclosure of which threaten the public safety or the public health;

(10) Those portions of records containing specific or unique vulnerability assessments, or specific or unique response plans, data, databases, and inventories of goods or materials collected or assembled to respond to terrorist acts; and communication codes or deployment plans of law-enforcement or emergency response personnel;

(11) Specific intelligence information and specific investigative records dealing with terrorist acts, or the threat of a terrorist act, shared by and between federal and international law-enforcement agencies, state and local law-enforcement, and other agencies within the Department of Homeland Security;

(12) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies and other records related to

national security briefings to assist state and local government with domestic preparedness for acts of terrorism;

(13) Computing, telecommunications, and network security records, passwords, security codes, or programs; ~~used to respond to or plan against acts of terrorism which may be the subject of a terrorist act~~

(14) Security or disaster recovery plans, risk assessments, tests, or the results of those tests;

(15) Architectural or infrastructure designs, maps, or other records that show the location or layout of the facilities where computing, telecommunications, or network infrastructure used to plan against or respond to terrorism are located or planned to be located;

(16) Codes for facility security systems; or codes for secure applications for facilities referred to in subdivision (15) of this subsection;

(17) Specific engineering plans and descriptions of existing public utility plants and equipment;

(18) Customer proprietary network information of other telecommunications carriers, equipment manufacturers, and individual customers, consistent with 47 U.S.C. § 222;

(19) Records of the Division of Corrections, Regional Jail and Correctional Facility Authority, and the Division of Juvenile Services relating to design of corrections, jail, and detention facilities owned or operated by the agency, and the policy directives and operational procedures of personnel relating to the safe and secure management of inmates or residents, that if released, could be used by an inmate or resident to escape a facility, or to cause injury to another inmate, resident, or to facility personnel;

(20) Information related to applications under §61-7-4 of this code, including applications, supporting documents, permits, renewals, or any other information that would identify an applicant for or holder of a concealed weapon permit: *Provided*, That information in the aggregate that does not identify any permit holder other than by county or municipality is not exempted: *Provided, however*, That information or other records exempted under this subdivision may be disclosed to a law-enforcement agency or officer:

~~(A)-(i)~~ To determine the validity of a permit;

~~(B)-(ii)~~ To assist in a criminal investigation or prosecution; or

~~(C)-(iii)~~ For other lawful law-enforcement purposes;

(21) Personal information of law-enforcement officers maintained by the public body in the ordinary course of the employer-employee relationship. As used in this paragraph, "personal information" means a law-enforcement officer's Social Security number, health information, home address, personal address, personal telephone numbers, and personal email addresses and those of his or her spouse, parents, and children as well as the names of the law-enforcement officer's spouse, parents, and children;

(22) Information provided by a person when he or she elects to remain anonymous after winning a draw game prize, pursuant to §29-22-15a of this code; ~~and~~

(23) Individually identifiable customer information created or maintained by a city or county or other public entity providing utility services in connection with the ownership or operation of a publicly-administered utility enterprise, including, but not limited to, customer names, addresses, and billing and usage records. Nothing contained herein is intended to limit public disclosure by a city or county of billing information:

(A) That the city or county determines will be useful or necessary to assist bond counsel, bond underwriters, underwriters' counsel, rating agencies, or investors or potential investors in making informed decisions regarding bonds or other obligations incurred, or to be incurred, with respect to the publicly-administered utility enterprise;

(B) That is necessary to assist the city, county, state, or public enterprise to maintain the integrity and quality of services it provides; or

(C) That is necessary to assist law enforcement, public safety, fire protection, rescue, emergency management, or judicial officers in the performance of their duties;

(24) Information related to security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data, or software; and

(25) Emergency or security information or procedures for any building or facility which, if disclosed, would jeopardize security of the building, facility, or individuals inside.

(b) As used in subdivisions (9) through (16), inclusive, subsection (a) of this section, the term "terrorist act" means an act that is likely to result in serious bodily injury or damage to property or the environment and is intended to:

- (1) Intimidate or coerce the civilian population;
- (2) Influence the policy of a branch or level of government by intimidation or coercion;
- (3) Affect the conduct of a branch or level of government by intimidation or coercion; or
- (4) Retaliate against a branch or level of government for a policy or conduct of the government.

(c) The provisions of subdivisions (9) through (16), inclusive, subsection (a) of this section do not make subject to the provisions of this chapter any evidence of an immediate threat to public health or safety unrelated to a terrorist act or the threat of a terrorist act which comes to the attention of a public entity in the course of conducting a vulnerability assessment response or similar activity.

§29B-1-5. Enforcement.

(1) Any person denied the right to inspect the public record of a public body may institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.

(2) In any suit filed under subsection ~~one~~ (1) of this section, the court has jurisdiction to enjoin the custodian or public body from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo. ~~and the burden is on the public body to sustain its action~~ The court, on its own motion, may view the documents in controversy in camera before reaching a decision. Any custodian of any public records of the public body found to be in noncompliance with the order of the court to produce the documents or disclose the information sought, may be punished as being in contempt of court.

(3) Except as to causes the court considers of greater importance, proceedings arising under subsection ~~one~~ (1) of this section shall be assigned for hearing and trial at the earliest practicable date.

§29B-1-7. Attorney fees and costs.

Any person who is denied access to public records requested pursuant to this article and who successfully brings a suit filed pursuant to §29B-1-5 of this code ~~shall~~ may be entitled to recover his or her attorney fees and court costs from the public body that denied him or her access to the records.

The bill (Eng. H. B. 3412), as amended, was then ordered to third reading.

Eng. House Bill 3424, Removing language regarding short term loans being provided to released inmates for costs related to reentry into the community.

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

Eng. House Bill 3492, Relating to municipal economic opportunity development districts.

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

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

Eng. House Bill 3517, Relating generally to fiscal emergencies of local governments.

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

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.**ARTICLE 9D. LOCAL FISCAL EMERGENCIES.****§6-9D-1. Legislative findings.**

(a) The Legislature finds:

(1) That local governments are instrumentalities of this state, and the Legislature must act for the public health, safety and welfare of its citizens to promote fiscal integrity of local governments to prevent future emergencies;

(2) That negative economic changes, waste, fraud or abuse by public officials, or a combination thereof, necessarily result in a significant impact on the revenues and effectiveness of local governments, and cause significant indebtedness without any current possibility for recovery; and

(3) That the failure of a local government to take actions on its own to address such a condition will adversely affect the health, safety and welfare not only of the residents of the local government, but also of other people of the state.

(b) It is the intent of the Legislature to direct the State Auditor or a designee to:

(1) Take necessary and appropriate actions to limit and restrict the powers of local governments to prevent the abuse of statutory powers;

(2) Require reports and examinations of their financial condition, transactions, operations and undertakings;

(3) Ensure the fiscal integrity of local governments so that they may provide for the health, safety and welfare of their citizens; and

(4) Determine if local governments have paid due principal and interest on their debt obligations, meet financial obligations to their employees, vendors and suppliers, and provide for proper financial accounting procedures, budgeting and taxing practices.

(c) The Legislature further finds that the fiscal emergency conditions described in this article result from and constitute abuses of the powers of a local government to borrow money, contract debts and levy taxes, and that those conditions impair and threaten the health, safety and welfare of the people of the state within and beyond the local government.

§6-9D-2. Definitions.

As used in this article:

"Committee" means a financial planning and supervision group created pursuant to this article.

"Debt obligations" means bonds, notes, certificates of indebtedness, bond anticipation notes, current revenue notes, local government fund notes, leases or other obligations issued or incurred in borrowing money, or to renew, refund, fund or refinance, or issued in exchange for, such obligations, and any interest coupons pertaining thereto.

"Default" means failure to pay the principal of or the interest on a debt obligation, or failure to make other payment to be made to the holder or owner of a debt obligation, in the full amount and at the time provided for in the contractual commitment with respect thereto, unless the time for such payment has been extended by the owner or holder of the debt obligation without penalty or premium and without the effect of subjecting the local government to the initiation of remedies pertaining to such debt obligation or other debt obligations.

"Deficit fund" means the general fund or any other fund of a local government that, as at the time indicated, has a deficit balance or a balance that is less than the amount required to be in such fund pursuant to law or pursuant to contractual requirements, demonstrating that over a period of time expenditures charged or chargeable to the fund have exceeded moneys credited to the fund, or that moneys credited to the fund have not been in the amounts required by law or contractual requirements.

"Effective financial accounting and reporting system" means an accounting and reporting system as prescribed by the West Virginia State Auditor's Office.

"Employee benefits" means expenditures for goods and services furnished to local government officers or employees by the local government, including, but not limited to, such benefits as food, temporary housing and clothing, and the provision of pension, retirement,

disability, hospitalization, health care, insurance or other benefits to employees requiring the advance payment of money other than directly to employees or other beneficiaries, or the deposit or reservation of money for such purpose.

"Estimated revenues" means the aggregate estimates of revenue receipts in the budget of the general fund of a local government and other funds as estimated and supplemented, modified, or amended by the local government, as approved by the West Virginia State Auditor's Office or other regulatory agency.

"Financial recovery plan" means the financial plan approved by the committee in accordance with §6-9D-6 of this code, as it may from time to time be amended in accordance with this article.

"Fiscal emergency" means the existence of fiscal emergency conditions as set forth in this article.

"Fiscal emergency period" means the period of time commencing on the date when the determination of a fiscal emergency is made by the State Auditor or a designee and ending when the determination of termination is made and certified.

"Fiscal watch" means the existence of fiscal watch conditions as provided in this article.

"General fund" means the fund used to account for and report the primary operating activities of the local government.

"General fund budget" means the estimates of revenue and expenditure as a plan of financial operation of the general fund during the applicable fiscal year as approved by the West Virginia State Auditor's Office.

"Local government" means any unit of local government within the state, including a county, municipality, and any other authority, board, commission, district, office, public authority, public corporation, or other instrumentality of a county, municipality, or any combination of two or more local governments.

"Other funds" means funds other than the general fund, including, but not limited to, special revenue funds, capital project funds, debt service funds, permanent funds, enterprise funds, internal service funds, pension trust funds, custodial funds, investment trust funds, and private purpose trust funds.

"Payroll" means compensation due and payable to employees of local government other than employee benefits.

§6-9D-3. Auditable Condition of Local Governments.

Notwithstanding the powers and duties granted to the State Auditor in §6-6-1 *et seq.* the State Auditor or designee may determine that a local government's accounts, records, files, or reports have not been maintained in accordance with §6-9-2 of this code. The State Auditor or designee shall notify the local government, in writing, of the deficiencies present and the action necessary to present the accounts, records, files, or reports in an auditable condition. Furthermore, the State Auditor or designee may prescribe the deadline for the local government in completing the necessary action and institute a fiscal monitoring plan to improve the local government's financial records.

§6-9D-4. Initiating fiscal watch review.

(a) A local government may undergo a fiscal watch review by the State Auditor to determine whether it is approaching a state of fiscal emergency. A fiscal watch review shall be initiated by a written request to the State Auditor or a designee from the governing body when duly authorized by a majority of the members of such body ; or may be initiated by the State Auditor or a designee if conditions for a fiscal watch have been determined to exist. Fiscal watch conditions include but are not limited to (1) the inability of a local government to meet financial obligations; (2) the lack of adequate financial records necessary to conduct an examination pursuant to §6-9-1 *et seq.* of this code; or (3) an examination pursuant to §6-9-1 *et seq.* of this code would cause an undue financial burden to the local government.

(b) The State Auditor or a designee will notify the local government when a fiscal watch review will or will not be conducted. The State Auditor's Office will perform the fiscal watch review, which may be substituted for an examination, as required by §6-9-1 *et seq.* of this code at the discretion of the State Auditor or a designee.

(c) All working papers acquired or created to produce the fiscal watch review shall be considered confidential pursuant to §6-9-9b of this code.

§6-9D-5. Guidelines for identifying potential for declarations of fiscal watch or fiscal emergency; rulemaking authority.

(a) The State Auditor or a designee shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code, setting forth guidelines for identifying fiscal practices and budgetary conditions of local government that, if uncorrected, could result in declaration of a fiscal watch or fiscal emergency.

(b) If the State Auditor or a designee determines that a local government is engaging in any of the practices set forth in the legislative rule promulgated pursuant to the provisions of this section or that any of those conditions exist, the State Auditor or a designee may declare the local government to be under a fiscal watch.

(c) The State Auditor or a designee, may visit and inspect any local government that is declared to be under a fiscal watch. The State Auditor or a designee may provide technical assistance to the local government in implementing proposals to eliminate the practices or budgetary conditions that prompted the declaration of fiscal watch and may make recommendations concerning those proposals.

§6-9D-6. Conditions constituting grounds for fiscal watch.

In addition to the conditions set out in the legislative rule promulgated pursuant to the provisions of section eleven of this article the following also constitute grounds for a fiscal watch may include, but are not limited to:

(1) Accounts have been due and payable for more than 30 days or for which a penalty was added for failure to pay. Accounts include, but are not limited to, final judgments, employee benefits payments due and payable, and amounts due and payable to persons and other governmental entities and including any interest and penalties thereon. Accounts that are due and payable do not include any account, or portion of any account, that is being contested in good faith.

(2) The deficit amount within the general fund for the preceding fiscal year exceed the estimated revenues made in the general fund budget of the current fiscal year.

(3) The local government has failed to comply with debt covenants as required by the issuer of any debt with such requirement.

§6-9D-7. Declaring existence of fiscal watch; financial recovery plan.

(a) Upon determining that one or more of the conditions constituting grounds for a fiscal watch are present, the State Auditor or a designee shall issue a written declaration of the existence of a fiscal watch and provide the same to the governing body of the local government.

(b) The fiscal watch shall be in effect until the State Auditor or a designee determines that the conditions have been satisfactorily addressed, cancels the watch, or until the State Auditor or a designee determines that a state of fiscal emergency exists. The State Auditor or a designee, shall provide such technical and support services to the municipal corporation, county or political subdivision after a fiscal watch has been declared to exist as the State Auditor or a designee considers necessary and provide recommendations to address the fiscal watch conditions.

(c) Within 90 days after the day a written declaration of the existence of a fiscal watch is issued under this section, the governing body of the local government for which a fiscal watch was declared shall submit to the State Auditor or a designee a financial recovery plan that shall identify actions to be taken to eliminate all of the conditions described in section five of this article, and shall include a schedule detailing the approximate dates for beginning and completing the actions and a five-year forecast reflecting the potential effects of the actions. The financial recovery plan also shall evaluate the feasibility of entering into shared services agreements with other political subdivisions for the joint exercise of any power, performance of any function, or rendering of any service, if not precluded by statute. The financial recovery plan is subject to review and approval by the State Auditor or a designee pursuant to the provisions of the rules promulgated pursuant to this article. The State Auditor or a designee may extend the amount of time by which a financial recovery plan is required to be filed, for good cause shown.

(d) The State Auditor or a designee may declare that a fiscal emergency condition exists under this article in the municipal corporation, county or political subdivision if either of the following applies:

(1) A feasible financial recovery plan for a local government filed pursuant to the provisions of this article and for which a fiscal watch was declared is not submitted within the time period prescribed by this section, or within any extension of time thereof; or

(2) The State Auditor or a designee finds that a local government for which a fiscal watch has been declared has not made reasonable proposals or otherwise taken action to discontinue or correct the fiscal practices or budgetary conditions that prompted the declaration of fiscal watch, and the State Auditor or a designee determines a fiscal emergency declaration is necessary to prevent further decline.

(e) If the State Auditor or a designee finds that a local government declared to be under a fiscal watch has not made reasonable proposals or otherwise taken action to discontinue or correct the fiscal practices or budgetary conditions that prompted the declaration of fiscal watch, and if the State Auditor or a designee considers it necessary to prevent further fiscal decline, the

State Auditor or a designee may determine that the local government should be in a state of fiscal emergency as set forth in this article

§6-9D-8. Determining existence of fiscal emergency conditions.

(a) The existence of fiscal emergency conditions as set forth in section nine of this article shall be determined by the State Auditor or a designee as set forth in rules authorized pursuant to this article. Fiscal emergency condition determinations shall be set forth in written reports by the State Auditor or a designee, which shall be filed with the governing body, the State Treasurer, Secretary of State, Governor, and Legislative Auditor.

(b) In making such determination, the State Auditor or a designee may rely on reports or other information filed or otherwise made available by the local government, accountants' reports, or other sources and data the State Auditor or a designee considers reliable for such purpose. The determination of a fiscal emergency condition may be made without need of the specific amounts noted related to such conditions.

§6-9D-9. Fiscal emergency conditions.

(a) The conditions constituting a fiscal emergency of a local government may include, but are not limited to:

(1) The existence, of a default on any debt obligation for more than 30 days.

(2) The failure to make payment of all payroll to employees of the local government in the amounts and at the times required by law, ordinances, resolutions, or agreements.

(3) The failure to make payment of all employee benefits of the local government in the amounts and at the times required by law, ordinances, resolutions, or agreements.

(4) The existence of a condition in which accounts were due and payable from the general fund and that either had been due and payable for at least 30 days or to which a penalty has been added for failure to pay, including, but not limited to, final judgments, employee benefits payments due and payable, and amounts due and payable to persons and other governmental entities and including any interest and penalties thereon. Accounts due and payable do not include any account, or portion of any account, that is being contested in good faith.

(5) The deficit amount within the general fund for the preceding fiscal year exceed the estimated revenues made in the general fund budget of the current fiscal year.

(6) The local government has failed to comply with debt covenants as required by the issuer of any debt with such requirement.

(7) Any such rule, as proposed by the State Auditor or a designee for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code, identified as indicators of a financial emergency condition.

(8) The State Auditor or a designee declares a fiscal emergency pursuant to section eight of this article.

(b) Any condition described in subdivisions (4), (5), (6) or (7) of subsection (a) of this section shall not constitute a fiscal emergency condition if the local government clearly demonstrates to the satisfaction of the State Auditor or a designee that such condition no longer exists prior to the time of the determination.

(c) Neither the time periods nor the amounts used in subsection (a) of this section to determine what constitutes a fiscal emergency condition of a local government for purposes of this article authorize actions otherwise contrary to law or any agreement of the local government.

§6-9D-10. Appeal of decision of State Auditor.

(a) A determination by the State Auditor or a designee that a fiscal emergency condition does not exist is final, conclusive and not appealable. A determination by the State Auditor or a designee under this section that a fiscal emergency exists is final, except that the governing body affected by a determination of the existence of a fiscal emergency condition under this section, when authorized by a majority of the members of their governing body, may appeal the determination of the existence of a fiscal emergency condition to the circuit court of the county having territorial jurisdiction over the local government. The appeal shall be heard expeditiously by the circuit court for good cause shown shall take precedence over all other civil matters except earlier matters of the same character. Notice of such appeal must be filed with the State Auditor or a designee and such court within 30 days after the notification of a fiscal emergency determination by the State Auditor or a designee to the governing body of the local government as provided for in subsection (a) of this section.

(b) Upon such appeal, determinations of the State Auditor or a designee shall be presumed to be valid and the local government shall have the burden of proving, by clear and convincing evidence, that each of the determinations made by the State Auditor or a designee as to the existence of a fiscal emergency condition under this article was in error. If the local government fails, upon presentation of its case, to prove by clear and convincing evidence that each such determination by the State Auditor or a designee was in error, the court shall dismiss the appeal. The local government and the State Auditor or a designee may introduce any evidence relevant to the existence or nonexistence of such fiscal emergency conditions at the times indicated in the applicable provisions of subsections (a) and (b) of this section.

(c) The pendency of any such appeal shall not affect or impede the operations of this article; no restraining order, temporary injunction, or other similar restraint upon actions consistent with this article shall be imposed by the court or any court pending determination of such appeal; and the actions of the State Auditor taken pursuant to this article may continue regardless of the pendency of any such appeal. Any action taken or contract executed pursuant to this article during the pendency of such appeal is valid and enforceable among all parties, notwithstanding the decision in such appeal. If the circuit court reverses the determination of the existence of a fiscal emergency condition by the State Auditor or a designee, the determination no longer has any effect, and any procedures undertaken as a result of the determination shall be terminated.

(d) All expenses incurred by the State Auditor or a designee relating to a determination or termination of a fiscal emergency or a fiscal watch under this article, including providing technical and support services, or for conducting a financial review, shall be reimbursed from an appropriation for that purpose. If necessary, the governing body of the local government may provide sufficient funds for these purposes.

§6-9D-11. Financial planning and supervision committee; rule-making authority.

(a) Upon the occurrence of a fiscal emergency in any local government, there is established, with respect to that local government, a supervising committee to perform essential governmental functions of the local government to be known as the "financial planning and supervision committee for (name of local government)", which, in that name, may exercise all authority vested in such a committee provided by this article. Furthermore, if a local government in which fiscal watch or fiscal emergency exists has failed to develop a financial recovery plan the "financial planning and supervision committee for (name of local government)" may develop such a plan for the local government.

(b) The State Auditor shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code, setting forth the following:

(1) Minimum requirements for the composition of the members of said committee;

(2) The rules of governance for such a committee;

(3) Requirements for the detailed financial recovery plan to be submitted by the subject local government;

(4) The powers, duties and functions of the committee;

(5) The payment of expenses and obligations;

(6) The establishment of enhanced financial reporting;

(7) The requirements of the local government operating under the plan;

(8) Recourse for a noncompliant local government;

(9) Limitations for appropriations;

(10) Communications of the committee;

(11) The approval of debt obligations;

(12) The issuance of general obligation, special obligation, or revenue bonds and notes in anticipation of bonds; and

(13) The continuance and dissolution of the committee.

§6-9D-12. Compliance

(a) Local government officials shall:

(1) Take the necessary corrective action recommended by the State Auditor or designee pursuant to section three of this article to present financial records in an auditable condition.

(2) Complete any recommendations imposed by the State Auditor or designee pursuant to section seven of this article.

(3) Provide a financial recovery plan in accordance with section seven of this article.

(4) Make reasonable proposals or otherwise take action to discontinue or correct the fiscal practices or budgetary conditions that prompted the declaration of fiscal watch or fiscal emergency.

(5) Comply with the financial recovery plan instituted by a financial planning and supervision committee created pursuant to section eleven of this article.

(b) If local government officials fail to adequately comply with the provision of this section, the State Auditor or designee may institute appropriate recourse measures pursuant to the rules authorized by section eleven of this article.

§6-9D-13. Prohibition against relief under federal bankruptcy laws unless authorized.

(a) No county, municipality, school district, authority, division, instrumentality, political subdivision, or public body corporate created under the Constitution or laws of this state shall be authorized to file a petition for relief from payment of its debts as they mature or a petition for composition of its debts under any federal statute providing for such relief or composition or otherwise to take advantage of any federal statute providing for the adjustment of debts of political subdivisions and public agencies and instrumentalities without the express, written permission of the State Auditor.

(b) No chief executive, mayor, board of commissioners, city council, board of trustees, or other governmental officer, governing body, or organization shall be empowered to cause or authorize the filing by or on behalf of any county, municipality, school district, authority, division, instrumentality, political subdivision, or public body corporate created under the Constitution or laws of this state of any petition for relief from payment of its debts as they mature or a petition for composition of its debts under any federal statute providing for such relief or composition or otherwise to take advantage of any federal statute providing for the adjustment of debts of political subdivisions and public agencies and instrumentalities without the express, written permission of the State Auditor.

§6-9D-12. Severability.

(a) In case any section or provision of this article, including any condition or prerequisite to any action or determination thereunder, or in case any act or action, or part thereof, made, or taken under this article, or any application thereof, is for any reason held to be illegal or invalid, such illegality or invalidity shall not affect the remainder thereof or any other section or provision of this article, including any condition or prerequisite to any action or determination thereunder, or any agreement, act or action, or part thereof, made, entered into, or taken under such article, which shall be construed and enforced and applied as if such illegal or invalid portion were not contained therein, nor shall such illegality or invalidity or any application thereof affect any legal and valid application thereof, and each such section, provision, agreement, act, or action, or part thereof, shall be deemed to be effective, operative, made, and entered into or taken in the manner and to the full extent permitted by law.

(b) Any action or proceeding bringing into question the interpretation, legality, or validity of any provision of this article, the existence or authority, or the legality or validity of any act, of the committee or the State Auditor or of any action taken under this article, is a matter of great public interest to the state and shall be advanced on the docket of the court and expedited to final determination.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 35. DISSOLUTION OF MUNICIPALITIES.

PART I. FORFEITURE OF CHARTER OR CERTIFICATE OF INCORPORATION.

§8-35-1. Forfeiture of charter or certificate of incorporation; notice; dissolution of municipality.

(a) Any municipality heretofore incorporated or which shall hereafter be incorporated ~~and which has no substantial indebtedness, and~~ which shall fail for one year to exercise its corporate powers and privileges, or which has not 20 qualified voters, or in which there were not 20 legal votes cast at its last election, or the population of which shall be reduced below 100 persons and so remain for six consecutive months, shall in either event have its charter or certificate of incorporation and all rights, powers and privileges so conferred upon such municipality forfeited and declared dissolved.

(b) The county ~~court~~ commission of the county wherein any such municipality or the major portion of the territory thereof is located shall have jurisdiction to hear and determine all matters relating to the forfeiture and dissolved of such charter or certificate of incorporation, upon the petition of one or more of its ~~inhabitants~~ qualified voters, or the State Auditor, and to dissolve such municipal corporation. Ten days' notice of the filing of such petition with the clerk of the county ~~court~~ commission of such county, served upon the mayor and recorder, or on the last mayor or recorder thereof, shall be sufficient notice upon which such county ~~court~~ commission shall so act, and upon the proper proof of the allegations of such petition, any such charter or certificate of incorporation shall be declared forfeited and the municipal corporation dissolved and all debts of such municipality shall be ordered paid and the forfeiture and dissolution shall ~~not~~ become effective until when such debts have been paid or when the State Auditor has fully exercised the actions authorized by §8-35-4 of said code. ~~Upon such forfeiture and dissolution all interest of such municipality in corporate funds, if any, in excess of the amounts required to pay corporate debts shall be and the same is hereby transferred to and vested in the State of West Virginia, to be controlled by the State Auditor. If the territory so incorporated, or a major part thereof, either in area or in population, shall, however, within one year next after such declaration of forfeiture and dissolution by the county court be reincorporated under this chapter, then the Auditor of the State of West Virginia shall convey unto such new municipality all of the rights of the State of West Virginia in and to the corporate property, moneys, claims, demands and taxes collected or uncollected, of the former municipal corporation so dissolved.~~

(c) A petition for forfeiture shall be filed with the clerk of the county commission. The petition shall be in writing and set forth the reasons for the request to forfeit and dissolve the municipality. The petition for dissolution shall be served upon the mayor and recorder, or on the last mayor or recorder thereof.

(d) The State Auditor shall promptly conduct an examination under the authority granted under §6-9-1 et seq. of this code, to determine the financial condition of the municipality.

PART II. VOLUNTARY DISSOLUTION OF CLASS III CITY OR

CLASS IV TOWN OR VILLAGE MUNICIPALITIES.**§8-35-2. Voluntary dissolution of ~~Class III city or Class IV town or village~~ municipal corporation.**

(a) A petition for dissolution shall be filed with the governing body of the municipality. The petition shall be in writing, set forth the reasons for the request to dissolve the municipality, and be signed by not less than 25 percent of the qualified voters of the municipality as shown by the last preceding statewide general election. The petition for dissolution shall be served upon the mayor and recorder, or on the last mayor or recorder thereof.

~~(b) Upon the filing of a qualified petition for dissolution of twenty-five or more percent of the legal voters of any Class III city or Class IV town or village municipal corporation, the governing body thereof shall submit to the qualified voters of such municipal corporation at the next regular municipal election, or at a special municipal election called for that purpose, the question of continuing or dissolving such municipal corporation. It shall be the responsibility of the governing body to verify the total number of eligible petitioners and to determine whether the required percentage of petitioners has been obtained. The governing body shall provide written notice of the election to the State Auditor within five days of determining an election date. The ballots, or ballot labels where voting machines are used, shall have written or printed on them the words:~~

~~/For Continuance of Municipal Corporation~~

~~/For Dissolution of Municipal Corporation~~

Shall the municipality of _____ (name of municipality subject to dissolution) be dissolved?

() Yes.

() No.

(c) The dissolution election shall be conducted in accordance with applicable election laws.

~~(d) If a majority of the legal votes cast be for dissolution, then such municipal corporation shall by operation of law be dissolved upon termination of the term of the governing body then in office: *Provided*, That all debts or other obligations outstanding against such municipal corporation shall be settled in full at the expiration of six (6) months from the date of the election on the question. The State Auditor shall promptly conduct an examination under the authority granted under §6-9-1 *et seq.* of this code, to determine the financial condition of the municipality. If a majority of the legal votes cast be for continuance, then such municipal corporation shall continue in existence unless and until dissolved at some later date under the provisions of section one of this article or this section two. *Provided, however*, That another election under the provisions of this section two shall not be held within two years of the last such election. Any election under the provisions of this section two shall be held, conducted and superintended and the result thereof ascertained, certified, returned and canvassed in the same manner and by the same persons as an election for municipal officers of such municipal corporation.~~

PART III. INVOLUNTARY DISSOLUTION OF MUNICIPAL CORPORATION.

§8-35-3. Involuntary dissolution of municipal corporation.

(a) The Prosecuting Attorney for the county where such municipality or the majority portion of the territory thereof is located, or the State Auditor, may petition for involuntary dissolution of a municipality when the government of a municipality ceases to function by reason of the following:

(1) General municipal elections have not been called in the municipality for two successive general municipal elections; and

(2) A majority of all the members of the governing body fail to qualify for two successive general municipal elections.

(b) The petition requesting involuntary dissolution shall be filed in the circuit court in the county in which such municipality or the majority portion of the territory thereof is located. The petition shall state the facts which justify the request and shall set forth a detailed statement of the assets and liabilities of the municipality insofar as they can be ascertained. The petition shall state the facts which justify the request insofar as they can be ascertained.

(c) Upon the filing of a petition for the involuntary dissolution of a municipality, the circuit court shall fix a date for a hearing on the request and written notice shall be provided to the State Auditor, and the Prosecuting Attorney for the county where such municipality or the majority portion of the territory thereof is located, within five days. The date of the hearing shall be not less than 30 days after the date of filing. The petitioner shall give at least 20 days' notice of the hearing by publication in a newspaper of general circulation in the municipality, and by posting copies of the notice in a manner consistent with court proceedings. The notice shall state the purpose of the petition and the date and place of the hearing.

(d) The State Auditor shall promptly conduct an examination under the authority granted under §6-9-1 et seq. of this code, to determine the financial condition of the municipality.

(e) Any person owning property in or registered to vote in the municipality may appear at the hearing and give testimony for or against dissolution of the municipality. If the court finds that the government of the municipality has ceased to function because of the reasons listed in subsection (a), it shall enter an order for dissolution of the municipality. The order of the circuit court shall state when the dissolution shall take effect and appoint the State Auditor to act as special receiver to wind up the affairs of the municipality and dispose of its property.

(f) The order of dissolution shall be filed with the clerk of the county commission and the office of the Secretary of State.

PART IV. DISPOSITION OF PROPERTY, DEBTS AND LIABILITIES.

§8-35-4. State Auditor as special receiver.

(a) Upon declaration of the forfeiture of the charter or certificate of incorporation, or the certification of the election for voluntary dissolution, or upon an order by the circuit court for involuntary dissolution, as set forth in this article, the State Auditor shall by operation of law, act as special receiver for the dissolved municipality.

(b) The State Auditor, acting as special receiver of the dissolved municipality, shall have the power and authority to:

(1) Take legal control of assets, including municipal corporate property, moneys, claims, demands and taxes collected or uncollected;

(2) Protect assets;

(3) File claims on behalf of the dissolved municipality in receivership;

(4) Initiate necessary and proper bankruptcy proceedings, including, but not limited to filing a petition in the name of the municipal corporation under Chapter 9 of Title 11 of the United States Code, and to act on the municipality's behalf in such proceeding, to distribute assets to claimants or creditors, and;

(5) Any such actions as the State Auditor may deem necessary and appropriate to wind up the affairs of the municipality.

(6) Any excess of amounts required to pay corporate debts shall be maintained in a special fund titled "municipal dissolution account" to be controlled by the State Auditor to offset the costs associated with conducting examinations and legal expenses pursuant to the provisions of this article.

(7) Further powers and duties of the State Auditor acting as a special receiver shall be set out in rules authorized pursuant to the provisions of this article. These shall include, but are not limited to:

(A) The manner in which the State Auditor acting as a special receiver may gain access to and control over bank account and public funds;

(B) The manner in which the State Auditor acting as a special commissioner signs or records deeds, releases, or contracts;

(C) The manner in which the State Auditor acting as a special commissioner transfers or receives title to real or personal property;

(D) The manner in which the State Auditor acting as a special commissioner executes legally binding documents on behalf of a dissolved local government.

§8-35-5. Disposition of property belonging to dissolved municipal corporation.

(a) No dissolution of an incorporated municipality shall impair the rights of any person in any contract or agreement to which the municipality is a party.

(b) The deposits and investments belonging to the dissolved municipality shall be used first to pay the municipality's debts and liabilities.

(c) In the event that deposits and investments belonging to the municipality are not sufficient to satisfy its debts and liabilities, then the State Auditor may initiate the liquidation of the dissolved municipality's property pursuant to §8-35-3 of this code.

§8-35-6. Sale and liquidation of dissolved municipal assets.

(a) If the State Auditor, as special receiver, makes a determination that a dissolved municipality's real and/or personal property must be liquidated to satisfy its debts and liabilities then a public auction may be conducted. The property shall be sold either at an on-site public auction or by utilizing an Internet-based public auction service, or at a suitable location within the county wherein the dissolved municipality was principally located and such shall be conducted by the State Auditor. Before making such sale, notice of the time, terms, manner and either the location of the sale or the Internet-based public auction service to be utilized, together with a brief description of the property to be sold, shall be published as a Class II legal advertisement in compliance with the provision of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the county.

(b) The provisions of subsection (a) of this section concerning sale at public auction shall not apply to the State Auditor selling or disposing of the property for public use to:

(1) The United States of America its instrumentalities, agencies or political subdivisions;

(2) The State of West Virginia, or its political subdivisions, including county boards of education, volunteer fire departments, and volunteer ambulance services; or

(3) Any authority, commission, instrumentality, or agency established by act of the State of West Virginia.

(c) For all sales made pursuant to this section, the State Auditor is not required to exclusively consider the present commercial or market value of the property.

(d) No officer or employee of the State Auditor or the Prosecuting Attorney for the county where such municipality or the majority portion of the territory thereof is located, or his or her immediate family, may purchase or acquire any property municipal assets disposed of pursuant to this section.

The bill (Eng. H. B. 3517), as amended, was then ordered to third reading.

On motion of Senator Martin, at 6:29 p.m., the Senate recessed for 45 minutes.

The Senate reconvened at 8:21 p.m. and, without objection, returned to the third order of business.

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

Eng. Com. Sub. for Senate Bill 485, Exempting West Virginia Secretary of State from competitive bidding process.

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

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

On page 2, section 1, line 41, by striking the period and inserting in lieu thereof a colon and the following words "*Provided*, That when any purchase or procurement has been made pursuant to this subdivision, the Secretary of State shall submit all bids, quotes, requested specifications, and contracts related to the purchase or procurement, as well as any subsequent change orders and amendments and addenda to contracts related to the purchase or procurement, to the director to be posted and publicly accessible on the division's website: *Provided, however*, That the Secretary of State is not required to submit to the director any document or portion of a document that would be exempt from disclosure if the document or portion of a document were requested pursuant to §29B-1-1 *et seq.* of this code.";

And,

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

Eng. Com. Sub. for Senate Bill 485—A Bill to amend and reenact §5A-3-1 of the Code of West Virginia, 1931, as amended, relating to the Purchasing Division; exempting the Secretary of State from the competitive bidding process for specific purchases of securing, facilitating, or

supporting critical election infrastructure; requiring the Secretary of State to provide certain documents related to exempt purchases to the Director of the Purchasing Division for posting on the division's website; providing an exception to the requirement to provide certain documents to the director.

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

Engrossed Committee Substitute for Senate Bill 485, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Martin, Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Stuart, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woodrum, and Smith (Mr. President)—31.

The nays were: None.

Absent: Boley, Jeffries, and Woelfel—3.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 485) 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 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 496, Removing reflexology and other energy-based work from definition of "massage therapy".

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

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

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

ARTICLE 37. MASSAGE THERAPISTS.

§30-37-2. Definitions.

(a) "Board" means the West Virginia Massage Therapy Licensure Board.

(b) "Massage therapist" means a person licensed to practice the health care service of massage therapy under this article who practices or administers massage therapy to a client of either gender for compensation. No person licensed by the massage therapy licensure board may be referred to as a primary care provider nor be permitted to use such designation.

(c) "Massage therapy" means a health care service which is a scientific and skillful manipulation of soft tissue for therapeutic or remedial purposes, specifically for improving muscle tone, circulation, promoting health and physical well-being. Massage therapy includes massage, myotherapy, massotherapy, bodywork, bodywork therapy, or therapeutic massage including hydrotherapy, superficial hot and cold applications, vibration and topical applications or other therapies which involve manipulation of the muscle and connective tissue of the body, for the purpose of enhancing health, reducing stress, improving circulation, aiding muscle relaxation, increasing range of motion, or relieving neuro-muscular pain. Massage therapy does not include diagnosis or service which requires a license to practice medicine or surgery, osteopathic medicine, chiropractic, or podiatry, and does not include service performed by nurses, occupational therapists, or physical therapists, or reflexologists who act under their own professional license, certificate, or registration, or energy work practitioners (including reiki, qigong, and sound healing).

(d) "Massage establishment" means a place of business wherein massage therapy is practiced, with a physical site or premise, including mobile sites, licensed as required by this article, in which licensed massage therapists are employees or contractors practicing massage therapy on clients.

(e) "Sole practitioner" means a licensed massage therapist who is licensed pursuant to this article, who is not an employee or contractor of the sole practitioner or an establishment, and who provides massage therapy to clients at a specific location including, but not limited to, a rental space, home office space, offsite, or onsite space.

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

Engrossed Senate Bill 496, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Stuart, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woodrum, and Smith (Mr. President)—32.

The nays were: None.

Absent: Boley and Woelfel—2.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 496) passed with its title.

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

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

Eng. Com. Sub. for Senate Bill 565, Relating generally to practice of optometry.

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

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

On page 9, section 4, line 1, by striking section 4 in its entirety and inserting a new section 4 to read as follows:

§30-8B-4. Certification requirements.

To be certified the licensee shall:

(1) Complete the required application form designed by the board; and

(2) Submit proof of attendance and satisfactory completion of education and training, including, but not limited to, a training requirement that at least a minimum of 5 posterior capsulotomy, 4 peripheral iridotomy and 5 selective laser trabeculoplasty procedures be supervised for each individual person proposing certification. A licensee shall successfully demonstrate clinical proficiency to perform the procedure or procedures on a living human eye to the proctor's satisfaction. The procedures shall be proctored by an optometrist or ophthalmologist that already meets the above criteria and submitted to the board for review and any additional requirements as established by the board in §30-8B-5 of this code.

(3) A licensee may apply for certification for each approved procedure separately and may receive certification individually for each procedure based upon the above criteria applied individually for each approved procedure.";

On page 11, section 6, line 13, after subsection (e) by inserting the following:

"(f) A certificate holder shall report any adverse outcomes related to surgical procedures performed under this article to the Board within ten business days. Such reports shall include the relevant patient records necessary to evaluate the incident, in accordance with applicable privacy laws.";

On page 11, section 7, line 10, by inserting the following:

"(c) A licensee may not perform a procedure on a pediatric patient. A licensee shall refer a pediatric patient to an ophthalmologist.";

And,

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

Eng. Com. Sub. for Senate Bill 565—A Bill to amend and reenact §30-8-3, §30-8-6, §30-8-9, and §30-8A-1 of the Code of West Virginia, 1931, as amended; to amend the code by adding a new section, designated §30-8-23; and to amend the code by adding a new article, designated §30-8B-1, §30-8B-2, §30-8B-3, §30-8B-4, §30-8B-5, §30-8B-6, §30-8B-7, and §30-8B-8, relating to the practice of optometry; defining terms; updating rulemaking authority; modifying scope of practice; permitting the performance of certain procedures when trained; permitting the board to regulate the use of lasers by optometrists; setting forth laser certification requirements; establishing the minimum training; providing treatment guidelines; prohibiting certain practices; and providing for exemption from specified review requirements.

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

Engrossed Committee Substitute for Senate Bill 565, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, Maynard, Morris, Queen, Roberts, Rose, Rucker, Taylor, Thorne, Willis, and Smith (Mr. President)—24.

The nays were: Barrett, Oliverio, Phillips, Stuart, Takubo, Tarr, Weld, and Woodrum—8.

Absent: Boley and Woelfel—2.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 565) 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 amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

Eng. Com. Sub. for Senate Bill 736, Relating to publication of registered lobbyist information.

On motion of Senator Martin, 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 6B-3-3, line 9, after the word "printable" by inserting the following text:

"and electronically searchable".

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

Engrossed Committee Substitute for Senate Bill 736, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, Maynard, Morris, Queen, Roberts, Rose, Rucker, Stuart, Tarr, Taylor, Thorne, Weld, Willis, and Smith (Mr. President)—28.

The nays were: Oliverio, Phillips, Takubo, and Woodrum—4.

Absent: Boley and Woelfel—2.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 736) passed with its title.

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

The Senate again proceeded to the ninth order of business.

The end of today's second reading calendar having been reached, the Senate returned to the consideration of

Eng. Com. Sub. for House Bill 2576, NIL Protection Act.

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

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

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

On page 5, section 5, lines 8 through 13, by striking out all of subsection (c).

The question being on the adoption of Senator Tarr's amendment to the bill, and on this question, Senator Tarr demanded the yeas and nays.

The roll being taken, the yeas were: Bartlett, Charnock, Clements, Deeds, Fuller, Grady, Helton, Jeffries, Morris, Phillips, Queen, Takubo, Tarr, Weld, and Woodrum—15.

The nays were: Azinger, Chapman, Garcia, Hamilton, Hart, Martin, Maynard, Oliverio, Roberts, Rose, Rucker, Stuart, Taylor, Thorne, Willis, and Smith (Mr. President)—16.

Absent: Barrett, Boley, and Woelfel—3.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Tarr's amendment to the bill rejected.

Engrossed Committee Substitute for House Bill 2576 was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Stuart, Takubo, Taylor, Thorne, Weld, Willis, Woodrum, and Smith (Mr. President)—31.

The nays were: Tarr—1.

Absent: Boley and Woelfel—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2576) passed with its title.

Senator Martin moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, Maynard, Morris, Oliverio,

Phillips, Queen, Roberts, Rose, Rucker, Stuart, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woodrum, and Smith (Mr. President)—32.

The nays were: None.

Absent: Boley and Woelfel—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2576) takes effect from passage.

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

Action as to Engrossed Committee Substitute for House Bill 2576 having been concluded, the Senate proceeded to the consideration of

Eng. Com. Sub. for House Bill 2595, Non Profit Athletics Act.

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

On the passage of the bill, the yeas were: Azinger, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Stuart, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woodrum, and Smith (Mr. President)—32.

The nays were: None.

Absent: Boley and Woelfel—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2595) passed with its title.

Senator Martin moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Stuart, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woodrum, and Smith (Mr. President)—32.

The nays were: None.

Absent: Boley and Woelfel—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2595) takes effect from passage.

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

Action as to Engrossed Committee Substitute for House Bill 2595 having been concluded, the Senate proceeded to the consideration of

Eng. Com. Sub. for House Bill 2267, Authorizing Department of Revenue to Promulgate Legislative Rules.

Having been read a second time and amended by the Committee on the Judiciary in earlier proceedings today, and now coming up in deferred order, was again reported by the Clerk.

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

On page 2, section 1, after line 3, by adding the following:

On page 13, paragraph 2.30.9, after the words "(iv) canned or packaged food valued at least" by deleting "\$100" and inserting in lieu thereof "\$50".

And,

On page 24, by striking out all of paragraph 3.2.1.a., and inserting in lieu thereof a new paragraph 3.2.1.a. to read as follows:

3.2.1.a. That is located on any college campus, state university campus, or branch thereof, unless it is located in an on-campus structure listed on the National Register of Historic Places located within a designated National Historic Landmark District or such private club type is located upon the premises of a National Collegiate Athletic Association, or its successor, approved Division I, II, or III sports stadium used for revenue generating sports by a college or university on its campus and no classes are held at the sports stadium or at a private college sports stadium.

And,

On page 34, subparagraph 3.4.7.c by striking out "2.22.5" and inserting in lieu thereof "2.25.5".

And,

On page 37, subsection 3.4.12.e, line six, following the words "commissioner's requirements" and the period, by inserting a new sentence to read as follows: "Furthermore, where a municipality has authorized sidewalk dining areas by ordinance, a qualified permit holder has obtained a sidewalk dining permit from the municipality and the Commissioner, and additionally the municipality has authorized by ordinance that a qualified permit holder in the PODA may provide for the lawful sale, service, and tendering of alcohol (such alcohol as authorized for sale by the licensee's license) from an approved sidewalk dining area in approved PODA cups to patrons, and the qualified permit holder has added the sidewalk dining area or areas as a part of its WVABCA floorplan comprising its licensed premises, then such qualified permit holder may conduct such lawful sales, service, and tendering of alcohol (such alcohol as authorized for sale by the licensee's license) from the sidewalk dining area or areas without the dining requirement for such to-go alcoholic beverage sales."

And.

On page 39, paragraph 4.2.3, after the word "A" by inserting the word "valid".

And,

On page 39, paragraph 4.2.3 by deleting the word "card".

And,

On page 39, paragraph 4.2.4, after the word "A" by inserting the word "valid".

And,

On page 39, paragraph 4.5.5 by striking out the word "The" and inserting in lieu thereof the words "In each public restroom the".

And,

On page 40, subsection 4.8, after the words "cleared of all members and guests" by inserting the words "one hour and".

And,

On page 48, subparagraph 5.1.1.h by striking out the words "in a position where the primary responsibility for such employment is to sell, furnish, tender, serve, or give nonintoxicating beer, wine, or alcoholic liquors to any person;" and inserting in lieu thereof the words "in any capacity that includes, even incidentally, the selling, furnishing, tendering, serving, or giving of nonintoxicating beer, wine, or alcoholic liquors to any person;".

The bill (Eng. Com. Sub. for H. B. 2267), as amended, was then ordered to third reading.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senator Chapman.

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

The Senate proceeded to the thirteenth order of business.

The following communications were reported by the Clerk:



**HOUSE OF DELEGATES
WEST VIRGINIA LEGISLATURE**

BUILDING 1, ROOM M-212
1900 KANAWHA BLVD., EAST
CHARLESTON, WV 25305-0470
PHONE (304) 340-3200

April 9, 2025

The Honorable Patrick Morrisey
Governor, State of West Virginia
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

Dear Governor Morrisey,

The following bills, authenticated by the signature of the Clerk of each House, and signed by the Speaker of the House of Delegates and the President of the Senate, have been examined and found truly enrolled:

Com. Sub. for H. B. 2042, Relating to allowing guardian ad litem to request the appointment of a court appointed special advocate.

Com. Sub. for H. B. 2157, Provide one trip temporary vehicle permits to be purchased and printed online.

Com. Sub. for H. B. 2172, Relating to adding an athletic trainer to the Board of Physical Therapy.

H. B. 2217, Relating to penalties for conspiracy to commit murder.

Com. Sub. for H. B. 2233, Authorizing the Department of Environmental Protection to promulgate legislative rules.

Com. Sub. for H. B. 2331, Relating to authorizing certain agencies of the Department of Commerce to promulgate legislative rules.

H. B. 2360, Clarifying the victims of crimes against law-enforcement officers.

Com. Sub. for H. B. 2399, Relating to the taxation of managed timber.

H. B. 2709, Permitting a voter with a change of address to vote in his or her new precinct without having to cast a provisional ballot.

H. B. 3030, Administration of the West Virginia Water Pollution Control Act.

H. B. 3089, Mandate the use of WV DMV electronic lien and title system for certain entities and persons.

H. B. 3313, Providing more opportunities for high school students in community colleges.

H.B. 3347, Supplemental Appropriation Administration Diamond Bldg.

H. B. 3358, Supplemental Appropriation FBGR DHHR

H. B. 3363, Supplemental Appropriation Public Defender

H. B. 3365, Supplemental Appropriation HLTH Birth to Three

H. B. 3366, Supplemental Appropriation FEDA HLTH OIG

H. B. 3367, Supplemental Appropriation SAPR DNR

H. B. 3368, Supplemental Appropriation Administration Lease Rental Payment

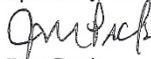
H. B. 3370, Supplemental Appropriation FEDA HMSV Summer EBT

And,

H. B. 3372, Supplemental Appropriation FEDA Veterans

These bills are presented to you on this day, April 9, 2025.

Respectfully submitted,



Jeffrey Pack
Clerk of the House of Delegates

cc: The Honorable Lee Cassis
Clerk of the Senate

PRESENTED TO THE GOVERNOR

APR 10 2025

Time

8:15am

The Senate of West Virginia
Charleston

LEE CASSIS
CLERK OF THE SENATE



STATE CAPITOL, ROOM M-211
1900 KANAWHA BLVD. EAST
CHARLESTON, WV 25305-0800
304-357-7800

April 10, 2025

The Honorable Patrick Morrisey, II
Governor, State of West Virginia
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

Dear Governor Morrisey,

The following bills, authenticated by the signature of the Clerk of each House, and signed by the President of the Senate and the Speaker of the House of Delegates, have been examined and found truly enrolled:

Com. Sub. for S. B. 500, Transferring audits of volunteer fire departments to Legislative Auditor;

S. B. 615, Eliminating accelerated tax payment requirements;

Com. Sub. for S. B. 715, Relating to personally identifiable information of member, retirant, beneficiary, or alternate payee of retirement system;

And,

S. B. 716, Relating to failure to pay required contributions and interest payments for certain retirees who transfer between retirement systems.

These bills are presented to you on this day, April 10, 2025.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lee Cassis".

Lee Cassis
Clerk of the Senate

C: The Honorable Jeffrey Pack
Clerk of the House of Delegates

On motion of Senator Martin, at 8:45 p.m., the Senate adjourned until tomorrow, Friday, April 11, 2025, at 11 a.m.
